

LEGAL NEWS FOR YOUR BUSINESS

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Client Alert

NEW RULES ON OVERTIME COMPENSATION AND NONCOMPETITION AGREEMENTS

The Department of Labor (“DOL”) and the Federal Trade Commission (“FTC”) each made critical rule changes last week impacting employers across most industries. First, the DOL announced a new rule raising the salary thresholds for overtime exemptions, which will make millions of employees eligible for overtime pay. Second, the FTC issued its long-awaited final rule significantly restricting the use and enforceability of non-competition agreements. Both rules likely will face aggressive legal challenges before taking effect. Here is a short summary of what employers need to know.

Changes to Overtime Requirements

The Fair Labor Standards Act (“FLSA”) generally requires employers to pay employees 1.5 times their regular rate of pay for each hour worked in excess of forty hours per week. Executive, administrative, and professional (“EAP”) employees, however, are exempt from overtime pay if they (1) are paid a fixed salary; (2) their salary exceeds a specified minimum threshold; and (3) they primarily perform executive, administrative, or professional duties, as defined in the DOL regulations. There also is an exemption for “highly compensated employees,” who (1) earn a salary; (2) are paid above a higher total annual compensation threshold; and (3) meet a minimal duties requirement.

The DOL’s new rule, scheduled to go into effect on July 1, 2024, significantly raises the minimum salary threshold for EAP and highly compensated employees to qualify for overtime exemptions. The following table illustrates the dates and amounts of the scheduled increases:

<i>Date</i>	<i>Standard Salary Threshold for EAP Employees</i>	<i>Annual Compensation Threshold for Highly Compensated Employees</i>
Prior to 7/1/2024 (Current)	\$684 per week (\$35,568 per year)	\$107,432 per year, including at least \$684 per week on a salary or fee basis.
7/1/2024	\$844 per week (\$43,888 per year)	\$132,964 per year, including at least \$844 per week on a salary or fee basis.
1/1/2025	\$1,128 per week (\$58,656 per year)	\$151,164 per year, including at least \$1,128 per week on a salary or fee basis.
7/1/2027, and every three years thereafter	Threshold to be updated by applying the methodology in effect at the time of the update.	Threshold to be updated by applying the methodology in effect at the time of the update.

With these threshold increases, many currently exempt employees would become eligible for overtime, requiring employers to decide whether to raise these employees' compensation to meet the new threshold or reclassify them as non-exempt. Affected employers will need to prepare quickly for this change in the rule, including implementing systems to track the hours of those newly eligible for overtime pay and ensure they are compensated properly. Employers also will need to prepare for the potential emotional impact on affected employees, many of whom may resent new requirements related to the tracking of their time.

A Near-Total Ban on Non-Competition Agreements

The FTC's new rule is a near-total ban on non-compete clauses and will take effect 120 days after publication of the final rule in the Federal Register. Under the rule, noncompete provisions for all workers who are not "Senior Executives" are unenforceable. "Worker" is defined to include employees, independent contractors, interns, externs, volunteers, apprentices, and sole proprietors who provide a service. "Senior Executive" is defined to mean persons in a policy-making position who received at least \$151,164 in total annual compensation in the preceding year.

Although pre-existing noncompete provisions for Senior Executives remain subject to enforcement, noncompete provisions entered by a Senior Executive after the effective date of the rule are unenforceable. The FTC rule carves out exceptions for noncompete provisions entered for the bona fide sale of a business entity, a person's ownership interest in a business entity, or all or substantially all of a business entity's assets. Additionally, it does not apply where a cause of action relating to a noncompete clause accrued prior to the effective date of the rule.

The new rule requires employers to notify all workers with existing noncompete agreements that they will not be, and legally cannot be, enforced against the worker. The employer must provide this notice in writing and deliver it by hand, mail,

email, or text message on or before the effective date of the rule. The rule provides model language for this notice.

Employers affected by this rule must prepare to notify affected employees that their noncompete agreements are not enforceable. Additionally, employers should evaluate the language of other restrictive covenants, including non-solicitation covenants, to ensure that the language does not run afoul of the new rule.

Conclusion

The new rule changes from the DOL and the FTC will mean huge changes for employers over a range of industries. Additionally, we anticipate immediate challenges to both rules. Indeed, the US Chamber of Commerce has already announced plans to file litigation challenging the FTC's rule on non competes.

For further information, or assistance with planning for the impact of these rules on your business and employees, please contact Gardner Skelton.



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