LEGAL • HR • WHAT'S NEW

The Best Legal Update EVER!



OH SHRM Conference

September 23, 2026

PRESENTERS

Laura Caty
Attorney • Bricker Graydon Wyatt LLP

Lee Geiger
Partner • Bricker Graydon Wyatt LLP

Rule #1 for Presentations:

Set expectations **LOW**.

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WELCOME
TO Fabulous
LAS VEGAS
NEVADA

ADA Accommodations

Interactive means “Interactive”

1. Employee does not get preferred accommodation
2. You can push back on employees and doctors
3. 3-letter approach

Create Exhibits A, B & C

Discrete Issues

e.g., colostomy bags, emotional support lizards, time off

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Friday Monday Leave Act (FMLA)

Does the FMLA Apply?

- 50 employees at company
- 50 employees within 75-mile radius
- 1 year of employment (does not need to be continuous)
- 1250 hours in the last year
- Has remaining leave

You can push back

- Impact on company
- Signs of abuse
- Document, document, document

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NLRB Is Back In Business

NLRB Composition

5

Normal Composition

5 members

2

Post-Biden Composition

2 members

NLRB could not act on cases – no quorum

3

January 2026 Composition

3 members

NLRB reluctant to act on cases – wanted 3 members on decisions

4

August 2026 Composition

4 members

Back in action

General Counsel indicated plan to be very active

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Union Activity Is On The Rise

By the numbers:

22,497

Cases filed in 2025

(2nd most in last decade)

2743

– Representation Cases

(2nd most in last decade)

19,754

– ULP Charges

(3rd most in last decade)

1811

– Elections held

(2nd most in last decade)

80%

of Elections

Approximate percentage that unions win

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New General Counsel Priorities

01

Reversing *Cemex*

Bargaining orders

02

Reversing captive audience ruling

03

Reversing status quo bargaining obligations

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“Quickie” Contracts?

Faster Labor Contracts Act - June 2026 *If it becomes a law:*

10 days

Mandatory bargaining within 10 days after a union is certified.

90 days

The parties have 90 days to reach an agreement through bargaining.

Mediation

Failure to reach an agreement within 90 days results in federal mediation.

30 days

Failure of mediation results in an arbitration after 30 days. The arbitration panel can impose a contract.

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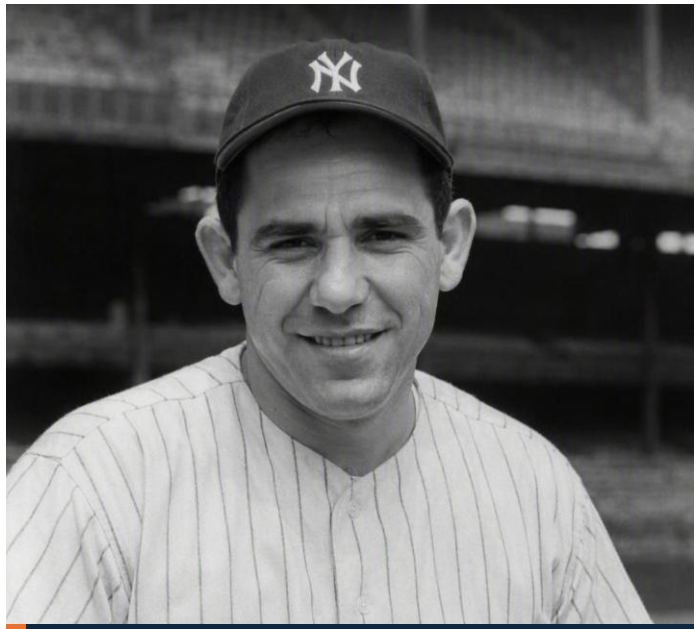
Be Aggressive in Fighting Unions

Get out in front of things

- Do a risk analysis
- Hire consultants if needed
- Seek legal counsel to protect Attorney / Client privilege

Pay attention to the little things

- File objections
- It's a long shot, but possible to have an election overturned (both ways)



"It ain't over till it's over."

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Employee Handbooks

01

Get them to legal counsel now for 1/1/27 rollout

02

AI is NOT your friend when drafting employee handbooks

Commuting Time

Is a midday commute compensible?

DOL

Opinion Letter

FLSA2026-9

July 22, 2026

Exempt Workers Doing Non-Exempt Work

FLSA2026-5

Workers do not lose exemption for performing non-exempt tasks in addition to their regular exempt work.



Overtime Pay Deduction

One Big Beautiful Bill Act

$12,500

Employees can deduct up to $12,500 in overtime compensation

Only the “premium” is deductible

E.g., $20/hour employee works 45 hours

Only $50 is deductible (5 hours x $10)



No additional premiums deductible for state/local laws or CBAs.

