

WEBINAR SERIES

Essential Insights on Regulatory Compliance in the Northeast

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Today's Presenters



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Today's Agenda

- Federal Employment Law Updates
- Caselaw Updates
- State Law Updates
- Employment Law Trends and Hot Topics for 2024

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/webinars



Federal Employment Law Updates

US DOL Overtime Rule Update

- Last updated in 2019 with a prior effective date of 1/1/2020.
- New rule was proposed on August 30, 2023.
- Sets the minimum salary threshold for overtime exemptions under the FLSA from **\$35,568** (or \$684/week) to **\$55,068** (\$1,059/week).
- Increases the threshold for highly compensated individuals from \$107,432 per year to \$143,988 per year.
- Comment period closed on November 7, 2023.
- Rule has a mechanism to periodically increase the salary threshold going forward.

US DOL Overtime Rule Update

- Final rule slated for April 2024 release.
- Likely to go into effect 60 days after the release of the final rule.
- Reminders/Takeaways:
 - Employers should plan now for these changes.
 - While some states (NY, CA) already have higher minimum salary thresholds for exempt employees, many states follow the federal overtime rule.

US DOL Independent Contractor Rule Update

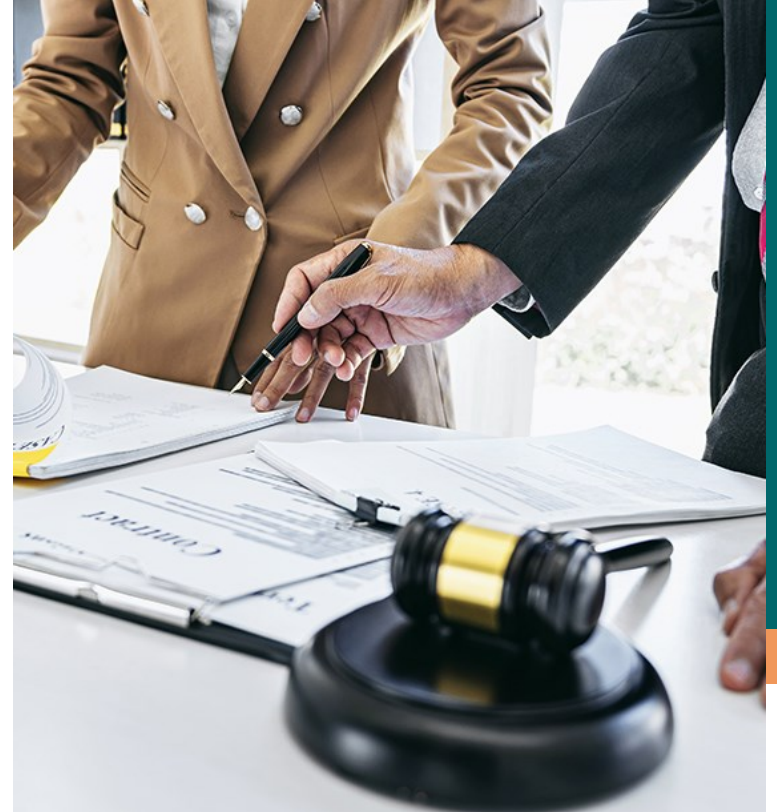
- On January 9, 2024, US DOL released its final rule for independent contractors.
- New rule is effective March 11, 2024.
- It restores a six-factor totality of the circumstances analysis:
 - (1) Opportunity for profit or loss depending on managerial skill
 - (2) Investments by the worker and the potential 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
 - (6) Skill and initiative
- Prior rule did not provide equal weight to the above factors.



NLRB Joint Employer Rule

NLRB Joint Employer Rule

- NLRB issued a new joint employer rule with an effective date of February 26, 2024.
- NLRB is made up of political appointees that serve for a few years.
- Current NLRB is more employee friendly.
- New joint employer rule replaces the rule that was issued in 2020, which was more employer friendly.
- Primarily impacts employers that are franchisors/franchisees; however, other employers need to be aware of the possible impact of this rule on their businesses.



