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TOP LEGAL ISSUES FACING **FASHION** & **RETAIL** IN 2026

TABLE OF CONTENTS

3	Authors
5	Introduction
6	Year(s) of the Tariff – Navigating Tariffs in 2026
8	AI in 2026
9	E-Commerce
12	Bankruptcy
13	Sustainability
15	Private Equity Partnerships: Navigating Scale, Technology, and Brand Identity
16	Labor & Employment
18	Social Media & Music
19	Immigration - Top Immigration Issues for the Fashion Industry in 2026
20	Advertising
21	Chatbots/CIPA
22	Proposition 65

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As in 2025, the first few months of 2026 have seen fashion and retail companies operating in an environment where legal developments increasingly shape day to day business decisions, and the same is expected to continue throughout the rest of the year.

Tariffs, trade enforcement, and supply chain pressures remain a persistent operational reality, even as brands continue to invest heavily in artificial intelligence (AI), digital commerce, and new consumer engagement tools. Simultaneously, regulators and plaintiffs' attorneys are paying closer attention to ecommerce practices, advertising disclosures, social media and music use, chatbots, and data privacy.

Sustainability obligations are expanding through extended producer responsibility programs, per- and polyfluoroalkyl substance (PFAS) restrictions, and climate related disclosure laws, while labor, employment, and immigration issues continue to affect workforce planning and mobility. Financial stress across the retail sector, evolving private equity activity, increased bankruptcy filings, and renewed Proposition 65 enforcement add further complexity.

This Top 10 Alert highlights the legal issues most likely to affect cost, growth, and risk allocation for fashion and retail companies in 2026 — and the areas where leadership teams should be paying close attention.



ONE: Year(s) of the Tariff – Navigating Tariffs in 2026

Fashion brands and retailers are now well-versed in the frequent Friday afternoon tariff announcements, Truth Social posts, and shifting tariff rates. Tariff related activity accelerated significantly in the past year, forcing both US and multinational companies to reconsider their supply chains and duty mitigation strategies. In 2026, fashion brands and retailers should expect tariffs to continue to shape the Administration's policy decisions.

IEEPA Litigation

On February 20, the US Supreme Court held that President Trump did not have authority to impose tariffs under the International Emergency Economic Powers Act (IEEPA) to impose tariffs. However, the Supreme Court's decision to invalidate all the IEEPA tariffs was just step one because it did not address the issue of tariff refunds.

While the ultimate refund mechanism remains unclear we are hopeful that Judge Eaton's order in the *Atmus Filtration* case at the Court of International Trade (CIT), covering all importers of "not finally liquidated entries" will actually result in the simple refund process through the Automated Commercial Environment (ACE) that U.S. Customs and Border Protection is developing.

Nonetheless, there is still much uncertainty, including whether the refund issue will be appealed. Thus, importers should act now to preserve their rights to possible refunds by accessing their import data, proactively monitoring liquidation dates, and filing protests prior to the 180-day deadline. We will provide updates as more information regarding refunds becomes available.

Importers should also be aware that their customers may seek recovery of any pass-through tariffs paid. Within a week of the Supreme Court decision, customers had already begun to file lawsuits. We expect that suppliers that shared in the tariff burden will also seek recovery. Importers need to review contractual terms to assess possible refund obligations and evaluate whether terms should be adjusted for future purchases.

Tariffs Aren't Leaving

Despite the Supreme Court decision, tariffs are the "new normal." The federal government has quickly pivoted to new authorities such as Section 122, Section 232, and Section 301 to impose new "replacement" tariffs.

- Section 122. As of February 24, the Administration imposed temporary global tariffs of 10% pursuant to Section 122 of the Trade Act of 1974, allowing imposition of tariffs up to 15% for 150 days unless extension is approved by Congress. This regime includes exemptions for United States-Mexico-Canada (USMCA) eligible goods and certain Dominican Republic-Central America- United States Free Trade Agreement (CAFTA-DR) eligible textiles.

- Section 232. Section 232 national security tariffs have also been imposed on several commodities, including steel and aluminum articles and their derivatives, which can include some fashion and retail products.
- Section 301. US Trade Representative announced two Section 301 investigations on most US trading partners: (1) Covering 16 economies relating to structural excess capacity and production in manufacturing sectors and (2) 60 economies related to their failure to impose or enforce forced labor bans. The China Section 301 tariffs that remain in effect from the first Trump Administration are a reminder of the long-lasting impacts of tariff policies.

