



38th Annual Conference &
Membership Meeting
September 17-19, 2025 - Columbus, OH



ZASHIN & RICH

“Labor and Employment Law Emerging and Current Issues”

A review of emerging and current issues in
labor and employment law



ZASHIN & RICH

**“Labor and Employment Law
Emerging and Current Issues”
GFOA September 18, 2025**

Jonathan J. Downes

jjd@zrlaw.com

614-565-2075

Jonathan J. Downes

- AV Preeminent rated by Martindale Hubbell for 20+ years.
- Fellow in the College of Labor and Employment Lawyers.
- Adjunct Professor Ohio State University, Fisher College of Business,
Masters Human Resources: Teaching Collective Bargaining,
Labor History, Employment Law for Human Resource Managers
- Ohio State Bar Association Certified Specialist in Labor and
Employment Law.
- More than thirty years of experience and expertise in representing
employers in labor and employment law and human resource management.
- Negotiated over 500 labor contracts, over 100 arbitrations, over 100 fact findings.
- Represents employers in arbitrations, organizing campaigns, and administrative hearings.
- Defends employers in state trial and appellate courts, courts, the Ohio Supreme Court, federal
district courts and the United States Court of Appeals for the Sixth Circuit.
- Recognized many times over as a subject-matter expert, Jonathan is designated as one of the
Best Lawyers and Top 50 Central Ohio Lawyers and an Ohio “Super Lawyer” every year since
2004.



Employment and Labor Law Group

Zashin & Rich's Employment Group has extensive experience representing public sector entities, large and small businesses, and non-profit organizations. Zashin & Rich's Employment Group's expertise extends into many areas including:

- **Litigation and EPLI Defense**
- **Discrimination and Retaliation**
- **General Employment Counseling**
- **Labor Law**
- **Collective Bargaining**
- **FLSA, Wage and Hour Issues**
- **Worker's Compensation**
- **Restrictive Covenants**
- **Employee Handbooks**
- **Unemployment Compensation**
- **Civil Service Law**
- **Public Records/Sunshine Laws**

- **Discrimination and Retaliation**
- **Laws Representation**
 - **Title VII**
 - **ADA**
 - **ADEA**
 - **FMLA**
 - **PDA**
 - **FLSA**
 - **§1983**

Pregnant Workers Fairness Act



PWFA Overview

- The PWFA applies to private employers and public sector employers (state and local governments) that have 15 or more employees.
- The PWFA requires a **covered employer** to provide a “**reasonable accommodation**” to a **qualified employee’s** or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”
- “Known” means the employee or the employee’s representative has communicated to the employer about the limitation.
- “Limitations” are physical or mental conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.



Reasonable Accommodation

Under the PWFA

“Reasonable accommodations” changes in the work environment or the way things are usually done at work. Some examples of possible reasonable accommodations under the PWFA include:

- Additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom;
- Changing food or drink policies to allow for a water bottle or food;
- Changing equipment, devices, or workstations, such as providing a stool to sit on, or a way to do work while standing;
- Changing a uniform or dress code or providing safety equipment that fits;
- Changing a work schedule, such as having shorter hours, part-time work, or a later start time;
- Temporary reassignment;
- Temporary suspension of one or more essential functions of a job;
- Leave for health care appointments;
- Leave to recover from childbirth or other medical conditions related to pregnancy or childbirth.

***This list just provides some examples; many other reasonable accommodations may exist.



Providing Urgent Maternal Protections for Nursing Mothers (“PUMP”) Act

- Effective Date: 4/28/2023
- Applies to most employees covered by FLSA
- Key Provisions:
 - Break Time: reasonable break time for employees to express breast milk for a nursing child, for one year after birth
 - Private Space: a place, other than a bathroom, that is shielded from view and free from intrusion, for employees to express breast milk.
 - Compensation: Break time is unpaid unless otherwise required by law or if the employee is not completely relieved from duty during the break.

FMILA – Service Animal

Bennett v. Hurley Medical Center

86 F.4th 314 (6th Cir. 2023)

- Nursing student Mia Bennett requested to have her service dog, Pistol, accompany her during clinical rotations at Hurley Medical Center to assist with panic attacks. Hurley initially approved the request.
- On the first day, staff and patients reported allergic reactions, leading Hurley to revoke approval and offer alternative accommodations, such as allowing Bennett breaks to see Pistol in a separate area.
- Bennett sued under Title II of the ADA, but the district court granted summary judgment for Hurley, citing Pistol as a direct health and safety threat.
- The Sixth Circuit affirmed, finding Hurley's decision reasonable due to risk of allergic reactions and the unfeasibility of relocating allergic staff and patients.



