

Quarterly Review

Volume 21

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OHIO ASSOCIATION *of* CIVIL TRIAL ATTORNEYS

**A Quarterly Review of
Emerging Trends
in Ohio Case Law
and Legislative
Activity...**

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President's Note

Daniel A. Richards, Esq.

Westin Hurd LLP



Dear Colleagues,

I am writing this note to you on one of my favorite days of the year...the day after we set our clocks forward one hour. While we lose an hour of the day and an hour of sleep, I always find hope and promise in the extra hour of daylight at the end of a day. As we move from a cold and snowy winter into spring, I am pleased to introduce the latest edition of the *OACTA Quarterly Review*, which features cutting-edge articles from our Employment Law and Governmental Liability Committees.

There are a number of recent decisions and trends in the employment law arena discussed herein, including:

- Recent judicial decisions and legislative changes affecting discrimination claims
- Emerging trends in the enforcement of the Pregnancy Workers Fairness Act and their implications for Ohio employers and employees
- Advice for defending religious accommodation claims after the *Groff* and *Muldrow* decisions.

Additionally, this edition features an important article from our Governmental Liability Committee discussing the proposed amendment to the Ohio Constitution that would eliminate immunity from civil liability for public employees. This proposed change could have far-reaching consequences for governmental entities and public servants throughout our state, and the article provides essential analysis for practitioners in this area.

Finally, there is an article discussing the technical methods for properly gathering, analyzing and presenting evidence in matters involving law enforcement related shootings.

As members of the Ohio Association of Civil Trial Attorneys, we are practicing law in interesting and sometimes difficult times. We attorneys bear a special responsibility which extends beyond representing our clients. We are guardians of the legal system itself and must remain steadfast in our commitment to defend the rule of law. Unfortunately, and more frequently, we are witnessing an erosion of respect for our judiciary and for their decisions.

In these times, it is more important than ever that we, as officers of the court, demonstrate our dedication to:

- Upholding the integrity and independence of our judicial system
- Supporting fair and impartial administration of justice
- Promoting public confidence in our courts and legal institutions
- Defending the constitutional principles that form the foundation of our legal system

While we may not always agree with a court's decision, let's always remember that we are required by our professional code to respect the decision and to defend and maintain the integrity of the judiciary. If we don't, who will?

Thank you for your continued dedication to OACTA and your commitment to the principles that sustain our legal system.

Introduction

Government Liability Committee & Employment Law Committee



Jared A. Wagner, Esq.

While police-involved shootings matters are always fertile grounds for the news cycle, there have been several recent events, particularly events in Minnesota involving ICE agents and protesters, that were caught on cameras from various different angles and have generated numerous comments and opinions from both experts and lay persons. Without addressing whether those shootings were appropriate and/or justified, the aftermath of those shootings demonstrated how the perception of such an event can change dramatically based on the available data and information and how that data and information can be manipulated by the media and persons to support various agendas on both sides of the political spectrum. Our first article, from **Mark Passamaneck, P.E.**, with Nederveld, Inc., discusses the science behind gathering, preserving, and analyzing the information and data related to police involved shootings. Such an undertaking is critical for the attorneys representing

officers and municipalities in order to determine potential liability and formulate a plan for litigation. Our second article, written by myself and attorney **Tom Spyker**, provides an update on the status of the ongoing effort to eliminate qualified immunity within Ohio as a defense for police officers. Qualified immunity recognizes that officers must make split second decisions under extreme circumstances and should not be held liable for reasonable mistakes of either law or fact. The importance of this defense is reinforced by the public reaction to these recent events.

It is our hope that you will find these articles useful to your practice. Please let me know if you have any thoughts or questions regarding either article, and please reach out if you are interested in participating in the Governmental Liability Committee.



Brigid E. Heid, Esq.

As Chair of the Employment Law Committee, I am extremely grateful to my committee and to the attorneys who have contributed their time and talent to submit articles for this issue of the *Quarterly Review*. Their perspective on developments in discrimination and accommodation law is truly insightful. I trust you will find the articles as instructive as I do.

Rebecca Singer-Miller, Weston Hurd, offers an in-depth discussion of trends developing with the PWFA. Rebecca distills numerous EEOC enforcement actions, pending EEOC litigation, and district court decisions to better the PWFA. Two of my Eastman & Smith colleagues have authored articles as well. **Juliana Fierro** examines reverse discrimination and DEI in light of the U.S. Supreme Court decision in *Ames v. Ohio Department of Youth Services* (2025), and certain actions being taken by

the EEOC. **Daniel Dubow** examines two U.S. Supreme Court decisions in *Groff v. DeJoy* (2023) and *Muldrow v. City of St. Louis, Missouri* (2024) and their subsequent application by courts in the Sixth Circuit and explains how the decisions will impact how parties approach and argue religious accommodation claims going forward.

Enjoy this issue of the *OACTA Quarterly Review*!

Critical Incident Services (CIS): Technical Methods for Scene Documentation, Analysis, and Evidence Presentations

Mark Passamaneck, P.E.
Nederveld, Inc.



Nederveld's Critical Incident Services (CIS) team provides a comprehensive, scientifically grounded approach to documenting and analyzing law enforcement-involved, firearm-related critical incidents. These events — such as officer-involved shootings, self-defense shootings, and mass-casualty attacks — fall outside the range of normal human experience and require precise, accurate, and objective technical evaluation. The objective of a CIS evaluation revolves around the application of established engineering principles, the engineering method, comprehensive testing, and state-of-the-art imaging and reconstruction technologies to deliver clear, actionable findings for investigators, attorneys, insurers, and decision makers.

Scene Documentation Methods

Nederveld employs a rigorous methodology to capture the physical environment and evidence associated with a critical incident. The documentation process integrates multiple layers of digital and physical evidence for producing a synchronized and verifiable record of events.

3D Reality Capture

A core component of the CIS documentation workflow is High-Definition Survey (HDS) scanning using FARO and LEICA systems, and sUAS (small Unmanned Aircraft System or drones) aerial captures, which generate detailed 3D models of the incident environment. The millions to sometimes billions of colorized survey points, accurate to within as little as 1 millimeter (4/100ths of an inch), form

a dense “*point cloud*” for a realistic 3D rendering of the incident location. The point cloud scans provide precise and scalable spatial geometry, enabling engineers and investigators to determine line-of-sight, relative positioning, and surface interactions with high accuracy. HDS scans can also be merged with CSI-produced (Crime Scene Investigators) images of vehicles and objects present during the incident to produce integrated 3D reconstructions.



Digital Video Sources

Critical incidents often involve abundant video, but raw data rarely becomes available in a synchronized or easily interpretable format. The CIS team, comprised of engineers and specialized technicians, collects and time-aligns all available imagery, including:

- Body-Worn Camera (BWC) footage
- Public entity or municipal remote surveillance system (RSS) camera video
- Private business surveillance cameras

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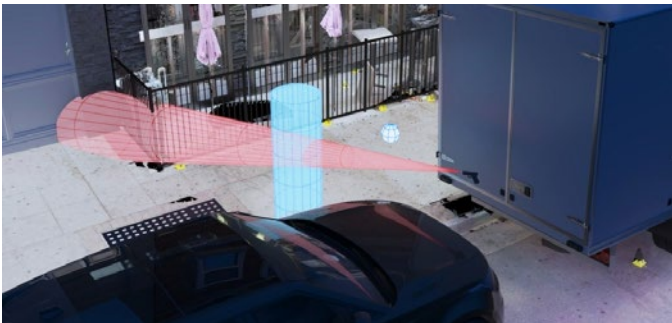
- Doorbell cameras
- Vehicle dash cameras
- Civilian cell phone videos

These video sources often contain distortions or timing offsets. The CIS analysis corrects camera and video lens distortion, synchronizes frames across devices, and integrates video evidence into the 3D environment to create reliable visual timelines. The method uses both **visual indicators** (such as muzzle flash and camera motion during recoil) and **auditory markers** (like shots captured on microphones) for accurate and precise event synchronization.

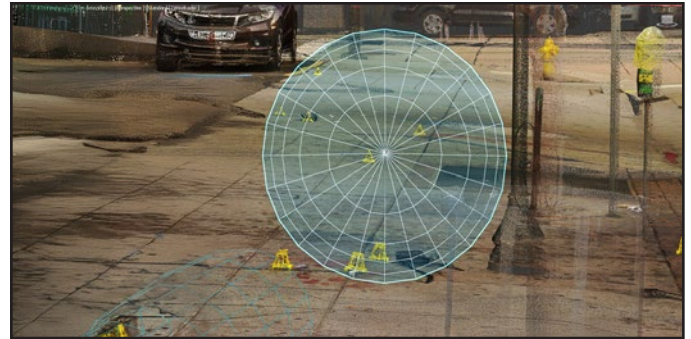
Trajectory and Physical Evidence Documentation

Where most law enforcement agencies utilize traditional CSI trajectory methods, such as trajectory rods or rocker methods, the CIS team supplements missing data using its own analytical processes. For each officer and each projectile discharged, the CIS team employs:

- **5-degree accuracy cones** representing accepted industry error tolerances
- **Firearm bore-axis alignment** based on the profile and slide geometry of the firearms used in the incident
- **Projectile impact site modeling** using medical records, material damage, and CSI photography



These methods allow investigators to reconstruct probable projectile paths from the muzzle to the impact site, even when law enforcement personnel's on-scene field documentation is incomplete.



