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SSG COMPLIANCE ADVISOR

What every HR leader should know about compliance.

2024 Midyear Employment Law Compliance Trends

Throughout 2024, there have been significant changes in employment law at the federal, state and local levels. A review of recent and proposed legislation reveals a number of emerging trends that will affect employers for the remainder of the year. Employers should ensure that they are apprised of significant legal developments and are either in compliance or prepared to comply with their requirements.

Federal agencies have been especially active in 2024, passing major regulations, including with respect to overtime compensation, independent contractor classification, the use of noncompete agreements and protections for pregnant workers. In 2024, we've also seen the emergence and continuation of a number of state legislation trends. In particular, states have continued to increase minimum wage rates, pass pay transparency laws, expand paid sick leave protections, and broaden protections from discrimination on the basis of hairstyles and hair textures historically associated with race. In addition, states have passed protections for the use of artificial intelligence (AI) in the workplace and captive audience meetings in which employers discuss religious or political matters.

EMPLOYER ACTION STEPS

The midyear point is a great time for employers to evaluate their compliance with recent and upcoming employment laws. Understanding and responding to these trends will be essential for employers' success for the remainder of 2024 and beyond. This Compliance Bulletin highlights some of the key employment law trends and challenges that employers will continue to face in 2024 and beyond.

HIGHLIGHTS

Some of the most significant employment law trends in 2024 include:

- Increases to the federal salary threshold to be exempt from overtime pay;
- Federal ban on noncompete clauses;
- Changes to the federal independent contractor rules;
- Clarification on the protections for pregnancy and related medical conditions;
- State minimum wage increases;
- More state "captive audience" bans;
- Continued increase in state CROWN Act legislation;
- Expansion of pay transparency laws;
- Enhanced regulation of AI in the workplace; and
- Increased state paid sick leave laws.

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The DOL's Final Overtime Rule

On July 1, 2024, the U.S. Department of Labor's (DOL) **overtime rule** took effect. The new overtime rule amended current requirements employees in white-collar occupations must satisfy to qualify for an overtime exemption under the Fair Labor Standards Act (FLSA). The FLSA requires employers to pay employees overtime pay at a rate of 1.5 times their regular rate of pay for all hours worked in excess of 40 in a workweek unless the employees qualify for an exemption under the FLSA. The FLSA provides several exemptions from the overtime pay requirements, the most common of which are the "white-collar" exemptions. The FLSA white-collar exemptions apply to individuals in executive, administrative, professional (EAP), and some outside sales and computer-related occupations. Some highly compensated employees may also qualify for the FLSA white-collar overtime exemption. To qualify for this exemption, white-collar employees must satisfy the standard salary level test, among other criteria. This salary level is a wage threshold that white-collar employees must receive to qualify for the exemption.

Starting **July 1, 2024**, the DOL's final rule increased the standard salary level from:

- $684 to $844 per week ($35,568 to $43,888 per year) for EAPs; and
- $107,432 to $132,964 per year for highly compensated employees.

On **Jan. 1, 2025**, the standard salary level will then increase from:

- $844 to $1,128 per week ($43,888 to $58,656 per year) for EAPs; and
- $132,964 to $151,164 per year for highly compensated employees.

The final rule also includes mechanisms allowing the DOL to automatically update the white-collar salary level thresholds without having to rely on the rulemaking process. Effective July 1, 2027, and every three years thereafter, the DOL will increase the standard salary level.

While the first increase on July 1, 2024, had a significant impact (the DOL estimated nearly 1 million workers were affected), the second increase on Jan. 1, 2025, is expected to have an even greater impact (affecting approximately 3 million workers). Therefore, employers should take steps in the second half of 2024 to ensure that they will be in compliance with the next increase by the new year. However, the new overtime rule is already subject to a number of legal challenges seeking to block its implementation. Depending on the outcome of such cases, the overtime rule may be delayed, modified or even vacated. Therefore, employers should continue to monitor for updates regarding such legal challenges and may want to wait to implement any changes before the date any applicable changes take effect.

