



January 11, 2024

## Year in Review – Labor and Employment

---

**Sullivan & Cromwell’s Labor and Employment Group offers a review of issues of importance we covered during the past year.**

We continue to monitor and report on the changing landscape of laws and regulations affecting the workplace to keep clients informed. We hope you find this review helpful and welcome any questions you may have on [our practice](#) and developments in areas of significance to employers.

---

### Recent Developments in Whistleblower Enforcement Activity

There has been heightened scrutiny of whistleblower protections by government agencies, and an uptick in whistleblower litigation and investigations. Through our podcasts, articles and blog posts, we continue to help keep clients informed of the latest laws impacting the workplace.



## Supreme Court's Recent Polansky Decision on the False Claims Act

In this episode of S&C's Critical Insights, Annie Ostrager and Tracy Richelle High discuss the Supreme Court's June 16 decision in *United States ex. rel. Polansky v. Executive Health Resources* and implications for qui tam whistleblowers.

[Listen here](#)

## Recent Developments with SEC's Whistleblowing Program

In this episode of S&C's Critical Insights, Annie Ostrager and Tracy Richelle High discuss recent developments in the Securities and Exchange Commission's whistleblowing program.

[Listen here](#)

## What To Expect From High Court's Whistleblower Case

In an article published in *Law360*, Annie Ostrager and Diane McGimsey discuss the significance of the Supreme Court's decision to review *Murray v. UBS Securities*, which could have major ramifications for the scope of federal whistleblower protections.

[Read here](#)



## Update on Recent Whistleblower Enforcement in the U.S.

In this episode of S&C's Critical Insights, Annie Ostrager and Kamil Shields, a member of the Firm's Criminal Defense & Investigations Group, provide an update on recent developments in whistleblower enforcement in the United States under the False Claims Act.

[Listen here](#)

---

In a post on our [Legal Developments Affecting the Workplace Blog](#), we discuss recent SEC enforcement actions based on employment agreements that allegedly violated the SEC's Whistleblower Protection Rules.

[Blog Post](#)

## Updates on Regulations Governing Non-Compete Agreements

S&C continues to advise on implications of challenges to the enforceability of non-compete agreements at the state and federal level. Our [blog posts](#) and [memos](#) provide the latest information for clients and friends of the Firm.

### Federal

[Federal Trade Commission Issues Proposed Rule That Would Bar Most Non-Compete Agreements with Workers](#)

[FTC Proposes to Ban Non-Compete Agreements, and Takes First-Ever Enforcement Actions Against Companies for Imposing Non-Compete Terms on Workers](#)

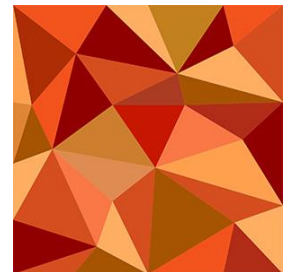
### Statewide

[California Governor Signs New Legislation Expanding the State's Restrictions on Non-Competes](#)

---

## The New Diversity, Equity & Inclusion Landscape

There is scrutiny over DEI programs in the wake of the Supreme Court's *Harvard* decision and we recorded the below podcast this year to help clients navigate an evolving DEI landscape. If your team is interested in a live program, please contact us at [murphy@sullcrom.com](mailto:murphy@sullcrom.com).



### Employment and Contracting Litigation After the Supreme Court's Affirmative Action Decision

In this episode of S&C's Critical Insights, Julie Jordan, Tracy Richelle High and Annie Ostrager discuss the Supreme Court's decision in two consolidated cases against Harvard and the University of North Carolina. The Court held that the schools' admissions programs—both of which used race as an explicit factor in admissions decisions—violated the Fourteenth Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964, which prohibits discrimination in education.

[Listen here](#)

## Events and Resources

### *15th Annual Employment Law Update*

On May 9, 2023 Julie Jordan, Tracy Richelle High, Diane McGimsey and Annie Ostrager hosted S&C's 15th Annual Employment Law Update. They were joined in a series of panel discussions by S&C partners Marc Treviño, Renata Hesse and Nic Bourtin, as well as S&C associate Jake Singer and practice area associate William Wolfe. The panels included discussion of L&E developments in Antitrust Law, Executive Clawbacks, Regulatory Updates in the DEI space, Whistleblower Actions, Artificial Intelligence, and Ethical Issues in L&E Investigations, followed by a networking reception.

