White and Williams LLP

# Employment Law 2024: What's Here and What's on the Horizon

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With the New Year here, new laws, rules and regulations are now in effect that may impact your company's business. While finalizing employee handbook revisions and preparing for the year ahead, employers should consider the following:

## State Minimum Wage Changes

The federal minimum wage ($7.25/hour) has not changed in over a decade, but state and local laws pertaining to minimum wage rates are constantly changing. Employers should consider reviewing applicable minimum wage laws in their jurisdiction and evaluate their workforce (standard/seasonal/tipped/minor workers, etc.) to determine employee rate of pay.

**State Minimum Wage for Most Workers**[1]

**Jurisdiction**

**Previous Rate**

**Effective January 1, 2024**

Connecticut

$15.00/hour

→

$15.69/hour

Delaware

$11.75/hour

→

$13.25/hour

Maine

$13.80/hour

→

$14.15/hour

Maryland

$13.25/hour

→

$15.00/hour

New Jersey

$14.13/hour

→

$15.13/hour

New York State

$14.20/hour

→

$15.00/hour

New York City[2]

$15.00/hour

→

$16.00/hour

Rhode Island

$13.00/hour

→

$14.00/hour

Vermont

$13.18/hour

→

$13.67/hour

## The USDOL's Defining and Delimiting the Exemptions for EAP and Other Employees

In its Fall 2023 Regulatory Agenda, the United States Department of Labor ("Department") set **April 2024** as the month the Department intends to issue its final rule amending salary-level requirements for white collar exemptions under the Fair Labor Standards Act ("FLSA"). In its August 30, 2023, Notice of Proposed Rulemaking, the Department set forth its proposal to substantially revise the salary threshold applicable to executive, administrative, and professional ("EAP") employees, as well as "highly compensated" employees for the purpose of overtime exemptions. The proposed rule has three main components:

1. Increase the standard salary level requirement for EAP employees from $684 per week ($35,568 annually) to $1,059 per week ($55,068 annually) – an increase of more than 50 percent.[3]
2. Increase the salary level for the "highly compensated" employee exemption from $107,432 to $143,988 per year.
3. The Department has indicated it will update these earnings thresholds every three (3) years based on available wage data.

If enacted as proposed, the final rule could go into effect 60 days thereafter and would impact millions of currently exempt employees. Employers should consider monitoring the Federal Register for information related to the forthcoming final rule. For additional information related to this proposed rule, click here.

## The FTC's Proposed Rule on Non-Compete Clauses

In January 2023, the Federal Trade Commission ("Commission") released a Notice of Proposed Rulemaking to void existing non-compete agreements and prohibit employers from entering into similar agreements with workers in the future. The proposal has been subject to much controversy, including a compelling sole dissent by Commissioner Christine S. Wilson and threatened legal action by the Chamber of Commerce, among others. The Commission's final vote on the proposal is expected in **April 2024** following its review of over 25,000 public comments.

Employers should consider reviewing their employment contracts with current and former employees to determine the impact the proposed rule may have on its provisions. For additional information related to this proposed rule, click here.

States are also actively regulating employment contract provisions.[4] Similar to the Commission's proposed rule are California's new laws. Although traditional non-compete agreements have long been void under California caselaw, effective **January 1, 2024**, California employers are prohibited from entering into non-compete agreements with employees and are prohibited from enforcing existing agreements regardless of where or when the agreement was executed. In other words, any current or former employer is prohibited from attempting to enforce a non-compete agreement in California.

The new California laws also provide that by February 14, 2024, employers must notify current and former employees (employed after January 1, 2022) that the non-compete they executed is void, and that current, former, or prospective employees may bring an action to enforce the prohibition on non-competes in the state. California's broad new laws leave many questions unanswered, including whether they apply to restrictive covenants other than non-competes.

Maryland also expanded non-compete protections effective **January 1, 2024**. Maryland's new law prohibits non-compete clauses for employees who earn less than or equal to 150% of the state minimum wage ($15.00/hour effective January 1, 2024).

New York employers should monitor state legislation relating to non-competes. Although New York Governor Kathy Hochul vetoed a bill which would ban all non-compete agreements for New York employers, Governor Hochul has signaled that she is willing to sign a bill which limits the use of non-competes. Such a bill could be signed into law and effective in 2024.