Timeline and Sequence Reconstruction

A defining strength of a highly trained Critical Incident Services team is its capacity to accurately reconstruct event sequences. This includes determining:

- When shots were fired
- Which officer fired each shot
- The orientation and position of the parties involved
- Verbal commands and critical actions preceding discharges

Synchronization of All Data Inputs

The CIS team integrates multiple data sources to establish a timeline:

- BWC and RSS footage
- ShotSpotter acoustic logs
- Unload sheets and firearm documentation
- Witness and officer statements

ShotSpotter data primarily supports round counts and general shot timing, but is not relied upon as the sole timing source due to microphone distance uncertainty and sound reflection variability. Its value increases when shootings occur across multiple locations, providing continuity across distances.

Audio-Video Interpretation for Shot Assignment

During reconstruction, the CIS team evaluates recoil signatures, muzzle flashes, and camera jolts to determine precise firing moments. BWCs activate audio only after a

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button press, but typically record the prior 30 seconds of video, creating inherent timing complexities that require specialized analysis. Through synchronization, the CIS engineer achieves a high-confidence shot sequencing even in chaotic, fast-moving incidents.



Analytical Methods

After scene documentation and timeline construction, the CIS team conducts a multi-layered technical analysis that includes ballistics, biomechanics, firearm handling standards, comprehensive testing where needed, and comparative video analysis.

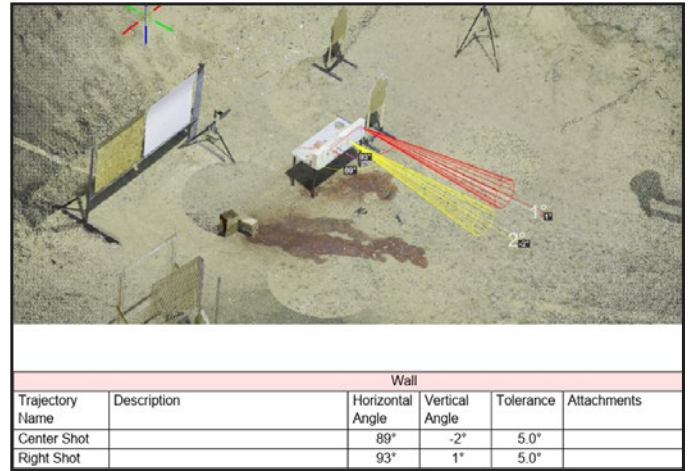
Ballistic Trajectory Analysis

Nederveld assesses bullet paths by combining:

- Officer and subject positions within the 3D model
- Barrel orientation at the instant of discharge
- Five-degree shot cones reflecting industry-accepted reconstruction tolerances
- Medical findings identifying bullet entry and exit wounds



Because handheld firearms move dynamically during firing, the CIS team evaluates muzzle flip, trigger jerk, and directional bias to infer probable deviations from the optical line-of-sight. When shot cones intersect the subject's modeled volume, the bullet is considered capable of producing the observed injuries.



Biomechanical Evaluation of Involved Persons

Movement plays a significant role in shooting dynamics. Accordingly, the CIS engineer evaluates:

- Subject's posture and orientation at each shot
- Transitional movements between shots
- Falls, rotations, and evasive actions
- Officer motion, obstacles, and environmental constraints

These motion-based assessments determine whether bullet impacts align with expected biomechanics and whether certain wounds could only have resulted from specific shooter positions.

Firearm Handling and Standards of Care

The CIS engineer and trained law enforcement technicians evaluate firearms-handling behavior relative to recognized standards of care for:

- Law enforcement use-of-force encounters
- Concealed weapons permit holders
- Range and training procedures
- Safe handling conditions related to malfunctions or accidental discharges

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The CIS team additionally investigates **firearm and ammunition failures**, including catastrophic component failures and mechanical malfunctions.

Digital Simulation and Visualization

The CIS team produces engineering-based digital simulations, recreations, and demonstratives that allow non-technical audiences — such as juries, judges, and claims professionals — to clearly understand complex shooting dynamics. These deliverables may include:

- Integrated 3D models showing scene geometry and evidence placement
- Animations of shot sequences
- Shooter and subject movement recreation
- Visual overlays correlating medical injuries with ballistic paths

These visualizations reduce ambiguity and support informed decision-making during litigation, settlement negotiations, or internal reviews.



Comprehensive Firearms Testing

Not every critical incident can be fully explained with static evidence or a video that captures the event. In some cases, intricately designed testing to mimic conditions, determine bullet performance and trajectory, or to “fill in the blanks” and provide a more complete or logical history of the event may be required. The CIS team utilizes state-of-the-art equipment, documentation methods, protocols, and procedures, as well as the same or similar weaponry to provide a thorough engineering answer to questions involving:

- Law enforcement use-of-force encounters
- Environmental impact on firearms or ammunition performance
- Safe handling conditions related to malfunctions or accidental discharges



Application and Value to Critical Incident Stakeholders

Critical incident investigations often involve significant legal exposure, including civil litigation and criminal proceedings. The CIS team can assist in such matters for the following interested or named parties:

- Municipalities
- Commercial property owners and insurers
- Claims professionals
- Legal professionals
- Churches and event venues
- Firearms instructors, training facilities, and shooting ranges
- Law enforcement agencies and officers

Because law enforcement agencies often face budget or training constraints limiting their ability to perform full reconstructions, the Nederveld CIS team provides an independent, technically detailed assessment that meets engineering standards and withstands judicial scrutiny.

Conclusion

Nederveld’s Critical Incident Services combine the knowledge and talents of key personnel from our forensic engineering and digital reality capture groups to provide

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expertise in product design and function/failure, ballistics, and the implementation of advanced analytical tools that bring clarity to high-stakes firearm-related events. Through rigorous scene documentation, precise timeline reconstruction, mechanical evaluation, and methodical ballistic and biomechanical analysis, the Nederveld CIS team reduces ambiguity and provides objective, technically defensible findings. These scientifically grounded deliverables empower clients, including agencies, insurers, or legal professionals, to understand what occurred, why it occurred, and how those findings align with physical evidence and established standards of care.

For more information regarding our CIS services and how we can assist you in evaluating your case, or to understand the comprehensive range of quality engineering and technical services provided by Nederveld, Inc., please visit our website at www.nederveld.com or call to speak to one of our professionals at 800.222.1868.

Mark Passamaneck, PE, is a Nederveld, Inc., Mechanical Engineer with 30 years of experience in forensic engineering. His forensic work includes the reconstruction of firearms-related critical incidents, which often includes in-depth evaluations related to sequence and timing, shooter perceptions and actions, as well as failure determination of firearms and/or ammunition. He evaluates standard-of-care issues related to firearm cleaning, hunting, range use, and the loading of ammunition and firearms. As a former sponsored competitive shooter and a current Range Master, Coach, Instructor, and Firearms Designer and Consultant, he effectively and uniquely merges his Mechanical Engineering background with an extensive depth and breadth of firearms subjects, adhering to accepted standards of documentation, analysis, and reporting within the forensic engineering community. Mr. Passamaneck can be reached at mpassamaneck@nederveld.com, or by phone at 800-222-1868.

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A Coalition of Absurdity – Understanding the Misguided Efforts to Eliminate the Immunities and Protections from Civil Liability Afforded to Public Employees Through an Amendment to the Ohio Constitution

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While lawyers who practice in the field of police and municipal defense are well versed in the application of the qualified immunity doctrine, most of the general public, and a lot of attorneys who do not practice in this area of the law, have an incomplete understanding of what constitutes qualified immunity.



Thomas N. Spyker, Esq.

There is a current movement within Ohio seeking to eliminate the defense of qualified immunity within this state. This article provides a legal analysis of the constitutional amendment that is being pursued and addresses the adverse effect such an

amendment would have if it was to come to fruition.

But before we discuss the pending efforts to eliminate qualified immunity within Ohio, it is helpful to understand the history and legal principles underlying the qualified immunity doctrine.

Qualified Immunity – A Brief History and Primer

42 U.S.C. § 1983, often colloquially referred to as “Section 1983” was enacted on April 20, 1871, and signed into

law by President Ulysses S. Grant. Section 1983 provides that “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

The statute has been referred to as the “Ku Klux Klan Act” and was passed to provide a private cause of action for persons whose constitutional rights had been violated by state actors. This was obviously particularly relevant to black citizens in the south, which was actively resisting reconstruction and integration efforts following the end of the civil war.

