

HIGHLIGHTS CHECKLIST

EMPLOYMENT COORDINATOR

Release #8; August 2026

ROUTE TO: _____

Here are the highlights of this issue of your *Employment Coordinator*. Circulate this Checklist throughout your office as a convenient summary of recent developments in the law. Consult the *Employment Coordinator* at the topic, chapter, and section indicated for details.

BENEFITS _____

Retroactive Change to Actuarial Assumptions Allowed by Supreme Court

In a major decision, the U.S. Supreme Court held that multiemployer pension plan actuaries can retroactively change assumptions underlying their withdrawal liability calculations, rejecting employers' argument for time restrictions on the methodology underpinning penalties for withdrawing from a pension fund.

M & K Employee Solutions, LLC v. Trustees of IAM National Pension Fund, 146 S. Ct. 1224 (2026)

Ben § 29:182

COMPENSATION _____

Supreme Court Clarifies What Is Needed Be Engaged in Interstate Commerce for FAA Purposes

The Supreme Court clarified that individuals can sometimes be direct, necessary, and active participants in moving goods from points in one state

to points in another state without crossing state lines or interacting with vehicles that do, as relevant to determining whether a worker falls within the scope of the FAA exemption.

Flowers Foods, Inc. v. Brock, 146 S. Ct. 1358 (2026)

Comp § 41:203

EMPLOYMENT PRACTICES —

Reasonable Accommodation Under ADA Must be Work-Related

Under the Americans with Disabilities Act, an accommodation must be work related, meaning that it will allow an employee to perform the essential functions of the relevant job. To qualify as "reasonable," then, an accommodation must alleviate "a key obstacle" that has prevented the employee from being able to perform an essential job function.

Tumbleson v. Lakota Local School District, 175 F.4th 773 (6th Cir. 2026) ..

Emp P § 9:53

Supreme Court Clarifies Jurisdiction Under FAA

The Supreme Court has held that a court that grants a stay pending arbitration under the FAA retains jurisdiction to see the case through and provide the FAA’s procedural protections along the way. The Supreme Court held that after an employee invoked the district court’s federal-question jurisdiction and filed action for state and federal claims against the defendants, including claims for employment discrimination, and after such court granted defendants’ motion to compel arbitration under the FAA, the court retained jurisdiction over defendants’ motion to confirm arbitral award and employee’s cross-motion to vacate such award under FAA. The Supreme Court held that even though arbitral award resolved parties’ dispute, the court’s original jurisdiction over employee’s federal claims was retained and that nothing in the FAA eliminated that jurisdiction during arbitration.

Jules v. Andre Balazs Properties, 146 S. Ct. 1209 (2026)

Emp P § 95:71

LABOR RELATIONS —————

Labor Board Applied the Wrong Standard in Finding That Subpoenas Were Unlawful

The Fifth Circuit held that the discovery rule for determining whether unions or employees can withhold otherwise relevant information based on confidentiality interests did not apply in assessing whether employer-sought subpoenas issued by the NLRB interfered with, restrained, or coerced

employees’ exercise of their union rights and constituted an unfair labor practice.

Starbucks Corporation v. National Labor Relations Board, 173 F.4th 230 (5th Cir. 2026)

Labor § 26:3

Labor Board Failed to Demonstrate It Was Entitled to Preliminary Injunction

The Sixth Circuit reversed the grant of a preliminary injunction when it found that the NLRB had failed to demonstrate that it was likely to succeed on the merits of its claim that the employer violated the NLRA by refusing to bargain with the union. The NLRB claimed that the results of a union decertification election retaining the union trumped a subsequent disaffection petition allegedly demonstrating that a majority of employees did not support the union. Evidence of attendance at union meetings before and after the election and the employer’s withdrawal of recognition, as well as an employee affidavit with three examples of fear and frustration among union employees due to the withdrawal, were insufficient to demonstrate that the employer’s refusal to recognize the union would erode union support to a point that the union would be unable to bargain effectively again in the future.

Kerwin on behalf of National Labor Relations Board v. Trinity Health Grand Haven Hospital, 174 F.4th 942 (6th Cir. 2026)

Labor §§ 33:18, 50:54