Telework under Fire

Telework: pre- and post- COVID-19

Before COVID-19 (Pre- March 2020):

- Telework was infrequently granted, often seen as a perk, not a right.
- Courts typically held that onsite presence was **essential** for many jobs.
- ADA requests for telework were **routinely denied** unless compelling evidence showed it was feasible.

During COVID-19 (2020–2022):

- Seismic shift toward remote work for various categories of employees, including in government and human services.
- Realization that many jobs could be performed remotely with few / no issues.
- Courts began to reconsider prior assumptions about the “essential functions” of onsite work

Telework under the ADA

- Under the ADA (and RC 4112), employers must provide **reasonable accommodations** to qualified individuals with disabilities.
- Employee must be able to perform the **essential functions** of the job **with or without** the accommodation.

Telework as a Reasonable Accommodation:

- Can be required if **not an undue hardship** and **job functions can be performed remotely**.
- COVID-era telework situations are now cited by employees to show reasonableness.

Smith v. Shelby Cnty. Bd. of Educ., (6th Cir. Aug. 1, 2024)

- Public school teacher asked to continue to teach remotely from home following the lifting of pandemic restrictions. He was **immunosuppressed** following multiple organ transplants.
- The school offered 2 options:
 - Let Smith teach remotely from inside of his classroom (using virtual learning technology), while his students participated from inside a nearby computer lab.
 - Instead of being in his classroom, Smith could teach from a location in the school's gymnasium that had a private restroom and isolated entrance.
- Smith turned down these options, resigned, filed suit under the ADA.
- The Sixth Circuit affirmed summary judgment in favor of the school.
 - “Where there is more than one reasonable accommodation, the choice of accommodation is the **employer’s**.”
 - The employer’s 2 proposed accommodations took “into consideration the **restrictions** communicated by Smith’s doctors.”
 - Smith did not offer evidence showing these accommodations were **ineffective**.

Telework Best Practices

- Employer should be prepared to justify a denial of telework:
 - Why would remote work cause operational issues?
 - Generic assertions of “team culture” or “face-to-face collaboration” may be insufficient
- Blanket remote work bans can trigger ADA exposure

Best Practices

- Clearly define **essential functions** in job descriptions
- Develop compliant, clear telework policies
 - Address related issues like risk management, technology, productivity
- Follow **interactive process** for every accommodation request
- Evaluate **reasonableness, effectiveness, and hardship** case-by-case
- Train managers and HR on handling disability-related requests

Free Speech

Public Employee Free Speech Basic Rule

1. Is employee speaking as a citizen (not pursuant to official duties)?
2. Is the speech on a matter of public concern?

If either answer is “no”: 1st Amendment protection does not apply.

If both answers are “yes”: apply the *Pickering* **balancing test** – weigh the employee’s interest against the employer’s interests and the impact of the speech.

Lindke v. Freed

601 U.S. 187, 144 S.Ct. 756 (2024)

- James Freed, City Manager of Port Huron, Michigan, used his public Facebook page to share personal and job-related posts, often engaging with residents' comments.
- Kevin Lindke, a Facebook user, criticized the city's COVID-19 response in comments on Freed's posts, which Freed deleted before blocking him. Lindke sued under 42 U.S.C. § 1983, claiming a First Amendment violation.
- The Supreme Court ruled that blocking a user is state action under § 1983 only if the official had authority to speak on the state's behalf and exercised that authority in the posts.
- The Court remanded the case, stating that if Freed acted in a private capacity when blocking Lindke, he was exercising his own First Amendment rights rather than violating Lindke's.



Noble v. Cincinnati & Hamilton County Public Library

112 F.4th 373 (6th Cir. 2024)

- Eric Noble, a security guard for the Cincinnati and Hamilton Public Library, shared a controversial meme opposing BLM protests on his personal Facebook page in 2020.
- The post was visible only to his Facebook friends (50-100 people), remained up for less than 24 hours, and was taken down before the Library addressed it.
- Screenshots of the post circulated among Library employees, leading to an HR investigation and Noble's termination. Meanwhile, the Library publicly expressed support for BLM.
- Noble sued for First Amendment retaliation, but the district court ruled in favor of the Library.
- The Sixth Circuit reversed, finding that Noble's speech was on a matter of public concern and that his right to free speech outweighed the Library's efficiency interests.
- The Court emphasized that Noble posted while off duty, never brought politics to work, and that no public complaints or workplace disruptions resulted from the post.



