Wage & Hour Developments: A Year in Review

2024

JacksonLewis

Table of Contents

Introduction

This Year in Review looks back at some of the key wage and hour developments in 2024, including U.S. Department of Labor (DOL) regulatory activity, significant court decisions, and state legislative and regulatory changes.

The DOL pushed forward an ambitious regulatory agenda but faced considerable challenges in the courts. Most notably, the DOL's crown jewel, a final rule sharply increasing the salary threshold from $35,568 to $58,656 for employees subject to the "white collar" exemptions under the Fair Labor Standards Act (FLSA), took effect on July 1, 2024. However, the rule was invalidated in November by a federal court in Texas before the largest increase was scheduled to go into effect.

The DOL also issued a rule defining "independent contractors" under the FLSA, which critics argued made it more difficult to classify workers as independent contractors. But that rule also faces legal challenges in several courts and, given the change in administration, may ultimately be withdrawn. For now, the DOL has asked an appeals court for more time to consider how it will proceed in the litigation, and oral argument has been postponed. A rule implementing a minimum wage hike for federal contractors is also the subject of numerous lawsuits. Recently, a circuit split has been created, and the U.S. Supreme Court has denied a petition for review.

The Supreme Court issued a transformative decision (*Loper Bright*) overruling its *Chevron* precedent and reversing decades of judicial deference to federal agency rulemaking, including DOL actions. Also, the Supreme Court heard oral argument in 2024 regarding whether employers bear the burden of proving an exemption from overtime applies by a preponderance of the evidence or a higher "clear and convincing" standard applied by the Fourth Circuit. The Court answered that question in early January 2025, finding a preponderance of the evidence applies.

Federal circuit courts of appeals issued a flurry of precedential decisions addressing minimum wage, overtime, exemptions and the "salary basis" test, compensable time, expense reimbursement, employee status, and procedural matters, among others.

State and local legislatures and state agencies also did their part, adopting measures imposing new legal obligations on employers and minimum wage increases.

Here is an overview of the most noteworthy wage and hour developments from 2024 … and the first month of 2025.

Reach out to your attorney at Jackson Lewis for more information or guidance on any of the topics in this report.

DOL Developments

Minimum Salary Requirement Rule Rebuffed

The DOL issued a final rule on April 26, 2024, increasing the minimum salary requirements for the "white collar" or "EAP" exemptions (executive, administrative, and professional) from the FLSA's minimum wage and overtime pay requirements. The final rule sharply increased, in two stages, the minimum salary an employee must be paid for a white-collar exemption to apply.

The first increase took effect July 1, 2024, raising the salary threshold from $684 per week ($35,568 per year) to $844 per week ($43,888 annually). The highly compensated exemption (HCE) total annual compensation level rose from $107,432 per year to $132,964 per year. The second, more substantial increase would have raised the salary minimum to $1,128 per week ($58,656 annually) and hike the highly compensated floor to $151,164 per year. The rule also provided for automatic updates to the salary thresholds every three years to reflect current earnings data, beginning July 1, 2027.

The rule immediately faced opposition. Several lawsuits challenged the new minimum salary thresholds. In consolidated cases brought by the State of Texas and a coalition of business groups, a Texas federal court enjoined the DOL from enforcing the rule, but only as to employees of Texas state government. *State of Texas v. United States DOL*, 2024 U.S. Dist. LEXIS 114902 (June 28, 2024). With the court declining to issue broader nationwide relief, the first minimum salary level increases took effect as scheduled on July 1.

While that was pending, the U.S. Court of Appeals for the Fifth Circuit, in which the Texas court resides, issued a decision in a long-running case seeking to invalidate the minimum salary thresholds in effect prior to the July 1 increase. *Mayfield and R.U.M. Enterprises, Inc. v. United States DOL*, 2024 U.S. App. LEXIS 23145 (Sept. 11, 2024). In *Mayfield*, a fast-food franchise operator had filed suit, taking aim at the $684 weekly ($35,568 per year) floor and $107,432 HCE annual threshold that took effect in 2019, under a rule issued during the first Trump Administration. The plaintiff argued the DOL lacks statutory authority to impose any minimum salary criteria for application of the EAP exemptions.

