

Update on New DOL Overtime Rule and FTC Final Rule Banning Non-Competes

By: John Vering and Cody Weyhofen

Overtime Regulations

On April 30, 2024, we published a client alert advising you that on April 23, 2024, the U.S. Department of Labor ("DOL") released its Final Rule, significantly raising the minimum salary thresholds for certain overtime exemptions (the so-called white collar exemptions ["WCE"] for executive, administrative, and professional employees) under the Fair Labor Standards Act ("FLSA"). The minimum salary levels for an executive, administrative, or professional employee to be exempt from overtime is scheduled to increase effective July 1, 2024, from \$684 per week (equivalent to \$33,568 per year) to \$844 per week (equivalent to \$43,888 per year). For employees eligible for the highly compensated employee exemption, the increase effective July 1, 2024, is from \$107,432 per year to \$132,964 per year. The regulations also provide for a second increase effective January 1, 2025, which would increase the WCE threshold to \$1,128 per week (\$58,656 per year) and the threshold for highly compensated employees to \$151,164 per year.

What to do in Light of Legal Challenges to Overtime Regulations

As we predicted, multiple lawsuits have been filed seeking to block the DOL from raising the salary thresholds described above. Given that, July 1, 2024, is rapidly approaching and oral arguments on the pending legal challenges are not scheduled until June 24, 2024, with no date scheduled for a ruling, we recommend that employers who have exempt employees who will fall below the new July 1, 2024, or January 1, 2025 salary thresholds, be prepared to timely either reclassify the employee as non-exempt and track their hours worked or raise the employee's salary.

Employers should also monitor the ongoing legal challenges to the rule but hold off communicating to affected employees whether their salaries will be raised or their status changed to non-exempt for as long as practical prior to July 1, 2024.

FTC Ban on Non-Compete Agreements

On April 23, 2024, the Federal Trade Commission ("FTC") voted 3-2 to issue a Final Rule ("Rule") that would generally ban employers from entering into non-competes with workers and require employers to notify workers that their existing non-compete agreements are unenforceable. We published a client alert explaining the Final Rule, which is scheduled to take effect September 4, 2024 (unless enjoined/stopped by a court).

Legal Challenges to FTC Ban

As we also predicted, in regards to the FTC rule banning non-compete agreements, lawsuits are pending to prevent the FTC from banning non-compete agreements. One lawsuit is pending in federal court in Texas, and that judge has announced that a ruling is expected on July 3, 2024. Another lawsuit is pending in federal court in Pennsylvania, and that judge has announced that a ruling is expected on July 23, 2024. Either judge *might* enter an order preventing the FTC from enforcing the non-compete ban. Of

course, any ruling by a federal trial court will likely be appealed, and the issue might eventually be decided by the United States Supreme Court.

What Should Employers Do?

As the effective date approaches, employers should take stock of what current and former employees are covered by non-compete agreements, and be prepared to notify them that their non-compete agreements are not enforceable if the Rule is not enjoined (declared unlawful) by a court. Keep in mind that there are laws in some states that ban or restrict non-compete agreements or make them unlawful as to certain categories of workers. Employers should monitor the above two cases, consider whether they need non-compete agreements for certain employees or whether non-solicit and non-disclosure agreements adequately protect the employer's trade secrets (confidential information and customer relations), comply with state and local laws, and be prepared to communicate the company's position to employees and prospective employees who may be under the impression that non-compete agreements are now unlawful.

Please contact the Seigfreid Bingham Employment Law team with any questions about this Rule banning non-competes or the new overtime regulations or if you need assistance preparing to comply with these new regulations. We will be monitoring further developments and legal challenges to these new regulations.

This article is general in nature and does not constitute legal advice. Readers with legal questions should consult the authors, John Vering (jvering@sb-kc.com) or Cody Weyhofen (cweyhofen@sb-kc.com), or other members of the Seigfreid Bingham's Employment Law Group, including Shannon Cohorst Johnson (sjohnson@sb-kc.com), Mark Opara (mopara@sb-kc.com), John Neyens (jneyens@sb-kc.com), Brenda Hamilton (bhamilton@sb-kc.com), Julie Parisi (jparisi@sb-kc.com), Christopher Tillery (ctillery@sb-kc.com), Katie Conklin (KConklin@sb-kc.com), or your regular contact at Seigfreid Bingham at 816.421.4460.