Social Media Best Practices

- **Develop Clear Social Media Policies:**
 - Keep personal and official accounts separate – “Don’t Cross the Streams!”
 - Set rules about appropriate use of government resources, logos, branding, etc.
- **Train your Team:**
 - Educate officials and employees on First Amendment protections, and risks of mixed-use accounts
 - Encourage disclaimers on personal accounts (e.g., “Views are my own”)
- **Before you “Block” or “Delete”...**
 - If maintaining an official page, adopt a viewpoint-neutral policy on comments
 - Avoid selective deletion or blocking unless based on clear, written criteria (e.g., profanity, spam)

Sixth Circuit: employers may not be liable for nonemployee harassment

Employers may not be liable to employees for unintended harassment by a nonemployee

- >Do not ignore employee complaints about a hostile environment caused by customers.
- >Forcing an employee to continue working with an abusive customer is likely to be interpreted as crossing the line into intentional conduct by the employer.
- >Implement and train harassment and workplace conduct policies, establish reporting channels, and foster a culture of respect for all employees.

Bivens v. Zep, Inc., 2025 U.S. App. LEXIS 20102 (6th Cir. 8-825)



OHIO'S NEW LAWS

ANTI-SLAPP PROVISION

POSTING OF EMPLOYEE INFORMATION

PAYSTUB PROTECTION ACT

ANTI-SLAPP

The Uniform Public Expression Protection Act

O.R.C. 2747.01 et. Seq.

- It provides immunity from lawsuits based on a person's constitutionally protected speech, assembly, association, and press on matters of public concern.
- The law also applies to communications made in legislative, executive, or administrative proceedings. The extent of these protections is not yet known, and the outer limits of these protections will likely be the subject of litigation in the coming years.
- Employers may be able to invoke these protections in certain actions to receive an early dismissal of cases against them. The Act's protection does not always apply, but provides necessary safeguards against the abuse of legal process



Online Posting of Certain Required State Labor Law Notices

The applicable notices are as follows:

- • Ohio Minor Labor Law Notice
- • Ohio Minimum Fair Wage Standards Law Notice
- • Ohio Civil Rights Law Notice
- • Ohio Prevailing Wage Law Notice
- • Ohio Workers' Compensation Notice
- • Ohio Public Employment Risk Reduction Program Notice



The Paystub Protection Act

enacts ORC Section 4113.14

- The Act requires employers to provide its employees with a statement of the employee's wages and deductions for each pay period.
- Those statements must include the employee's name and address, the employer's name, the total gross wages and net wages earned by the employee over that pay period, the amount and reason for each deduction from the employee's wages, the dates of the pay period and payday, and, for hourly employees, the total number of hours worked during the pay period, the hourly wage for the employee, and any hours worked over 40 hours in a workweek.
- Violations of this act do not carry legal liability alone, but employers should nevertheless ensure that their payroll practices comply with the Act's requirements.



Employee Compensation and Unions

SERB REPORTS

SERB COST OF HEALTH INSURANCE IN
OHIO'S PUBLIC SECTOR - 2025 EDITION

2024 WAGE SETTLEMENT REPORT

FACT-FINDING / CONCILIATION
QUARTERLY STATS - 2025 Q2

SERB 2024 Data

- There were 858 out of 976 (87.9%) labor contracts with a wage increase percentage during the contract duration.
- The statewide average increase was **3.86%** in year one (2024), **3.24%** in year two (2025), and **3.19%** in year three (2026). The statewide average wage increase percentage for the duration of the contracts was **3.42%**.
- There were 94 out of 976 (9.6%) labor contracts with one or more lump sums that took effect during the duration of the contract. The statewide average lump sum was **\$1,047** in year one (2024), **\$1,042** in year two (2025), and **\$913** in year three (2026).