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The DOL's Final Independent Contractor Rule

On March 11, 2024, the DOL's final **independent contractor rule** took effect. The rule revised the agency's guidance on how to analyze who an employee or independent contractor is under the FLSA. The final rule rescinds the 2021 Independent Contractor Rule and returns to the pre-2021 rule precedent. In doing so, the final rule restores the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee or an independent contractor under the FLSA. The final rule ensures that all economic realities test (ERT) factors are analyzed equally without assigning a predetermined weight to a particular factor or set of factors. These six factors include:

1. The opportunity for profit or loss depending on managerial skill;
2. Investments by the worker and the potential employer;
3. The degree of permanence of the work relationship;
4. The nature and degree of control;
5. The extent to which the work performed is an integral part of the potential employer's business; and
6. The worker's skill and initiative.

A worker's coverage by a particular law or entitlement to a particular benefit often depends on whether they are an employee or an independent contractor. In general, employment laws, labor laws and related tax laws do not apply to independent contractors. Arguably, the final rule may result in classifying a greater number of workers as employees, not independent contractors. This classification would be significant, particularly in the gig economy, as it would afford more individuals FLSA rights and protections. The DOL has released **guidance** to help employers comply with the final rule. Employers should note that the independent contractor rule is also subject to multiple lawsuits alleging that the regulation is illegal. Depending on the outcome of these cases, the new independent contractor rule could be modified or thrown out entirely. Therefore, while employers should take steps to ensure compliance with the current rule, they may also want to monitor for updates regarding these lawsuits.

The FTC's Noncompete Ban

On May 7, 2024, the Federal Trade Commission (FTC) published a **final rule** to prohibit employers from entering into or enforcing noncompete clauses with most employees. The ban is scheduled to take effect on Sep. 4, 2024. In general, a noncompete clause is a contractual term between an employer and a worker that blocks the worker from working for a competing employer or starting a competing business, typically within a certain geographic area and period of time after the worker's employment ends.

Subject to very limited exceptions, the final rule provides that:

- The use of noncompete clauses will be banned as of the effective date;
- Any existing noncompete clauses (other than those entered into with senior executives) will be invalidated;
- Employers must notify all employees (other than senior executives whose existing noncompete agreements will remain enforceable) that their existing noncompete agreements will not be enforced.

Currently, the enforceability of noncompete clauses is determined by state and local legislatures and courts. The FTC rule would instead govern the enforceability of noncompete clauses at the federal level and supersede any less restrictive state laws or judicial interpretations.

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Employers that use noncompete or similar protective clauses should familiarize themselves with the rule's requirements and take steps now to prepare for its effective date. However, employers should note that a number of lawsuits (including one brought by the U.S. Chamber of Commerce) seeking to block the final rule have already been filed, so employers should monitor for additional legal challenges and prepare for potential uncertainty.

The EEOC's Final Rule to Implement the PWFA

The Pregnant Workers Fairness Act (PWFA), which went into effect on June 27, 2023, requires employers to provide reasonable accommodations for known limitations of employees and applicants related to pregnancy, childbirth or related medical conditions. On April 19, 2024, the U.S. Equal Employment Opportunity Commission (EEOC) published a **final rule** to implement the PWFA. The final rule went into effect on **June 18, 2024**. Highlights from the final rule include:

- Examples of reasonable accommodations, including additional breaks to drink water, eat or use the restroom; a stool to sit on while working; time off for health care appointments; temporary reassignment; temporary suspension of certain job duties; telework; or time off to recover from childbirth or a miscarriage, among others;
- Guidance regarding limitations and medical conditions for which employees or applicants may seek reasonable accommodation, including miscarriage or stillbirth; migraines; lactation; and pregnancy-related conditions that are episodic, such as morning sickness;
- Guidance encouraging early and frequent communication between employers and workers to raise and resolve requests for reasonable accommodation in a timely manner;
- Clarification that an employer is not required to seek supporting documentation when an employee asks for a reasonable accommodation and should only do so when it is reasonable under the circumstances;
- Explanation of when an accommodation would impose an undue hardship on an employer and its business; and
- Information on how employers may assert defenses or exemptions, including those based on religion, as early as possible in charge processing.

