



The HR WIRE

ETC HR Employer Compliance News II *Making Compliance Connections*

July 2024

SECTION I: Notices, Reminders & Alerts & SECTION II: Noteworthy Compliance Happenings

Workplace Labor Notice Updates

- **CA** - California [Unemployment Insurance Notice](#) has been updated with a clearer and more user-friendly format. It now includes direct links for applicants to quickly find information on applying for Unemployment Insurance, Disability Insurance, and Paid Family Leave benefits, making it easier for employees to access essential claims and informational resources. (Note: Although it reflects a revision date of 1/22, it was added to EDD's website as of 5/24.)
- **IN** – [New Veteran Benefits and Services](#) Poster Released. It must be posted by employers with 51 or more full-time equivalent (FTE) employees.
- **LA** –
 - Louisiana [Minors Labor Law Notice](#) now requires that minors under 16 years old receive at least a 30-minute meal break for every five-hour work period. This requirement previously applied to employees under 18 years old.
 - A new [Workers' Compensation Fraud Notice](#) has been issued, providing significantly more extensive information than the previous version.
- **ME** - Maine [Minimum Wage Notice](#) has been revised to reflect the new minimum salary requirement for employees to qualify as exempt from overtime under the Fair Labor Standards Act. Starting July 1, 2024, the minimum salary will be \$844 per week.
- **MD** – Due to the state's prohibition of vaping in the workplace, employers are responsible for posting a sign that says "NO SMOKING OR VAPING" near every public entrance to their place of employment.
- **MS** - The Mississippi [Unemployment Insurance Notice](#) has been updated to reflect changes in the filing process for unemployment insurance benefits. The Mississippi Unemployment Insurance poster now features a new phone number for filing claims and an updated email address for further information.

Reminders & Alerts!

Compliance Reminder! Form 5500 Reporting

For employers with **calendar-year benefit plans** who **ALSO** had **at least 100 covered participants** (covered employees and former employees on COBRA) on the first day of the plan year....Form 5500 is due by July 31st, unless an extension is requested.

Most benefit plans with less than 100 covered participants will not be subject to Form 5500 reporting, but you should contact your Health & Welfare Broker to ensure you qualify for this exception. See also ETC's Compliance Clander Resource. If you are need of Form 5500 Services, please reach out to ETC today at hr_help@etctracking.com



NEW! OSHA Issues Proposed Heat Rule (Indoor & outdoor) Work

The Occupational Safety and Health Administration announced its long-anticipated **proposed rule** Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings on July 2, 2024.

The proposed rule takes a large-scale approach to regulating heat injury and illness issues, requiring employers to develop robust Heat Injury and Illness Prevention Plans for indoor and outdoor heat hazards, regularly monitor temperatures at the work site, and implement control measures at two distinct heat exposure thresholds.

Under the new Rule:

- The [proposed rule](#) applies to all employers with a “reasonable expectation” of employee exposure to certain heat thresholds, it provides for some limited exceptions.
- There are two, defined applicable heat thresholds & detailed employer procedures
- Employers must develop a Prevention Plan, conduct training as well as perform monitoring requirements

Once published in the Federal Register, the public is encouraged to submit written comments on the rule.

To learn more, access the July 10th Morgan Lewis article [HERE](#)

New! NLRB Voluntarily Withdraws Joint-employer Rule Appeal

Timeline

- On March 8, 2024, a federal judge blocked the implementation of the NLRB’s 2023 joint-employer standard, which was set to take effect on March 11, 2024.
- On May 7, 2024, the NLRB appealed the federal judge’s decision to the U.S. Court of Appeals for the 5th Circuit.
- On July 19, 2024, the NLRB voluntarily [dismissed its appeal](#).
- **The 2020 joint-employer rule remains in effect.**
- Employers should rely on the 2020 joint-employer rule to determine where joint employment exists.

On July 19, 2024, the National Labor Relations Board (NLRB) voluntarily dismissed its appeal of the U.S. District Court for the Eastern District of Texas decision vacating the NLRB’s [2023 joint-employer rule](#). The rule, which had been set to take effect on March 11, 2024, **would have expanded** the types of control over job terms and conditions that trigger joint employment.

2020 Joint-employer Standard Recap:

The 2020 standard considers the “**substantial direct and immediate control**” employers have over essential terms and conditions of employment for individuals who are employed by another organization.

Specifically, the 2020 joint-employer standard indicates that a business is a joint employer of another employer’s employees **only if** the degree of joint control is of sufficient magnitude to conclude that the joint employer meaningfully affects matters relating to the employment relationship.

