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2024 Labor & Employment Update Webinar

October 2, 2024

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Schedule + Zoom Recording Time Stamps

9:00 a.m. - 9:05 a.m.	**Opening Remarks** (0:00-3:05)
9:05 a.m. - 10:15 a.m.	**State Legislative Updates: CT** (3:05-22:30), **NY** (22:30-51:26), **MA** (51:26-1:14:06) **Q+A** (1:14:06-1:27:17)
10:15 a.m. - 10:45 a.m.	**DOL's Final Rule on Independent Contractor Status** (1:27:17-1:52:43)
10:45 a.m. - 11:15 a.m.	**Leaves of Absence: Best Practices for the Challenging Situations** (1:52:43-2:27:13)
11:15 a.m. - 11:45 a.m.	**Non-Compete Update** (2:27:13-2:57:04)
11:45 a.m. - 12:15 p.m.	**Immigration Update** (2:57:09-3:25:12)
12:15 p.m. - 12:30 p.m.	**Closing Remarks** (3:25:12-3:26:43)

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2024 Connecticut Legislative Updates

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Overview

- Significant Expansion of Paid Sick Leave
- Increase in Minimum Wage
- Impact of federal changes to the FLSA overtime exemption
- What Did Not Pass This Year

Expansion of Paid Sick Leave

- The amended law passed in May 2024 and, by 2027, will cover basically all workers in Connecticut:
  - Effective January 1, 2025, the law covers employees of any employer with 25 or more employees.
  - Effective January 1, 2026, this will be expanded to include employers with 11 or more employees.
  - Effective January 1, 2027, the law applies to all employers with 1 or more employees.
  - Determination of number of employees is based on the company payroll during the week of January 1 of each year.

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Expansion of Paid Sick Leave

- ***Effective January 1, 2025:***
  - The law will be expanded to include not only "service workers" as defined by the U.S. Bureau of Labor Statistics' Standard Occupational Classification system, but ALL EMPLOYEES except certain seasonal employees who work 120 days or less per year.
  - Prior exclusion for manufacturing companies and nationally chartered nonprofits will be eliminated.
  - Employers must allow an employee who transfers within the company to retain all accrued sick leave.
  - Successor employers must allow employees of the acquired company to retain accrued sick leave.

Expansion of Paid Sick Leave

- ***Effective January 1, 2025 (cont.):***
  - Accrual of paid sick time begins after 120 calendar days of employment (formerly 680 hours).
  - Accrual rate also has been modified from 1 hour for every 40 hours worked to 1 hour for every 30 hours worked, for a maximum of 40 hours per year.
  - Law applies to exempt employees and presumes such employees work 40 hours per week for accrual purposes.
  - The carry-over requirements – allowing employees to carry over up to 40 hours of sick time from the prior year – remains unchanged.

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Expansion of Paid Sick Leave

- ***Effective January 1, 2025 (cont.):***
  - Definition of "family member" is significantly expanded from child or spouse to spouses, siblings, children, grandparents, grandchildren and parents, as well as individuals who are "related to the employee by blood or affinity whose close association the employee shows to be equivalent to those family relationships."

  - Permissible reasons to use sick leave have been expanded to include pandemic-like situations where work or schools have been closed due to public orders or because a family member's health has been determined to pose a risk to the health of others.
  - Employers can no longer require documentation that the leave is being used for a permissible reason.

Expansion of Paid Sick Leave

- ***Effective January 1, 2025 (cont.):***
  - Employers must provide written notice to all employees of their rights under the new law, or post in a conspicuous place a poster that the Connecticut Department of Labor has been ordered to create.
  - Employers will have to retain sick leave records for three years for (i) all accrued sick leave for each employee, and (ii) all sick leave used during a calendar year.
  - Sick leave records will be subject to DOL inspection; failure to comply can lead to imposition of fines.

Minimum Wage Hike

- Under the existing minimum wage laws in Connecticut, the minimum wage was increased, effective January 1, 2024, from $15.00 per hour to $15.69 per hour.
- No adjustments have yet been made to the minimum wage for 2025.

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Federal Changes to FLSA Overtime Exemption

- Standard for determining whether a salaried employee is entitled to overtime pay still looks at salary and duties.
- Major changes in the salary threshold were approved to go into effect on July 1, 2024, and January 1, 2025.
- Prior to July 1, 2024, the salary threshold was $684 per week ($35,568 per year).

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Overtime Exemption (cont.)

- As of July 1, 2024, salaried workers who earn less than $844 per week ($43,888 per year) and do not perform managerial/executive duties are eligible for overtime pay.
- By January 1, 2025, the salary threshold goes up to $1,128 per week ($58,656 per year) for salaried workers to be eligible for overtime pay.

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Overtime Exemption (cont.)

- Overtime rate is 1.5 times the hourly rate of the salaried employee.
- Applies to all hours worked over 40 per week, even if the employee's salary is intended to cover more than 40 hours per week.
- Non-discretionary bonuses and incentive payments earned in the prior 52 weeks can be included in the salary.
- Overtime pay may not be contracted away or waived.

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Proposed Legislation That DID NOT Pass

- The biggest piece of legislation that – AGAIN – has not been passed is the ban on ALL non-competes that do not meet specific conditions (HB 5269).
  - Legislation got more traction after the FTC federal non-compete ban.
  - Similar to prior versions of the bill, HB 5269 would require additional consideration and written notice.
  - Non-competes would only be for one year.
  - Would ban non-competes for non-exempt workers.
  - This version of the legislation made its way through House committees and was referred in April 2024 to the House Judiciary Committee, where it has remained without any further action.

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2024 New York Legislative Updates

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2024 New York Legislative and Regulatory Action

- New York's Attempt to Ban Non-Compete Clauses
- Social Media Privacy
- Paid Lactation Breaks
- Prenatal Care Leave
- COVID-19 Paid Sick Leave
- Minimum Wage Increase

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NYS Fails to Enact Law Banning Non-Compete Clauses

- Last year, the NYS Assembly passed a bill, which, together with an identical Senate bill proposed to ban the use of non-compete clauses in employment.
- On December 23, 2023, Governor Hochul vetoed the bill, and her memo stated that it "would broadly prohibit all non-compete agreements in New York."
- Governor Hochul felt that the bill went too far in banning all non-competes. She would have favored banning non-competes for middle-class and low-wage earners.
- Senator Sean Ryan, who sponsored the failed Senate bill, said he would reintroduce a watered-down bill in 2024. This has not happened.

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NYS Fails to Enact Law Banning Non-Compete Clauses (cont.)

Problems that doomed the NYS's proposed ban:

- Many business groups and trade associations criticized the bill as overbroad and lacking common sense exceptions, such as permitting non-competes in connection with the sale of a business.
- NYS's bill aligned more with California's and the FTC's approach to non-compete clauses instead of looking to the more narrowly tailored Massachusetts law.
- The bill did not address non-solicitation of employee agreements. Still, one can argue that such agreements also restrict or prohibit employees from getting a new job, especially because the proposed law banned clauses that would "otherwise restrict competition."