NLRB Joint Employer Rule

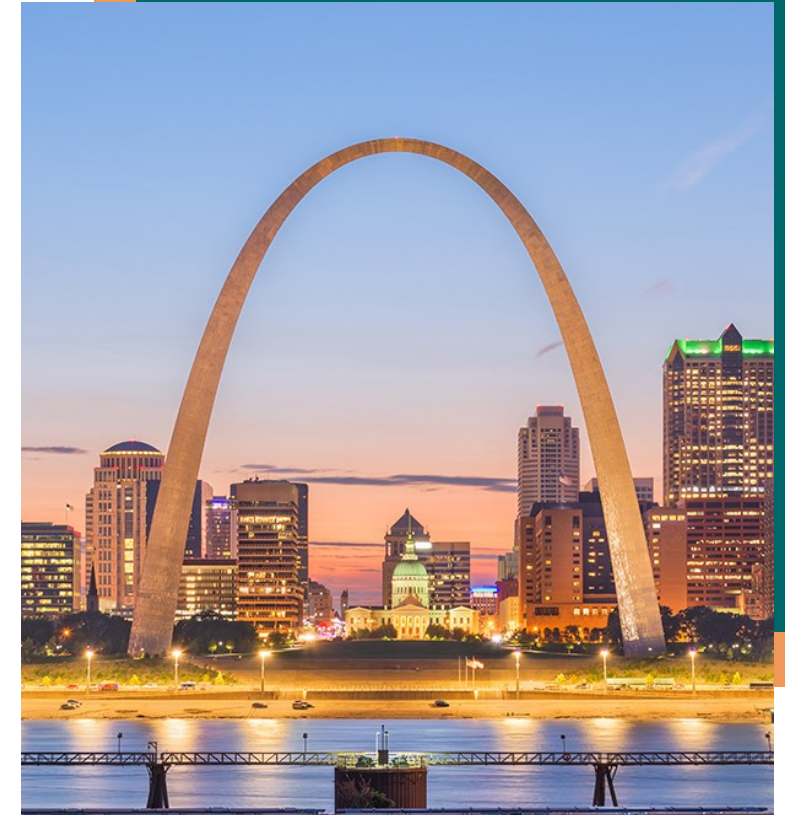
- New rule: an entity may be considered a joint employer of a group of employees if each entity has an employment relationship with the employees and they share or codetermine **one or more of the employees' essential terms and conditions of employment**,
- Terms and Conditions of Employment:
 - (1) wages, benefits, and other compensation;
 - (2) hours of work and scheduling;
 - (3) the assignment of duties to be performed;
 - (4) the supervision of the performance of duties;
 - (5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
 - (6) the tenure of employment, including hiring and discharge; and
 - (7) working conditions related to the safety and health of employees.
- NLRB released a fact sheet about the new rule, which can be found [here](#).

Case Law Update

Muldrow v. City of St. Louis

Case Synopsis

- Issue was whether Title VII prohibits job transfers that don't cause "significant disadvantage" to workers can be considered discrimination in violation of Title VII.
 - Does Title VII require a showing of harm to the employee for a discrimination claim to prevail?
- Why are we talking about this?
 - At the District Court level and Court of Appeals, the employer prevailed.
 - However, the case was appealed to the Supreme Court, who heard oral arguments on December 6, 2023.
 - SC Justices seemed sympathetic to employee.
 - If the Court rules in favor of the employee, it will open the door for additional claims.
- Written decision is likely to be released in June 2024.



Eisenhauer v. Culinary Institute of America

- Federal Case about both the Federal Equal Pay Act and New York's Equal Pay Act.
- Plaintiff alleged its employer violated both of these laws by paying her less than male colleagues.
- Court noted that:
 - Federal EPA allows for unequal pay as long as it is based on “any other factor other than sex.”
 - NY law, however, adds the additional requirement that the factor other than sex must be job-related for the position in question.
- While Defendant prevailed on under the Federal EPA, the Appellate Court clarified that these statutes were very different and they remanded the matter to state court under the state's Equal Pay Act, which had a higher standard.
- This case serves as a reminder that often state laws have more protections for employees than federal laws.