Employer Takeaway: Employers should ensure they rely on the 2020 joint-employer standard to determine where joint employment exists.

New! Labor and Employment Issues in a Post-Chevron World

With the US Supreme Court’s June 28 decision in *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*, the four-decades *Chevron* doctrine is no longer. While the Court’s decision has altered **administrative jurisprudence** as we have come to know it, its impact on labor and employment agency action may vary from sweeping change to a continuation of the status quo.

With *Loper Bright*, federal courts have been directed not to defer to administrative agencies’ interpretations of ambiguous or broad statutes, save for narrow exceptions such as express delegations. Instead, federal courts must exercise independent judgment when reviewing statutory text and use traditional tools of statutory construction to



find the “best meaning” of the statute. The agency simply presenting a “reasonable” or “permissible” construction of an ambiguous statute is not sufficient for it to prevail.

That said, the Supreme Court made clear in *Loper Bright* that all existing judicial decisions upholding agency rules and orders are not automatically overruled by the new decision, even if courts relied on *Chevron* in those earlier decisions. Time will certainly provide greater insight into the implications of the recent Decision.

IN THE NEWS - Texas Federal District Court Partially Blocks the FTC’s Employer Noncompete Ban

Timeline:

- In April, the Federal Trade Commission (FTC) issued an administrative rule that will essentially ban all noncompete agreements effective September 4, 2024.
- On July 3, 2024, the Northern District of Texas put the FTC noncompete ban on hold, only with respect to the plaintiffs, until it issues a final decision in a case challenging the ban’s validity.
- For all other employers, the noncompete ban is still scheduled to take effect on **Sept. 4, 2024.**
- The court stated that it intends to rule on the merits of the case on or before **Aug. 30, 2024.**
- Depending on the outcome, the ruling could affect the ban’s effective date nationwide, so employers should continue to monitor for updates.

On July 3, 2024, the U.S. District Court for the Northern District of Texas [granted](#) the plaintiffs’ motion in *Ryan LLC v. FTC* for a preliminary injunction to block the Federal Trade Commission’s (FTC) noncompete ban while the court considers the merit of the case. The injunction applies only to the plaintiffs in the case: a Texas employer, the U.S. Chamber of Commerce and other business organizations. As such, **employers who are NOT parties to the suit are not covered under the injunction**. The court intends to rule on the merits of the case by Aug. 30, 2024, before the ban’s scheduled effective date of Sept. 4, 2024.

Impact on Employers:

Per the court’s decision, the effective date of the noncompete ban is stayed only for the plaintiffs; it does not apply nationwide. Therefore, other employers may still take steps to ensure compliance with the law on the effective date of Sept. 4, 2024. However, the court indicated its plan to issue a ruling by Aug. 30, 2024.

In addition, the U.S. District Court for the Eastern District of Pennsylvania scheduled a hearing in a separate case seeking a preliminary injunction of the noncompete ban on July 10, 2024, and is expected to issue a ruling by July 23, 2024. Employers should continue to monitor for updates and wait to implement any final changes, as the final ruling in this case or other legal challenges could still result in the ban being modified, delayed or even vacated.

Additionally, on April 23rd, the same day of the filing of the Ryan LLC lawsuit, the U.S. Chamber of Commerce (the nation’s largest business advocacy group) filed a similar lawsuit in the Eastern District of Texas seeking to do the same. Since then, another lawsuit was filed in the Eastern District of Pennsylvania (*ATS Tree Services, LLC v. Federal Trade Commission et al.*). Each of these lawsuits take similar form. They contend the FTC lacks authority to engage in rulemaking of substantive competition rules (i.e., prohibit noncompetes), and seek a declaratory judgment and injunctive relief to prevent the Final Rule from taking effect 120 days after its publication in the Federal Register, September 4th.



IN THE NEWS - Texas Judge Suspends DOL's Ability to Enforce New FLSA's White-Collar Exemption

As of July 1, 2024, the U.S. Department of Labor (DOL) instituted a significant change affecting the Fair Labor Standards Act's (FLSA) white-collar exemption. The new rule increases the minimum salary threshold for employees to qualify for the white-collar exemption from overtime pay requirements. Under the FLSA, the white-collar exemption applies to certain executive, administrative, and professional employees who meet specific criteria, including being salaried and earning above a set threshold. Prior to the DOL's rule, the threshold was \$35,568 annually. Employees who met these criteria were exempt from overtime pay, meaning they did not receive time-and-a-half for hours worked beyond 40 per week.