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NYS Fails to Enact Law Banning Non-Compete Clauses (cont.)

New York City Council weighs in:

- On February 28, 2024, the NYC Council announced a bill that would prohibit non-compete agreements and invalidate non-competes that predate the law.
- The NYC bill defines a "non-compete agreement" as "an agreement between an employer and a worker that prevents, or effectively prevents, the worker from seeking or accepting work for a different employer, or from operating a business after the worker no longer works for the employer."
    - The plain language of the proposed law would ban non-solicitation of customer and employee clauses.
    - "Employer" means a person that hires or contracts with a worker to work for a person.
    - "Worker" means a natural person who works for an employer, including independent contractors.

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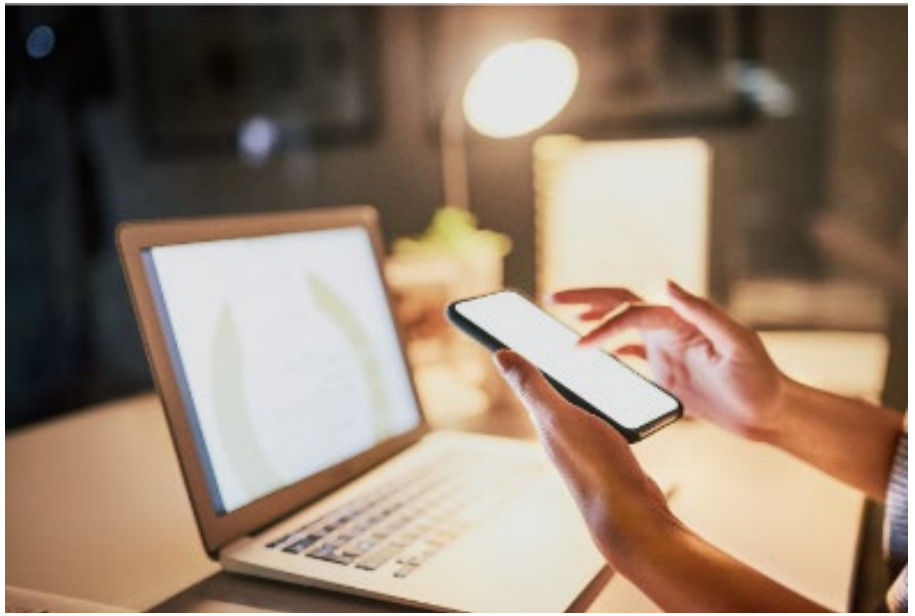
Social Media Privacy

- Effective March 12, 2024, New York State prohibited employers from soliciting or requiring employees or job applicants to share their log-in credentials for social media accounts.
- Employers are also barred from requesting that employees or applicants provide content from their social media accounts (photos, videos, etc.).
- Employers may not require employees or applicants to access their personal social media accounts in the employer's presence.



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Social Media Privacy (cont.)

Exceptions:

- Doesn't apply to employers obligated to screen employees or monitor communications by federal law or self-regulatory organizations as defined by the Securities and Exchange Act of 1934.
- Employers may request or require an employee to disclose access information to an account provided by the employer where the account is used for business purposes, and the employee was provided prior notice of the employer's right to request or require such information.
- Employers may restrict employee internet access while using the employer's resources.
- Employers are required to comply with court orders regarding employee accounts.

Social Media Privacy (cont.)

Exceptions:

- Employers are not prohibited or restricted from viewing, accessing or utilizing information about an employee or applicant that can be obtained without any required access information (such as public profiles), that is available in the public domain, or for the purposes of obtaining reports of misconduct or investigating misconduct, photographs, video, messages or other information that is voluntarily shared.

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Paid Lactation Breaks

- NYS previously required employers to provide unpaid lactation breaks.
- Effective June 19, 2024, NYS Labor Law § 206-c requires **paid** 30-minute breaks each time an employee needs to express breast milk, for up to three years.
- If an employee requires more time, the employer must allow the employee to use meal periods or available paid breaks.
- An employee may not be required to make up the time spent expressing breast milk.

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Prenatal Care Leave

- Effective January 1, 2025, Labor Law § 196-b will require all employers to provide leave to every employee.
- 20 hours of paid prenatal personal leave per 52-week period.
- Prenatal personal leave is to be taken by an employee "during their pregnancy or related to such pregnancy," including for physical examinations, medical procedures, monitoring and testing, and discussions related to pregnancy with a health care provider.
- Prenatal personal leave may be taken in hourly increments.

Prenatal Care Leave (cont.)

- Unlike overlapping leaves that run concurrently, prenatal personal leave is in addition to the paid or unpaid sick leave already required by New York law.
- Unlike sick leave currently required in New York, an employee qualifies for paid prenatal personal leave immediately upon hire.
- Similar to current requirements for sick leave, an employer shall be prohibited from requiring an employee to disclose confidential information relating to an absence qualifying for paid prenatal personal leave. No doctor's notes with substantive details concerning the reason for the leave.

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Prenatal Care Leave (cont.)

- Unused paid prenatal leave does not need to be paid out on separation.
- Unlike paid sick leave, there is no carryover of paid prenatal leave to the following year.
- The Department of Labor will likely issue regulations and guidance before January 1, 2025. The regulations and guidance will likely address the type of documentation that an employer will be permitted to request and also address what constitutes a leave "related to . . . pregnancy."
- An employer "may not discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee" for taking paid prenatal leave.

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COVID-19 Paid Sick Leave

- New York law currently requires employers to provide employees with a certain amount of paid sick leave in case of a mandatory or precautionary order of quarantine or isolation due to COVID-19, separate from and in addition to other time off entitlements. Certain employees are also entitled to paid family leave or disability insurance benefits due to such orders.
- Because the CDC no longer recommends that individuals isolate for five days after testing positive for COVID-19, NYS has decided to end this leave.
- Effective July 31, 2025, COVID-19 paid sick leave will be repealed. NYS previously allowed the paid COVID-19 vaccine leave mandate to expire on December 31, 2023. The vaccine leave mandate provided employees with additional paid leave to get vaccinated.
- After July 31, 2025, employees can still use existing paid sick leave law benefits to care for themselves or their covered family member's COVID-19 related absences.

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New York Minimum Wage Increase

On May 3, 2023, Governor Hochul signed into law scheduled increases to New York's minimum wage for most employees beginning January 1, 2024, through 2026.

Effective Date of Increase	New York City, Nassau, Suffolk and Westchester	Remainder of New York State
Current	$16	$15
1/1/2025	$16.50	$15.50
1/1/2026	$17	$16

Thereafter, minimum wage increases will be indexed to the U.S. Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers for the Northeast Region. A reduction in the CPI would not result in a reduction of the minimum wage.

