2026 Hospitality & Retail Practice Group Seminar

January 28-30, 2026

Hot Topics

Barath S. Raman
Moderator
LEWIS WAGNER, LLC
Indianapolis, Indiana
braman@lewiswagner.com

The 1970s seemed like they were an easy time. We didn't have to comb our hair to look fashionable. We could wear huge comfortable pants and whatever jewelry we wanted. And to get big laughs, all we needed to do was shout "Dyn-o-mite!" Well times have changed, whether it be for good, bad, or somewhere in between.

Regardless of where along the political spectrum we may lie, there is one thing that we all can agree on, current geopolitical issues are greatly affecting the hospitality and retail sector. There is not a lot of guidance on how companies are supposed to navigate everchanging rules and social conditions. For example: (1) what are we supposed to do when U.S. Immigration and Custom Enforcement ("ICE") comes to your place of business; (2) how are businesses supposed to deal with political and social instability, while balancing free speech and supporting employees; and (3) what are businesses supposed to do regarding various states' efforts to roll back crucial DEI initiatives.

This white paper will explore these difficult topics and provide tips and best practices that hopefully can be utilized to help navigate these tough times.

Interacting with ICE

ICE, primarily through Homeland Security Investigations (HSI), now emphasizes three (3) core worksite enforcement tools: (1) I-9 inspections and civil fines – i.e. Audits; (2) criminal enforcement actions; and (3) compliance/outreach efforts. These actions may take the form of planned I-9 audits, unannounced on-site visits or "raids," and/or targeted document or information requests.

When ICE appears on-site, the priority needs to be to maintain safety and order while ensuring the company's legal rights are not waived inadvertently. All front-line personnel should be trained in advance on a simple script and escalation pathway to the company's designated response team and outside counsel.

Key immediate actions include:

1. Directing officers to a designated company representative (or small response team) who is trained to interact with ICE and to contact counsel.
2. Keeping employees calm, instructing them not to run or interfere, and limiting access by ICE officers to public areas unless a judicial warrant authorizes entry into non-public spaces.
3. It is important to note that ICE can enter any public area without a need of a warrant. The ability to distinguish between public and private is important. For example, parking lots, lobbies, restrooms, and dining areas in restaurants are considered public areas despite likely being on private property. However, private areas such as offices, employee-only areas are considered private, and ICE needs a judicial warrant (discussed in detail below) to access those areas.
4. Documenting the encounter in real time (names and agencies of officers, time and duration, documents presented, areas searched, and items seized) while remaining polite and non-obstructionist.

Proactive preparation substantially reduces legal and operational risk when ICE contacts a business. Best practice mandates that companies should treat ICE planning like any other critical incident protocol, with designated roles, training, and drills.

Core best practices include:

1. Establishing a written "ICE Rapid Response Plan" with a designated response team (HR, legal, security, operations) and a current contact sheet for outside immigration/employment counsel.

2. Training reception and front-desk personnel to (a) request identification and any warrant or written notice, (b) escort agents only to public areas, and (c) immediately call a specified manager and legal counsel.
3. Running mock ICE scenarios or tabletop exercises so managers know how to review a warrant's scope, control access to non-public areas, and avoid volunteering extra information or documents beyond what is legally required.

Responding to ICE Requests for Documents

Some clients may have received a request for documentation from ICE. However, there is a clear distinction between a request from ICE that is or is not supported by a Court Ordered warrant. In short, a judicially backed order must have "U.S. District Court" or a "State Court" at the top of the document. Without that designation, any request is only considered an executive/administrative request, and the business is under no legal obligation to respond to the request.

Like in a criminal case, a judicial search warrant signed by a judge typically authorizes entry into identified premises, access to specific areas, and seizure of particular records or electronic data. Agents are permitted to act within the four corners of that warrant, but not beyond it.

When presented with a judicial warrant:

1. The business must request and review a complete copy of the warrant, including attachments; confirm the correct address, date, time, agency, areas to be searched, and categories of items to be seized.
2. Cooperate within the scope of the warrant while calmly but firmly objecting to any attempt to search areas or seize materials not described in the warrant, documenting any overreach for counsel.
3. Do not interfere physically with agents; instead, assign a company representative to shadow the search, log each area entered, and note any deviations from the warrant's terms.