The Fifth Circuit panel upheld the 2019 rule and the DOL's authority to impose some minimum salary requirement. (The appeals court upheld the 2019 rule under the more rigorous standard of review set forth by the Supreme Court in its landmark *Loper Bright* decision. See below.) While a salary requirement could serve as a proxy for identifying employees who are performing exempt duties, the appeals court held, the DOL may not set the salary floor so high that it effectively negates the duties test, which appears in the text of the FLSA..

Resolving the legal challenge to the 2024 rule on the merits, the Texas federal court found the DOL's latest rule had done just that. *State of Texas v. United States DOL*, 2024 U.S. Dist. LEXIS 207864 (Nov. 15, 2024). While the Fifth Circuit had not addressed how high the salary threshold could be set, the district court found that the DOL's "staggering" 2024 increase effectively displaced the duties test, as evidenced by the sheer number of employees excluded from the exemption despite the exempt duties they perform. Therefore, the court vacated the rule in its entirety, including the July 1 salary level increase already in effect. The second minimum salary increase, scheduled for Jan. 1, 2025, never took effect. The salary level in effect prior to July 1 ($684 per week, $35,568 per year) was restored, and the annual salary level for the HCE exemption returned to its pre-July 1 threshold of $107,432.

The DOL has filed an appeal of the district court's decision striking down the 2024 rule. The Trump Administration may withdraw the appeal or choose not to defend the 2024 rule on appeal. It is also possible the Administration may maintain the appeal for the purpose of defending its rulemaking authority but later withdraw the 2024 rule and undertake new rulemaking. This was the approach taken by the first Trump Administration after an Obama-era minimum salary rule was likewise invalidated.

On Dec. 30, 2024, another Texas federal court issued a cursory order adopting the reasoning of *Texas v. DOL* and awarding summary judgment to plaintiffs in a separate legal challenge to the minimum salary rule. *Flint Avenue LLC v. United States DOL*, No. 5:24-cv-130. The court rejected the DOL's contention that the Nov. 15 ruling was in conflict with the Fifth Circuit's *Mayfield* decision. The DOL also is defending the rule in an ongoing suit brought in the federal court in the District of Columbia. *Association of Christian Schools Int'l v. United States DOL*, No. 1:24-cv-2618.

For their part, the plaintiffs in *Mayfield* have filed a petition for rehearing *en banc*, hoping to overturn the Fifth Circuit's holding that the DOL has statutory authority to impose a minimum salary requirement.

For a deeper dive:

- DOL Releases Final White-Collar Exemption Rule, Sets Minimum Salary to Increase in Phases Beginning July 1, 2024
- Fifth Circuit Holds DOL Can Set Salary Floor for White-Collar Exemptions

Independent Contractor Rule Under Fire

The DOL released a final rule revising the standard for determining whether a worker is an employee or independent contractor under the FLSA. The rule, which took effect March 11, 2024, formally adopted the six-factor "economic realities" test to determine whether a worker is an employee or independent contractor. The DOL historically applied these factors in resolving the independent contractor question but never formally codified their use.

These 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 also formally rescinded the 2021 independent contractor rule issued by the DOL in the waning days of the first Trump Administration. The 2021 rule focused more narrowly on a few factors for determining whether a worker is an independent contractor and arguably allowed for the expanded use of independent contractors. After President Joe Biden took office, however, the DOL delayed the 2021 rule's effective date and ultimately withdrew it.

Litigation seeking to invalidate the 2024 rule promptly ensued. Freelance writers and editors filed suit. They wanted to maintain their independent profession and claimed the rule would force them into undesired employment relationships or they would lose business clients that feared potential liability. A federal court held the independent contractors lack standing to challenge the rule because they are not a party subject to the regulation. *Warren v. United States DOL*, No. 2:24-cv-7 (N.D. Ga. Oct. 7, 2024). An appeal is pending in the Eleventh Circuit. In another suit brought by freelancers, a federal magistrate recommended dismissal for the same reason. The plaintiffs in that case have filed an objection to the magistrate judge's recommendation. *Littman v. United States DOL*, No. 3:24-cv-00194 (M.D. Tenn. Nov. 13, 2024).