Unfortunately, Section 1983 sat mostly dormant for over 90 years, due to restrictive judicial interpretations that severely limited the application of the statute and held that an action could not be “under color of law” if there was not a state law permitting the allegedly improper behavior. But Section 1983 saw renewed interest with the beginning of the civil rights movement, and in 1961

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the U.S. Supreme Court recognized that Section 1983 provides a right to bring a civil action for an alleged violation of the U.S. Constitution irrespective of state laws and constitutions. See *Monroe v. Pape*, 365 U.S. 167. “Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.” *Id.* at 171-172.

One point worth noting is that while the Court allowed the claims against the individual officers to proceed, it held that Section 1983 does not allow for a claim to be brought against the municipality. *Id.* at 187-192. That portion of the ruling, however, was subsequently overruled in *Monell v. Department of Soc. Svcs.*, 436 U.S. 658 (1978), which held that municipalities can be held liable under Section 1983 if they were the moving force behind the constitutional violation.

A few years later, *Pierson v. Ray*, 386 U.S. 547 (1967), the beginnings of the qualified immunity doctrine began to emerge. In *Pierson*, white and black clergymen attempted to use a segregated interstate bus terminal waiting room in Jackson, Mississippi, in 1961. *Id.* at 548-551. The clergymen were arrested and charged with conduct breaching the peace in violation of § 2087.5 of the Mississippi Code, which statute was **subsequently** held unconstitutional by the Supreme Court in 1965 (*Thomas v. Mississippi*, 380 U.S. 524). *Id.* The Supreme Court held that the officers were entitled to raise the defenses of good faith and probable cause to Section 1983 claim. *Id.* at 556-558. Recognizing that such “qualified” immunity as arising out of the common law and commonsense notions of liability for police officers, the Supreme Court held as follows:

The common law has never granted police officers an absolute and unqualified immunity, and the officers in this case do not claim that they are entitled to one. Their claim is rather that they should not be liable if they acted in good faith and with probable cause in making an arrest under a statute that they believed to be valid. Under the

prevailing view in this country a peace officer who arrests someone with probable cause is not liable for false arrest simply because the innocence of the suspect is later proved. A policeman’s lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does. Although the matter is not entirely free from doubt, the same consideration would seem to require excusing him from liability for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional, on its face or as applied.

Id. at 555.

But it took a case almost two decades later and arising out of the turmoil of the Nixon administration to fully give rise to the concept of qualified immunity in the case of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

In January 1970, A. Ernest Fitzgerald, a management analyst in the Department of the Air Force, was fired in what he believed was retaliation for testifying to Congress regarding \$2 billion in unexpected costs and other issues associated with the C5-A transport plane. Fitzgerald sued Nixon aides Bryce Harlow and Alexander Butterfield for civil damages and claimed they were involved in a conspiracy that resulted in his wrongful dismissal. In stating the basis for a qualified immunity defense in such situations, the Court held that “government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate **clearly established statutory or constitutional rights of which a reasonable person would have known.**” *Harlow*, 457 U.S. at 818 (emphasis added).

Through decisions following *Harlow*, the Courts refined and explained the qualified immunity doctrine, establishing a two prong test.

Under the first prong of the test, the question is whether there has been a violation of a right under the U.S.

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Constitution. The second prong of the test asks whether it was clearly established that defendant's alleged actions would violate the constitution. Both questions are decided based on objective evidence irrespective of the subjective thoughts and intentions of the defendants.

The first prong is more straightforward and simply asks, was the constitution violated? The second prong gives rise to more debate and controversy and is actually the heart of the qualified immunity doctrine and asks, would it have been clear based on the previous case law and the facts available to the defendant that his actions would violate the constitution.

The Supreme Court has repeatedly instructed lower courts not to define what is clearly established at a general or high level. Thus, the question is not whether it was clearly established in general that an officer may not place a person under arrest without probable cause of a criminal violation, the question is whether there was sufficient case law to put the issue beyond doubt such that no reasonable officer would have believed it to be constitutional. This analysis requires consideration of the facts and circumstances of the specific case from the objective perspective of the officer at the time of the encounter and "it is inappropriate [for courts], in the quietude of [their] chambers, to second-guess standard police procedure and on-the-scene judgment." *United States v. Foster*, 376 F.3d 577, 587 (6th Cir. 2004). Stated simply, qualified immunity "gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991).

Efforts to circumvent Section 1983 and the qualified immunity defense by establishing a private cause of action for violations of the Ohio Constitution

It has long been recognized that there is no private cause of action for alleged violations of Article I, Section 14 of the Ohio Constitution, which prohibits unreasonable searches and seizures. *Foos v. City of Delaware*, S.D. Ohio No. 2:08-CV-0873, 2010 U.S. Dist. LEXIS 90019, at *29-*33 (Aug. 31, 2010) (citing *Provencs v. Stark Cty. Bd. Of*

Mental Retardation, 64 Ohio St. 3d 252, 1992-Ohio-35). Thus, a party in Ohio seeking to bring a civil action related to an excessive use of force and/or false arrest allegations must seek recovery under Section 1983 and the U.S. Constitution and cannot bring such a claim under the Ohio Constitution. *Id.*

Recognizing that they cannot use state law to usurp a federally recognized defense to claims brought under the U.S. Constitution, the opponents of qualified immunity have embarked on a campaign to undermine federal jurisprudence and the common law through an amendment to the Ohio Constitution that would not only create a private cause of action for violations of the Ohio Constitution, but would also explicitly eliminate all governmental immunities, including qualified immunity, for such claims.

Ohio's Proposed Constitutional Amendment to Abolish Qualified Immunity is an Unprecedented Expansion of Governmental Liability

The Ohio Coalition to End Qualified Immunity (the "Coalition"), is a group proclaiming to seek to "end qualified immunity" throughout the state of Ohio by proposing a state constitutional amendment. Although the Coalition calls their proposal a narrow, corrective reform, it is actually an unprecedented expansion of governmental liability that goes beyond eliminating governmental immunities and would be ruinous to local governments. Ohio municipal leaders should be informed on this issue so that voters are aware of the real impact this proposal would unleash on local governments.

First, let's clarify what the Coalition's proposed amendment language means. The Coalition claims the amendment abolishes qualified immunity, a defense, as discussed above, that arises out of the common law and is used in federal civil rights lawsuits. In reality, however, the proposal side-steps the immunity issue by creating a new state-level claim for violations of the Ohio Constitution. Moreover, the proposed amendment not

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only seeks to eliminate the qualified immunity defense, it also seeks to exponentially expand liability against public sector employees and their employers.

- **Elimination of All Immunities:** The proposed amendment not only prevents courts from using a qualified immunity-like analysis on these new claims, but it also abolishes sovereign, prosecutorial, judicial, and legislative immunity, long standing doctrines with completely different functions in our society.
 - Notably, immunity would be removed for any individuals, including volunteers or non-profit entities, that are acting on behalf of the public entity.
- **Creating a Strict Liability Standard:** A claim under the proposed amendment only requires proving by a preponderance of evidence that a government actor caused a state-constitutional violation. In other words, a person can succeed on these claims just by proving that a municipal employee made any simple mistake in the performance of their duties regardless of whether the mistake was in good faith or reasonable. Even in a standard negligence action a party's liability is judged by a reasonably prudent person standard of care. Thus, public employees, including police officers, librarians, fire fighters, and maintenance crews, would have less protections than the general public.
- **Unlimited Damages and Attorney Fees:** Plaintiffs can claim, and recover, uncapped economic and non-economic damages, plus attorney fees, regardless of whether those services were provided on an hourly, contingent or pro bono basis, fueling frivolous lawsuits.
- **Vicarious Liability:** Taxpayers foot the bill for employees' conduct, even if the municipality had no role in the incident, and even if the municipality disciplines the employee while correcting the issue.
- **No Right to a Jury (for the public employees and municipalities):** Plaintiffs alone pick judge or jury trials, denying defendants their constitutional right to a jury.

- **Six-Year Statute of Limitations:** Claims can linger for six years, triple Ohio's two-year personal injury limit. Again, public employees are subject to liability exposure far in excess of what is applicable to the citizens they serve.

- **Termination of Employment** A finding of liability against an employee is grounds for termination of employment.

Second, let's consider the harmful ramifications of OCEQI's new state claim against public sector employees and their employers.

- **The Strict Liability Standard Will Lead to an Unprecedented Rise in Frivolous Lawsuits Against All Public Sector Employees:** The amendment's strict liability standard is a disaster nobody's talking about. It's simple and devastating: No government actor shall deprive anyone of a constitutional right. Anyone claiming a violation can sue. No need to prove negligence or intent—they just show the act happened and recover uncapped damages and attorney fees while the employee is terminated for cause.

