Highlights to the 2026-4 Update

This release, issued in December 2026, continues the *Guide to Employment Law and Regulation, 2d's* coverage of federal and state employment laws for both human resource professionals and employment attorneys. New material in this update includes:

- **Jurisdiction following stay of discrimination claims:** 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. *Jules v. Andre Balazs Properties, 608 U.S. 200, 146 S. Ct. 1209, 224 L. Ed. 2d 708 (2026).* **See § 2:67.50.**
- **FAA exemption in FLSA claim:** The Supreme Court has 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, 608 U.S. 380, 146 S. Ct. 1358, 225 L. Ed. 2d 1 (2026).* **See § 14:16.**
- **Discovery rule did not apply in assessing NLRB subpoenas:** 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).* **See § 17:83.**
- **Prudent process controls in ERISA claim:** On a claim that an ERISA fiduciary breached the duty of prudence with respect to a plan investment, if the fiduciary's process was prudent, that ends the inquiry and plaintiffs lose. However, if the fiduciary's process was imprudent, a court asks whether a hypothetical prudent investor would have made the same decision anyway; if he would, the plaintiffs lose, but if he would not, the plaintiffs might recover. Though the prudence required of an ERISA fiduciary with respect to plan investments is not reducible to a mechanical checklist, three considerations help a court rate a fiduciary's performance: (1) whether the fiduciary reviews their advisors' data and seeks more if needed; (2) whether the fiduciary analyzed and understood the bases for the opinions on which it relied; and (3) whether the fiduciary otherwise used a process that was reasonable under the circumstances. *In re Quest Diagnostics ERISA Litigation, 179 F.4th 217 (3d Cir. 2026).* **See § 19:4.**

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