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2024 Massachusetts Legislative Updates

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2024 Massachusetts Legislative Updates

- Massachusetts Pay Transparency Act – takes effect in 2025.
- 2025 Minimum wage remains at $15.00 for most employees; $6.75 for tipped workers.
  - Efforts to increase to $20 have not been successful.
- 2024 Ballot initiative on the minimum wage for tipped workers.
  - Would increase tipped minimum wage gradually beginning January 1, 2025, up to $15 in 2029
  - Until 2029, employers must make up shortfall between tips and $15 minimum wage, but calculation can be performed over entire pay period rather than each shift.
  - Tips pool can include “back of house” employees, but not managers/supervisors
- Ballot initiative to allow rideshare drivers to form a union.

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Massachusetts Pay Transparency Act – M.G.L. c. 149, §§ 105E,105F.

- Passed on July 31, 2024, at end of legislative session.
- Big picture:
  - Employees will be provided with more information about the pay ranges for jobs they are seeking or jobs they already hold.
  - New reporting requirements for employers of 100 or more employees.
- Growing trend among states. In New England, CT, RI and VT have transparency laws in place.
- Mass. law is compliance-focused – less punitive.

Massachusetts Pay Transparency Act – Reporting Requirements

- Beginning February 1, 2025, employers subject to federal wage date report filing requirements must now file reports with Massachusetts Secretary of State.
  - "Covered Employer" – employers with at least 100 employees in Massachusetts at any time during prior calendar year.
- EEO-1 (Employer Information Reports)
  - Workforce demographic data, including data by job category and sex and race or ethnicity. Currently no pay data.
  - Reports submitted annually by February 1 (every other year for EEO-3, EEO-4).
- Reports are <u>not</u> subject to public records laws.

Massachusetts Pay Transparency Act – Pay Transparency Requirements

- Beginning October 29, 2025, Covered Employers must:
  1. Disclose the pay range of an employment position in a posting for such position.
  2. Provide pay range of position to employee who is offered promotion/transfer to new position with new responsibilities.
  3. Provide pay range of position to a person who holds that position or an applicant for such position on the person's request.

  Covered Employer – 25 or more employees in the Commonwealth. Public/private

Massachusetts Pay Transparency Act – Pay Transparency Requirements (cont.)

- Pay range: "the annual salary or hourly wage range that the covered employer reasonably and in good faith expects to pay for such position at that time."
    - Does not include bonuses, commissions, equity, stock options, other benefits.
- Posting: "any advertisement or job posting intended to recruit job applicants for a particular and specific employment position. . ."
    - Applies to postings made through third parties (recruiters).
    - Social media posts.
- Employers prohibited from firing, retaliating, discriminating against an employee or applicant who enforces rights, makes complaint, participates in proceeding.

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Massachusetts Pay Transparency Act – Enforcement/Penalties

- One "offense" includes one or more job postings made during the same 48-hour period.
  - First offense – warning.
  - Second offense – fines up to $500.
  - Third offense – fines up $1,000.
  - Subsequent offenses – fines between $7,500 and $25,000.
- Two-day grace period following notice of violation before fine imposed.
  - Only available during first two years after enactment.
  - Will help avoid "feeding frenzy" of class action litigation for unknowing violations.
- No treble damages for violations under c. 149, § 150.
- Attorney General has exclusive authority to enforce.
  - Some ambiguity as to whether a private right of action exists for retaliation suits.

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Massachusetts Pay Transparency Act – MEPA Exposure

- Potential for pay disclosure to lead to claims under the Massachusetts Equal Pay Act
- MEPA became effective July 1, 2018
  - Prohibits employers from paying employees less than an employee of a different gender who does "comparable work", i.e. work that requires similar skill, effort and responsibility, and is performed under similar working conditions.
- Differences in pay are allowed under certain conditions:
  - A seniority system
  - The geographic location of the jobs
  - Production, sales or revenue-based systems of pay
  - Job-related differences in education, training or experience
  - A merit system
  - Differences in travel
- Includes a private right of action

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Massachusetts Pay Transparency Act – Next Steps

- Conduct pay audits.
- Develop pay scales/bands that are tied to legitimate, non-discriminatory reasons for differences in pay, i.e. experience, education, skills/credentials, seniority.
- Implement procedures for meeting reporting requirements.
- Anticipate employee relations issues.
    - Develop messaging about why certain individuals are falling at the lower end of the pay scale.
- Law requires Attorney General to engage in "public awareness campaign" to clarify ambiguities.

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DOL's Final Rule on Independent Contractor Status

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DOL's Final Rule on Independent Contractor Status under the Fair Labor Standards Act

- The DOL announced the new final rule addressing worker classification under the FLSA.
- The new rule went into effect on March 11, 2024.
- According to the DOL, the 2024 rule is intended to "reduce the risk that employees are misclassified as independent contractors while providing a consistent approach for businesses that engage with individuals who are in business for themselves."

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DOL's Final Rule on Independent Contractor Status **Why is this rule important?**

- What is the Fair Labor Standards Act?
  - The FLSA is a federal law that establishes minimum wage, overtime pay, recordkeeping and child labor standards affecting full-time and part-time employees in the private sector and in federal, state and local governments.
  - The FLSA's protections do not apply to independent contractors.
  - Misclassified independent contractors can expose employers to significant potential liability.
- The FLSA does not define "independent contractor."

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DOL's Final Rule on Independent Contractor Status
How did we get here?

- The Economic Reality Test: 1947 *"Silk Factors"* – six non-exclusive factors originally set forth by the U.S. Supreme Court
  - The courts and the DOL applied these factors (or some similar variation of them) for more than 70 years.
  - However, courts applied factors inconsistently, often reaching opposite conclusions based on what appear to be essentially the same facts.
- Trump-Era DOL Rule Making
  - 2021 IC Rule: The 2021 IC Rule elevated the comparative value of two "core" factors: (1) "the nature and degree of the individual's control over the work" and (2) "the individual's opportunity for profit or loss."
  - The rule made it much easier for businesses to classify workers as independent contractors.
- Biden Administration Delays and Withdraws Trump-Era Rule
- The new 2024 Rule replaces the 2021 Rule

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DOL's Final Rule on Independent Contractor Status
The new independent contractor rule

- This new DOL independent contractor rule for 2024 adopts a six-factor test to determine whether a worker qualifies as an independent contractor.
- This test is similar to guidance issued and case law decided prior to 2021 (Silk factors). The six factors are:
    1. Opportunity for profit or loss depending on managerial skill;
    2. Investments by the worker and the potential employer;
    3. Degree of permanence of the work relationship;
    4. Nature and degree of control;
    5. Extent to which the work performed is an integral part of the potential employer's business; and
    6. Skill and initiative.
- The 2024 rule now allows for the consideration of ***additional factors*** relevant to the overall question of economic dependence.
    - No single factor or subset of factors will be dispositive.
    - The factors should not be considered in isolation.

