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A Workplace Law Update

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New DOL and FTC Rules (Maybe) Mandate Employment Changes

By: Rebecca Seguin-Skrabucha, Member, Workplace Law Group

It was a busy and high-profile week for the Department of Labor ("DOL") and the Federal Trade Commission ("FTC"), both of which issued new rules that require employers to thoroughly review their use of the exempt classification and non-competition restrictions. Though enforcement dates are set under both rules, legal challenges are anticipated and already pending, likely affording employers a pause and/or altogether excusal from the new requirements.

The DOL Rule – Exempt Salary Threshold

Under the Fair Labor Standards Act ("FLSA"), employees are entitled to overtime compensation for any week in which they work more than 40 hours, unless they are classified as "exempt." Certain "white-collar" employees are eligible for executive, administrative, and professional exemptions if they are compensated on a salary basis at a rate not less than $35,568 annually, and they satisfy the corresponding duties tests.

The new DOL rule, released on April 23, 2024, increases the salary threshold from $35,568 to $43,888 on July 1, 2024 and then to $58,656 on January 1, 2025.

This means that employers with exempt employees who are earning less than the increased salary thresholds must decide whether to increase such employees' annual compensation or reclassify them as non-exempt and, therefore, eligible for overtime compensation.

Immediate action by employers may not be necessary as legal challenges are all but guaranteed because the new DOL rule resembles, in part, a similar rule issued in 2016 which was stayed and eventually struck down by a federal judge. In the meantime, employers are encouraged to audit the current compensation levels of their exempt employees to understand and quantify their theoretical compliance.

The FTC Rule – Non-Competition Restrictions

On April 23, 2024, the FTC commissioners approved a final rule that almost entirely bans non-competition agreements. The final rule is scheduled to take effect 120 days after publication in the Federal Register.

The final rule would prohibit employers from entering into new non-competition agreements and require employers to issue notices of unenforceability to employees whose current employment agreements contain non-competition restrictions.

There are two narrow exceptions under the final rule: (1) employers may enforce non-competition restrictions upon "senior executives" (i.e., executives in "policy making positions," earning at least $151,164 annually) that predate the effective date of the final rule; and (2) employers may enter into and enforce non-competition restrictions in connection with "a bona fide sale of a business entity."

The U.S. Chamber of Commerce is among the litigants who have already sued the FTC, seeking to block the new FTC rule and arguing that the FTC is acting upon an unconstitutional overreach.

A stay of the rule is anticipated, suggesting, again, that immediate action by employers is unnecessary. Nonetheless, employers should evaluate their current use of non-competition agreements for compliance with the pending federal rule and any current state laws, some of which already limit or prohibit certain restrictive covenants.

Bodman's Workplace Law Group continues to monitor developments with regard to the enforceability of both the DOL and FTC rules. Employers should contact any member of Bodman's Workplace Law Group to discuss strategies for any interim adjustments to employee classifications, compensation, and restrictive covenants.

Bodman may not be able to respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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