Average Negotiated Wage Increase Percentage (%) By Calendar Year

Comparison Group	2024		2025		2026	
	Average	#	Average	#	Average	#
Statewide	3.86 %	758	3.24%	818	3.19%	778
Region						
(1) Akron/Canton	3.38%	82	3.04%	87	3.01%	86
(2) Cincinnati	4.35%	100	3.38%	114	3.26%	108
(3) Cleveland	3.77%	177	3.07%	186	3.02%	164
(4) Columbus	4.10%	111	3.43%	122	3.49%	124
(5) Dayton	3.59%	89	3.23%	92	3.19%	92
(6) Southeast Ohio	4.16%	44	3.49%	47	3.36%	44
(7) Toledo	4.20%	93	3.36%	102	3.25%	95
(8) Warren/Youngstown	3.14%	62	3.00%	68	2.96%	65
Jurisdiction						
City	4.47%	223	3.58%	243	3.39%	253
County	3.72%	110	3.15%	121	3.20%	116
Township	4.16%	58	3.57%	69	3.44%	65
School District	3.40%	328	2.98%	340	3.01%	301
Other	4.11%	39	3.08%	45	2.83%	43
Unit Type						
Police (Safety/Security)	4.35%	192	3.55%	210	3.45%	218
Fire	4.73%	73	3.76%	79	3.64%	80
Teacher (BOE)	3.41%	215	3.03%	203	3.04%	184
Non-Teaching (BOE)	3.41%	118	2.89%	142	2.95%	122
Blue-Collar	3.42%	61	3.09%	67	3.02%	61
Other	4.02%	99	3.17%	117	2.98%	113

#: Number of Contracts.

Note: These increases apply to most job titles in the bargaining unit and include equity/market adjustment % increases.

Note: Excluded items include wage reopener, lump sum, hourly increase, and salary schedule step increases.

Note: A description of each comparison group is on page 9.

Note: 858 out of 976 (87.9%) filed comparison contracts contained a percent increase.

Note: Contracts statewide with a 0% increase at any point in the contracts' duration: 2024 = 21; 2025 = 5; 2026 = 2.

SERB Factfinding & Conciliation Report

June 30 , 2025

Calendar Year	2022				2023				2024				2025			
Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Fact-Finding Hearings	23	13	11	11	17	19	14	8	17	23	15	11	19	27		
Recommendations Rejected	10	6	3	5	5	8	2	4	8	4	4	5	7	5		
Mediation Attempt Reported	30.0%	46.0%	45.0%	55.0%	38.0%	58.8%	50.0%	75.0%	41.2%	69.6%	47.0%	36.0%	26.0%	59.0%		
Wages as an Issue	100.0%	100.0%	90.9%	100.0%	94.1%	78.9%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	96.3%		
Employer Average Wage Offer	2.40%	2.50%	2.38%	2.71%	2.67%	3.09%	2.76%	3.00%	2.69%	3.54%	3.35%	3.57%	2.98%	2.85%		
Employee Organization Average Wage Request	3.56%	4.52%	4.59%	5.33%	4.35%	3.91%	4.99%	5.59%	4.13%	5.63%	4.54%	5.34%	5.02%	4.93%		
Wage Award - Annual Average	2.55%	3.12%	3.19%	4.47%	3.44%	3.82%	3.68%	3.85%	3.47%	4.35%	3.80%	3.79%	4.76%	3.65%		
Wage Award - 1st Year Average	2.92%	3.25%	3.81%	5.19%	3.23%	4.65%	4.23%	4.41%	3.71%	6.05%	4.79%	4.81%	5.81%	4.39%		
Wage Award - 2d Year Average	2.54%	3.14%	3.08%	4.03%	3.78%	3.35%	3.27%	3.57%	3.50%	3.60%	3.27%	3.57%	4.18%	3.37%		
Wage Award - 3d Year Average	2.20%	2.98%	2.67%	4.19%	3.31%	3.46%	3.53%	3.57%	3.20%	3.40%	3.33%	2.97%	4.05%	3.18%		
Conciliation Hearings	4	6	2	3	2	4	4	0	1	2	1	0	2	1		
Conciliation Average Wage Award	2.25%	3.00%	3.00%	2.75%	4.00%	3.50%	2.83%	N/A	3.33%	N/A	3.25%	N/A	5.17%	4.17%		