Social Media Posts

Can we do anything about an employee’s private post?

01

Charlie Kirk situations?

02

Union issues?

03

First Amendment rights?

04

Impact on the workplace

Severance Agreements

Call your lawyer!

Different forms:

- Over 40
- Under 40
- “Group”

- State law requirements

AI is NOT your friend

EEO-1 Reports Going Away?

> The Equal Employment Opportunity Commission ("EEOC" or "Commission") is issuing a proposed rule to rescind and remove the requirements for the filing of the EEO-1... reports, and the recordkeeping and record preservation requirements related to these reports, ... because it has preliminarily determined that the reports are inconsistent with equal employment opportunity law and potentially unconstitutional. It further finds the data collected is not narrowly tailored, is unnecessary to enforce anti-discrimination laws, and at a minimum, that any marginal benefits are outweighed by the substantial burdens imposed on both employers, who must submit these reports annually regardless of any specific allegation or indication of a potential violation of the statutes the EEOC enforces, as well as the Commission.

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AI in the Workplace



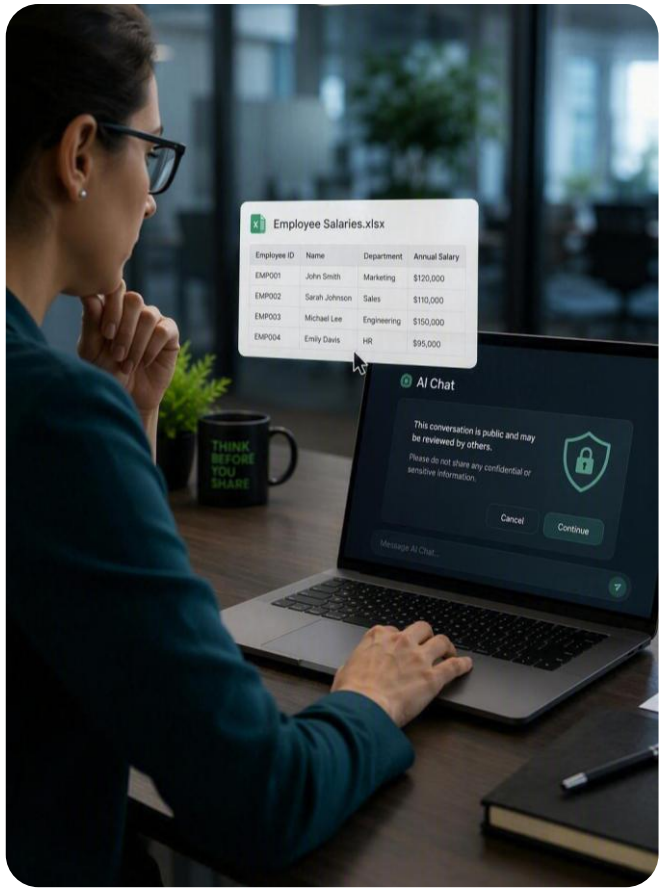
EMPLOYEE AI USE

Biggest HR Risk Associated With Employee AI Use

Risk #1: Confidentiality Breaches

EMPLOYEES MAY ENTER:

- Employee information
- Compensation data
- Medical information
- Customer information
- Trade secrets
- Proprietary business information



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BEST PRACTICE

CREATE CLEAR RULES REGARDING

ALLOWED

What information may be entered into AI systems?

OFF LIMITS

What information may never be entered?



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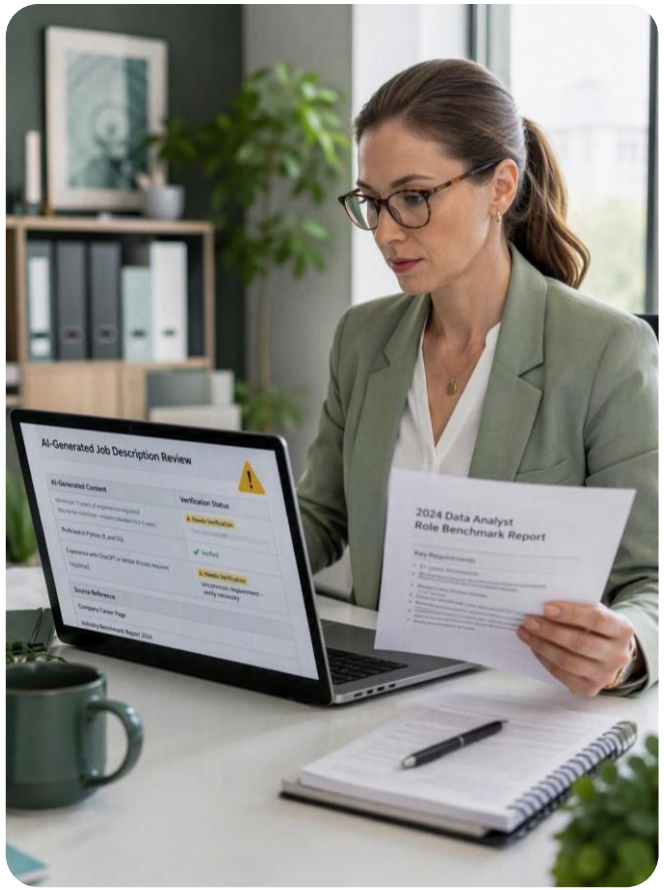
Risk #2: Inaccurate Information (“Hallucinations”)