## The NRLB's Standard for Determining Joint Employer Status

In October 2023, the National Labor Relations Board ("NLRB") released a final rule setting forth the standard for joint-employer status under the National Labor Relations Act ("NLRA"). The final rule rescinds and replaces the Trump-era rule adopted in 2020 and goes into effect **February 26, 2024**. The new rule expands the previous standard and considers the alleged joint employers' authority to control essential terms and conditions of employment, whether or not such control is exercised, and without regard to whether any such exercise of control is direct or indirect.

Under the new rule, "essential terms and conditions of employment" are defined as:

1. wages, benefits, and other compensation;
2. hours of work and scheduling;
3. the assignment of duties to be performed;
4. the supervision of the performance of duties;
5. work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
6. the tenure of employment, including hiring and discharge; and
7. working conditions related to the safety and health of employees.

The new joint-employer standard is only implicated if an entity employs the worker at issue and has authority to control at least one of these terms or conditions. Authority over other matters is not sufficient. In anticipation of the effective date, best practices include reviewing existing contracts with third parties to determine potential joint-employer liability under the new standard.

## OSHA's Rule Expanding Submission Requirements for Injury and Illness Data

Effective **January 1, 2024**, certain employers in designated high-hazard industries will be required to submit injury and illness information, that they are already required to keep, to the Occupational Safety and Health Administration ("OSHA").

In its final rule, issued July 17, 2023, the following must be submitted to OSHA:

- Establishments with 100 or more employees in certain high-hazard industries (agriculture, manufacturing, entertainment, construction, etc.) must submit information from their Form 300-Log of Work-Related Injuries and Illnesses, and Form 301-Injury and Illness Incident Report to OSHA once a year. These submissions are *in addition* to submission of Form 300A-Summary of Work-Related Injuries and Illnesses.
- To improve data quality, establishments are required to include their legal company name when making electronic submissions to OSHA from their injury and illness records.

OSHA will publish some of the data collected on its website to allow employers, employees, potential employees, employee representatives, current and potential customers, researchers and the general public to use information about a company's workplace safety and health record to make informed decisions. The final rule retains the current requirements for electronic submission of information from Form 300A from establishments with 20-249 employees in certain high-hazard industries and from establishments with 250 or more employees in industries that must routinely keep OSHA injury and illness records.

Employers should consider reviewing and updating their reporting procedures to ensure compliance with the **January 1, 2024** regulation.

## Other 2024 Considerations

- In September 2023, the Equal Employment Opportunity Commission ("EEOC") released Proposed Enforcement Guidance on Harassment in the Workplace signaling that revised guidance could be issued in **2024**. Such guidance would be consistent with the EEOC's Strategic Enforcement Plan Fiscal Years 2024 – 2028 and would mark the first update on harassment guidance in over twenty (20) years.
- Implications for employers in light of the Supreme Court's *Students for Fair Admissions v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023) decision will likely continue in 2024. While the Court's decision is limited to college admission policies, Justice Gorsuch acknowledged the similarities between Title VI and Title VII. Since the Court's June 2023 decision, legal action has been threatened against employers for their diversity, equity, and inclusion policies. In some instances, organizations have challenged employers' DEI policies using the framework established in *SFFA*. For additional information related to the *SFFA* decision, click here.
- 2024, an election year, brings with it specific challenges for employers especially in polarizing times. Employers may consider reviewing their policies related to political speech and voting leave (and volunteer poll worker leave, if applicable).
    - Some states, such as New York and Maryland, protect an individual's right to take leave on election days, while other states, like Pennsylvania and New Jersey, do not. Notwithstanding, Pennsylvania and New Jersey employers cannot threaten or intimidate employees to influence their political opinions or actions.

Members of the Labor and Employment Group at White and Williams LLP are available to assist employers maintain compliance with new laws and rule in 2024 and beyond. If you have questions, please contact Joseph M. Carr, Associate (carrj@whiteandwilliams.com; 610.782.4907) or another member of the Labor and Employment Group.

For more developments on labor and employment, head to The Employment Law Counselor blog and listen to the latest Employment Law Counselor podcast on related topics.

[1] This list is narrowed to the Northeast and Mid-Atlantic regions.

[2] And Long Island and Westchester County.

[3] The Department has stated that its final rule will, by the time of its release, incorporate updated salary data which will bring its standard salary level to between $57,616 to $60,209 per year, or even higher, depending on the time between the Notice of Proposed Rulemaking and the final rule.

[4] This is a non-exhaustive list of state legislation pertaining to non-competes and similar restrictive covenants.