SERB Reports for Factfinding and Conciliation

Fact-Finding Reports | State Employment
Relations Board

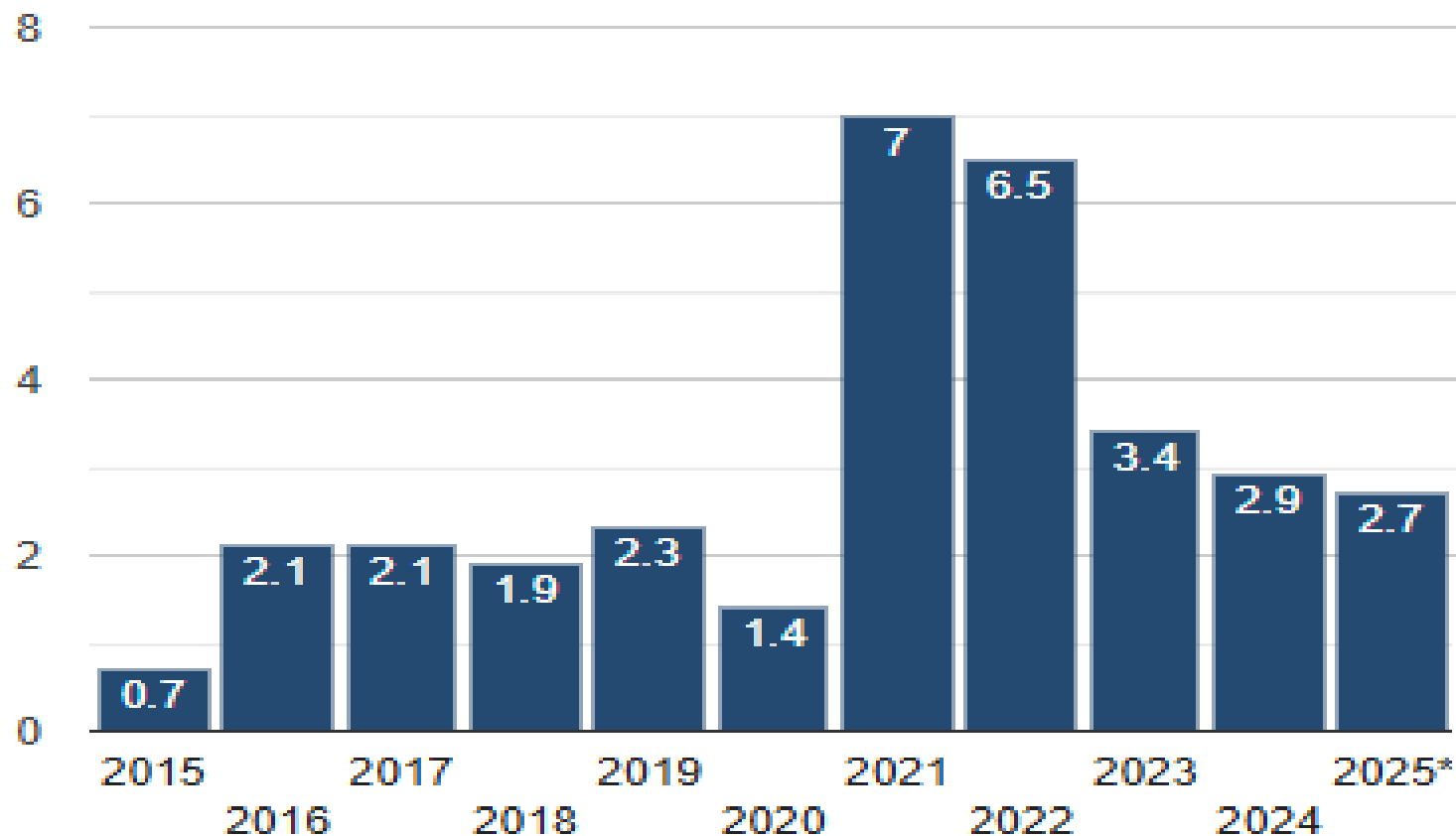
FF Report Wage Proposals

Conciliation Awards | State Employment
Relations Board



Inflation 2015 to 2025

Chart: United States Annual Inflation Rates (2015 to 2025)



Discrimination and Affirmative Action

**“ENDING ILLEGAL
DISCRIMINATION AND RESTORING
MERIT-BASED OPPORTUNITY”**

Section 125.111 Discrimination provisions in contracts - affirmative action program

(B) All contractors from whom the state or any of its political subdivisions make purchases shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as referred to in division (E)(1) of section 122.71 of the Revised Code. Annually, each such contractor shall file a description of the affirmative action program and a progress report on its implementation with the department of development.

THANK YOU!

Jonathan Downes

17 South High Street, Suite 900

Columbus, Ohio 43215

Cell: 614-565-2075

jjd@zrlaw.com