Combining the strict liability with the broad scope of Ohio's constitution turns utterly frivolous lawsuits into viable claims that could bankrupt local governments. Consider these examples:

- **Typo Trouble:** A teacher emails student records to the wrong parent due to an auto-fill error. Ohio's Constitution (Article I, Section 1) protects student privacy. The typo violates it. The parents sue for unlimited damages and must win under this amendment. The parents may not get much money for damages, but the attorneys representing them will submit six-figure legal bills that the municipality will be forced to pay, and the teacher could be fired for cause.
- **Bee Sting Chaos:** A park cleanup volunteer misses bees near a trash can. Moving it stirs the bees, stinging bystanders. Ohio's right to be free from harm (Article I, Section 1) is violated. The bystanders sue.

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- **Snow Plow Sorrow:** A city maintenance worker plowing snow strikes a vehicle parked along the road causing damage to the vehicle. The alienable right of acquiring, possessing, and protecting property is set forth within the Ohio Constitution (Article I, Section 1). Rather than treating the claim as a typical car accident negligence action subject to the reasonable person standard, the city and its driver are held strictly liable for the property damage and the car owner’s attorney fees, and the driver can be terminated.

Such examples are only the beginning because lawyers will be highly incentivized to establish creative basis to litigate any trivial mistake that can even arguably be considered a constitutional violation since their fees will be paid on the success of the claim—not the value of it.

- **The Unlimited Damages and Vicarious Liability Components Would Drain Tax Coffers Defending and Paying Out These Lawsuits:** There is a real impact to every Ohioan. Unlimited damages and uncapped attorney fees combined with vicarious liability spell financial ruin for governments. Plaintiffs can claim millions for emotional distress over inconveniences and even if they do not get it, their attorneys will still get six figure pay days on every case, regardless of outcome. Public entity insurers will withdraw from the state and the legal fees accrued in defending these claims will force service cuts and tax hikes.
- **The Six-Year Statute of Limitations Creates an Unreasonably Long Lawsuit Window:** The six-year statute of limitations triples Ohio’s two-year personal

injury limit. Plaintiffs can wait years to sue, when evidence is gone and memories fade. A teacher’s 2025 typo could spark a 2031 lawsuit.

Although the Coalition was not successful in collecting enough signatures to allow for the proposed amendment to appear on the November 2025 ballot, they have made it clear that they will continue to attempt to push this ill-advised agenda through for future ballots. Local governments and the public should remain aware of the effects such an amendment would have and continue to reject the Coalition’s efforts.

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Current Trends in Enforcing the Pregnant Workers Fairness Act

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The Pregnant Workers Fairness Act (“PWFA”), which has been in effect since June 27, 2023, offers broader protections to workers for pregnancy and/or childbirth-related conditions. The PWFA requires employers with fifteen (15) or more employees to provide

reasonable accommodations for pregnancy, childbirth, or related medical conditions, unless the accommodation imposes an undue hardship on the employer.¹ On June 18, 2024, the Equal Employment Opportunity Commission’s (“EEOC”) final regulations implementing the PWFA became effective. The EEOC’s final regulations offer guidance to employers as to what a “reasonable accommodation” could be under the PWFA, and how employers should respond when faced with a request for a reasonable accommodation.²

Following the implementation of the final regulations, representatives of the EEOC have confirmed that protecting pregnant workers is a “strategic enforcement priority” for the agency.³ During the 2024 fiscal year, the EEOC received thousands of charges of discrimination that included claims under the PWFA.⁴ The EEOC also began utilizing its law enforcement authority to file its first PWFA lawsuit in federal district court.⁵ As with other charges of discrimination, the EEOC offers voluntary programs to resolve charges filed under the PWFA. Thus far, the EEOC has announced that it has successfully settled nearly a dozen charges pursuant to the PWFA.⁶

The EEOC Has Secured More Than \$450,000 and Other Relief for Pregnant Workers

In each of the ten cases that the EEOC has settled or conciliated under the PWFA, the EEOC has secured

monetary compensation for the complainant, and required the employer to take proactive steps to prevent future discrimination. Most employers were required to provide additional training to their staff about the PWFA and its protections. In some cases, the EEOC enjoined the employer from considering pregnancy or related conditions when making employment decisions, required additional annual or quarterly reporting to the agency, and mandated the appointment of an EEO coordinator. Below are summaries of the outcomes of each of the ten such cases:

- December 2025: the Miami Field Office conciliated a charge against Brandt Information Services, Inc. for terminating a pregnant employee after the employee requested two and a half months of unpaid leave as a reasonable accommodation. The conciliation agreement required Brandt to pay \$100,000 to the former employee, and to implement a new policy allowing employees to request leave as a reasonable accommodation – even if the employee did not qualify for leave under the Family Medical Leave Act (“FMLA”).⁷
- December 2025: the Miami Field Office conciliated a charge against Health and Behavior Dimensions, Inc., a non-profit organization, for refusing to engage in the interactive process with a pregnant employee and terminating her employment when she sought a reasonable accommodation. The organization was required to pay \$35,000 to the former employee, provide training to all employees, and report annually to the EEOC on discrimination complaints it received.⁸
- July 2025: the EEOC entered into a two-year consent decree with Polaris Industries, Inc. to settle a federal lawsuit filed in 2024 (*EEOC v. Polaris Industries*,

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Inc., N.D. Ala. Case No. 5:24-cv-1305). The lawsuit alleged that a pregnant employee was (1) required to work more than forty hours per week against physician-imposed work restrictions, (2) penalized for pregnancy-related absences and medical appointments, and (3) threatened with termination if the employee accumulated any additional attendance points. Ultimately, the employee resigned to avoid the termination of her employment. The consent decree required Polaris to pay \$55,000 to the employee for lost earnings and compensatory damages, to improve its policies and practices, and provide training to its employees about the PWFA.⁹

- April 2025: the EEOC entered into a three-year consent decree with Amelia Springs Assisted Living to settle a federal lawsuit filed in 2023 (*EEOC v. Florida Care ALF of Amelia Island, Inc.*, M.D. Fla. Case No. 3:23-cv-1130). The lawsuit alleged that a temporary employee was fired after management learned of her pregnancy. Although the lawsuit was filed under the Pregnancy Discrimination Act (“PDA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”), and not the PWFA, the consent decree still required the employer to pay \$20,000 in damages, amend its policies to protect pregnant employees, provide training on pregnancy discrimination and protections available under the PWFA, report to the EEOC, post notices, and submit to an injunction preventing the consideration of an employee’s pregnancy or ability to become pregnant when making employment decisions.¹⁰
- April 2025: the EEOC entered into a two-year consent decree with Kurt Bluemel Inc. to settle a federal lawsuit filed in 2024 (*EEOC v. Kurt Bluemel*, D. Md. Case No. 1:24-cv-2816). The lawsuit alleged a pregnant employee requested maternity leave with the expectation of returning to work, but when attempting to return three months later, the employee was told there was no work available – despite the employer’s hiring of new, non-pregnant employees before and after her return-to-work attempt. The consent decree required Kurt Bluemel Inc. to pay \$40,000 to the employee, implement and disseminate a policy

prohibiting pregnancy discrimination, provide training on that policy and on the PWFA, post a remedial notice about the settlement, and submit to an injunction preventing further pregnancy discrimination.¹¹

- October 2024: the Miami District conciliated a charge against Sailormen, Inc., doing business as a Popeye’s Chicken & Biscuits, for terminating a pregnant worker’s employment upon belief that the employee would need accommodations to perform her job duties. The employer was required to compensate the former employee, train all employees on pregnancy discrimination, revise its practices and policies, appoint an EEO coordinator to ensure the revised policies’ compliance with the PWFA, and annually report complaints of discrimination to the EEOC.¹²
- October 2024: the EEOC entered into a three-year consent decree with Lago Mar Resort & Beach Club to settle a federal lawsuit filed in 2024 (*EEOC v. Lago Mar Properties, Inc.*, S.D. Fla. Case No. 0:24-cv-61812). The lawsuit alleged that an employee was fired shortly after requesting leave to recover and grieve from a stillbirth that occurred during her fifth month of pregnancy. The consent decree required Lago Mar to pay \$100,000 in damages to the former employee, revise its reasonable accommodation policies to comply with the PWFA and the Americans with Disabilities Act (“ADA”), appoint an EEO coordinator, train its employees, and report any complaint of discrimination to the EEOC.¹³
- October 2024: the Detroit Field Office entered into a conciliation agreement with Family Fresh Harvesting, LLC, a farm labor contractor who provides temporary visas to agricultural workers, to resolve a pregnancy discrimination charge. The charge alleged that a pregnant employee was fired and sent back to Mexico after she requested unpaid time off to attend pregnancy-related medical appointments. The agreement required Family Fresh Harvesting, LLC to compensate the former employee for damages, train its employees at the start of each work season, and send electronic notices in