Supporting Employees When ICE Visits the Property

Businesses must walk a careful line between complying with lawful enforcement activity and maintaining a safe, non-discriminatory, and legally compliant workplace for all employees. Clear, neutral policies that apply company-wide can help minimize allegations of retaliation or discriminatory treatment tied to perceived immigration status.

Recommended measures to support employees include:

4. Providing pre-incident training on rights and responsibilities, including the right of employees to remain silent when questioned and to consult with an attorney if detained, while emphasizing that they must not lie or obstruct.
5. Developing a communication plan to notify employees about an ongoing or recent ICE visit without speculation about individual immigration status, and to direct all media or third-party inquiries to a designated spokesperson.
6. Offering access to an employee assistance program, counseling resources, or referrals to independent immigration counsel, where appropriate, and documenting that any adverse employment actions are based on lawful, non-discriminatory grounds (for example, a confirmed inability to satisfy I-9 requirements).

The Fine Line Between Freedom of Speech, Political Speech, and Complying with the NLRB

Over the past several years, we have read (and in some circumstances experienced) example after example of business having to balance either an employee's and/or customer's right to free speech as it relates to political and/or controversial statements and events.

Employee political speech in the workplace sits at the intersection of labor law, constitutional misconceptions, and brand protection. For ALFA International's hospitality audience, the key is distinguishing what the National Labor Relations Act (NLRA) and the National Labor Relations Board (NLRB) actually protect, versus what is purely a business and reputational choice in handling "politics at work."

As an example, most recently, the assassination of Charlie Kirk highlights how political speech can cause an issue not just for schools and local business, but even for an ALFA client, Starbucks. And without getting to the facts of the Starbucks controversy, it does highlight how quickly a single customer interaction or employee decision can become a political flashpoint and a brand problem. In these situations, the stakeholders include the individual employee, co-workers, the union, management, customers, and the online public, making it an ideal case study in how "political speech," workplace rules, and brand identity collide in real time.

Legal Baseline: No General Right to "Political Speech" at Work

First, it is important to understand that under U.S. law, most employees of private employers do not have a federal First Amendment right to engage in political speech in the workplace; the constitutional free-speech guarantee constrains government, not private businesses. As a result, private-sector employers generally may discipline or discharge employees for political speech that conflicts with workplace policies, subject to specific statutory carve-outs and anti-discrimination constraints.

What the NLRA and NLRB Actually Protect

Specifically, the NLRA protects "concerted activities for the purpose of collective bargaining or other mutual aid or protection," and Section 7 rights apply in both union and non-union workplaces. Political or social-justice expression can fall within this protection when it has a sufficient nexus to employees' terms and conditions of employment and is connected, even loosely, to group action or group concerns.

Examples include employees discussing political issues tied to wages, benefits, immigration enforcement, safety, or healthcare in ways that relate to their own working conditions, including wearing buttons or clothing supporting a candidate or cause that advocates for workplace-related changes.

In contrast, political speech that is purely individual, personal, or unrelated to working conditions—for example, generic support for a candidate on personal social media with no workplace tie—typically falls outside NLRA protection in the private sector. Even when speech is arguably concerted, it can lose protection if it is so egregiously offensive, discriminatory, or threatening that the NLRB concludes it crosses the line from protected activity into harassment, violence, or disruption the employer can lawfully regulate.

However, the Starbucks-style scenario illustrates the gray area: an employee's refusal to comply with a customer-service directive because of the political identity of a public figure may be framed either as a personal moral stand, or as insubordination and failing to comply with employer job expectations, depending on the facts and the narrative each side constructs.

Freedom of Speech ≠ Freedom from Consequences

Given this inherent gray line, it is vital for employers and employee to understand that in the private-employment context, "freedom of speech does not mean freedom from repercussions" is legally accurate and strategically important to explain to both managers and employees. Private employers can, within the bounds of the NLRA and anti-discrimination laws, impose discipline for political speech that violates neutral policies on harassment, customer treatment, dress code, or social-media use, even if that speech would be constitutionally protected against government restriction in a public forum.

The communications challenge is that many employees equate "free speech" with an absolute right to express political views at work; hospitality employers should proactively educate their workforce that workplace speech is regulated, and that rights differ depending on whether speech is about working conditions, involves concerted activity, or targets protected classes.