The PWFA has significantly expanded workplace rights and protections for employees affected by pregnancy, childbirth and related conditions, and employers will likely continue to face increased compliance burdens and litigation risks. Employers should also anticipate experiencing a learning curve and other growing pains related to certain PWFA concepts and how they may interact with other applicable employment laws. For example, many states already have their own laws requiring accommodations for pregnancy, childbirth and related medical conditions, and an ongoing trend toward more expansive and enhanced protections for employees is expected to endure. These laws often provide greater employee protections than those granted under the PWFA and usually apply to smaller employers as well. Thus, many employers may expect to encounter differing standards when analyzing whether they can reasonably accommodate an employee's known limitation related to pregnancy or childbirth.

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Minimum Wage Increases

The FLSA requires all employers to pay covered employees a minimum wage of at least $7.25 per hour; however, states and municipalities may impose a minimum wage rate that is greater than the federal minimum wage. While the federal minimum wage has remained stagnant since 2009, a significant number of states and municipalities have imposed higher minimum wage rates over the years. In 2024 alone, over 20 states have increased their minimum wages. While some of these increases have not substantially outpaced the federal minimum wage, there is a growing trend among states to increase the minimum wage to **at least $15 per hour**. Currently, eight states have adopted a minimum wage of $15 per hour or more, including California, Connecticut, Maryland, Massachusetts, New Jersey, New York, Washington state and the District of Columbia. Employers can expect this trend to continue, with three more states (Delaware, Illinois and Rhode Island) set to increase their minimum wages to at least $15 per hour by Jan. 1, 2025, and three states (Florida, Hawaii and Nebraska) scheduled to do so in 2026.

As always, employers should pay close attention to both their federal minimum wage obligations and the minimum wage requirements for each state in which they have employees. Because these wage rates change frequently and at different intervals, employers may wish to conduct regular payroll audits to ensure they remain in compliance. Failure to comply with minimum wage requirements can result in costly legal challenges and significant monetary penalties, so it is important that employers comply with their legal obligations.

Captive Audience Bans

In 2024, a number of states have passed or introduced legislation to bar employers from requiring employees to attend “captive audience” meetings on religious or political matters. These laws prohibit employers from coercing employees into attending or participating in meetings that are sponsored by the employer and concern the employer’s views on religious or political matters (including union organization). In general, the bans on captive audience meetings include exceptions for certain communications that employers are required by law to make.

So far, eight states have passed legislation allowing employees to opt out of such captive audience meetings, including Connecticut, Maine, Minnesota, New Jersey, New York, Oregon, Vermont and Washington. The trend has only grown in recent months, as a handful of other state legislatures, including California, Illinois and Massachusetts, have introduced similar laws. In light of these new laws, employers should be mindful of avoiding discussions of political or religious matters during required meetings (including discussions related to unionization) and may consider a review of employer policies regarding workplace meetings. Finally, employers should continue to monitor for legal updates in the states where employees are located.

CROWN Acts

Creating a Respectful and Open Workplace for Natural Hair (CROWN Act) legislation has also gained traction across state and local legislatures in recent years. CROWN Act legislation is aimed at eliminating discrimination based on traits historically associated with race—specifically, hair textures and hairstyles. Subject to limited exceptions, such laws generally prohibit racially discriminatory workplace dress codes and hygiene policies that ban employees from maintaining certain hairstyles commonly or historically associated with race, such as afros, braids, twists, cornrows, locs and other similar hairstyles. To date, more than 20 states have passed a CROWN Act to protect employees from discrimination on the basis of an individual’s hairstyle or hair texture.

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In addition to the state law push for CROWN Act protections, the federal legislature introduced a nationwide CROWN Act. However, similar legislation was blocked in 2019 and 2022, so it is unclear whether the 2024 bill will experience the same fate. Nonetheless, employers should continue to track both state and federal legislation and take measures to ensure employees are protected from discrimination on the basis of such traits historically associated with race (for example, updating dress codes, grooming policies and related employee handbook provisions and training workers and supervisors on their rights and responsibilities under the CROWN Act).

Pay Transparency Laws

Pay transparency laws have increased in recent years and states have continued to pass and introduce pay transparency legislation in 2024. In general, pay transparency laws hope to address pay inequality and promote wage transparency by requiring employers to disclose compensation information and increasing employee access to salary data. These laws vary in their requirements, but often require employers to post salary ranges in job postings or disclose salary information to existing employees and job applicants.