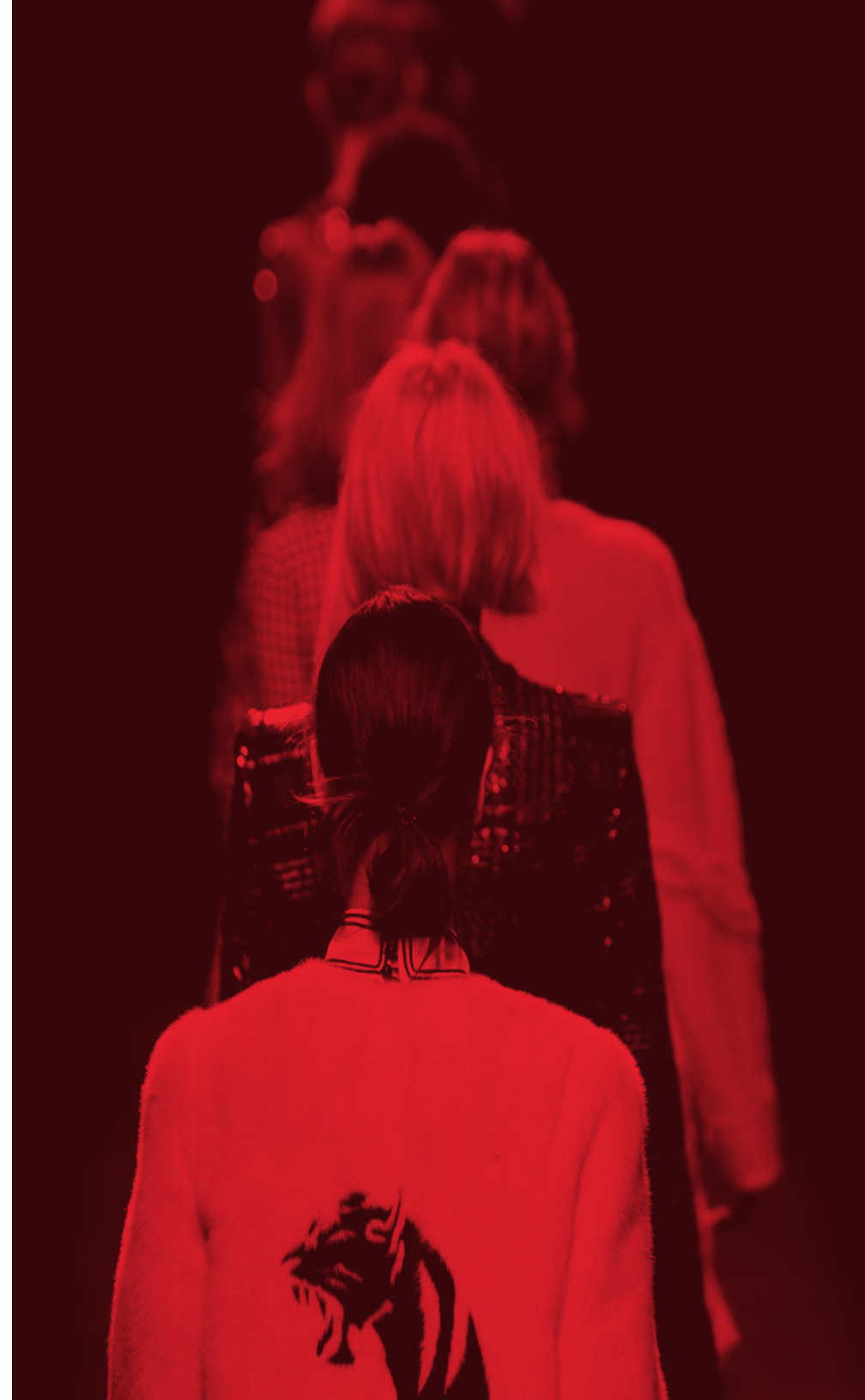
In parallel, brands utilizing the USMCA should be aware that the first joint review of the trade agreement will be this year with rules of origin and possible elimination of cross-the board tariff exemptions squarely in scope.

Operational Pressures Intensifying

The Supreme Court's IEEPA decision will likely set the tone for the year, while active use of Sections 122, 301, and 232 will continue to increase costs across various sectors. Companies that pair legal awareness with operational execution will be better positioned to protect margins and maintain continuity in their supply chains.

Fashion brands and retailers should align budgets to the range of outcomes the Supreme Court decision has produced, including potential refunds, the tax and transfer pricing implications from those refunds, and exposure to replacement tariffs under other authorities. Teams may also be assessing sourcing, classification, and origin determinations that drive tariff treatment under the new tariff authorities.