Key Changes Under the New Rule

The DOL's final rule raised the minimum salary threshold to \$43,888 as of July 1. Starting Jan. 1, 2025, this threshold will increase to \$58,656, with subsequent updates every three years. This change expands overtime eligibility to millions of additional workers.

Legal and Practical Implications

The new rule has generated mixed reactions. Proponents argue that it ensures fair pay for overtime work. Critics, including many business groups and the state of Texas, contend that the increased threshold will significantly raise payroll costs and lead to job cuts.

To address these concerns, the state of Texas filed for a preliminary injunction against the rule, arguing that it would cause irreparable harm by increasing state payroll expenses and straining budgets. On June 28, 2024, a federal judge in Texas granted a preliminary injunction, halting the rule's implementation and enforcement against the state of Texas as an employer. Private sector employers and other states remain subject to the new rule.

Addressing Compliance

For employers, the immediate priority is to assess the new salary threshold's effects on their workforce. To comply, companies must identify employees who will become newly eligible for overtime pay and adjust payroll practices accordingly. Additionally, employers should be prepared for the threshold adjustments scheduled for January 2025 and beyond. Access the original July 10th Barnes & Thornburg, LLP article [HERE](#)

ETC will continue to monitor the situation. In the interim, employers are best positioned adhering to the federally enacted changes.

IN THE NEWS - EEOC Taking Action – July 2024

- [EEOC Sues Mia Aesthetics for Disability Discrimination](#)
- [EEOC Sues Wilson Logistics for Violating the Americans with Disabilities Act](#)
- [Third Bench Holdings to Pay \\$165,000 in EEOC Retaliation Lawsuit](#)
- [Walmart Agrees to Pay \\$75,000 in EEOC Disability Discrimination Suit](#)
- [EEOC Sues GEM Management For Sexual Harassment](#)
- [Select Staffing to Pay \\$500,000 in EEOC Sexual Harassment Lawsuit](#)
- [Hatzel & Buehler to Pay \\$500,000 to Settle EEOC Age Discrimination Suit](#)
- [Fremont Contractor to Settle EEOC Harassment Charge](#)
- [Hank's Furniture to Pay \\$110,000 in EEOC Religious Discrimination Lawsuit](#)
- [EEOC Sues Fred Meyer Stores, Inc. for Sexual Harassment](#)
- [Dollar General to Pay \\$295,000 in EEOC Age Discrimination and Retaliation Lawsuit](#)
- [Beaumont Health to Pay \\$30,000 in EEOC Race Discrimination Lawsuit](#)
- [Didlake, Inc. Pays More Than \\$1 Million in EEOC Disability Discrimination and Retaliation Lawsuit](#)
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SECTION III:

New & Upcoming! Noteworthy State/City Compliance Alerts

Hawaii

New! State Limits Captive Audience Meetings – July 2, 2024

Beginning July 2, 2024, employers of all sizes can't take—or threaten to take—adverse action against an employee for not attending or participating in an employer-sponsored meeting that communicates the employer's opinion on *political matters*. The same applies to receiving or listening to employer communications for this purpose. *Political matters* is defined as anything related to an attempt to influence a future vote by people in an audience. [HLS 2715](#) was signed by the governor on July 2, 2024.

Employer Takeaway: Employers should allow employees to opt out of any meeting or communication covered by this law and make sure supervisors understand the law.

Illinois

New! Freelance Worker Protection Act – July 1, 2024

The Freelance Worker Protection Act provides protections for independent contractors who provide products or services in Illinois or who work for a hiring entity located in Illinois when the value of that work is equal to or greater than \$500 in a 120-day period.

Under the law, freelance **workers are entitled to** all of the following:

- A written contract (see templates below) that includes:
 - Name and contact information of both the hiring entity and freelance worker
 - Itemization of products and services
 - Rate and method compensation
 - Date of compensation due
 - Dates of services to be provided
- Full payment for the services by the due date in the contract, or if the due date is not specified, within 30 days of completing the services outlined in the contract
- Protection from retaliation and/or other negative action for exercising rights under the FWPA

Of note: The law only applies to contracts taking effect **after July 1, 2024**. Illinois provides See model contracts on their state website [HERE](#) To learn more, access the State's [Frequently Asked Questions](#)

Louisiana

New! Updates Meal Breaks for Minors – Aug 1, 2024

As of August 1, 2024, the law requiring meal breaks for minors will *only* apply to minors who are 15 years old or younger. [HB 156](#) was signed by the governor on June 11, 2024.