AI CAN PRODUCE

- Incorrect facts
- Fake citations
- Misstated legal requirements
- Inaccurate company policies



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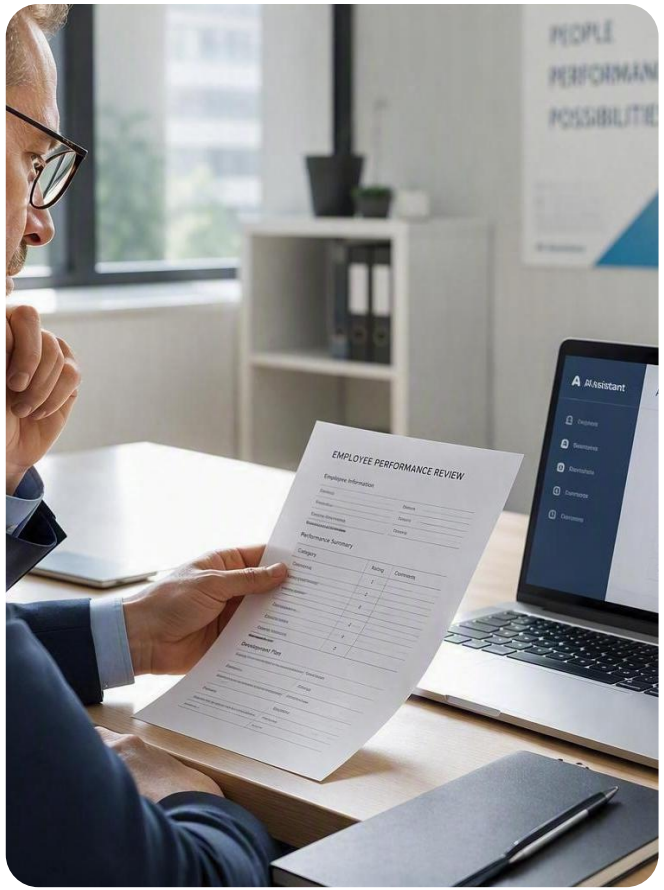
Best Practice: AI Assists, Humans Decide

REQUIRE HUMAN REVIEW FOR

- Performance evaluations
- Disciplinary actions
- Employment decisions
- Policy development



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Risk #3: Discrimination and Bias

AI TOOLS MAY

- Screen resumes
- Rank candidates
- Recommend interviews
- Analyze speech patterns
- Evaluate video interviews



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HR TAKEAWAY:

The employer NOT THE SOFTWARE VENDOR will likely face the discrimination claim

> *"The software made the decision" is not an excuse*

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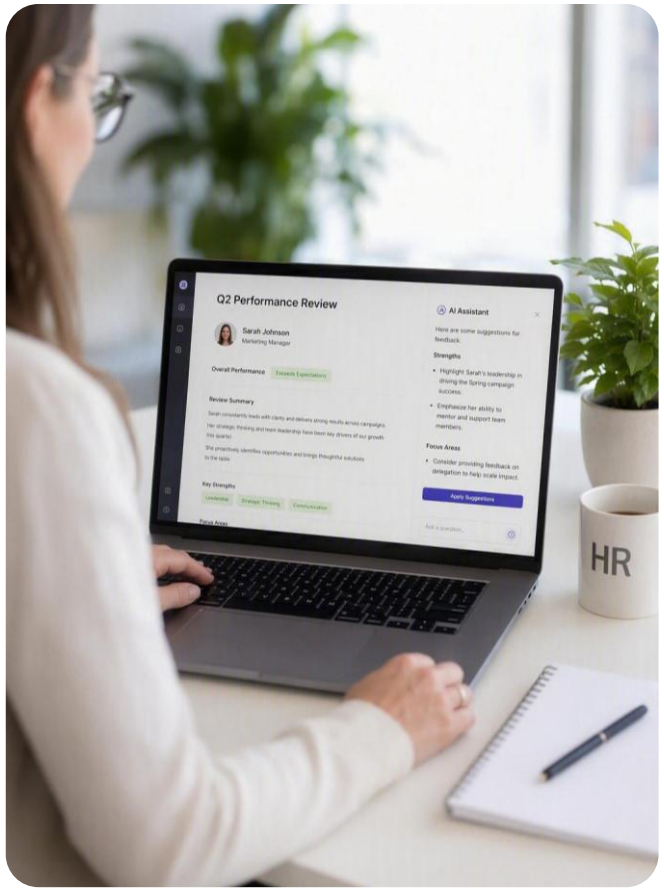
PERFORMANCE MANAGEMENT