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English and Spanish to all employees affirming its commitment to provide reasonable accommodations to pregnant employees and hire employees irrespective of their sex or pregnancy¹⁴

- September 2024: the New Orleans Field Office entered into a three-year consent decree with Gracious Bakery & Café to settle a federal lawsuit filed in 2024 (*EEOC v. Gracious, LLC d/b/a Gracious Bakery & Café*, E.D. La. Case No. 2:24-cv-418). The lawsuit alleged that Gracious Bakery terminated a pregnant woman's employment after missing two shifts for pregnancy-related emergency medical treatment, and her managers believed that her pregnancy complications created a "reliability" issue. The consent decree required Gracious Bakery to pay the former employee \$46,500 in back pay and damages, revise its policies, conduct annual training, post notices affirming its PWFA obligations, and provide regular reports to the EEOC regarding pregnant workers and applicants.¹⁵
- September 2024: The Tampa Field Office entered into a conciliation agreement with ABC Pest Control, Inc. to resolve a charge alleging a pregnant employee was fired after requesting to attend monthly pregnancy-related medical appointments. ABC Pest Control agreed to pay \$47,480 to the former employee, revise its employment policies to include making reasonable accommodations under the PWFA, provide training, appoint an EEO coordinator, and provide quarterly reporting to the EEOC on requests for accommodations and discrimination complaints.¹⁶

The EEOC is Currently Litigating Almost a Dozen PWFA Cases Nationwide

Although the EEOC has resolved some PWFA charges through voluntary settlement or conciliation, nearly a dozen lawsuits filed by the EEOC remain pending in federal district courts. Below are summaries of the allegations in each of the cases:

- *EEOC v. Hotel Equities Group, LLC*, N.D. Ill. Case No. 1:26-cv-01217 (alleging that a pregnant front desk clerk was initially provided with a suitable chair as a reasonable accommodation, but management later

replaced it with a less-desirable stool, discouraged her from using it, and ultimately discharged her).¹⁷

- *EEOC v. U.S. Steel*, D. Minn. Case No. 0:25-cv-04721 (alleging that a pregnant mining equipment operator needed an accommodation to cease working with the most physically jarring machinery during her high-risk pregnancy, but instead, U.S. Steel placed the employee on involuntary leave for several weeks, and later reassigned the employee for the remainder of her pregnancy to work inconsistent with both her medical restrictions and job description with reduced earning potential).¹⁸
- *EEOC v. Option Care Health, Inc.*, D. Mass. Case No. 1:25-cv-12817 (alleging that Option Care refused to grant a nurse's request to temporarily limit her assignments to patients closer to her home and conduct virtual visits to accommodate her pregnancy symptoms, leading to the nurse's forced resignation).¹⁹
- *EEOC v. R&L Carriers Shared Services, LLC*, N.D. Ill. Case No. 1:25-cv-11121 (following a subpoena-enforcement action,²⁰ the EEOC filed suit against R&L Carriers, a freight shipping company, for allegedly forcing a pregnant truck driver to take leave rather than work during her pregnancy with a 20-pound lifting restriction).²¹
- *EEOC v. Blue Island SLF, LLC d/b/a Prairie Green at Fay's Point*, N.D. Ill. Case No. 1:25-cv-11111 (alleging that an employee was fired after disclosing her pregnancy and requesting a 20-pound lifting restriction as an accommodation).²²
- *EEOC v. Roland Park SNF Operations, LLC*, et al., D. Md. Case No. 1:25-cv-2986 (alleging that a skilled nursing facility refused to provide light- or modified-duty accommodations to a certified nursing assistant for pregnancy; instead, the facility terminated her employment and advised her to reapply for a position following her pregnancy).²³

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- *EEOC v. Smithfield Fresh Meats Corp.*, E.D.N.C. Case No. 7:25-cv-1410 (alleging that a newly-hired employee, who was involved in a workplace accident, required medical attention for pregnancy-related complications and requested a lifting restriction to continue working, but the employer refused to provide the accommodation, placed her on unpaid leave, and terminated her employment two weeks later).²⁴
- *EEOC v. PT Administrative Services LLC d/b/a JAG Physical Therapy*, E.D.N.Y. Case No. 1:25-cv-03615 (alleging that a patient services coordinator’s employment was terminated immediately after she inquired about leave and/or altering her work schedule to accommodate her physical recovery from childbirth and facilitate lactation).²⁵
- *EEOC v. Security Assurance Management Inc.*, D.D.C. Case No. 1:25-cv-00181 (alleging lactation-related accommodations were not provided and, as a result, the employee leaked through her uniform, was forced to pump in the car and missed work, faced discipline for lactation-related absences, and was not scheduled for any other shifts thereafter).²⁶ Notably, Defendant Security Assurance Management, Inc. moved for partial dismissal of “superfluous” PWFA claims, stating that plaintiff “excessively asserted five separate PWFA claims.”²⁷ Defendant argued that the five PWFA claims were duplicative because they related to the same facts, alleged the same type of harm, and sought the same types of damages.²⁸ The district court denied the motion for partial dismissal, finding the claims were not duplicative as they arose from different allegations (i.e., asserted different motivations for Defendant’s allegedly unlawful conduct) and were to be analyzed under separate legal standards.²⁹
- *EEOC v. Urologic Specialists of Oklahoma, Inc.*, N.D. Okla. Case No. 4:24-cv-0452 (alleging that a medical practice forced an employee to take unpaid leave – rather than continue working with accommodations to sit, take breaks, or work part-time for her high-risk pregnancy – and refused to guarantee the employee would have breaks to express breastmilk

upon her return, leading to the termination of her employment).³⁰ Notably, on February 13, 2026, the Parties jointly moved to enter a four-year consent decree whereby Urologic Specialists must: (a) cease denying reasonable accommodations under the PWFA, unless it can demonstrate undue hardship on the operation of its business; (b) cease taking adverse employment actions against employees for requesting or using a reasonable accommodation; (c) cease denying reasonable accommodations under the ADA; (d) cease retaliating against employees related to the PWFA or ADA; (e) pay the affected employee \$10,000 designated as backpay, and \$80,000 designated as nonpecuniary compensatory damages; (f) update its policies and procedures; (g) post copies of its updated policies in all physical and online locations; (h) train its staff semi-annually on the PWFA and ADA; (i) make postings of a notice that “Federal law prohibits pregnancy and disability discrimination in employment”; and (j) report to the EEOC quarterly.³¹ As of the drafting date of this article, the motion remains pending.

- *EEOC v. Wabash National Corporation*, W.D. Ky. Case No. 5:24-cv-00148-BJB (alleging that after a pregnant employee’s request to transfer to a role that did not require her lie on her stomach was denied, she was required to take unpaid leave and, ultimately, forced to resign at nearly eight months pregnant because she was given no choice but to return to her position without modification).³²

Each of the EEOC actions – whether the action has been resolved or remains pending in federal district court – suggest that the EEOC is focused on remedying the denial of pregnancy-related accommodations that resulted in termination or constructive discharge. Nevertheless, even where termination of employment does not occur, an employer may still be liable under the PWFA for denying a request for reasonable accommodation absent undue hardship.

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Private Parties Have Also Sought to Enforce the PWFA Within Sixth Circuit District Courts

Private parties have also sought redress in federal courts for violations of the PWFA. Two recent decisions from Sixth Circuit district courts – *Varney v. Health Carousel, LLC* and *Payne v. Western Michigan University* – demonstrate that plaintiffs can assert multiple theories of PWFA claims, which may overlap with other causes of action.

For instance, in *Varney*, the Southern District of Ohio denied Health Carousel, LLC’s motion to dismiss three separate PWFA claims for failure-to-accommodate, interference with rights, and retaliation related to lactation. *Varney*, No. 1:24-cv-624, 2025 U.S. Dist. LEXIS 175632 (S.D. Ohio Sept. 9, 2025). As for the failure-to-accommodate claim, even though the plaintiff may have been provided with break time and space to express breast milk, the court recognized that the employer denied plaintiff’s request for a modified work schedule, and “refused to engage in the interactive process to identify alternative accommodations.” *Id.* at *17. Regarding the interference claim, the court found that plaintiff plausibly stated a claim that her manager “routinely interfered by criticizing and harassing her for the length of pumping breaks in order to intimidate and coerce her into taking shorter pumping breaks.” *Id.* at *18. Because the text of 42 U.S.C. § 2000gg-2(f)(2) “covers both the exercise and enjoyment of the rights in question,” the court permitted the interference claim to move forward. *Id.* Finally, as to the retaliation claim, the plaintiff alleged that her manager retaliated against her for reporting lactation harassment by (1) intensifying scrutiny of the length of her pumping breaks, (2) being overly critical of her work, and (3) assigning more work than she should complete. *Id.* at *3. The court found that these allegations sufficiently pled a retaliation claim not only under the PWFA, but also Title VII, the PUMP Act, and Ohio law. *Id.* at *14-16, 19-20. Thus, the motion to dismiss was denied in its entirety. *Id.* at *20.