Maryland

New! Montgomery County Increases Minimum Wage – July 1, 2024

On July 1, 2024, the minimum hourly wage in Montgomery County will increase as follows:

- 1–10 employees: \$15
- 11–50 employees: \$15.50
- 51 or more employees: \$17.15
- 11 or more employees and the employer is tax exempt under § 501(c)(3): \$15.50



- 11 or more employees and the employer provides *home health services* or *home or community-based services* (as defined by [federal law](#)) and receives at least 75% of gross revenues through Medicaid: \$15.50

The minimum base wage for tipped employees remains \$4 per hour.

More information can be found [here](#).

New! State Prohibits Vaping in the Workplace – July 1, 2024

Effective July 1, 2024, Maryland's Clean Indoor Air Act will be expanded to prohibit vaping in almost all indoor places of employment. *Vaping* includes using any electronic smoking device or other device that allows the user to inhale aerosol tobacco, cannabis, or hemp. Employers are required to post a sign that says "NO SMOKING OR VAPING" near every **public** entrance to their place of employment. [MD H 238](#)

Massachusetts

New! State Requires Pay Range Disclosure and Pay Data Reporting – Feb 2025 & July 2025

On July 31, 2024, Massachusetts Governor Maura T. Healey signed into law regulations requiring employers to disclose pay range information.

Employers will have some time to get ready for these new requirements:

Date	Covered Employer	Obligation
February 1, 2025	Employers with 100 or more employees in Massachusetts and subject to federal EEO filing requirements	Submit demographic and pay data to the Secretary of the Commonwealth
July 31, 2025	Employers with 25 or more employees in Massachusetts	Pay range disclosure obligations go into effect

Employer-away: To prepare for this new requirement, Covered Employers with 25 or more employees in Massachusetts should take measures to comply *before* July 31, 2025. More to come as the effective date approaches

Minnesota

New! Employment Law Updates – Aug 2024

The below take effect August 1, 2024, and apply to employers of all sizes:

ANTIDISCRIMINATION LAW EXPANDED

Minnesota's antidiscrimination statute has had minor updates to several definitions.

First, the definition of **disability** has been updated to include impairments that are episodic or in remission if they would materially limit a major life activity when active. This brings Minnesota's definition in line with the federal Americans with Disabilities Act (ADA) (which only applies to employers that have 15 or more employees).

Second, the definition of **discriminate** has been broadened to include any form of harassment, not just sexual harassment.

Finally, the definition of **familial status** has been broadened to include, among other things, having custody of a minor child (even when they don't live with you) and caregiving for an incapacitated person whom the employee lives with.

Employer takeaway: If your Equal Employment Opportunity (EEO) policy includes these definitions (which is unlikely), update it by August 1.



EARNINGS STATEMENTS MUST BE RETAINED

All employers must keep a record of earnings statements for each nonexempt employee for every pay period for at least three years as part of their recordkeeping requirements under the state's Fair Labor Standards Act. While federal law already requires that pay records of nonexempt employees be kept for three years, the state law is more specific in requiring that earnings statements (aka pay stubs) be retained.

PREGNANCY AND PARENTING LEAVE CHANGES

The provisions regarding the continuation of benefits in the Pregnancy and Parenting Leave law and the pregnancy accommodations law have been updated to align with the state's upcoming Paid Leave law.

Employers are required to maintain coverage and continue paying their share of any group insurance premiums during any period of benefits or leave granted under these statutes. Employees are responsible for maintaining their portion of the premium payments.

Additionally, employers can't reduce an employee's Pregnancy and Parenting Leave entitlement by any period of paid or unpaid leave an employee takes for prenatal care medical appointments.

Employer takeaway: Adjust language in your policies as needed and ensure that you pay the group insurance premiums during covered pregnancy and parenting leaves.

TIPS RECEIVED BY ELECTRONIC MEANS

Employers must credit any tips an employee receives through electronic means (like a credit card) in the pay period they are received and must distribute the *full amount of the tip* that was indicated in the payment to the employee no later than the next scheduled pay period.

Employer Takeaway: Work with your payroll or accounting department to ensure tips are distributed in a timely fashion and are not reduced by credit card service (or other) fees.

ORAL FLUID DRUG TESTING

Employers will be permitted to conduct applicant and employee oral fluid (saliva) testing for drugs, alcohol, and cannabis under specific circumstances, without having to use a testing laboratory to conduct the initial test. The law requires that employers follow specific procedures regarding notifying the employee of the test results and confirming a positive test result at an employee's request. Due to the overall complexity of Minnesota's employment drug testing laws, we recommend consulting with an attorney if you're interested in doing this kind of testing.