State Law Updates

New York Salary Threshold Change Effective 1/1/24

For New York City, Nassau, Suffolk, and Westchester counties:

- 2024 – \$1,200.00/week (\$62,400.00 per year)
- 2025 – \$1,237.50/week (\$64,350.00 per year)
- 2026 – \$1,275.00/week (\$66,300.00 per year)

For the rest of New York:

- 2024 – \$1,124.20/week (\$58,458.40 per year)
- 2025 – \$1,161.65/week (\$60,405.80 per year)
- 2026 – \$1,199.10/week (\$62,353.20 per year)



New York Salary Threshold Change Effective 1/1/24, continued

Before this increase took effect, the minimum salary threshold was:

- \$1,125 a week (\$58,500 per year) for New York City and Nassau, Suffolk, and Westchester counties, and
- \$1,064.25 a week (\$55,341 per year) for the rest of New York.



New York Salary Threshold Change Effective 1/1/24, continued

Reminder:

In New York, to be exempt from the overtime laws, employees must meet one of the applicable exemptions. Two of the most commonly used and important exemptions are the *executive exemption* and the *administrative exemption*.

Both exemptions require that the employees (1) satisfy the applicable duties test, and (2) meet a salary threshold established by the NYSDOL.



Minimum Wage Update

- Effective January 1, 2024:
 - \$16.00/hour for NYC, Long Island, and Westchester.
 - \$15.00/hour for the remainder of the state
- Effective January 1, 2025:
 - \$16.50/hour for NYC, Long Island, and Westchester.
 - \$15.50/hour for the remainder of the state.
- Effective January 1, 2026:
 - \$17.00/hour for NYC, Long Island, and Westchester.
 - \$16.00/hour for the remainder of the state.



State of Non-Competes in New York

Non-Compete Agreements:

- On December 22, 2023, New York State Governor Kathy Hochul vetoed the bill, previously passed by the state legislature on June 30, 2023, that would ban all new non-competition agreements for workers in New York.

Will a revised bill be introduced?

- Likely.
- Employers should expect a revised bill to be introduced during the 2024 legislative session.

Personal Social Media Accounts- NY Employer Dos and Don'ts

New legislation has been passed, to take effect March 12, 2024, which will prohibit employers from requesting or gaining access to the personal social media accounts of employees or prospective employees.

This law specifically prohibits employers from requesting, requiring, or coercing any employee or prospective employee to:

- Disclose any username and/or password or other authentication information for personal social media accounts.
- Access the employee's or prospective employee's personal social media account in the presence of the employer.
- Reproduce in any manner photographs, videos, posts, or other information contained within the personal social media accounts obtained by the means prohibited above.
- An employer may not discharge, discipline, or otherwise penalize an employee or threaten to do so, for refusal nor can the employer fail or refuse to hire any prospective applicant for refusal to disclose this prohibited information.

State of Statute of Limitations in New York

- On November 17, 2023, New York State Governor Kathy Hochul signed a bill extending the statute of limitations for filings complaints of discrimination and retaliation claims with the State Division of Human Rights.
- Statute of limitations is increasing **from 1 year to 3 years**.
- New law will take effect on February 15, 2024, and applies to claims arising on or after that date.

New York City: Earned Sick and Safe Time Act Changes

Earned Sick and Safe Time Act (ESSTA) Changes:

- The regulations clarified that NYC employers with 100 or more employees nationwide are required to provide up to 56 hours of ESSTA leave to employees working in NYC.
- NYC employers with less than 100 employees nationwide have to provide up to 40 hours of ESSTA leave to employees working in NYC.

Hybrid Workers:

- Covered by Sick Leave Law – covered for work performed in the City.

Workers' Bill of Rights:

- Beginning July 1, 2024, New York City employers will be required to distribute and post a city-created "Workers' Bill of Rights" notice informing employees of their employment rights.

New Jersey- UI Insurance Claim Process Changes

Amendments to New Jersey's Unemployment Compensation filing requirements were scheduled to take effect on July 31, 2023, but the state has provided an update that it is delaying enforcement of the law.

NJDOL has not yet released a new effective date.

New Requirements:

- New Jersey employers will be required to electronically report certain "separation information" to the NJDOL immediately after an employee is separated.
- Employers will now need to electronically report the necessary information.
- Still waiting on official guidance.