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Factor 1: Opportunity for profit or loss depending on managerial skill

- This factor considers whether the worker has opportunities for profit or loss based on managerial skill (including initiative or business acumen or judgment) that affect the worker's economic success or failure in performing the work.
- The following facts can be relevant:
  - whether the worker determines or can meaningfully negotiate the charge or pay for the work provided;
  - whether the worker accepts or declines jobs or chooses the order and/or time in which the jobs are performed;
  - whether the worker engages in marketing, advertising or other efforts to expand their business or secure more work; and
  - whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space.
- If a worker has no opportunity for a profit or loss, then this factor suggests that the worker is an employee.
- However, some decisions by a worker that can affect the amount of pay that a worker receives, such as the decision to work more hours or take more jobs when paid a fixed rate per hour or per job, generally do not reflect the exercise of managerial skill indicating independent contractor status under this factor.

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Factor 2: Investments by the worker and the potential employer

- This factor considers whether any investments by a worker are capital or entrepreneurial in nature.
  - Generally support an independent business and serve a business-like function.
    - Such as increasing the worker's ability to do different types of or more work, reducing costs, or extending market reach.
- The worker's investments do not have to be equal to the potential employer's investments and should not be compared only in terms of the dollar values of investments or the sizes of the worker and the potential employer.
  - Instead, the ***focus should be on comparing the investments to determine whether the worker is making similar types of investments as the potential employer (even if on a smaller scale) to suggest that the worker is operating independently***, which would indicate independent contractor status.
- Costs to a worker of tools and equipment to perform a specific job, costs of workers' labor, and costs that the potential employer imposes unilaterally on the worker, for example, are not evidence of capital or entrepreneurial investment and indicate employee status.

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Factor 3: Degree of permanence of the work relationship

- This factor weighs in favor of the worker being an ***employee*** when the work relationship is:
  - indefinite in duration,
  - continuous, or
  - exclusive of work for other employers.
- This factor weighs in favor of the worker being an ***independent contractor*** when the work relationship is:
  - definite in duration,
  - non-exclusive,
  - project-based, or
  - sporadic based on the worker being in business for themselves and marketing their services or labor to multiple entities.
- Seasonal or temporary nature of work by itself would not necessarily indicate independent contractor classification.

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Factor 4: Nature and degree of control

- **This factor considers the potential employer's control over the performance of the work and the economic aspects of the working relationship.**
  - More control by the potential employer favors employee status; more control by the worker favors independent contractor status.
- **Facts relevant to the potential employer's control over the worker include whether the potential employer:**
  - sets the worker's schedule,
  - supervises the performance of the work,
  - explicitly limits the worker's ability to work for others,
  - uses technological means to supervise the performance of the work (such as by means of a device or electronically),
  - reserves the right to supervise or discipline workers,
  - places demands or restrictions on workers that do not allow them to work for others or work when they choose, or
  - exercise control over prices or rates for services and the marketing of the services or products provided by the worker.
- **Actions taken by the potential employer for the sole purpose of complying with a specific, applicable federal, state, tribal or local law or regulation are not indicative of control.**
  - Ex.: a writer comply with libel law; a home care agency's requirement that all individuals with patient contact undergo background checks in compliance with a specific Medicaid regulation.
- **Actions taken by the potential employer that serve the potential employer's own compliance methods, safety, quality control or contractual or customer service standards may be indicative of control.**
  - Ex.: comprehensive training requirements (beyond training required for relevant licenses).

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Factor 5: Extent to which the work performed is an integral part of the employer's business

- This factor considers whether the work performed is an integral part of the potential employer's business.
- This factor does not depend on whether ***any individual worker*** is an integral part of the business, but rather ***whether the function they perform is an integral part of the business.***
- This factor weighs in favor of the worker being an employee when the work they perform is:
  - critical,
  - necessary, or
  - central to the potential employer's principal business.
- This factor weighs in favor of the worker being an ***independent contractor*** when the work they perform is ***not*** critical, necessary or central to the potential employer's principal business.

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Factor 6: Skill and initiative

- This factor considers whether the worker uses specialized skills to perform the work and whether those skills contribute to business-like initiative.
- This factor indicates ***employee*** status where the worker does not use specialized skills in performing the work or where the worker is dependent on training from the potential employer to perform the work.
- Where the worker brings specialized skills to the work relationship, this fact is not itself indicative of independent contractor status because both employees and independent contractors may be skilled workers.
    - It is the worker's use of those specialized skills ***in connection with*** business-like initiatives that indicates that the worker is an independent contractor.

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DOL's Final Rule on Independent Contractor Status **Employer impact and key takeaways**

- At the end of the day, existing case law continues to control, as it is courts—and not regulatory agencies—that create binding precedent law.
- There have been a number of legal challenges to the final rule, the outcomes of which could impact the applicability of the rule.
- DOL's independent contractor final rule only defines independent contractor status under the FLSA.
  - Does not apply to other federal or state laws. Separate analysis should be performed.
- The 2024 rule reinforces the DOL's pro-employee view of worker classification and may create classification complications for companies reliant on independent contractors.
- Employers may want to evaluate their existing and future worker relationships and independent contractor agreements.

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Leaves of Absence: Best Practices for Challenging Situations

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October 2, 2024

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Purpose of Today's Webinar

Given the increasing number of leave laws on the state and federal levels, the purpose of this section is to highlight challenging situations and issues and review best practices for addressing those situations.

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Sources of Leave

- Municipal, State and Federal Laws
- Case Law Interpretation of Law (such as ADA)
- Additional Company-Sponsored Leaves (PTO, Bereavement Leave, Additional Personal Leave, Short-Term Disability, Long-Term Disability, Additional Leave under a CBA)

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Today's Focus is Medical Leave: FMLA, Pregnancy, ADA

- Medical for Self or Family
- Includes Pregnancy Leave and Bonding Leave
- Other types of leave such as Jury Leave and USERRA (Military Leave) will not be covered today.

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Today's Focus: Medical Leave

- Paid Sick Leave
- Paid Family Medical Leave
- State Unpaid Family Medical Leave
- Federal Unpaid Family Medical Leave
- Americans with Disabilities and State Equivalent Leave
- Pregnancy Leave (in excess of FMLA)

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Addressing Challenges

- Coordinating many different sources of leave and overlapping leave requirements
- Many challenges arise in the context of the FMLA and the ADA or Pregnancy Leave
- Business needs and ADA: How much leave is enough?
- Pregnancy leave beyond the FMLA
- Terminations and FMLA

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Best Practices

- Communicate all available leave to employees usually in handbook
- In a specific case, ensure employee is aware of all available leave options
- Always consider wage replacement options: paid leave or paid coverage options (such as short-term and long-term disability)
- Ensure your PTO/Sick Leave Policy complies with Connecticut Sick Leave Policy
- Running leaves concurrently

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Paid and Unpaid FMLA: A Quick Review

- CT Paid FMLA is available to employees on the first day of employment. Employees apply themselves. It is not job-protected leave.
- CT unpaid leave and federal unpaid leave ARE job-protected leaves.
- CT unpaid leave available to employees after 3 months of employment. Employer must have only 1 employee.
- Federal unpaid leave is available to employees after 12 months of employment. Employer must have 50 employees.
- Employees are entitled to 12 weeks of unpaid leave under state and federal law. They can run concurrently.
- Pregnancy leave 2 additional weeks under CT FMLA.
- Eligible employees to take up to 26 weeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.
- Employer must consider providing an additional reasonable leave under the ADA and state law if employee requests it.

