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Employer Insights

A Moreton & Company Human Resource and Employee Benefits Compliance Newsletter.

DOL Announces Final Overtime Rule

On April 23, 2024, the U.S. Department of Labor (DOL) announced a final rule to amend current requirements employees in white-collar occupations must satisfy to qualify for an overtime exemption under the Fair Labor Standards Act (FLSA). The final rule will take effect on July 1, 2024.

Increased Salary Level

The FLSA white-collar exemptions apply to individuals in executive, administrative, professional, 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 increases the standard salary level from:

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

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

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

Automatic Updates

The DOL's final rule also includes mechanisms allowing the agency to automatically update the white-collar salary level thresholds without having to rely on the rulemaking process. Beginning July 1, 2027, and continuing every three years thereafter, the DOL will increase the standard salary level. The agency will apply up-to-date wage data to determine new salary levels.

Impact on Employers

The first salary level increase in July is expected to impact nearly 1 million workers, while the second increase in January is expected to affect approximately 3 million workers. Employers should become familiar with the final rule and evaluate what changes they may need to adopt to comply with the rule's requirements. Legal challenges to the rule are anticipated, which may delay the final rule's implementation.

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FTC Bans Noncompetes

On April 23, 2024, the Federal Trade Commission (FTC) voted to issue a final rule that would ban noncompete agreements in virtually all employment relationships. The final rule has not yet been filed in the Federal Register but is scheduled to take effect 120 days after the filing.

Final Rule

The final rule defines a noncompete clause as a term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from:

- Seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or
- Operating a business in the United States after the conclusion of the employment that includes the term or condition.
- Such terms or conditions include employee contracts or workplace policies, whether written or oral. 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.

Legal Challenges

On April 24, 2024, the U.S. Chamber of Commerce sued the FTC, seeking to block the final rule. The complaint was filed in the U.S. District Court for the Eastern District of Texas and argues that the FTC lacks the authority to issue rules that define unfair methods of competition. Additional legal challenges are likely, so employers should monitor for updates and anticipate uncertainty in the coming months.

Next Steps for Employers

Employers may consider reviewing existing employee agreements or form agreements (such as new hire paperwork) to determine whether any contain noncompete clauses that would be invalidated under the rule. Employers may also begin preparing revisions to such agreements and consider whether to use alternatives to noncompete clauses (e.g., nondisclosure clauses) to protect competitive business information.

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HHS Provides Progress Update

The Department of Health & Human Services (HHS) released an update on its progress toward implementation of the Advanced Explanation of Benefits (AEOB). Transparency provisions in the Consolidated Appropriations Act (2021) require health care providers to furnish an individual's health plan with a good faith estimate (GFE) of the expected charges for providing an item or service (upon scheduling or at the participant's request). For uninsured or self-pay individuals, the provider must provide the GFE to the individual. Upon receiving a provider's GFE, health plans must send the participant or beneficiary an AEOB that includes the GFE and other information, such as the provider's network status and an estimate of the amount the plan is required to pay.

Although the GFE requirement began applying to uninsured individuals in 2022, the agencies deferred enforcement of the GFE and AEOB requirements for plans until regulations implementing the requirements are issued and applicable. At the time, the agencies advised that they intended to undertake rulemaking "in the future" to implement AEOBs. Delays were attributed to complexities in developing technical infrastructure for transmission of data from providers to plans and insurers.

HHS explained in this update that it is working to implement the GFE and AEOB requirements in stages. The agencies are incorporating lessons learned from implementing the uninsured GFE provisions, as well as industry feedback from the preliminary development of GFE and AEOB data exchange standards, to develop proposed rules on insured GFE and AEOB requirements. HHS notes that in a study it conducted of the health care industry's business and technology needs as well as the capabilities of providers and payers, researchers recommended that HHS propose a single data exchange standard for the receipt of GFEs by payers and the transmission of AEOBs from payers to providers. The study suggested that existing technical standards may not be sufficient to meet the insured GFE and AEOB requirements; new standards may need to be developed to ensure successful implementation.

This update is essentially an acknowledgement of the complexities of providing an AEOB. It does not include any discussion of the time frame for implementation and suggests that this requirement will be subject to further delay, which is good news for health plan sponsors and their insurers and TPAs.

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DOL Rescinds Association Health Plan Regulations

Finalizing an earlier proposal, the U.S. Department of Labor (DOL) has rescinded its 2018 regulations regarding association health plans (AHPs), the status of which had been uncertain since a court partially vacated the regulations in 2019. The 2018 regulations made it easier for a group or association of employers to be treated as an ERISA "employer" that could maintain a single group health plan, rather than each participating employer being treated as maintaining its own plan. Because the single plan would likely be a large plan, the employers would effectively be able to avoid key Affordable Care Act provisions applicable to individual insurance and small group insurance, such as the requirement to cover essential health benefits.

In the preamble, the DOL explains that it considered rescinding only portions of the regulations, including provisions allowing commonality of interest among participating employers to be established based solely on geography and permitting plan participation by working owners without common-law employees. However, it concluded that the remaining provisions would not properly reflect the limits of ERISA's employer definition and rescinded the regulations in their entirety, reiterating in the related news release that this approach will "resolve any uncertainty" about the applicable standards. The preamble notes that the earlier proposal solicited comments on whether to codify preexisting guidance on this issue, which largely consists of advisory opinions that lack the authority of regulations. While the comments provided no clear consensus, the DOL indicates that it will take the recommendations regarding potential future rulemaking under advisement.

Under the long-standing preexisting guidance (which continued to apply alongside the now-rescinded regulations), an employer group or association will be an "employer" that may establish a single ERISA plan if it is a "bona fide" association of employers with a genuine organizational relationship and an ability to control the association. These plans are generally multiple employer welfare arrangements (MEWAs) that are subject to ERISA and may also be subject to state insurance laws

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