Authors: Lucas Rock, Angela Santos



TWO: AI in 2026

AI is rapidly reshaping fashion and retail, delivering measurable cost savings and operational efficiencies from the inception of the design process through the consumer retail experience, and everything in between. Analysts project billions of dollars in total savings and opportunity potential for brands and retailers through targeted AI adoption. These opportunities, however, must be carefully balanced against legal risk.

The most immediate gains come from automating or accelerating routine tasks, improving decision quality with predictive analytics, and enabling new, lower cost consumer engagement:

- **Design Process:** AI drives cost savings in the design processing through trend prediction and concept generation that compresses research cycles and accelerates time to market.
- **Advertising and Marketing:** When advertising new designs, AI avatars allow brands to significantly reduce spend on traditional campaigns and streamline content creation. Additionally, personalized marketing can help increase return, and product placement in agentic shopping experiences can guide consumers from discovery to checkout.
- **Retail and Operations:** AI can automate, support, and speed routine tasks, lowering workforce related costs. For example, AI driven assistants can provide around the clock customer service. AI can also forecast demand and improve inventory management to reduce under and over production, optimize allocation and merchandising, and support restocking.

Across the fashion and retail industry, AI-related cost savings present growth opportunities for brands but must be implemented with a robust legal and compliance framework in mind, including the following considerations:

- **AI-Generated Output:** Human review and oversight are critical to prevent reliance on “hallucinations” in product descriptions, sizing guidance, or customer service, as well as ensure that output does not inadvertently incorporate third party intellectual property or a public figure’s likeness. Use of AI models and influencers triggers right of publicity considerations, making written consent essential for any commercial use of a digital replica.
- **Disclosure:** Disclosure obligations should be evaluated under truth in advertising rules, state laws, and platform terms when AI avatars interact with consumers or appear in ads.
- **Data and Privacy:** Personalization features and virtual try ons may involve consumer data, including biometric identifiers. Implement data minimization practices, appropriate security safeguards, clear privacy notices, and consent mechanisms consistent with applicable laws.
- **Vendor Due Diligence:** Vendor selection and contracting should address training data provenance, permissible commercial uses, security requirements, and indemnities for intellectual property claims.

With disciplined governance and a robust compliance framework, brands can capture AI’s cost-savings potential while mitigating legal exposure.

Author: Natasha Weis

THREE: E-Commerce

E-commerce in 2026 is poised to further blur the lines between digital and physical retail, and how enforcement and platform regulations shape the way brands sell. We expect regulators to continue focusing on deceptive tactics, undisclosed endorsements, opaque pricing, and import compliance. Based on current signals, we anticipate that growth will be driven less by launching “new” channels and more by integrating and governing the channels that already work, particularly marketplaces, social and live commerce (including TikTok Shop), retail media tied to connected TV (CTV), and stores that double as fulfillment and experience hubs. While exact outcomes will vary by segment, companies should plan for an omnichannel year in which discovery, checkout, and fulfillment are distributed across a wider set of surfaces than ever before and ensure disclosures and pricing are compliant across those surfaces. Additionally, changing import regulations will require companies to shift strategies to avoid potential operational cost increases and delays.

Social Media and CTV

We expect commerce to meet consumers where they already spend time, with several shifts gaining momentum and distinct legal considerations:

Social Media: TikTok Shop appears set to move from novelty to necessity, and we expect platforms to enforce built-in “paid partnership”/commercial content offerings in short video and live shopping more aggressively. Brands should also anticipate platform-level penalties for deceptive reviews and undisclosed

endorsements in 2026. For example, TikTok has announced in-app enforcement of disclosure obligations for US-based accounts. If commercial content is not properly disclosed or if live content includes misleading pricing claims, TikTok may block the content from reaching the “For You” page.

To ensure regulatory compliance, fashion and retail brands should treat creator content like formal advertising: assume that the Federal Trade Commission’s (FTC) Endorsement Guides require clear, simple, and unavoidable disclosures of any material connection; live streams require repeated, audible/on-screen disclosures and avoidance of exaggerated promises or misleading price comparisons; and platform disclosure tools are helpful, but may not be sufficient on their own. Consider requiring FTC-compliant influencer agreements, compliance with platform-specific obligations, creator training and attestations, pre-approved scripts/claim substantiation, and monitoring and takedown rights for all creator content.

Connected TV: CTV advertising lets retail brands serve TV-like ads via streaming apps on smart TVs and devices, offering digital-style targeting, interactivity, and measurable outcomes across the e-commerce journey.