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Review: What are the qualifying reasons for leave under the CTFMLA?

- An eligible employee may take CTFMLA leave for any of the following reasons:
  - Birth of a child and care for the child within the first year after birth;
  - The placement of a child for adoption or foster care and care for the child;
  - Care for a family member with a serious health condition;
  - Because of an employee's own serious health condition;
  - To serve as an organ or bone marrow donor;
  - To address qualifying exigencies arising from a spouse, son, daughter or parent's active-duty service in the armed forces; and
  - To care for a spouse, son, daughter, parent or next of kin with a serious injury or illness incurred on active duty in the armed forces.

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Review: What are the qualifying reasons for leave under the Federal FMLA?

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including
  - Qualifying exigency leave - Leave for certain reasons related to a family member's foreign deployment, and
  - Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

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What does job protection mean under the FMLA?

- **Job protection.** Employees who use FMLA leave have the right to go back to work at their same job or to an equivalent job that has the same pay, benefits, and other terms and conditions of employment at the end of their FMLA leave. Violations of an employee's FMLA rights may include changing the number of shifts assigned to the employee, moving the employee to a location outside of their normal commuting area, or denying the employee a bonus for which they qualified before their FMLA leave.
- **Federal FMLA requires continuation of group health plan benefits.** Employers are required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the employee's FMLA leave.

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Employee's Notice Requirements

- **When leave is foreseeable.** In general, when an employee **knows about the need for the leave in advance**, they must give at least 30 days advance notice if it is possible and practical to do so. For example, if an employee is scheduled for surgery in two months, their need for leave is foreseeable and they should give at least 30 days advance notice.
- If 30 days advance notice is not possible because the situation has changed or the employee does not know exactly when leave will be required, the employee must provide notice of the need for leave as soon as possible and practical.
- In the case of FMLA leave for a qualifying exigency arising out a military deployment, the employee must give notice of the need for such leave as soon as possible and practical, regardless of how far in advance the leave is needed.
- **When leave is unforeseeable.** When an employee **needs leave unexpectedly**, the employee must provide notice to the employer as soon as possible and practical. Even when the need for leave is unforeseeable, it should generally be possible and practical for the employee to provide notice of leave within the time required by the employer's usual and customary notice requirements.

Foreseeable Leave: Planned Medical Treatment

- For **planned medical treatment**, the employee must consult with the employer and try to schedule the treatment at a time that minimizes disruptions. The employee should consult with the employer prior to scheduling the treatment in order to arrange a schedule that best suits the needs of both the employee and employer. Of course, any schedule of treatment is subject to the approval of the treating health care provider.

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Notice of Leave

- When an employee does not give timely or sufficient notice of the need for FMLA leave and does not have a reasonable excuse, the employer may delay, or in some cases, deny the employee's FMLA leave. The employer also can choose to waive the employee's notice requirements.
- The extent of an employer's ability to delay FMLA coverage for leave depends on the facts of the particular case. For example, if it was possible for the employee to give notice of the need for leave the same day it was needed, but the employee instead gave notice two days after the leave began, then the employer may delay FMLA coverage of the leave by two days.
- In all cases, an employer can delay or deny the leave only if it is clear that the employer actually informed the employee about the employee's obligation to provide notice under the FMLA.
- Sometimes the employer may want to designate the leave as FMLA and can do so.

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FMLA Intermittent Leave

- Temporary transfer to alternative position or working a reduced schedule that better fits with business needs and leave periods.
- Equivalent pay and benefits
- The alternative position does not need to have the same duties as the employee's regular position, but it should be similar in terms of qualifications, schedule, tenure and appointment.
- When employees return from FMLA leave, they should be restored to their original job or an equivalent job. An equivalent job has similar duties, responsibilities, pay, benefits and working conditions to the employee's original job.

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Temporary Transfers

- The position into which the employee transfers must have the same pay and benefits as the previous position, although the duties may be different. According to the Fair Labor Standards Act, an exempt employee who qualifies for and takes intermittent leave or a reduced-schedule leave can have his or her salary reduced without jeopardizing exempt status. The transfer must be to an available alternative position for which the employee is qualified and which is better suited for periods of recurring leave. The transfer must comply with any applicable collective bargaining agreement, as well as federal and state laws.
- If the alternative position is of lesser pay, then the employer can raise the pay to match the existing pay and benefit level of the employee's regular position. A part-time job is also an option, as long as the employee is not required to take more leave than is medically necessary. For example, if an employee needs to take leave in increments of four hours per day, that employee could be transferred to a half-time job or could remain in the same job on a part-time basis. The employer will still need to pay the same hourly rate and provide the same benefits. However, an employer can reduce the benefits, such as the amount of vacation leave, if it is the employer's normal practice to do so when the number of hours an employee works determines the amount or level of the benefit.

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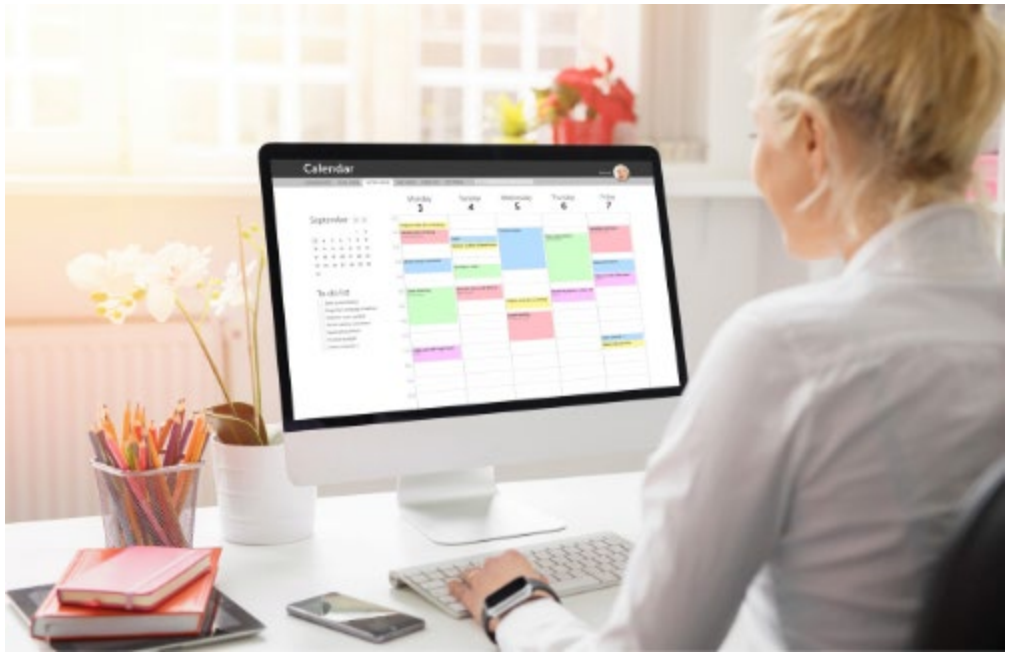
Prohibited Transfers