Performance Management Challenge

AI-Generated Performance Reviews

Benefits:

- Better Writing
- More Consistency
- Time Savings



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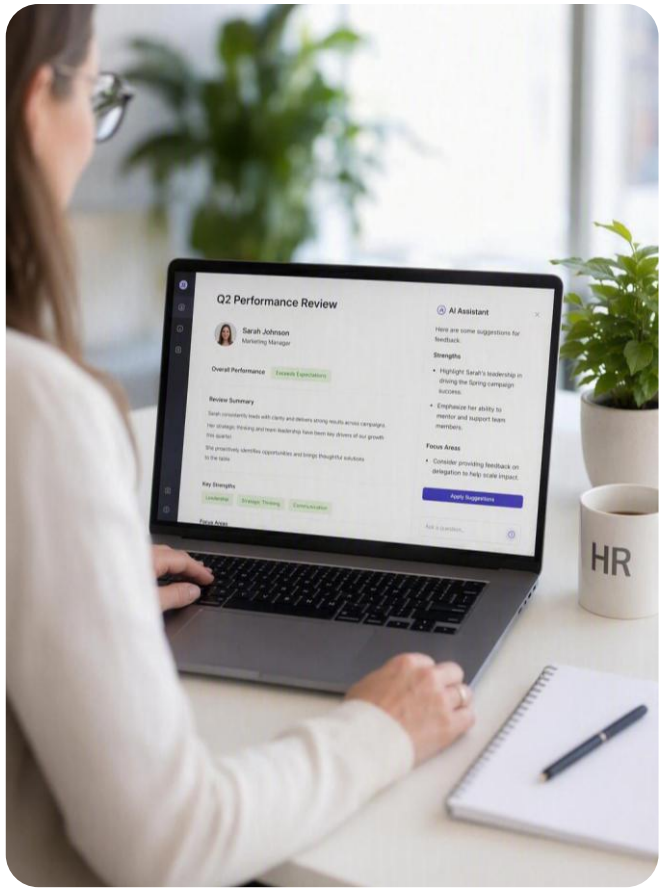
AI-Generated Performance Reviews

Risks - Managers May:

- Stop documenting throughout the year
- Accept AI-generated language without review
- Overstate or understate issues



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AI-Generated Performance Reviews

REQUIRE MANAGERS TO

- Create original performance observations
- Use AI only as an editing tool
- Verify accuracy before submission



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AI-ASSISTED WORK

The New Performance Problem: Employees Using AI

A Difficult HR Question is Emerging

POTENTIAL ISSUES

An employee's productivity doubles because AI is doing a substantial portion of the work.

- How should performance be measured?
- Who owns the work product?
- What skills are actually being evaluated?
- Is undisclosed AI use misconduct?



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Employee Use Issues

ORGANIZATIONS SHOULD CLEARLY DEFINE

- Permitted AI use
- Restricted AI use
- Prohibited AI use



WORKPLACE POLICY

Creating an Effective AI Workplace Policy

Policy Component #1:

Define Approved Tools

EXAMPLES

- Company-approved Copilot tools
- Approved enterprise AI platforms
- Avoid a **free-for-all** environment