The most significant litigation is a lawsuit filed by business groups. It had begun as a challenge to President Biden's withdrawal of the 2021 rule. *Coalition for Workforce Innovation v. Walsh*, No. 1:21-cv-130 (E.D. Tex.). The plaintiffs argued that the 2021 rule was improperly rescinded and later challenged the 2024 rule. DOL's motion to dismiss the case is pending. Other businesses sued to preserve the ability to retain independent contractors. A federal court in Louisiana declined to issue a TRO or preliminary injunction, concluding that the trucking company plaintiffs failed to show they would suffer harm absent injunctive relief. *Frisard's Transp., LLC v. United States DOL*, No. 2:24-cv-347 (E.D. La. March 8, 2024). The plaintiffs have appealed the ruling.

Most recently, a federal court upheld the independent contractor rule on the merits in a suit brought by another trucking company, finding the rule was not arbitrary or capricious under the Administrative Procedures Act. The court granted the DOL's motion to dismiss or, in the alternative, summary judgment. *Colt & Joe Trucking v. United States DOL*, 2025 U.S. Dist. LEXIS 4657 (D.N.M. Jan. 9, 2025).

The fate of the independent contractor rule, however, ultimately may be sealed by the Trump Administration outside of litigation. The Trump DOL could rescind the 2024 rule and undertake new rulemaking to restore the 2021 rule introduced during President Trump's first term. As with its minimum salary rule, the DOL is defending the independent contractor rule on several fronts.

The U.S. Department of Justice (DOJ) has asked the Fifth Circuit to pause the appeal pending in the *Frisard's Transportation* case and postpone oral argument, which had been scheduled for Feb. 5, 2025, to give the new administration time to consider the issues at stake and determine how the DOL wishes to proceed. On Jan. 24, 2025, the Fifth Circuit granted the motion. The DOJ also has asked the district court for a continuance of a scheduled status conference in the *Coalition for Workforce Innovation* case for similar reasons.

For a deeper dive:

- Labor Department Releases Independent Contractor Final Rule, Revising Standard
- Independent Contractor Rule Takes Effect, But Legal Challenges Mount

Tip Rule Twists and Turns

In a landmark decision, the Fifth Circuit struck down a 2021 DOL "dual jobs" rule, which set strict limits on the amount of time tipped employees can spend performing work that does not directly generate tips. *Restaurant Law Center v. United States DOL*, 2024 U.S. App. LEXIS 21449 (Aug. 23, 2024).

The FLSA permits tipped employees to receive $2.13 per hour in a direct wage, so long as the combination of their direct wage and tips equals at least the $7.25 hourly minimum wage. (Many states have laws that require higher tipped rates.) The dual jobs regulation, first promulgated in 1967, provides that if an employee is working two separate occupations (such as server and cook), this tip credit against the minimum wage is available only when the employee is working in the tipped occupation.

The "80/20" or "20%" rule limits the amount of time an employee may spend on work that is not tip-producing to 20% of the employee's hours in a given workweek, while still allowing the employer to take the tip credit. This provision first appeared in the DOL's field handbook in 1988. The 2021 rule codified this guidance for the first time. The rule further distinguished between tip-producing work, such as waiting tables, and work that directly supports tip-producing work, such as bussing tables. Finally, the rule imposed a new "30-minute" restriction, limiting to 30 minutes the amount of continuous time during a shift that a tipped employee may spend performing tasks that are "directly supporting" tipped work.

The Fifth Circuit found the 2021 rule conflicts with the statutory scheme that Congress established under the FLSA. The FLSA allows the tip credit for any employee "engaged in" an "occupation … that customarily and regularly receives more than $30 a month in tips," the court observed. It continued, "The FLSA does not ask whether duties composing that given occupation are themselves each individually tip producing." The court vacated the rule, voiding the provision nationwide. The court made clear, however, that the underlying dual jobs regulation was valid.