Brand Protection in a Polarized Environment

Regardless of whether political speech is legally protected, hospitality brands must assess reputational, guest-relations, and commercial risk. Viral incidents involving employees' political statements can trigger boycotts, secondary protests, shareholder pressure, and union organizing leverage long before any NLRB determination is issued.

Best practices emerging from recent guidance include: (1) developing clear, content-neutral policies on customer treatment, symbols, and messaging in uniform; (2) ensuring responses to incidents are consistent with those policies; and (3) planning in advance for public-facing statements that neither abandon core values nor appear to punish legitimate safety or discrimination concerns raised by employees.

How to Navigate the Current Administration's Anti-DEI initiative All the While Maintaining the Progress and Development of Successful DEI Program

In 2025, federal policy shifts have explicitly targeted DEI programs, especially in federally connected institutions and among government contractors, casting many long-standing initiatives in a new, more suspicious light. Executive actions and Department of Justice (DOJ) guidance now frame "illegal DEI" as any initiative that appears to favor certain demographic groups or influence workforce demographics, urging employers to terminate race- or sex-conscious practices and to emphasize "merit" and neutrality in all aspects of employment.

At the same time, Title VII and parallel state laws continue to prohibit discrimination "because of" race, sex, religion, and other protected characteristics, and they apply to all employees and applicants, regardless of whether a policy is labeled "DEI." EEOC commentary in 2025 has begun to focus on "DEI-related discrimination at work," signaling that agencies and courts will scrutinize both traditional discrimination and over-corrections in the name of diversity.

It is clear that the current administration's position on DEI is not limited only to state and federal agencies and organizations. They have started targeting private companies. Some, by using the power of social media and its base to initiate boycotts to affect the bottom line, and other times, by expressly threating to withhold state and federal contracts to companies who engage in what the administration perceives as DEI program that support "reverse discrimination."

Structuring lawful, defensible DEI

It is important to note that the new federal guidance does not ban all DEI; instead, it illustrates examples of what it considers to be unlawful DEI programs, including preferences, quotas, and differential treatment based on protected traits. The DOJ's "illegal DEI" memorandum promotes "best practices" centered on inclusive opportunities for "all qualified individuals," skills-based criteria, performance metrics, and the avoidance of programs that are designed to move specific demographic numbers.

By example, the DOJ has recently argued that the "Mansfeld Rule" that many ALFA firms abide by, violates federal law and may be the basis of action taken against law firms who have adopted it. Moreover, several states have targeted law firms who have specific DEI programs by threatening to withhold contracts for legal services.

Therefore, while understanding and maintaining the crucial benefits of successful DEI programs, it is important for employers to consider: (1) reframing DEI as equal opportunity and inclusion for everyone; (2) eliminating hard diversity quotas in hiring or promotion metrics; (3) opening trainings and mentorship programs to all employees; and (4) ensuring that any aspirational diversity goals are clearly distinguished from selection criteria. Importantly, these steps do not eliminate DEI programs – they simply reframe the DEI initiatives as programs that are meant to provide opportunities to all qualified individuals.

Rise in "reverse discrimination" claims

Following the Supreme Court's 2023 decision in *Students for Fair Admission v. Harvard*, courts and litigants have increasingly challenged workplace diversity efforts as unlawful discrimination against majority-group employees. Employment law commentators and class-action practitioners report a growing number of claims by white or male employees alleging that DEI initiatives resulted in unfavorable treatment in hiring, promotion, or termination decisions.

Recent cases and investigations illustrate the litigation playbook. Plaintiffs have sued universities and media companies alleging that diversity-focused hiring and promotion policies operate as de-facto preferences that disadvantage "straight white males" or white male faculty candidates, sometimes relying on public statements about diversity goals and internal metrics to argue intentional discrimination. However, rulings in these cases provide guidance as to what Courts are looking for in these types of claims. Specifically, courts have signaled that general statements about commitment to diversity and broad DEI policies, without more, do not automatically prove discrimination; plaintiffs must link alleged harm to specific, adverse employment actions.

From a best-practices standpoint, employers should: ensure that all hiring and promotion decisions are grounded in documented, job-related criteria; avoid tying manager performance evaluations to specific demographic outcomes; conduct privileged audits of DEI programs for disparate treatment risk; and train decision-makers on making individualized decisions rather than filling perceived "quotas." Contemporaneous documentation of legitimate business reasons for employment actions remains critical in defending both traditional and "reverse" discrimination cases.