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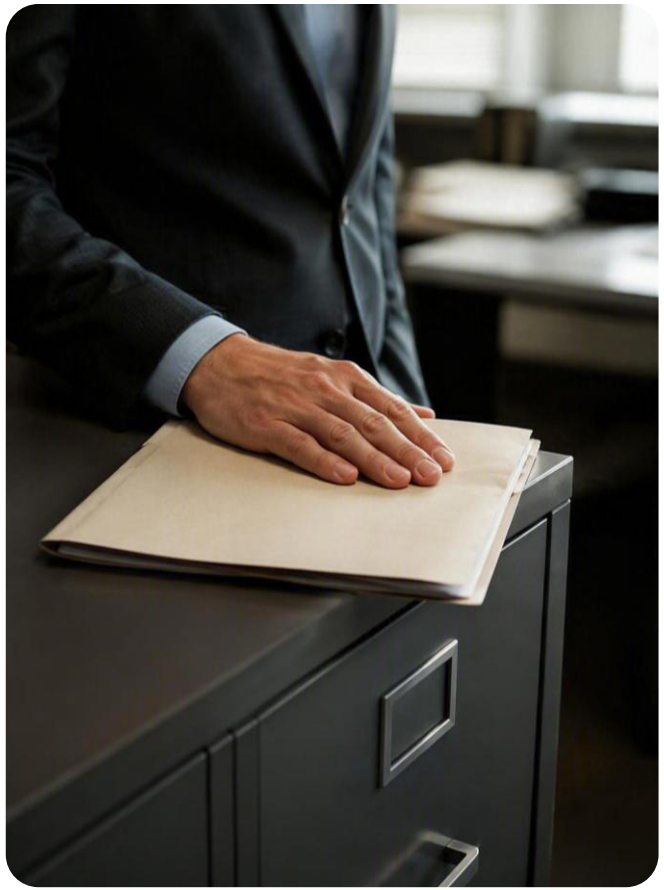
Policy Component #2:

Define Prohibited Inputs

NEVER INPUT

- Medical information
- Protected employee information
- Trade secrets
- Confidential customer information



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Policy Component #3:

Human Oversight Requirement

REQUIRE HUMAN REVIEW OF

- Employment decisions
- Hiring decisions
- Discipline
- Compensation decisions
- Performance evaluations



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Policy Component #4:

Disclosure Requirements

WHEN EMPLOYEES MUST DISCLOSE AI USE

- Legal documents
- Customer-facing communications
- Reports
- Performance evaluations



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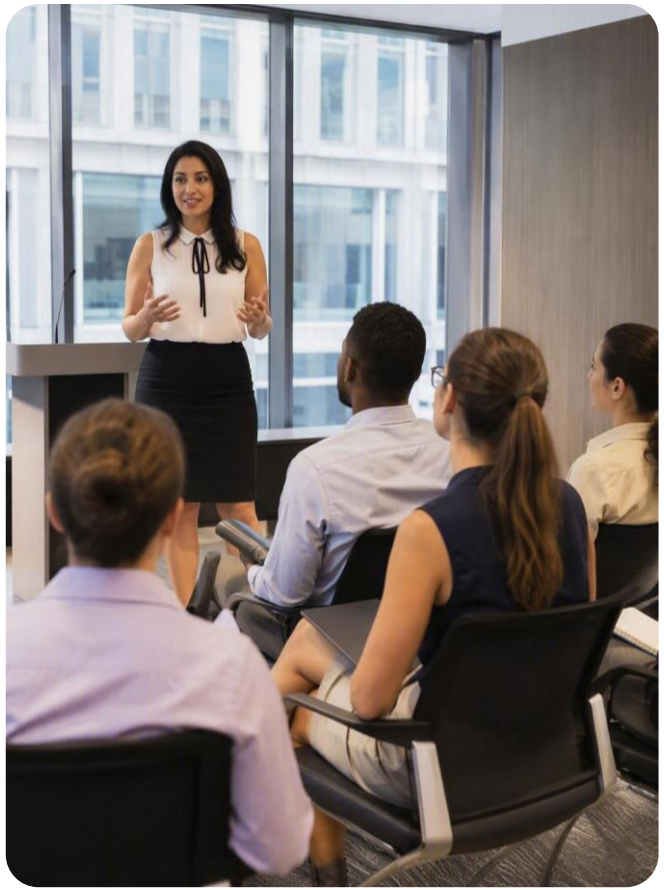
Policy Component #5: Training

TRAIN THESE GROUPS ON ACCEPTABLE AI USE

- HR
- Managers
- Employees



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PRACTICAL TAKEAWAYS

Practical Takeaways for HR Professionals

WHAT TO CARRY FORWARD

Remember the Five “Golden Rules”

1	**Treat AI Like an Employee Assistant, Not a Decision Maker**	Humans remain accountable.
2	**Verify Everything**	AI output should always be reviewed.
3	**Protect Confidential Data**	Assume anything entered into a public AI tool could create risk.
4	**Audit Employment Decisions**	If AI influences hiring, promotion, discipline, or termination decisions, review outcomes for consistency and potential bias.
5	**Develop Policies Before Problems Arise**	The organizations in the best position legally are those that establish governance before issues occur.

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STUMP
THE
LAWYER

Thank you!



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