On Dec. 17, 2024, the DOL issued a final rule removing the "80/20" and 30% non-tipped work restrictions added in the 2021 rule and reinstating the text of the dual jobs regulation as it existed prior to the effective date of the invalidated rule. As restored, the regulation does not impose any time restrictions on the amount of non-tipped work that tipped employees may perform. Issuance of this final rule may signal the DOL has chosen not to file a petition for review with the Supreme Court. Even if a petition were to be filed, the Trump Administration likely would withdraw it, as the 2021 rule is inconsistent with a 2020 rule proposed during the first Trump Administration. The new administration may opt to go even further and issue a new regulation to replace the haggard 1967 regulation.

Caselaw in several federal circuits outside the Fifth Circuit uphold the 80/20 rule as it existed prior to the 2021 rule. These rulings generally deferred to the DOL and its interpretation of its dual jobs rule. Following the Supreme Court's *Loper Bright* decision, however (see below), the DOL's interpretation is not subject to judicial deference.

For a deeper dive:

- Fifth Circuit Strikes Down DOL Tip Credit Rule: What It Means for Employers
- Tipping the Scale: The New 80/20 Rule
- DOL Returns to Pre-2021 Dual Jobs Regulation for Tipped Employees

Uncertain Fate of Federal Contractor Minimum Wage Mandate

President Biden issued Executive Order (EO) 14026 in 2021, which increased to $15 the minimum hourly wage for employees working on federal government contracts and provided for annual increases to the minimum wage. On Sept. 30, 2024, the DOL announced the wage rate of $17.75 per hour to take effect Jan. 1, 2025.

In November, the U.S. Court of Appeals for the Ninth Circuit held that the president lacked authority under the Procurement Act to issue EO 14026. *State of Nebraska v. Su,* 2024 U.S. App. LEXIS 28010 (Nov. 5, 2024). The appeals court also held the DOL regulation implementing the EO was arbitrary and capricious because the DOL failed to consider alternatives to the $15 rate, such as a lower wage rate or phasing in the $15 rate over several years. The appeals court did not, however, invalidate EO 14026 or the implementing regulation. Instead, it sent the case back to the federal district court in Arizona, which had upheld the wage mandate in a legal challenge brought by several states.

On remand, the district court is expected to issue a preliminary injunction barring application of the wage mandate, although it is not clear whether the injunction will apply to just the plaintiff states (to the extent of their relationships with the federal government as federal contractors) or as a complete ban to enforcement within the states. Meanwhile, on Dec. 20, 2024, the DOL filed a petition for *en banc* rehearing of the divided Ninth Circuit panel decision.

Two other legal challenges were filed. The Fifth Circuit recently reversed a 2023 decision invalidating EO 14026 in a case brought by the states of Louisiana, Mississippi, and Texas. The Texas district court had narrowly enjoined the wage mandate only as applied to the plaintiff state governments, refusing to issue a nationwide injunction because it did not want to "encroach" upon other federal courts that had upheld the executive order. *State of Texas v. Biden*, 2023 U.S. Dist. LEXIS 171265 (Sept. 26, 2023). The Fifth Circuit, however, reversed the decision and upheld EO 14026, setting up a split with the Ninth Circuit. *State of Texas v. Trump*, 2025 U.S. App. LEXIS 2485 (Feb. 4, 2025).

In another case, the U.S. Court of Appeals for the Tenth Circuit affirmed a lower court's refusal to grant a preliminary injunction barring enforcement of the wage mandate. *Bradford v. United States DOL*, 2024 U.S. App. LEXIS 10382 (Apr. 30, 2024). The appeals court held the plaintiffs were not likely to show the DOL lacked statutory authority to issue the DOL rule implementing EO 14026. Again, however, the appeals court did *not* issue a final decision on the merits. The plaintiffs filed a petition for certiorari at the Supreme Court asking the justices to address whether the wage mandate exceeds the president's authority under the Procurement Act and, if not, whether the statute improperly gives lawmaking authority to the president. On Jan. 13, 2025, the petition for certiorari was denied.

For now, the minimum wage mandate is in effect. But a broader reprieve (through a variety of avenues) may be forthcoming. The Trump Administration may opt to abandon the bid to rehear the Ninth Circuit panel's holding. President Trump also may opt to rescind President Biden's executive order and decline to defend the wage mandate if the Supreme Court decides to review the Tenth Circuit opinion.