- An employer is not allowed to transfer an employee to discourage him or her from taking leave. Practices prohibited by the FMLA include:
  - Assigning a white-collar employee to perform a laborer's work.
  - Requiring an employee who works the day shift to be reassigned to the graveyard shift.
  - Assigning an employee who works at a headquarters facility to a facility that is a significant distance away from headquarters.
- When an employee is able to return to full-time work, the employee must be placed in the same or equivalent job as he or she had when the leave started.

Paying Exempt Employee Only for Hours Worked During Intermittent Leave

- One of the few exceptions to reducing exempt employee's salary
- Determine hourly equivalent.
- Pay only for hours worked.



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ADA: How much additional leave is reasonable?

- The only bright line is no “indefinite” leave. Otherwise, should be on a case-by-case basis.
- Consider other leave that is available after the expiration of the FMLA.
- No established time to hold job open beyond the FMLA required period.
- Case law examines circumstances and business needs.
- Important to document conversations regarding additional leave requests.

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ADA Undue Burden for Leaves of Absence

- Courts generally find that a request for leave is unreasonable as a matter of law only where the leave is for an extremely long period of time—exceeding a year at minimum—or when it is clear that even when the employee returns from such leave, they would be unqualified to perform the essential functions of their role.

Undue Burden

- Factors Include:
  - The nature and cost of the requested accommodation
  - The financial resources of the organization
  - The impact on the operation of the business
  - Ask: How did you cover the job during the FMLA leave? Why can't you continue to cover the job in that way?

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Specific Examples

Employee is a poor performer. You are the supervisor. You have scheduled a meeting with the employee to put her on a performance improvement plan. You have indicated only “check in” in the calendar invitation so that you don’t give her a heads-up. The employee does not appear for the meeting, and you are notified by HR that she has requested FMLA. What do you do?

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What should you do?

- If you are the supervisor, should you:
  - Delete the performance improvement plan and throw your hands up. If the employee is on FMLA, any performance management cannot be implemented now that the employee is taking FMLA.
  - Save the performance improvement plan to implement when the employee returns from leave.

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Change the facts slightly

Employee is a poor performer. You are the supervisor. You are notified by HR that the employee has requested FMLA. You have not yet drafted a performance improvement plan, and you have no previous performance management documentation in the file. What do you do?

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What should you do?

- Quickly draft a written warning so that you can provide it upon the employee's return.
- Quickly draft a performance improvement plan so that you can provide it to the employee upon her return.
- Wait until the employee's return from leave and immediately start micromanaging her and pointing out all of her performance issues.
- Wait until employee returns from leave and then continue to manage her as you previously managed her.

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HR Response

- You are HR. You have noticed a pattern with a particular supervisor's employees going out on FMLA stress leaves. What should you do?

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Response

- Meet with the supervisor and say, “Many of your employees are on a stress leave. What are you doing to stress out your employees?”
- Review the supervisor’s most recent performance evaluation to see if there are any issues.
- Meet with the supervisor’s manager to see if the supervisor is having any issues managing employees.

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CT Sick Leave Law Effective Jan. 1, 2025

- You are the supervisor. An employee notifies you that she wants to take CT Sick Leave. What should you do?

  - Ask her, “Why do you need sick leave?”
  - Tell her, “Sure, just provide me with a doctor’s note.”
  - Refer her to HR.

CT Sick Leave Law

- The CT Paid Sick Leave Law effective January 1, 2025, prohibits employers from requiring employees to submit documentation showing that the employee took sick leave for a qualifying reason.

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Terminating During FMLA

- You are doing a reduction in force. You are laying off an entire department. Can you include the employee on FMLA?
- You are doing a reorganization. Some of the department is being laid off. Some of the department is being restructured into other jobs. Can you lay off the employee on FMLA?
- You conducted an investigation while an employee is on leave and determined she engaged in serious misconduct, in violation of company policies. Can you terminate the employee while she is on leave?

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Scheduling FMLA

Employee requests FMLA for scheduled surgery. The request is for the department's busiest time of year, and you need all hands on deck. Can you deny the FMLA because of the timing?

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Response

For **planned medical treatment**, the employee must consult with the employer and try to schedule the treatment at a time that minimizes disruptions. The employee should consult with the employer prior to scheduling the treatment in order to arrange a schedule that best suits the needs of both the employee and employer. Of course, any schedule of treatment is subject to the approval of the treating health care provider.

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Examples

- Talon knows in July her serious health condition will require in-patient treatment beginning September 30th. She notifies her employer September 15th. In this case, the employer may delay Talon's FMLA leave by 30 days until October 15th, because Talon could have, but did not, provide 30 days advance notice.
- Bill takes unforeseeable leave for a flare-up of his chronic serious health condition. Although it was possible to notify his employer on the first day of his leave, he notifies the employer two days after the leave begins that the absence is for an FMLA-covered reason. In this case, the employer may delay the FMLA leave by two days.

Returning after FMLA

- Employee fails to return upon expiration of FMLA and fails to communicate after you've sent a reminder of the return-to-work date.
- Can you terminate the employee?

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Returning after FMLA

Yes, employee has failed to return after you've sent a reminder of the return-to work date and has failed to communicate with you about returning to work.

Returning after FMLA

Employee has failed to return to work after FMLA but has requested an additional two weeks for recovery and has a doctor's note supporting the need for additional time to recover. Should you provide the additional time off?

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Response

- In most cases, two weeks will not have a significant impact on the business.
- But if the employee submits doctor's note stating that employee needs additional time, and it is unknown when he will be able to return to work, that would be construed as a request for indefinite time off, which is not required under the ADA.
- Always consider if the employee can qualify for long-term disability.
- If the company/employee doesn't have LTD, then look at the needs of the business to determine whether you can continue to provide unpaid time off. Employer must show "undue burden".

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Pregnancy

- Employee has been working for you for three months and announces her pregnancy.
- Two weeks later, she provides a doctor's note indicating she must go on bed rest.
- You provide her with 14 weeks of leave under the FMLA.
- She provides another doctor's note indicating that she needs to remain on bed rest until delivery and then will likely need another 8 weeks because she will have a C-section.
- What do you do?