By contrast, in *Payne*, the Western District of Michigan granted summary judgment in favor of Western Michigan University (“WMU”) on plaintiff’s failure-to-accommodate PWFA claim. *Payne*, No. 1:24-cv-814, 2025 U.S. Dist.

LEXIS 223694 (W.D. Mich. Nov. 13, 2025). Plaintiff’s complaint alleged that she was fired only five months after hire because she was pregnant, but WMU contended that her employment was terminated for poor performance. *Id.* at *1. Regarding the PWFA claim, plaintiff alleged that she presented a doctor’s note to her supervisors (informing her supervisors that she was suffering from nausea and vomiting), and requested to be excused from work on the day of her doctor’s visit. *Id.* at *25. Similar to the ADA, to survive summary judgment on a PWFA failure-to-accommodate claim, a plaintiff must present evidence that she is a qualified individual, (2) her employer was aware of her limitation, and (3) her employer failed to reasonably accommodate the limitation. *Id.* at *24. Plaintiff’s claim failed on the second prong. *Id.* The court found that plaintiff never informed her supervisors that she needed further accommodations for her pregnancy, or that her pregnancy was making it more difficult for her to fulfill her job duties. *Id.* at *25-26. The court granted summary judgment in favor of WMU on all claims. *Id.* at *26. Although plaintiff appealed the summary-judgment decision to the Sixth Circuit, the Parties ultimately dismissed the appeal with prejudice.³³

While *Varney* suggests that district courts may be hesitant to grant early dismissal of PWFA claims alleging denial of a reasonable accommodation or adverse employment action, *Payne* illustrates that employers may obtain summary judgment and defeat PWFA claims if an employee failed to make known a need for accommodations because of pregnancy or related conditions.

Key Takeaways

Since the EEOC’s final regulations implementing the PWFA became effective, there has been an increase in the number of enforcement actions from both the EEOC and private parties. Legal practitioners can expect this trend to continue as implementation and enforcement of the PWFA remains one of the EEOC’s priorities.

The PWFA was enacted to provide broader protection to workers for not only pregnancy, but for other childbirth-

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related conditions. Employers must be flexible in providing reasonable accommodations under the PWFA for such conditions, including stillbirth and lactation, unless the employer can demonstrate undue hardship. Understanding how the PWFA compliments (and differs from) other federal and state laws, including the ADA, PDA, Title VII, the PUMP Act, and Ohio Revised Code Chapter 4112, will enable labor and employment attorneys to effectively advise clients as they are faced with reasonable accommodations requests from their employees.

ENDNOTES

1. See generally 42 U.S.C. § 2000gg et seq. “Undue hardship” under the PWFA has the same meaning as it does under the ADA. *Trego v. Penske Logistics, LLC*, No. 3:24-cv-00460, 2026 U.S. Dist. LEXIS 30319, *65 (M.D. Tenn. Feb. 12, 2026) (citing 42 U.S.C. § 2000gg(7), which incorporates by reference the definition provided in 42 U.S.C. § 12111).
2. See generally 29 C.F.R. § 1639; see also Christina L. Corl and Jacob H. Levine, *Implementing the Pregnant Workers Fairness Act: Key Insights for Legal Practitioners*, 19 OACTA QUARTERLY REVIEW 4 (Fall 2024) (analyzing the EEOC’s final regulations and suggesting best practices for employers implementing the PWFA).
3. EEOC PRESS RELEASE: *EEOC Sues Wabash National for Pregnancy Discrimination* (Sept. 10, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-wabash-national-pregnancy-discrimination> (quoting former EEOC Chair Charlotte A. Burrows).
4. EEOC PRESS RELEASE: *EEOC Issues Agency Financial Report for Fiscal Year 2024* (Nov. 15, 2024), <https://www.eeoc.gov/newsroom/eeoc-issues-agency-financial-report-fiscal-year-2024>.
5. *Id.*
6. See generally EEOC PRESS RELEASES from September 2024 through December 2025, *infra*.
7. EEOC PRESS RELEASE: *EEOC Recovers \$135,000 for Florida Employees Under Pregnant Workers Fairness Act* (Dec. 29, 2025), <https://www.eeoc.gov/newsroom/eeoc-recovers-135000-florida-employees-under-pregnant-workers-fairness-act>.
8. *Id.*
9. EEOC PRESS RELEASE: *Polaris Industries to Pay \$55,000 in EEOC Pregnancy Suit* (July 23, 2025), <https://www.eeoc.gov/newsroom/polaris-industries-pay-55000-eeoc-pregnancy-suit>; see also EEOC PRESS RELEASE: *EEOC Sues Two Employers Under the Pregnant Workers Fairness Act* (Sept. 26, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-two-employers-under-pregnant-workers-fairness-act>.
10. EEOC PRESS RELEASE: *Amelia Springs to Pay \$20,000 in EEOC Pregnancy Discrimination Lawsuit* (Apr. 3, 2025), <https://www.eeoc.gov/newsroom/amelia-springs-pay-20000-eeoc-pregnancy-discrimination-lawsuit>.
11. EEOC PRESS RELEASE: *Kurt Bluemel Inc. to Pay \$40,000 in EEOC Pregnancy Discrimination Suit* (Apr. 3, 2025), <https://www.eeoc.gov/newsroom/kurt-bluemel-inc-pay-40000-eeoc-pregnancy-discrimination-suit>.
12. EEOC PRESS RELEASE: *Sailormen, Inc. / Popeye’s Conciliates EEOC Pregnant Workers Fairness Act Charge* (Oct. 11, 2024), <https://www.eeoc.gov/newsroom/sailormen-inc-popeyes-conciliates-eeoc-pregnant-workers-fairness-act-charge>.
13. EEOC PRESS RELEASE: *Lago Mar Restaurant & Beach Club to Pay \$100,000 in EEOC Pregnant Workers Fairness Act Suit* (Oct. 11, 2024), <https://www.eeoc.gov/newsroom/lago-mar-resort-beach-club-pay-100000-eeoc-pregnant-workers-fairness-act-suit>.
14. EEOC PRESS RELEASE: *Family Fresh Harvesting Conciliates EEOC Pregnancy Discrimination Charge* (Oct. 10, 2024), <https://www.eeoc.gov/newsroom/family-fresh-harvesting-conciliates-eeoc-pregnancy-discrimination-charge>.
15. EEOC PRESS RELEASE: *Gracious Bakery to Pay \$46,500 in EEOC Pregnancy Discrimination Lawsuit* (Sept. 27, 2024), <https://www.eeoc.gov/newsroom/gracious-bakery-pay-46500-eeoc-pregnancy-discrimination-lawsuit>.
16. EEOC PRESS RELEASE: *ABC Pest Control, Inc. Conciliates Pregnant Workers Fairness Act Charge* (Sept. 11, 2024), <https://www.eeoc.gov/newsroom/abc-pest-control-inc-conciliates-pregnant-workers-fairness-act-charge>.
17. EEOC PRESS RELEASE: *EEOC Sues Hotel Equities for Pregnancy and Religious Discrimination, Retaliation* (Feb. 4, 2026), <https://www.eeoc.gov/newsroom/eeoc-sues-hotel-equities-pregnancy-and-religious-discrimination-retaliation>.
18. EEOC PRESS RELEASE: *EEOC Sues U.S. Steel for Pregnancy Discrimination and Retaliation* (Dec. 23, 2025), <https://www.eeoc.gov/newsroom/eeoc-sues-us-steel-pregnancy-discrimination-and-retaliation>.
19. EEOC PRESS RELEASE: *EEOC Sues Option Care Health, Inc. for Pregnancy Discrimination* (Sept. 30, 2025), <https://www.eeoc.gov/newsroom/eeoc-sues-option-care-health-inc-pregnancy-discrimination>.
20. On January 16, 2025, the EEOC filed an action against R&L, requesting an order to show cause as to why a subpoena *duces tecum* issued to R&L concerning Charge No. 440-2023-08119 should not be enforced. See Application for an Order to Show Cause Why a Subpoena Should Not Be Enforced and Memorandum in Support, *EEOC v. R&L Carriers Shared Services, LLC*, Case No. 1:25cv528 (N.D. Ill. Jan. 16, 2025), ECF Nos. 1 and 3. The EEOC voluntarily dismissed the show cause action without prejudice before the show cause hearing took place. See *id.*, Minute Entry, ECF No. 16 (striking the show cause hearing set for March 13, 2025). Based on these proceedings, it is unclear whether the EEOC obtained the records sought by the subpoena prior to voluntarily dismissing the action. See *id.*; see also EEOC PRESS RELEASE: *EEOC Files Agency’s First Subpoena Enforcement Action Under the Pregnant Workers Fairness Act* (Apr. 8, 2025), <https://www.eeoc.gov/newsroom/eeoc-files-agencys-first-subpoena-enforcement-action-under-pregnant-workers-fairness-act>.
21. EEOC PRESS RELEASE: *EEOC Sues Two Businesses Operating in the Chicago Area Under the Pregnant Workers Fairness Act* (Sept. 16, 2025), <https://www.eeoc.gov/newsroom/eeoc-sues-two-businesses-operating-chicago-area-under-pregnant-workers-fairness-act>.
22. *Id.*