For a deeper dive:

- Federal Contractors in Flux: Ninth Circuit Finds President Biden Can't Mandate Minimum Wage Under EO 14026
- Texas Federal Court Bars Enforcement of $15 Minimum Wage for Federal Contractors Against Three States
- Tenth Circuit Upholds Court's Refusal to Enjoin Federal Contractor Minimum Wage Hike

Davis-Bacon Prevailing Wage Rule Partially Enjoined

A federal judge in Texas blocked the DOL from enforcing several provisions of its 2023 prevailing wage final rule under the Davis-Bacon and Related Acts (DBRA) for construction contractors. *Associated General Contractors v. United States DOL*, 2024 U.S. Dist. LEXIS 137938 (June 24, 2024). The DBRA applies to federal contractors and subcontractors performing on contracts in excess of $2,000 for construction, alteration, or repair of public buildings or public works and requires employees be paid no less than local prevailing wages and fringe benefits for corresponding work on similar projects in the area.

The final rule ushered in the most significant changes to the DBRA regulations in four decades. Among other changes, the rule redefined the term "prevailing wage" and returned to a three-step process for determining what the prevailing wage will be for workers in the same classification and area; codified the requirement that fringe benefits should be annualized; and required recordkeeping for at least three years after all work on the prime contract is completed.

A coalition of construction industry groups sued and sought injunctive relief to bar the DOL from enforcing four regulatory changes. The court enjoined three of the four provisions: a provision that would read the DBRA's prevailing wage requirements into all federal contracts by operation of law; a provision narrowing the rule's "material supplier" exemption; and a provision applying the DBRA's prevailing wage requirements to truck drivers and others not employed at the worksite. The court imposed a nationwide preliminary injunction preventing the DOL from implementing and enforcing them. The other provisions of the 2023 DBRA rule, however, are in effect.

The DOL filed an interlocutory appeal on Aug. 22, 2024, seeking to overturn the preliminary injunction. The appeal is pending in the Fifth Circuit. The plaintiffs on Dec. 16, 2024, filed a motion for summary judgment in the district court below, seeking to resolve the case on the merits. The DOL filed a cross-motion for summary judgment on Jan. 16, 2025.

A separate lawsuit is ongoing in a Texas federal court, brought by another construction industry group. In that case, the plaintiffs have challenged all the rule's provisions and have asked the court to set aside and vacate the rule in its entirety. *Associated Builders and Contractors v. Su*, No. 1:23-cv-396 (E.D. Tex.). Cross-motions for summary judgment are also pending in that case.

For a deeper dive:

- Labor Department's Davis-Bacon Act Final Rule: Changes for Federal Contractors
- Court Enjoins Key Provisions of Davis-Bacon Prevailing Wage Final Rule for Construction Contractors

DOL Moves to End Subminimum Wage for Employees with Disabilities

The DOL issued a proposed rule to end the practice of paying subminimum wages to certain workers with disabilities. The proposed rule, announced Dec. 3, 2024, marks the first rulemaking related to the subminimum wage in 35 years. The regulation saw its last substantive update in 1989.

The FLSA allows employers to pay productivity-based wages of less than the federal minimum hourly rate (currently, $7.25) to certain workers with disabilities. FLSA, Section 14(c), authorizes the secretary of labor to issue certificates to employers permitting them to pay a subminimum wage "when necessary to prevent curtailment of opportunities for employment." Use of the subminimum wage program has waned in recent years, and the number of certificate holders has declined sharply. The DOL issued the proposed rule after "preliminarily" concluding that the subminimum wage program is no longer necessary to boost work opportunities for individuals with disabilities.

If enacted, the rule would mostly impact community-based rehabilitation and training programs. It remains to be seen whether the incoming administration will finalize the proposed rule

For a deeper dive:

- Proposed Rule Would End Subminimum Wage for Employees with Disabilities

DOL Opinion Letters Address Expense Reimbursement, Tip Pools

The DOL issued the first opinion letters of the Biden Administration in the last quarter of 2024. The letters discuss particularly challenging wage and hour compliance issues in somewhat uncommon factual scenarios.