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Response

- Provide the additional leave unpaid and allow the employee to return to her job at the expiration of her medical leave of absence.
- In Connecticut, there is no case law testing the limits of the pregnancy leave of absence to accommodate a pregnancy-related medical condition.
- May look to ADA precedent, which allows for longer leaves of absence.

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QUESTIONS?

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Non-Compete Law Update

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FTC Final Rule Recap

- In April 2024, the Federal Trade Commission issued its “Final Rule” banning non-compete clauses in employment because such clauses were deemed an “unfair method of competition” in violation of the Federal Trade Commission Act.
- According to the FTC, “Non-competes block workers from freely switching jobs, depriving them of higher wages and better working conditions, and depriving businesses of a talent pool that they need to build and expand.”

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FTC Final Rule Recap (cont.)

- By a strict party-line vote of 3-2, the FTC's unelected commissioners decided that businesses should not be entitled to the protection of non-compete agreements, regardless of whether they have a legitimate interest worthy of protection.
- The Final Rule sought to upend centuries of state laws governing the use of non-compete clauses in employment, including state laws that already limit or ban their use.

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FTC Final Rule Recap (cont.)

- The FTC Final Rule applied to all employees except it would not apply retroactively to "Senior Executives," which were defined as employees earning over $151,164 per year and who had "final authority to make policy decisions that control significant aspects of a business entity and does not include authority limited to advising or exerting influence over such policy decisions."
- The FTC Final Rule was supposed to take effect in early September 2024.
- Immediately after the FTC issued its Final Rule, lawsuits were filed to prevent the law from taking effect.
- Three federal court decisions ruled on the Final Rule's legitimacy.

FTC Final Rule Recap (cont.)

Ryan LLC, et al. v. FTC (N.D. Texas)

- On July 3, 2024, the court issued a preliminary injunction against the FTC's Final Rule.
- The preliminary injunction did not apply to all employers, but only to those parties in the case.

FTC Final Rule Recap (cont.)

Ryan LLC, et al. v. FTC (N.D. Texas)

- The court found that the FTC lacked authority to create "substantive" rules, despite its general authority to regulate "unfair methods of competition."
- In addition, it was arbitrary and capricious, "because it is unreasonably overbroad without a reasonable explanation. It imposes a one-size-fits-all approach with no end date. . . ."
- The court stated that it would issue a final decision by no later than August 30, 2024.

FTC Final Rule Vacated

Ryan LLC, et al. v. FTC (N.D. Texas)

- On August 20, 2024, the court issued a permanent injunction permanently blocking the FTC Final Rule from going into effect on September 4, 2024.
- The court based its decision on the same rationale applicable to its decision to grant the earlier preliminary injunction.
- The FTC has until October 21, 2024, to appeal.
- No appeal in this case has yet been filed.

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Future of FTC Rule

- FTC will likely appeal the permanent injunction.
- It depends on the composition of the FTC in January 2025, following the election. There are five FTC commissioners. Three commissioners belong to the same party as the President, while two must belong to the other party.
- If Trump is elected President, the FTC may vote to abandon the appeal.
- If Harris is elected President, the FTC will likely pursue its appeal.
- I predict that the nationwide ban will remain, which could lead the FTC to try again with a brand-new rule that addresses some of the Final Rule's shortcomings.

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National Labor Relations Board

- On May 30, 2023, NLRB official stated that non-competes are “usually” illegal.
- Memo from NLRB General Counsel to agency lawyers stated that non-compete agreements discourage workers from exercising their rights under labor law to advocate for better working conditions. E.g., they could prevent workers from resigning or threatening to do so to demand better pay or other improvements.

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National Labor Relations Board (cont.)

- On June 12, 2024, an ALJ ruled that overly broad non-compete and non-solicitation clauses violated an employee's labor rights. This was the first NLRB ruling to find such clauses unlawful under the National Labor Relations Act (NLRA).
- The ALJ found that the clauses were unlawful for non-supervisory employees because they could deter employees from engaging in activities protected by section 7 of the NLRA.
- This decision confirms that the NLRB has taken the General Counsel's memo seriously and is targeting non-solicitation clauses as well as non-competes.

National Labor Relations Board (cont.)

- Whether the NLRB will continue to pursue non-compete and non-solicitation clauses depends on the outcome of the upcoming Presidential election.
- This rollercoaster ride happens when administrative agencies seek to make laws that only a legislature is empowered to make.

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Where do we go from here?

- Just because it may appear that the FTC's non-compete ban is likely never to resurface, states will likely step in to address these issues.
- This year, New York and Connecticut each attempted to pass laws prohibiting non-compete agreements, which failed.
- Regardless of federal and state legislative efforts, courts are scrutinizing non-competes more closely than ever.

Where do we go from here?

- Review Current Non-Compete and Non-Solicitation Agreements
  - First, be prepared to articulate a “protectable interest.” Do not address duration and scope until first identifying an appropriate interest worthy of protection.
    - Protecting the company from additional competition is not a legitimate interest worthy of protection.
    - Protectable Interests: (1) Trade secrets and other confidential information; (2) customer relationships; (3) investment in employer’s reputation in the market; or (4) purchase of a business owned by the employee.
    - Training is not a protectable interest unless it’s highly specialized and otherwise can qualify as trade secret and other confidential information.
    - According to the Restatement of Law, Employment Law: “an employer cannot protect as confidential any information in which it does not have a protectable interest, such as . . . information that would be considered part of the general experience, knowledge, training, and skills that an employee acquires in the course of employment.”

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Where do we go from here?

- Review Current Non-Compete and Non-Solicitation Agreements (cont.)
  - Second, consider whether the duration of the non-competition or non-solicitation clause is as narrow as necessary to protect the interest.
    - Depending on the interest, one year might not be enough, and six months might be too long. It depends on what you are trying to protect.
  - Third, consider the geographic area covered.
  - Fourth, what is the impact of the restriction on the employee's ability to pursue their occupation?
  - Fifth, consider whether there might be other less restrictive ways to protect the applicable interest (e.g., confidentiality or non-disclosure agreements).

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Where do we go from here?

- A word on trade secret and confidential information
  - Generally, employers tend to rely on trade secret and confidential information as a basis for the non-compete restriction.
    - In addition to making sure that the information is truly a trade secret or otherwise confidential, employers must take measures to protect that information.
    - If information goes missing, an employer should be able to identify when and how that information was misappropriated. Smaller businesses have trouble with this piece because they tend to use applications like Dropbox, Google Drive, etc. Employers need to be able to articulate the extent of the protections they apply to their information to keep it safe.

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Where do we go from here?

- Severability or "Blue Pencil" Clauses
  - These should not be treated as boilerplate.
  - They should permit a court and an arbitral forum to rewrite overbroad provisions.
  - They should specify how the overbroad clause should be reduced. Don't leave a court or arbitrator guessing. E.g., use mileage restrictions or specify separate towns/municipalities. Don't use terms restricting the scope to the "Northeast" or the "Greater Metropolitan Area."