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23. EEOC PRESS RELEASE: *EEOC Sues Roland Park Rehabilitation and Healthcare Center and Atlas Healthcare for Sex and Pregnancy Discrimination* (Sept. 11, 2025), <https://www.eeoc.gov/newsroom/eeoc-sues-roland-park-rehabilitation-and-healthcare-center-and-atlas-healthcare-sex-and-pregnancy-discrimination>.
24. EEOC PRESS RELEASE: *EEOC Sues Smithfield Fresh Meats Corp. for Pregnancy Discrimination* (Aug. 19, 2025), <https://www.eeoc.gov/newsroom/eeoc-sues-smithfield-fresh-meats-corp-pregnancy-discrimination>.
25. EEOC PRESS RELEASE: *EEOC Sues Physical Therapy Chain for Pregnancy Discrimination* (June 16, 2025), <https://www.eeoc.gov/newsroom/eeoc-sues-physical-therapy-chain-pregnancy-discrimination>.
26. EEOC PRESS RELEASE: *EEOC Sues Security Assurance Management for Sex and Pregnancy Discrimination* (Feb. 28, 2025), <https://www.eeoc.gov/newsroom/eeoc-sues-security-assurance-management-sex-and-pregnancy-discrimination>.
27. See Partial Motion to Dismiss, *EEOC v. Security Assurance Management, Inc.*, No. 1:25-cv-181 (D.D.C. Mar. 20, 2025), ECF No. 9, at p. 3.
28. See *id.* at pp. 3-7 (arguing, among other things, that Count Two (“Adverse Actions on Account of Requesting Reasonable Accommodations in Violation of the PWFA”), Count Four (PWFA Retaliation), Count Three (“Denial of Employment Opportunities Based on the Need to Make Reasonable Accommodations in Violation of the PWFA”), and Count Five (Interference with Rights Under the PWFA) were duplicative and encompassed by Count One (Failure to Accommodate Under the PWFA)).
29. *United States EEOC v. Sec. Assur. Mgmt.*, No. 25-00181 (RC), 2025 U.S. Dist. LEXIS 202502 (D.D.C. Oct. 14, 2025).
30. EEOC PRESS RELEASE: *EEOC Sues Two Employers Under the Pregnant Workers Fairness Act* (Sept. 26, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-two-employers-under-pregnant-workers-fairness-act>.
31. See Joint Motion to Enter Consent Decree, *EEOC v. Urologic Specialists of Oklahoma, Inc.*, No. 4:24-cv-452 (D. Okla. Feb. 13, 2026), ECF No. 47.
32. EEOC PRESS RELEASE: *EEOC Sues Wabash National for Pregnancy Discrimination* (Sept. 10, 2024), <https://www.eeoc.gov/newsroom/eeoc-sues-wabash-national-pregnancy-discrimination>.
33. See Order, *Payne v. Western Michigan University*, No. 25-2137 (6th Cir. Feb. 2, 2026), ECF No. 13.

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Discrimination Claims Not Just for the Minority

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In the summer of 2025, the United States Supreme Court issued a decision in *Ames v. Ohio Department of Youth Services*, unanimously holding that workers belonging to a majority-group cannot be required to meet a higher evidentiary standard in Title VII

employment discrimination claims.¹ The opinion, authored by Justice Ketanji Brown Jackson, rejects the Sixth Circuit's previous requirement that a member of a majority group must also show additional "background circumstances" to support their assertion that the defendant is "an unusual employer who discriminates against the majority."² Ms. Ames, a heterosexual woman, sued her employer, alleging she was denied a management promotion and ultimately demoted because of her sexual orientation; a lesbian woman received the promotion and a gay man subsequently filled her vacant position.³ The Sixth Circuit granted summary judgment to the employer, determining Ms. Ames failed to prove any "background circumstances" that suggested the employer discriminates against the majority class.⁴ The Supreme Court then vacated the judgment below and remanded for the application of the proper standard, stating, "We hold that this additional 'background circumstances' requirement is not consistent with Title VII's text or our case law construing the statute."⁵ The decision in *Ames* has catapulted the discussion of reverse discrimination into the national limelight, and recent federal actions by the Equal Employment Opportunity Commission ("EEOC") have continued to spotlight this ongoing issue.

The EEOC made clear its future priorities when in December 2025, EEOC Chair Andrea Lucas published a video on social media and its own website, soliciting white men to file discrimination complaints with the

EEOC against their employers.⁶ The EEOC video urges prompt filing, and specifically identifies white men as its targeted demographic by asking, "Are you a white male who's experienced discrimination at work based on your race or sex?"⁷ This communication to the public serves to both clarify and reinforce that employers are on notice regarding the EEOC's intention to investigate Diversity, Equity, and Inclusion ("DEI") initiatives, policies, programs and practices.⁸

The EEOC has continued to ramp up its enforcement mechanisms in the new year, signaling its continued focus on those in the majority class. In February 2026, the EEOC issued a press release, announcing the agency filed a subpoena enforcement action against Nike, Inc. to compel production of information related to allegations of company-wide discrimination against white workers.⁹ The EEOC is specifically seeking information relating to Nike's DEI 2025 targets and its other DEI objectives.¹⁰ The agency's court filing reveals that the EEOC is investigating "systemic allegations of DEI-related intentional race discrimination," specifically concerning "a pattern or practice of disparate treatment against white employees, applicants and training program participants in hiring, promotion, demotion, or separation decisions, including selection for layoffs; internship programs; and mentoring, leadership development and other career development programs."¹¹ The EEOC requests information dating back to 2018 regarding:

- Criteria used in selecting employees for layoffs;
- Information related to the company's tracking and use of worker race and ethnicity data, including as a factor in setting executive compensation;

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- Information about 16 programs which allegedly provided race-restricted mentoring, leadership, or career development opportunities.

With the Ames decision and the EEOC's shifting focus, employers should be aware of the EEOC's increased scrutiny of DEI programs and a potential increase in reverse discrimination claims brought by individuals outside the typical parameters of a protected class. Employers wishing to minimize legal risk should maintain proper documentation of their decision-making process to show their employment-related decisions were merit-based and grounded in non-discriminatory policy. The developing federal caselaw and current administrative actions make it clear: discrimination claims are not reserved for those in a minority class.

ENDNOTES

1. *Ames v. Ohio Dept. of Youth Services*, 605 U.S. 303, 313 (2025)
2. *Ames v. Ohio Dept. of Youth Services*, 605 U.S. 303, 305 (2025), quoting *Ames v. Ohio Dept. of Youth Services*, 87 F.4th 822, 825 (6th Cir. 2023)
3. *Id.* at 605

4. *Id.* At 307
5. *Id.* At 306
6. *Trump EEOC Chair's Makes Announcement Regarding White Males Who 'Experienced Discrimination at Work'*, FORBES BREAKING NEWS (December 2025)
<https://www.bing.com/videos/riverview/relatedvideo?q=eoc+chair+andrea+lucas+twitter+solicitation&mid=A5AE6FD92E420F1F22FAA5AAE6FD92E420F1F22EA&FORM=VIRE>
7. *Id.*
8. *What You Should Know About DEI-Related Discrimination at Work*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (February 12, 2026)
<https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>
9. *EEOC Files Subpoena Enforcement Action Against NIKE*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (February 4, 2026)
<https://www.eeoc.gov/newsroom/eeoc-files-subpoena-enforcement-action-against-nike>
10. *Id.*
11. *Id.*
12. *Id.*

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Defending Religious Accommodation Claims After the *Groff* and *Muldrow* Decisions

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The United States Supreme Court's rulings in *Groff v. DeJoy*,¹ and *Muldrow v. City of St. Louis, Missouri*,² will impact how parties approach and argue religious accommodation claims going forward.