Legally, the same truth-in-advertising rules apply: ads must be truthful, not misleading, and substantiated, and necessary disclosures must be clear and conspicuous in the viewing context, including on connected screens and related digital touchpoints. Because CTV relies on data to target and attribute outcomes, retailers should build programs that comply with applicable privacy laws that account for evolving consumer consent. Brands marketing to families should also account for children’s

protections, such as the Children’s Online Privacy Protection Rule (COPPA) and, in linear/broadcast placements, separate children’s content rules and commercial limits enforced by the Federal Communications Commission (FCC). Brands utilizing CTV should plan for robust claim substantiation, consistent disclosures, privacy controls, and outcome measurement across platforms.

Price Transparency and “Junk Fee” Enforcement: Retailers face growing scrutiny over price transparency and so-called “junk fees,” or mandatory charges that aren’t clearly disclosed up front. Regulators say such fees mislead shoppers and distort competition. Many states are enacting broad “all-in” pricing laws, such as California’s SB 478, which requires advertised prices to include all mandatory fees (with limited exceptions like taxes and reasonable shipping), and prohibits drip pricing and percent add-ons revealed only at checkout.

We anticipate heightened enforcement on pricing transparency in the e-commerce space, especially for online checkout and live/creator commerce (where fees and surcharges often appear late). Further, while the FTC’s Rule on Unfair or Deceptive Fees applies only to businesses offering or advertising live-event tickets and short-term lodgings, companies offering tickets to branded events should be aware of the Rule’s “all-in” price obligations. The emerging enforcement patchwork related to price transparency means rules and exemptions vary by state, and penalties and private litigation exposure can be substantial. Retail brands should ensure the first shown price equals the total required price, treating any unavoidable processing or handling charges as part of that total and avoid bait-and-switch or misleading “was/now” discounts.

Physical Retail’s Response to E-Commerce Trends

Physical retail remains critical, but its role will continue to evolve from pure selling to a blend of experience, service, and fulfillment, with a greater emphasis on compliant in-store endorsements and transparent pricing. Shoppers increasingly expect stores to feel connected to their online journey, to deliver fast and flexible pickup/returns, and to host engaging reasons to visit, while regulators continue to scrutinize how brands disclose endorsements and substantiate claims. In practice, this means rethinking store layouts, training associates and creators on disclosure rules, and aligning pricing and promotions across channels so customers see fair, consistent value wherever they shop.

Physical locations are becoming logistics and service hubs in a unified commerce model. Expect broader use of “Buy Online Pick Up in Store” (BOPIS) and “Buy Online Return in Store” (BORIS) models, ship-from-store, and micro-fulfillment as consumer’s same-day expectations rise. Retailers that re-allocate back-of-house space to faster picking and returns intake should be better positioned on delivery speed and reverse-logistics cost. The result is better delivery performance and more efficient inventory management across channels. Traffic trends suggest consumers will reward stores that provide reasons to visit beyond inventory, such as events, brand storytelling, creator collaborations, and tech-enabled try-ons. Expect more showrooms, pop-ups, and “store-within-a-store” concepts that encourage discovery and content creation, but ensure in-store creators and hosts follow the same endorsement-disclosure and claim-substantiation rules that apply online to maintain regulatory compliance.

Brands inviting influencers or creators to host events or recommend products in-store should comply with the same endorsement-disclosure and claim-substantiation rules that apply on social media. Retailers should standardize on clear, prominent disclosures for in-store creator activations and ensure associates understand when a statement is an “endorsement” that requires substantiation and disclosure.

Cross-Border E-Commerce and Section 321 *De Minimis*

We anticipate continued changes to the US *de minimis* regime that will affect direct-to-consumer imports in 2026, following the 2025 suspension of duty-free treatment for low-value shipments and tighter data expectations. Agencies have proposed rules requiring more granular data disclosure (including HTSUS-10 codes) and limiting eligibility for goods covered by certain tariff actions (Section 201/232/301) from *de minimis* eligibility, while recent executive actions have limited or suspended *de minimis* treatment for some origins.

Operationally, brands using cross-border dropship or marketplace models should plan for more Type 01/11 entries and duties on small value shipments, as well as potential carrier/postal surcharges and documentation requirements. Further, marketplace platforms are tightening rules around cross-border fulfillment and clear “ships-from” disclosures, raising landed costs and extending timelines for small-parcel fashion categories. Adjustments like staging inventory in the United States and building accurate landed-cost calculations into checkout can mitigate margins and customer-experience impacts.

Retailers should anticipate sustained enforcement and data-collection pressure, plus lingering operational friction or delays to comply with shifting regulatory and platform requirements. Teams should align on customs compliance, logistics, and e-commerce functions to keep product launches and promotions on track.