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Immigration Update

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Unlawful Conduct

- The INA prohibits 4 types of unlawful conduct:
  - Citizenship or immigration status discrimination.
  - National origin discrimination.
  - Unfair documentary practices.
    - Request more or different documents than required.
    - Reject documents that reasonably appear to be genuine and relate to the employee.
    - Specify certain documents that the worker should present.
  - Retaliation or intimidation (actual or perceived).

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Form I-9: Employment Eligibility Verification

- Verify identity of all new employees.
- Verify the employment authorization of all new employees.
- Complete the most current version of Form I-9 (revision date 8/1/2023).
- Retain Form I-9 for no less than 3 years.
  - Employed for less than 2 years: retain Form I-9 for 3 years.
  - Employed for more than 2 years: retain Form I-9 for one year from termination date.
- USCIS's "I-9 Central" is intended to answer employers' and employees' questions related to the I-9: www.uscis.gov/i-9-central.
- M-724 Handbook for Employers is also accessible from the USCIS website.

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Form I-9: Timelines

- Employee accepts offer of employment.
- Employee completes **Section 1** of the form no later than the first day of work for pay (Ex.: Monday).
- Employee gives documents and form to employer.
- Employer **completes Section 2** of the form no later than 3rd business day employee starts work for pay (Ex.: Thursday).
- If employee's work authorization expires, **complete Supplement B**.

Note: Employers who physically examine the documentation presented by employees may choose to make and retain copies or scans of the documentation; BUT employers that use E-Verify must make and retain copies of documentation presented by employees for List A of the Form I-9.

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Form I-9: Developments

- COVID-19 flexibilities ENDED on July 31, 2023.
- Employers should be conducting in-person reviews of I-9 documentation and reviewing *original* documents.
- **BUT, since August 1, 2023, employers have the option, provided certain other conditions are met, to review I-9 documents virtually.**

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I-9 Developments: Optional Alternative 1 (OA1)

Published in the Federal Register on July 25, 2023

Allows for virtual document examination in limited circumstances

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What is the Alternative Procedure for Remotely Examining Documents?

- An option for employers to remotely examine Form I-9 documents.
- Alternative to physical document inspection.
- Must use E-Verify to confirm employment eligibility.
- Must be offered consistently to all employees.
- Hybrid method:
  - Remote document examination for remote employees.
  - Physical document inspection for on-site employees.

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Which Employers Qualify for the Alternative Procedure to Update Form I-9?

1. Employers enrolled in E-Verify and in good standing*;
2. Employers enrolled in E-Verify with respect to all hiring sites in the United States;
3. Employers that were enrolled in E-Verify at the time that they performed a remote examination of an employee's Form I-9 documentation (for Section 2 or for reverification);
4. Employers that created an E-Verify case for that employee (unless the documentation was reviewed solely for reverification).

An employer meeting all of these requirements is eligible to conduct its post-COVID I-9 update using the OA1 virtual review process outlined.

***Employers must undergo specific trainings available in the E-Verify system.**

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Required OA1 Procedure

1. Obtain and retain copies (front and back, if two-sided) of the Form I-9 documentation being presented by the employee;
2. *After* the employee transmits a clear copy of the documentation, the employer must conduct a live video interaction with the employee in which the employee displays the documentation; and
3. Annotate the Form I-9 to indicate that the required update was conducted under the alternative procedure. This can be done by adding “Alternative Procedure” and the date of the live video interaction to the “Additional Information” field in Section 2 of the Form I-9 (or to Section 3 for reverification, as applicable).
4. The document copies must be retained with the Form I-9 and presented to DHS in the event of an I-9 inspection.

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If using the Alternative Procedure…

- If an employer chooses to offer the alternative procedure to new employees at an E-Verify site, the employer must do so consistently for all new hires at that site.
- An employer can elect to offer the alternative procedure for remote hires only and continue to complete in-person document inspection for employees working on-site or in a hybrid capacity.
- Employers cannot force employees to complete the video I-9 document review if the employee elects to provide documents in person.

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List A Documents: Automatic proof of status and work authorization

- U.S. Passport or Passport Card
- Green Card
- Employment Authorization Card
- Foreign passport with I-94 which allows employment incident to status

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List B Documents: If List B documents shown, must also show documents from List C

- U.S. Driver's License or State Photo ID
- Military ID
- Voter Registration Card
- School or Medical Records (for those under 18)

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Reminder: Categories Allowing Work Incidents to Status

- **E & L Visas**
  - On January 30, 2022, USCIS and CBP began the use of new classes of admission (COA) codes for E and L nonimmigrant spouses (e.g., E-1S, E-2S, E-3S, and L-2S) to reflect work authorization incident to status based on the November 12, 2021 policy change by USCIS. USCIS noted that new I-94 admission records reflecting these codes may be presented for Form I-9 purposes as List C, #7 documents issued by the Department of Homeland Security.

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Ukrainian & Afghan Parolees

Effective November 21, 2022, Ukrainian and Afghan parolees with certain classes of admission are considered employment authorized incident to parole, which means that they do not need to wait for USCIS to approve their Form I-765, Application for Employment Authorization, before they can work in the United States. This updated policy guidance applies to the following individuals, if their parole has not been terminated:

- Afghan parolees whose unexpired Form I-94, Arrival/Departure Record, contains a class of admission of “OAR.”
- Ukrainian parolees whose unexpired Form I-94 contains a class of admission of “UHP” and a most recent date of entry on September 30, 2024, and indicates Ukraine as the country of citizenship on the document (work permit incident to status for 90 days, after which they need to be reverified).

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DOL & IER Updates

- Equal Pay Transparency Laws
  - May affect PERM ads and H-1B LCA Postings.
  - Recommendation: include salary (or range) in newspaper ads and LCA postings.
- Technology Platforms
  - Look at your recruitment platforms to make sure recruitment ads are not discriminatory.
- 2 Safe Harbor Questions
  - Are you now authorized to work?
  - Will you need sponsorship in the future?

→ Unless employee discloses possible future sponsorship, you can't go digging.

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Employment Immigration – Planning Tips

- When thinking about starting a Labor Petition to sponsor a Green Card for an employee, be mindful of how long the process is taking…
  - Current timeframe for PERM Labor Petitions is > 23 months (PWD, recruitment & PERM).
- Given the lengthy timeframes and current priority date backlogs, it is essential to think ahead, particularly if you have employees in certain visa categories (H-1Bs, Ls, Rs).
- Reach out to us proactively so we can plan ahead and/or come of up with alternative immigration options for your employees so we can ensure they can continue to work.
- Temporary “short-term” employment visas are available…but often can’t be done on short notice. Start evaluating next year’s employment needs now!

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Thank you for attending!