Under Title VII of the Civil Rights Act of 1964, an employer is required to reasonably accommodate an employee's genuinely held religious belief unless doing so poses an undue hardship on the employer's business.³ An employer fails to accommodate an employee's religion when it causes the employee to abandon a religious belief to comply with "otherwise neutral policies."⁴ In *Groff*, the Court re-evaluated the then-frequently quoted undue hardship standard that required an employer to show a religious accommodation would result in "more than a *de minimis* cost" on the employer.⁵

Groff concerned a USPS postal worker who requested an accommodation of not working on Sundays due to his genuinely held religious belief.⁶ Mr. Groff declined to work Sunday shifts which resulted in other employees covering his shifts for him, and in Mr. Groff incurring progressive discipline.⁷ Mr. Groff ultimately resigned to avoid termination.⁸ The District Court granted summary judgment on Mr. Groff's failure to accommodate claim, and the Third Circuit Court of Appeals affirmed, ruling that requiring his co-workers to pick up his shifts and diminishing morale was more than a *de minimis* cost to USPS, and thus, an undue hardship.⁹

On appeal, the Supreme Court in *Groff* reversed and remanded, holding that "more than a *de minimis* cost" was not the proper test in these cases.¹⁰ Instead, the Supreme Court held that "an employer must show that

the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."¹¹ The Supreme Court further suggested: "more severe than a mere burden," and "must rise to an 'excessive' or 'unjustifiable' level."¹² The *Groff* Court also recognized that this is often a fact intensive inquiry which poses additional difficulties in obtaining summary judgment.¹³

A year after unanimously deciding *Groff*, the Supreme Court unanimously decided *Muldrow* and lowered the burden for proving a *prima facie* claim of employment discrimination under Title VII. Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to...compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."¹⁴ When relying on indirect evidence of discrimination under Title VII, a plaintiff must show that the plaintiff (1) is a member in a protected class; (2) experienced an adverse employment action; (3) was qualified for the position; and (4) was treated differently or replaced by an individual outside of the individual's protected class.¹⁵ In *Muldrow*, the Supreme Court lessened the requirement for establishing an "adverse action" to prove indirect discrimination.

Muldrow involved claims of gender discrimination under Title VII brought by a female detective against her employer, the police department, when she was transferred to a different position and replaced by a male police officer. Although her rank and pay remained the same, her new position involved different responsibilities, perks and work schedule. For example, *Muldrow* went from having

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a plainclothes position with an unmarked take-home car to a uniformed position with no take-home car, and a less regular schedule with weekend shifts.¹⁶ The district court granted the City's motion for summary judgment on all claims, and the Eighth Circuit Court of Appeals affirmed, ruling that the transfer "did not result in a diminution to her title, salary, or benefits."¹⁷ The Supreme Court, however, reversed and remanded, holding that a plaintiff need only show "some harm" to a term or condition of employment to establish an adverse employment action to support a discrimination claim, and that a plaintiff need not show the harm was significant, "serious, or substantial, or any similar adjective..."¹⁸

The rulings in *Groff* and *Muldrow*, have since been applied in a recent decision by the Sixth Circuit Court of Appeals in *Bilyeu v. UT-Battelle, LLC*, involving married plaintiffs who each objected on religious grounds to getting the COVID-19 vaccine as a condition of employment.¹⁹ Their employer, UT-Battelle, required all individuals refusing the vaccine on religious grounds to read a fact sheet regarding the vaccine. The employer offered a single accommodation for religious reasons of indefinite unpaid leave.²⁰ In addition, UT-Battelle subjected Mr. Bilyeu to interrogation as to the sincerity of his religious beliefs and required him to exhaust one month of vacation days while out on leave.²¹ The Bilyeus brought claims under Title VII for failure to accommodate, retaliation and disparate treatment. The district court granted summary judgment in favor of the employer on all claims, except Mrs. Bilyeu's retaliation claim, which the parties settled.

On appeal, the Sixth Circuit affirmed summary judgment for the employer on Mrs. Bilyeu's remaining claims due to lack of standing, but reversed summary judgment as to Mr. Bilyeu's claims. In light of *Muldrow*'s holding that "material" harm need not be shown to prove discrimination,²² the Sixth Circuit in *Bilyeu* dispensed with its own similar precedent that had previously required a showing that employees were "discharged or disciplined" for failing to comply with an employment requirement that conflicts with a sincere religious belief when proving a failure to accommodate claim.²³ The Sixth Circuit held that a failure to accommodate a religious belief cannot be dismissed "simply because the plaintiff's only harm is having to choose between violating his religious beliefs and violating workplace policies," and remanded Mr.

Bilyeu's claims for further proceedings in light of the decision in *Muldrow*. The Sixth Circuit did not address the merits of the employer's undue hardship defense.²⁵

Although the Sixth Circuit applied the reasoning of *Muldrow* to failure to accommodate religious beliefs claims, it did not apply this reasoning to Title VII retaliation claims. The Sixth Circuit recognized that the *Muldrow* Court retained the "materially adverse" requirement for Title VII retaliation claims which require a plaintiff to show that an adverse action was "harmful to the point that [it] could well dissuade a reasonable worker from making or supporting a charge of discrimination."²⁶ The Sixth Circuit thus held that "a plaintiff cannot bring a Title VII retaliation claim when he alleges only that he made an accommodation request and that the employer denied the request."²⁷ Stated another way, a plaintiff must present evidence of a harm separate from the denial of an accommodation claim to pursue a retaliation claim. The Sixth Circuit reversed the grant of summary judgment as to Mr. Bilyeu's retaliation claim as well as he pointed to the additional harms of being subjected to an interrogation of his religious beliefs and being confronted with an adverse "fact sheet" in an attempt to shame him and convince him that his beliefs were wrong.²⁸

Other courts within the Sixth Circuit have analyzed the undue hardship defense for religious accommodation claims. For patient-facing employees during the height of the pandemic, the Sixth Circuit was persuaded that safety risks to patients constituted an undue hardship, even after *Groff*.²⁹ Undue hardship is more difficult to prove when there is a decreased safety risk, as there was in *Bobnar v. AstraZeneca Pharmaceuticals LP*,³⁰ where the Northern District of Ohio granted summary judgment in favor of the plaintiff when the company failed to show losses of business or clients as a result of the plaintiff not being vaccinated, and failed to show that the plaintiff transmitted the virus at a higher rate than unvaccinated employees. Similarly, in *Isensee v. Amplify, Inc.*,³¹ the Southern District of Ohio declined to grant summary judgment to the employer when it failed to produce admissible evidence that it would have lost a customer had it permitted the plaintiff to go unvaccinated.

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Takeaways

In light of the decisions in *Groff* and *Muldrow*, and the application of those decisions by Sixth Circuit courts, employers and their counsel should be prepared to satisfy a heightened evidentiary burden to defend against religious accommodation claims. More religious accommodation claims are likely to survive the summary judgment stage, absent persuasive evidence of an undue hardship on the employer's business. Likewise, employees will be required to show harm separate from denial of religious accommodation should they wish to survive a motion for summary judgment targeted at retaliation claims. Employers who are presented with a request for religious accommodation must understand the new legal standard and consider all potential impacts on the employer's business before denying the accommodation. Gone are the days of "more than a mere" burden being a sufficient basis for denial. Instead, employers must be prepared to present evidence of "substantial increased costs" or the like, to defend a failure to accommodate a religious accommodation claim. Consulting experienced legal counsel during the individualized assessment of an employee's accommodation request, before denying a request, would likewise be prudent.

ENDNOTES

1. 600 U.S. 447 (2023).
2. 601 U.S. 346 (2024).
3. 42 U.S.C. § 2000e-(j). 29 C.F.R § 1605.2(b)(1).
4. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015).
5. *Groff*, 600 U.S. 447, at 456.
6. *Groff*, 600 U.S. 447, at 454.
7. *Id.* at 455.
8. *Id.*
9. *Id.* at 456.
10. *Groff*, 600 U.S. 447, at 468.
11. *Id.* at 470.
12. *Id.* at 469.
13. *Id.* at 468.
14. 42 U.S.C. §2000e-2(a)(1)
15. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); see, also, *Tepper v. Potter*, 505 F.3d 508, 515-16 (6th Cir. 2007)
16. *Muldrow*, 601 U.S. 346, at 359.
17. *Muldrow*, 601 U.S. 346, at 353.
18. *Id.* at 354-355.
19. *Bilyeu*, 154 F.4th 396, 399.
20. *Id.* at 399-400.
21. *Id.* at 401.
22. *Bilyeu*, 154 F.4th 396, 405.
23. *Bilyeu*, 154 F.4th 396, 404-405, citing *Tepper v. Potter*, 505 F.3d 508, 515-16 (6th Cir. 2007).
24. *Bilyeu*, 154 F.4th 396, 405.
25. *Id.* at 404-405, citing *Groff v. DeJoy*, 600 U.S. 447, 453-54 (2023)
26. *Id.* at 405, citing *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006).
27. *Id.* at 406.
28. *Id.* at 406-407.
29. See *Henry v. Southern Ohio Medical Center*, 155 F.4th 620, 632 (6th Cir. 2025); *Savel v. MetroHealth System*, 2025 WL 1826674, *2 (6th Cir. 2025).
30. 758 F.Supp.3d 690, 728-729 (N.D. Ohio 2024).
31. 2024 WL 2132419, *7-8 (S.D. Ohio May 13, 2024)

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