Authors: Emily Caylor, Alexis Mozeleski



FOUR: **Bankruptcy**

Financial distress and bankruptcy in the retail sector are projected to see elevated activity in 2026. As of January 2026, chapter 11 filings are 76% above numbers from January 2025 across all sectors. Among those early filings are three large retailers, Saks Global (Saks Fifth Avenue, Neiman Marcus and Bergdorf Goodman); Francesca's; and Eddie Bauer.

Looking ahead, we see continued risk to retailers arising from high debt loads (including pressure from high interest payment related to upcoming debt maturities); continued economic pressures and strain related to the K-shaped economy and its impact on consumer discretionary spending; and ongoing impact on the uncertainty related to tariffs. Expect to see more bankruptcy filings for retailers on the horizon, as Saks' filing and other market trends put increasing pressure on vendors and suppliers within the industry.

Store closures will affect commercial landlords leading to large vacancies but creating opportunity in repurposing of vacant retail space. Consumers trying to enter the luxury market will find themselves priced out and looking for resale platforms.

FIVE: **Sustainability**

Extended Producer Responsibility

California became the first state in the nation to establish an extended producer responsibility (EPR) program specifically for textiles, apparel, footwear, and accessories. This landmark legislation shifts the cost and burden of textile recycling from consumers and municipalities to producers. *Key milestones for 2026:* CalRecycle must approve a Producer Responsibility Organization (PRO) by March 1, and producers must join the approved PRO by July 1.

Producers that fail to comply may face penalties of up to \$10,000 per day — or \$50,000 per day for intentional or knowing violations. Retailers and distributors should also note that once the program takes effect, they may not sell products from non-compliant producers. Companies should begin gathering data about covered products now, prepare for joining the approved PRO later this year, and monitor New York, where similar state legislation (Senate Bill S3217) has been introduced.

PFAS Restrictions Continue to Expand

PFAS face increasing restrictions that directly impact apparel and textile products. Here is what to expect in 2026:

State Product Sales Restrictions. As of January 1, 2025, California and New York banned the sale of apparel with intentionally added PFAS. California's law applies to all "textile articles" containing regulated PFAS or total organic fluorine above

100 ppm (dropping to 50 ppm by 2027). Outdoor apparel for "severe wet conditions" is temporarily exempt through January 1, 2028, but must carry disclosure labels. Additional states are implementing or expanding PFAS bans in 2026, including Connecticut, Maine, Vermont, and Colorado.

EPA's Proposed TSCA Reporting Rule Amendments. In November 2025, the US Environmental Protection Agency (EPA) proposed significant changes to the Toxic Substances Control Act (TSCA) Section 8(a)(7) PFAS reporting rule. The proposal would add exemptions for:

- PFAS in imported articles.
- PFAS manufactured in mixtures or products at concentrations below 0.1%.
- Certain byproducts, impurities, and research and development chemicals.

The submission period for most manufacturers is currently set to begin April 13, and close October 13. Small businesses reporting only on imported PFAS-containing articles have until April 13, 2027. Companies should track developments and ready data for reporting, as the final rule is expected in mid-2026.

California Climate Disclosure Laws (SB 253 and SB 261)

California's climate disclosure laws will continue to have significant implications for large companies in the fashion and retail sector.

SB 253 (Climate Corporate Data Accountability Act) applies to US companies with over \$1 billion in annual revenue that do business

in California. Companies must report Scope 1 and 2 greenhouse gas emissions by August 10, with Scope 3 reporting beginning in 2027. Limited assurance is not required for the first 2026 reporting cycle, but subsequent years of reporting will require limited assurance on Scope 1 and 2 emissions, escalating to reasonable assurance by 2030. Penalties may reach \$500,000 per year for non-compliance, though California Air Resources Board (CARB) has stated it will not impose penalties in 2026 for good-faith compliance efforts.

SB 261 (Climate-Related Financial Risk Act) applies to US companies with over \$500 million in annual revenue that do business in California. Companies must publish biennial climate-related financial risk reports aligned with the Task Force on Climate-Related Financial Disclosures (TCFD) or equivalent frameworks. While the statutory deadline was January 1, 2026, the Ninth Circuit issued an injunction on November 18, 2025, temporarily pausing enforcement pending an appeal. CARB has confirmed it will not enforce the January 1 deadline and will provide an alternate date after the appeal is resolved. Penalties under SB 261 may reach \$50,000 per year.

Companies should begin collecting emissions data now and conduct gap assessments for climate risk reporting. Even with uncertainty around SB 261's timeline, preparation is key, as a new compliance deadline will likely be set if the injunction is lifted.