New Jersey- UI Insurance Changes

Changes:

- **2023:** To be eligible for UI, the EE must have earned at least **\$260 per week** (a base week) during 20 or more weeks in covered employment during base year, or at least \$13,000 in total covered employment.
- **2024:** To be eligible for UI, the EE must have earned at least **\$283 per week** (a base week) during 20 or more weeks in covered employment during base year, or at least \$14,200 in total covered employment.

The weekly benefit rate is capped at a maximum amount based on the state minimum wage.

- **2023:** the maximum weekly benefit rate was \$830.
- **2024:** the maximum weekly benefit rate is \$854.

Massachusetts' Proposed Pay Equity Bill

Massachusetts Senate and House passed a bill requiring private employers with over 25 employees in MA to:

- Post the "pay range" for a particular position on job postings,
- Disclose the pay range for a position to employees who are offered a promotion or a transfer to a new position with different job responsibilities, and
- Provide the pay range for a particular position to an employee holding the position or to an applicant for the position upon request.

Although not yet signed, the Governor is expected to sign the legislation, which will go into effect one year from the date it is signed into law.

Rhode Island's Increased Wage and Hour Penalties

Increased Wage and Hour Penalties:

- Taking effect January 1, 2024, Rhode Island's new law will impose criminal penalties on employers for knowing and willful wage and hour violations.
- The law also includes harsher penalties for employers generally, and those in the construction industry specifically, that misclassify workers as independent contractors.

Connecticut Data Privacy Act

Amendments to the Connecticut Data Privacy Act (CTDPA), the state's comprehensive data privacy law, are rolling out to enhance privacy protections for consumers.

- July 1, 2023: the new law amends the CTDPA to protect consumer health data which includes any information used to identify a consumer's physical or mental health condition or diagnosis, including gender affirming health data and reproductive or sexual health data.
- July 1, 2024: the CT Online Privacy law requires social media platforms to give minors, defined as consumers under 18 years of age, the right to "unpublish" or remove the platform from public visibility and delete their accounts.
- October 1, 2024: Children Online Safety Protections - online services, products, or features that are utilized by minors must: 1) use "reasonable care" to avoid any "heightened risk of harm" to minors caused by the service, product, or feature; and 2) conduct a data protection assessment of such online services to address any heightened risk of harm to minors.



Employment Law Trends and Hot Topics for 2024

Pay Transparency

- States are pushing for pay transparency in job postings and to employees interested in internal job openings.
- Goal is to level the playing field for women and minorities.
- Employers posting for new jobs should review their job postings for compliance with applicable state law.



Data Privacy

- Data Privacy laws continue to trend across the country.
- Employers should review their internal processes and make sure they have a data privacy policy that complies with the laws in the states in which they do business.



Non-Competes

- On both the federal and state levels, non-competes continue to face a high level of scrutiny.
- The government is concerned with employees being able to move maintain employment.



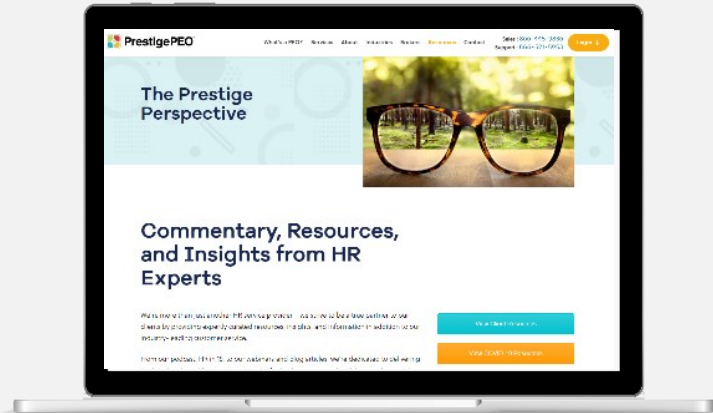
Paid Family Leave Funding

- We continue to see states enact paid family leave laws and fund paid family leave through employee and sometimes employer contributions.
- Employers entering into new states should carefully review the paid leave family laws of each state for compliance.



QUESTIONS?

Questions / Comments / Discussion?



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