If you were unable to join us and would like to view the [recording of the program](#), please use the [On-demand CLE form](#) to receive CLE credit and enter "ID2815" under Program Name.

CLE Credit: This program is eligible for NY CLE 0.5 Ethics and 2.5 PP and CA MCLE 0.5 Ethics and 2.5 General

#### **Additional CLE Resources**

Keeping your team up to date on the latest developments that matter to your business is of chief importance to S&C. In addition to the programs given at the Employment Law Update, noted above, would be happy to provide trainings on topics or issues that may be of interest, at no cost.

---

## S&C Insights on Additional Employment Hot Topics

- Arbitration** [Second Circuit Upholds the Enforceability of an Arbitration Filing Deadline, and Finds Litigants Cannot Evade Arbitral Confidentiality Rules in Court Filings](#)
- [California Supreme Court Rejects U.S. Supreme Court's Interpretation of PAGA Standing](#)
- [U.S. Supreme Court Resolves Circuit Split Concerning Stays Pending Appeals of Denials of Motions to Compel Arbitration](#)
- [A Discussion of Recent Federal Arbitration Act Decisions](#)
  
- Title VII** [Fifth Circuit Expands Title VII Employee Protections](#)
- [Supreme Court Clarifies Undue Hardship Test for Religious Accommodation Requests](#)
- [DOJ and EEOC Ask Supreme Court to Clarify What Employment Actions Can Be the Basis for a Title VII Discrimination Suit](#)

# SULLIVAN & CROMWELL LLP

<b>Department of Labor Proposed Rules</b>	<a href="#">DOL Proposes Fiduciary Investment Advice Regulations</a> <a href="#">DOL Proposes to Significantly Raise the Salary Threshold for Exempt Employees</a>
<b>Artificial Intelligence</b>	<a href="#">EEOC Settles First AI-Discrimination Lawsuit</a> <a href="#">EEOC Releases Guidance Addressing Artificial Intelligence and the Potential for Disparate Impact Discrimination Concerns Under Title VII</a>
<b>Fiduciary Duties</b>	<a href="#">Delaware Court of Chancery Holds for the First Time that Corporate Officers Owe a Duty of Oversight</a>
<b>NLRB Updates</b>	<a href="#">NLRB Modifies Standard for Evaluating Independent Contractor Classification Under the National Labor Relations Act</a> <a href="#">NLRB Acts to Limit Scope of Permissible Confidentiality and Non-Disparagement Restrictions in Severance Agreements</a>
<b>FLSA</b>	<a href="#">Divide Emerges Between Circuit Courts of Appeal Regarding the Standard for Issuing Notice to “Potential Plaintiffs” in FLSA Collective Actions</a>
<b>COVID-19</b>	<a href="#">EEOC Updates COVID-19 Guidance Following End of the Federal Public Health Emergency</a>
<b>New York State Updates</b>	<a href="#">New York Enhances Criminal Liability for Wage Theft</a> <a href="#">New York State Enacts Salary Transparency Law</a>

---

For Labor and Employment podcasts, please subscribe to [S&C Critical Insights](#)

To receive email updates from our blog, please subscribe to [Legal Developments Affecting the Workplace](#)

Subscribe to our [Memos](#)

## 2023 Rankings & Recognitions



Sullivan & Cromwell’s Labor and Employment Law Group was recognized for its excellence in 2023 by leading industry publications.

S&C was ranked Band 1 by *Chambers USA* in its “New York – Labor & Employment: Highly Regarded” table, Tier 1 by *U.S. News & World Report* in its “Best Lawyers Best Law Firms” category for the Nationwide Litigation: Labor & Employment section and Tier 2 by *Benchmark Litigation* in its Labor & Employment – Nationwide table.

Julie Jordan is ranked in *Chambers USA*: District of Columbia Labor & Employment, and was recognized as a Labor & Employment Star and Top 50 Labor & Employment Litigator (National) by *Benchmark Litigation*.

Tracy Richelle High is ranked in *Chambers USA*: New York Labor & Employment, and was recognized as a Labor & Employment Star (Northeast) by *Benchmark Litigation*. She was also named to *National Law Journal’s* list of Employment & Discrimination Trailblazers.

Diane McGimsey was recognized as a Labor & Employment Star (West) by *Benchmark Litigation*.

Annie Ostrager is ranked in *Chambers USA*: New York Labor & Employment, and was recognized as a Labor & Employment Star (Northeast), Future Star (Northeast) and Top 50 Labor & Employment Litigator by *Benchmark Litigation*.