Authors: Alex Garel-Frantzen, Lynn Fiorentino



SIX:

Private Equity Partnerships: Navigating Scale, Technology, and Brand Identity

As economic volatility, tariff uncertainty, and rising technology costs continue to shape the fashion landscape, private equity (PE) activity in the US fashion sector is expected to remain strong in 2026. PE interest is particularly robust among mid-market apparel and accessories brands, where scale synergies and shared services can create immediate margin and working-capital advantages. For founder-led labels, PE partnerships can unlock access to better supply chain terms, enterprise-grade AI platforms, and operational infrastructure that would otherwise be unaffordable—helping smaller brands compete on technology while expanding into new regions and product lines.

Brands considering PE investment should carefully assess alignment with their long-term vision and brand authenticity. While most founders are comfortable ceding control on back-end operations like manufacturing and distribution, friction can emerge when investors seek involvement in design, marketing, or assortment decisions. Brands should also be mindful of the growing trend of PE-to-PE transactions, where ownership may change hands multiple times as firms pursue different value strategies. A well-negotiated agreement with appropriate guardrails can help protect creative control, distribution strategy, and brand integrity through these transitions.

Authors: Felicia Xu, Erica Roque

SEVEN: **Labor & Employment**

Noncompete Agreement Enforcement

The enforcement of noncompete agreements will continue to be an evolving landscape in 2026. The FTC enacted a sweeping ban on noncompete agreements in 2024, however, after legal challenges to the ban, the FTC announced at the end of 2025 that it was abandoning the blanket ban and would instead proceed with assessing noncompete agreements on a “case-by-case” basis. In recent enforcement actions, the FTC has stopped the enforcement of noncompete agreements banning employee movement within an entire industry or an entire geographical area with a limited carve-out for high-level executives.

Noncompete enforcements are particularly noteworthy in the fashion and retail industry where high-level executives and creatives commonly move between rivals. Employers should review their use of noncompete agreements to ensure compliance with the FTC’s current timelines as well as monitor FTC guidelines and enforcement throughout 2026. Employers should also take note if they have employees in states that have separately passed noncompete agreement litigation, including states with complete bans or states with noncompete agreement restrictions.

Prospective Written Meal Period Waivers in California

Class and Private Attorneys’ General Act (PAGA) actions remain prevalent in California, particularly for retail employers who

employ a large number of non-exempt employees. Class and PAGA actions often assert a variety of claims of Labor code violations, ranging from meal and rest break violations to noncompliant wage statements to improper calculation of overtime. One hot button issue is compliance with California’s meal break requirements. The California Court of Appeal recently issued a significant decision affirming that employers and employees may mutually agree, in writing, to prospectively waive the employee’s meal period for shifts between five and six hours so long as the waivers are entered into voluntarily and can be revoked at any time.

This decision could be highly favorable for retail employers because, with meal break waivers, employers have more flexibility in the length and scheduling of shifts. In light of this decision, employers should consider implementing the following best practices: (1) use written, standalone meal break waivers; (2) present meal break waivers in a manner that is free from coercion (or the appearance of coercion) with language that is easily understood by employees; (3) communicate the employee’s revocation rights; (4) avoid retaliation against those employees who decline to sign or choose to revoke the meal break waiver; and (5) regularly review all waiver forms and practices with legal counsel to ensure ongoing compliance.

Restrictions on the Use of AI in Employment Decisions

There has been a rise of legislation and regulations targeting the use of AI in making employment decisions, including hiring, promotions, workplace trainings and workforce reductions. California, one of the leading enactors of AI regulation, has passed regulations targeting the discriminatory impacts of AI. The regulations emphasize the value of conducting

bias auditing of AI and require employers to preserve AI-related records and data. New York City has passed similar regulations requiring companies to conduct AI bias auditing.

However, a recent federal Executive Order established an AI Litigation Task Force, which is set to review state AI laws related to AI bias in 2026. Employers should be aware of how this EO could affect state regulations and the changing regulation related to the use of AI in growing or reducing its labor force to ensure compliance across all jurisdictions.

Authors: Jeff Weston, Amanda Peterson



EIGHT:

Social Media & Music

Brands often desire to use trending or charting music in their social media posts. The use of popular music can signal cultural relevance, capitalize on viral moments, and create greater exposure to social media posts because of the way a social media platform's algorithms work. However, using music in a brand's or a brand influencer's social media posts without the appropriate commercial use licenses in place raises meaningful risks of copyright infringement. Typically, the music contained in music libraries that social media platforms make available to individual users to add to their social media posts can only be used for a non-commercial purpose. Therefore, if music from such a non-commercial music library is used in the social media post of a brand, that use would be a violation of the terms of use and very likely be an infringement of copyrights.