Colorado started the trend of pay transparency laws when it enacted the first legislation of its kind in 2021. Between 2021 and 2024, additional pay transparency laws took effect in Maryland, Connecticut, Nevada, Rhode Island, Washington, California, New York and a number of municipalities. More states continue the trend in 2024, with new pay transparency legislation taking effect in Hawaii and the District of Columbia, along with expanded requirements in Maryland. Additional pay transparency laws will take effect on Jan. 1, 2025, in Illinois, Minnesota and Vermont.

Given the rapid spread of pay transparency laws, even if employers are currently unaffected by pay transparency mandates, they should consider developing strategies to address this issue, as pay transparency likely already impacts them directly or indirectly. Additionally, employers hiring remote employees may be subject to pay transparency laws in other states even if the employer does not have a physical presence in such location. Employers can protect themselves and help ensure compliance with applicable laws by understanding applicable pay transparency requirements and regularly reviewing job postings.

AI-Based Discrimination Legislation

Advancements in AI have had a significant impact in the employment setting, with new tools that may be used for scheduling, tracking hours, processing payroll and assisting with employment decisions. These AI tools raise a number of legal concerns, including the fact that the use of AI tools in decision-making could result in employment discrimination. In response to these concerns, New York City passed the first law requiring employers to conduct annual bias audits of automated employment decision-making tools in 2023. Since then, comprehensive AI legislation has been passed in Colorado, and additional laws have been introduced in five states, including California, Georgia, Hawaii, Illinois and Washington. In general, such AI legislation regulates employer use of AI tools to make, or to assist an employer in making, employment decisions (such as hiring or termination), with the aim of mitigating the risk of "algorithmic discrimination." Algorithmic discrimination generally occurs when the use of an AI system leads to the differential treatment or impact of individuals based on a protected characteristic (e.g., age, race, disability, religion or sex).

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addition to the state law focus on regulating AI, the White House issued an **Executive Order**, addressing a range of issues arising from the use of AI in the private sector, including the potential for discrimination. Additionally, the U.S. Equal Employment Opportunity Commission (EEOC) issued **guidance** on preventing discrimination against job seekers and workers through the use of AI tools. Further, on April 29, 2024, the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) published **Field Assistance Bulletin (FAB) No. 2024-1** on the use of AI in the workplace and potential AI-related risks under federal employment laws. In light of the various legal developments, employers should continue to monitor state and federal restrictions on the use of AI in the employment context, and employers that do use AI to make or assist in making employment decisions should ensure that appropriate safeguards are in place to prevent discrimination.

Paid Sick Leave

In recent years, state and local legislatures have started to pass laws entitling workers to paid sick leave in certain circumstances. Currently, nearly one-third of states (and the District of Columbia) have passed their own paid sick leave laws. The requirements of each such law can differ significantly, which can raise compliance challenges—particularly for employers with a distributed workforce. In particular, each paid sick leave law may vary with respect to the amount of leave employees can take, the reasons leave may be taken, the method of accrual and whether and in what circumstances sick leave can carry over from year to year. This trend has continued in 2024, as paid sick leave laws were enacted or expanded in a number of states and municipalities, including Connecticut, Minnesota, Chicago, New York City and Washington.

In addition, in March 2024, President Biden issued a proposed **budget** for fiscal year 2025 in which he urged Congress to enact legislation that would provide workers with seven days of paid sick leave per year. In light of the continued push for paid sick leave entitlements, employers should continue to monitor paid sick leave updates and may wish to review existing policies and procedures to ensure compliance. Further, while paid sick leave laws are becoming more widespread, do so. While paid leave may seem like a costly burden for some employers, it can be advantageous for both employers and employees. Offering paid leave can be an effective way to attract and retain key talent, reduce burnout, improve employee productivity, and strengthen employee wellness by allowing for greater work-life balance.

Conclusion

Many of the compliance challenges employers faced in early 2024 will continue through the rest of the year and beyond. Additionally, organizations' compliance obligations are growing and becoming more complex. As a result, employers will need to find ways to establish effective and efficient compliance practices. Proactively embracing and effectively responding to the evolving regulatory landscape can help employers establish a strong compliance foundation, which is vital for sustained growth and success in today's competitive business landscape. The best strategies will vary by workplace, but being aware of the trends and themes presented in this Compliance Bulletin can guide employers as they establish compliance strategies.

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