New Hampshire

New! State Adds Protections for Volunteer Firefighters and EMTs – Aug 2024

Effective August 13, 2024, employers of all sizes will be prohibited from taking adverse action against volunteer firefighters and emergency medical technicians (EMTs) for reporting late to work because they are responding, in their official capacity, to an emergency they come across or witness while heading to work. Employers are not required to compensate nonexempt employees for the time missed.

New! State Prohibits Hairstyle Discrimination – Sept 2024

Protective hairstyles have been added to the state's antidiscrimination statute, effective September 1, 2024.

[NH H 1169](#) was signed by the governor on July 3, 2024. ETC will release an updated State Handbook closer to the effective date, should a revision be needed.

New! Guns in Trunks State Regulation – Jan 1, 2025

Starting January 1, 2025, employers of all sizes will be subject to new limitations with respect to firearms stored in employees' personal vehicles. Specifically, *all* employers can't:

- Require that employees disclose whether there is a firearm or ammunition in their vehicle
- Search an employee's vehicle for a firearm or ammunition



Additionally, employers *that are state or federal government contractors* can't prohibit employees from storing a firearm or ammunition in their vehicle on the employer's property if the employee can legally possess a firearm, the vehicle is locked, and the firearm or ammunition isn't visible. [HB 1201](#) and [HB1336](#) were signed by the governor on July 12, 2024.

New Jersey

New! State's Secure Choice Retirement Savings Program Operational on June 30, 2024

Beginning June 30, 2024, the New Jersey Secure Choice Retirement Savings Program will be accepting registration for private employers with 25 or more employees. The state will notify employers with instructions and deadlines to register for or certify exemption from the program. The implementation deadlines are:

- **September 15, 2024**, for covered employers with 40 or more employees; and
- **November 15, 2024**, for covered employers with 25 to 39 employees.

Details can be found on the [New Jersey Secure Choice Retirement Savings Program](#) page.

Vermont

New! State Limits Captive Audience Meetings – July 1, 2024

Beginning July 1, 2024, employers of all sizes can't take—or threaten to take—adverse action against an employee to get them to attend, or for not attending, an employer-sponsored meeting if its primary purpose is to express the employer's opinion on religious or political matters as per [VT S 102](#) which was enacted on May 28, 2024.

The same applies to participating in or viewing communications for this purpose. These types of laws are primarily aimed at preventing employees from being forced to attend anti-unionization meetings.

This law defines matters as *religious* if they relate to religious affiliation and practice and the decision to join or support any religious organization or institution. Matters are considered *political* if they relate to any of the following:

- Political affiliation
 - Elections for political office
 - Political parties
 - Legislative proposals
 - The decision to join or support any political party or political, civic, community, fraternal, or labor organization
- The law contains several exceptions, including communications that are legally mandated or essential for an employee's job duties and requiring attendance at meetings necessary for an employee to perform their job or to discuss the employer's business operations. Additionally, the restrictions on religious communications don't apply to religious organizations and the political communication restrictions don't apply to political organizations.

Employer Takeaway: Allow employees to opt out of any meeting or communication covered by this law and make sure supervisors understand the law.

New! State Requires Pay Ranges in Job Postings – July 1, 2025

Beginning July 1, 2025, employers with five or more employees will be required to include a compensation range with most job ads.

Any written posting for a job that will be physically performed in the state, or a remote position that mainly does work for a location in the state, must include the compensation or compensation range. This includes internal postings for transfers and promotions. It doesn't include general announcements that don't identify specific job openings or verbal announcements made in person, on the radio or TV, or by other electronic means (because they aren't *written*). For commission-based positions, employers must indicate in the job posting that compensation is commission-based, and they don't have to provide a pay rate or range. For tipped positions, employers must include the pre-tip compensation or range and note that the position is tipped.

Compensation ranges must include a minimum and maximum annual salary or hourly rate, and must be provided in good faith, meaning they should be a reasonable estimation of what that open position will actually pay.



The Attorney General's Office is expected to publish guidance on its website by January 1, 2025. [VT H 704](#) was signed by the governor on June 4, 2024.

Employer Takeaway: Employers should amend job postings to include the required information by July 1, 2025.

SECTION IV: Previously Reported Regulatory Matters

Effective April 2024, please see separate, standalone publication for a listing of all previously reported regulatory matters for 2024.

The WIRE is for informational purposes only and should not be construed as legal advice.