In music, there are two separate copyrights: one in the sound recording (the recorded performance), and one in the musical composition (the underlying music and lyrics) that is performed on a sound recording. Using a track in a social media post implicates both works and the two copyrights. As a result, lawful commercial use of music in social media posts requires licenses that cover commercial use of the sound recording and of the musical composition. That typically requires securing and paying for multiple licenses — a license from the owner of the sound recording (usually a record company), and a license from the

owner(s) of the musical composition (usually one or more music publishers). Most major platforms offer commercial music libraries or catalogs that are pre-cleared for business use on-platform. These libraries typically do not include trending or charting music.

A use is typically “commercial” when a brand posts on its social media account or channel, or when a brand influencer uses music to promote a brand's goods or services. In addition, a brand's reposting of user generated content that includes copyrighted works can convert an originally non commercial use into a commercial one that violates the terms of use and is an infringement of copyrights.

Music companies' enforcement of their rights in this area has become increasingly common, including by way of litigation in which music companies allege copyright infringement over unlicensed use of music in social media content. Claims commonly include direct copyright infringement for a brand's posts (including re-posts of individual user posts), and contributory and vicarious copyright infringement related to brand influencer posts. Plaintiffs frequently seek statutory damages of up to \$150,000 per infringed work (i.e., \$150,000 for the sound recording and \$150,000 for the musical composition) for alleged willful copyright infringement.

Authors: Matt Finkelstein, Natasha Weis

NINE: Immigration

Top Immigration Issues for the Fashion Industry in 2026

With all the new immigration rules introduced in 2025, fashion industry employers face unique challenges that require open communication with their foreign national workforce, including designers, models, artisans, and creative professionals, to ensure everyone has the knowledge and documents to make informed decisions in the best interest of the company.

The current Administration has prioritized immigration compliance, and fashion industry employers should do the same. Given the industry's reliance on international talent for shows and design work, companies should conduct proactive I-9 audits and correct I-9 errors to take advantage of the good faith compliance defense in the event of a governmental investigation. Fashion companies should consider enrolling in E-Verify to obtain the presumption of compliance, gain an extra layer of assurance that their workforce is authorized, and run reports to identify if any temporary protected status (TPS) or parole employee's work authorization status has changed, as most TPS and parole programs have been terminated, thereby ending their work authorization.

Fashion houses and agencies should develop protocols detailing how to respond to governmental raids and investigations, including informing store managers, reception and security staff who to contact and what to do. This is particularly important

for high-profile fashion events and showrooms where large numbers of foreign national workers may be present.

International travel is the lifeblood of the fashion industry, with employees regularly attending fashion weeks, client meetings, and production facilities abroad. Employees should be instructed to consult with their company contacts before international trips to ensure they are able to go and return as planned, given the many travel bans and delays in Consular visa appointments. Employers should decide how to handle employees who are stranded abroad or ask to work abroad for a lengthy period, which implicates local employment and tax laws.

Companies should consider policies regarding whether employees can take and use company-issued electronic devices on international trips, as governmental officials are now frequently searching these devices. This is especially relevant for fashion companies carrying proprietary designs and trade secrets across borders. Employers should also confirm with their H-1B employees (ex: designers, pattern makers, and technical specialists) that they are in the United States when H-1B petitions are filed and will remain in the United States until fully approval, to avoid the new \$100,000 H-1B fee.

The immigration climate is challenging, but fashion industry employers and their global workforce can adapt successfully as long as they remain aware of the changing rules and discuss strategies proactively.

Author: Berin Romagnolo

TEN: Advertising

One of the most noteworthy recent developments in advertising law is a newly enacted New York law, which takes effect in June, requires advertisers to disclose the presence of “synthetic performers” in their advertising. Under this statute, companies distributing ads to New York audiences — including digital and social media campaigns — must conspicuously disclose when visual or audiovisual ads include an AI-generated fictional human persona. While similar laws are not yet widespread, the statute is as an early regulatory signal: lawmakers are beginning to treat AI-generated commercial content as a distinct risk category requiring transparency. For fashion and retail companies experimenting with AI-generated models, virtual influencers, and other synthetic tools, disclosure risk is no longer theoretical.

Meanwhile, pricing transparency has emerged as a parallel enforcement priority. Federal and state regulators are targeting so-called “drip pricing” practices that obscure the true cost of goods or services at the point of advertising. The FTC’s Junk Fee Rule, which took effect in May 2025, covers live event ticketing and short-term lodging, requiring advertised prices to include all mandatory fees other than reasonable shipping costs and taxes. Some state laws are broader: California’s Honest Pricing Law and Minnesota’s all-in pricing statute (both of which took effect in 2025) apply across a wide range of goods and services, while additional states including Colorado, Connecticut, Oregon, and Virginia have enacted or are implementing similar requirements. Although details vary, the regulatory direction is consistent: headline prices

that exclude unavoidable charges increasingly carry enforcement risk. For fashion and retail brands, these laws elevate pricing architecture into a core advertising compliance issue for 2026.

Concurrently, the landscape for negative option and auto-renewal marketing remains unsettled but high risk. While the FTC’s widely publicized Click-to-Cancel Rule was vacated by a federal appellate court in July 2025 before it took effect, the decision did not eliminate federal oversight: subscription marketing remains governed by ROSCA and Section 5 of the FTC Act, which continue to anchor enforcement actions challenging deceptive renewal flows and cancellation friction, and the agency has signaled that renewed rulemaking in this area remains possible. At the same time, enforcement and litigation exposure are heavily driven by state law. California’s recent amendments to its Automatic Renewal Law, along with new or amended statutes taking effect in 2026 in states including Colorado, Connecticut, Maine, and Maryland, reinforce a longstanding trend toward tighter disclosure and cancellation expectations. The result is a complex and layered regulatory environment in which it is easy for businesses get caught non-compliant.

Author: Thorne Maginnis

ELEVEN: Chatbots/CIPA

Which Way, Florida Man? – A New Front Opens In The “Wiretapping” Litigation Front

To paraphrase Prince von Metternich, when California sneezes, America catches a cold. And that certainly appears to be true with respect to the various flavors of California digital slip-and-fall claims making their way to Florida courts recently. These include chat cases, website analytics tracking, as well as newer email pixel claims under the theory that these widely deployed technologies are somehow a “computer contaminant.” One of the double-edged-sword aspects of these cases is that they are often filed in Florida small claims courts — where the stakes are low as a result, but at the same time, a defendant often has to appear in person shortly after service for a case management conference, adding to the anticipated expense. In other words, the inconvenience is the point for these plaintiffs’ attorneys to leverage a quick settlement. After all, their billboards by the airport are not free.

However, while California wiretapping statutes were seemingly written by William Faulkner’s Benjy Compson character, the Florida Security of Communications Act (FSCA) is at least modeled after the Federal Wiretap Act and has some more straightforward defenses if you can find your way around the various statutory definitions. Further, Florida has much better – and more consistent – approach to standing in its state courts, consistent with federal Article III requirements of the plaintiff having an actual injury.

We have had success arguing three separate grounds for dismissing these setup claims. First, to “intercept” a communication under federal or Florida law, one needs to be using an “electronic, mechanical, or other device” — and software or equipment used in the ordinary course of business are excluded from the statutory definitions. Second, and relatedly, both federal and Florida courts have independently interpreted “interception” as requiring *third-party interception* in transit, which is just common sense, as no one would ask, “did you intercept that email I sent you?” Third, Florida courts also approach injury, or the lack thereof, with common sense and dismiss these cases for lack of standing. “How dare you keep that written communication I sent to you over the public Internet?” doesn’t get the same reception in the Swamp as it might in the Land of Fruits and Nuts.

Ultimately, there are certainly defenses to these setup claims in Florida if your company is facing a claim now. But just as importantly, there are also some fairly easy steps that you can take to mitigate the risk of involuntarily paying for a new billboard in South Florida.

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TWELVE:

Proposition 65

Prop 65 enforcement targeting thermal receipt paper has increased significantly in recent months, affecting California retailers across multiple sectors, and we expect the same activity to continue into 2026.

Under Prop 65, California's consumer right-to-know law, businesses that manufacture or sell products in the state must provide warnings when those products contain chemicals identified as causing cancer or reproductive harm. In late December 2024, the Prop 65 warning requirement for Bisphenol S (BPS) went into effect. Since then, plaintiffs' attorneys have issued hundreds of Notices of Violation to clothing stores, restaurants, coffee shops, supermarkets, and other retail establishments using thermal receipt paper containing BPS. These notices carry exposure for civil penalties and attorneys' fees, and unresolved matters can escalate into costly litigation after the 60-day cure window expires.

Consumer product companies and retailers can take several steps to mitigate risk. First, companies should confirm their receipt paper is free of both BPS and BPA, transitioning to compliant alternatives if necessary. Second, companies should document the transition to compliant paper by preserving internal communications directing stores to make the change. Third, companies should obtain written certification from receipt paper suppliers confirming the receipt paper is BPS- and BPA-free.

Companies that proactively address emerging Prop 65 enforcement trends are best positioned to manage exposure and avoid costly litigation.

ArentFox Schiff tracks this and other Prop 65 enforcement developments in its monthly video series, Prop 65 Unboxed and in its monthly newsletter, Prop 65 Roundup.

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