FLSA 2024-01, issued Nov. 8, 2024, addressed whether per diem expense payments for tools and equipment may be excluded from the hourly rate when calculating overtime pay under the FLSA. A company that services oil and gas industry clients sought guidance from the Wage and Hour Division on whether it could increase from $25 to $150-200 the daily rate it pays its pipeline inspectors for use of their personal devices and "ancillaries" on remote jobsites and exclude a portion of that higher payment from the regular rate of pay.

The FLSA requires "all remuneration" to be included in the regular rate when computing overtime pay. There are certain exceptions, however, including reimbursement for expenses incurred by an employee on the employer's behalf. The FLSA regulations state that only the "actual or reasonably approximate amount of the expense is excludable." The Wage and Hour Division administrator advised that the $150-$200 payments are not likely to be excludable from the regular rate. Because the proposed payments are six to eight times greater than the current $25 per day that the company pays, they do not appear to be a reasonable approximation of the expenses employees incurred, the administrator advised. Also, the employer presented no documentation that the inspectors actually incurred these ongoing expenses.

FLSA 2024-02, released Dec. 18, 2024, responded to a brewery and taproom's request for guidance on whether a bartender who holds an equity interest in the business can participate in the bartenders' tip pool. The individual in question owns "at least" a 20% interest in the business. The wage and hour administrator's response expressly does *not* address whether the bartender is a statutory employer under the FLSA given their equity interest. The letter addresses only whether the bartender is a manager or supervisor within the meaning of FLSA, Section 3(m)(2)(B), and thus excluded from the tip pool. The administrator advised that, because the bartender is "actively engaged in managing the bartenders," the bartender is a manager or supervisor and cannot receive pooled tips for the time in which the individual is working as a bartender.

FLSA 2025-1, released Jan. 14, 2025, addresses whether a "quick service" restaurant's managerial and supervisory employees may participate in an employer-mandated tip pool. The restaurant does not take the tip credit; all employees are paid at least the applicable hourly minimum wage. Customers often leave cash tips in a tip jar or on their credit card bills, though. Team leads and assistant team leaders typically perform the same customer service and cleaning duties as crew members.

The employer asked whether the team leads and assistant team leaders can participate in the tip pool when they work a shift in a nonsupervisory capacity. The wage and hour administrator advised that, if these employees meet the executive exemption duties test and thus qualify as managers or supervisors, they may not receive tips from the tip pool.

The employer also asked whether shift leads, who are not managers or supervisors but who are the highest-ranking employees during certain shifts, may participate in the tip pool during such shifts. The wage and hour administrator advised that shift leads may participate in the tip pool even on shifts where they are the most senior employee on staff assuming they do not meet the executive employee duties test.

For a deeper dive:

- DOL Opinion Letter Addresses Expense Reimbursement and Regular Rate
- Wage and Hour Division Opinion Letter FLSA 2024-02
- Wage and Hour Division Opinion Letter FLSA 2025-1

U.S. Supreme Court News

Chevron Deference Death Knell

In its last term, the Supreme Court issued a blockbuster decision overturning the *Chevron* doctrine of judicial deference to a federal agency's interpretation of an ambiguous statute. *Loper Bright Enters. v. Raimondo*, 2024 U.S. LEXIS 2882 (June 28, 2024). Courts are no longer permitted to simply defer to agency regulation where a statutory term is ambiguous. Rather, courts must independently analyze the statute and determine its meaning using all the judicial tools at their disposal.

The *Loper Bright* decision makes it easier to challenge new DOL regulations head-on, as reflected in the successful challenge to the DOL's minimum salary and tip credit rules. *Loper Bright* may also help when defending wage and hour claims arising from an alleged violation of an agency regulation. The demise of *Chevron* deference, however, does not mean that defeating an agency regulation is a slam dunk. In addition to the Fifth Circuit's *Mayfield* decision upholding the DOL's authority to adopt a minimum salary requirement, for example, several federal courts post-Loper Bright have upheld agency interpretations:

- The U.S. Court of Appeals for the Eleventh Circuit agreed with the DOL's interpretation of "regular rate" under the FLSA and DBRA, noting the DOL had consistently applied the interpretation for 80 years. *Perez v. Owl, Inc.*, 2024 U.S. App. LEXIS 19661 (Aug. 6, 2024).
- A Louisiana federal court declined to overturn a DOL regulation defining "employed as a seaman" under the FLSA's seaman exemption, citing longstanding circuit precedent defining "seaman" that did not adhere to the DOL regulation "as an inviolate rule" but rather, treated the rule as a "guide." *Adams v. All Coast, LLC*, 2024 U.S. Dist. LEXIS 173964 (Sept. 25, 2024).
- A federal district court in Texas rejected an employer's argument that the DOL exceeded its authority in imposing the salary basis test for application of the EAP exemption, noting that *Mayfield* would also apply here. *Alvarez v. NES Glob. LLC*, 2024 U.S. Dist. LEXIS 174236 (Sept. 26, 2024).
- A federal court rejected an employer's affirmative defense that *Loper Bright* invalidated a DOL regulation requiring employers to issue notice before taking the tip credit. *Karonka v. Asuka Blue Investment*, 2024 U.S. Dist. LEXIS 215849 (Nov. 27, 2024).

Nondelegation doctrine up next. This term, the justices will consider the nondelegation doctrine, another foundational issue of administrative law, and may issue another significant blow against federal agency authority. The justices will take up a pair of cases involving the nondelegation doctrine, which holds that the Constitution prohibits Congress from delegating its legislative powers to another branch, including executive agencies. The cases are *FCC v. Consumers' Research* (No. 24-354) and *SHLB Coalition v. Consumers' Research* (No. 24-422). They pose the question whether Congress improperly delegated its taxing authority to the Federal Communications Commission to operate a fund to ensure telecommunications services are available to all citizens, including those in remote rural areas.

Reviving the long-dormant nondelegation doctrine would further erode the ability of federal agencies to engage in rulemaking. The *Loper Bright* decision stated that a court could grant deference to an agency interpretation of a statute where Congress expressly delegates authority to the agency to interpret the statute. Thus, the Fifth Circuit upheld the DOL's authority to impose a minimum salary requirement because Congress delegated authority under the FLSA to "define and delimit" the EAP exemptions. Under the nondelegation doctrine, the question becomes: Did Congress violate the Constitution when it delegated authority to the DOL to "define and "delimit" the EAP exemptions?

For a deeper dive:

- Go Fish! U.S. Supreme Court Overturns '*Chevron* Deference' to Federal Agencies: What It Means for Employers
- Workplace Law After '*Loper*': Wage and Hour Compliance in the Future

What is the Standard of Proof on Exemptions?

The Supreme Court held that employers do not have to meet a heightened standard of proof to establish that an employee satisfies an FLSA exemption, reversing an outlier decision of the U.S. Court of Appeals for the Fourth Circuit that found the higher "clear and convincing evidence" standard applies. *E.M.D. Sales, Inc. v. Carrera*, 2025 U.S. LEXIS 364 (Jan. 15, 2025).

The case involved an overtime suit filed by sales reps for a food distribution company. The employer argued that the employees were not entitled to overtime because the FLSA's outside sales exemption applied. A federal court in Maryland rejected this affirmative defense, finding the employer could not meet its burden to show the exemption applied. The district court had applied a higher, "clear and convincing" standard of proof. A Fourth Circuit panel affirmed, holding that circuit precedent requires an FLSA exemption be proven by "clear and convincing" evidence.

The Supreme Court reversed, in a unanimous decision. "Preponderance of evidence" is the default standard in civil cases, and the Court concluded there is no policy or statutory basis for applying a heightened "clear and convincing evidence" standard for FLSA exemptions.

For a deeper dive:

- Fourth Circuit Panel Questions Validity of Court's Burden of Proof for FLSA Overtime Exemptions
- U.S. Supreme Court Makes Clear There Is No Heightened Standard for Employers to Establish an FLSA Exemption Applies

Federal Appellate Decisions

Below is a summary of some noteworthy FLSA decisions issued by federal appeals courts in 2024 addressing important questions of wage and hour law:

Compensable Time

***De minimis* doctrine survives.** The Ninth Circuit found that triable issues remained as to whether the time spent by call center workers booting up and shutting down their computers was *de minimis*, and thus not compensable time under the FLSA and Portal to Portal Act. The appeals court held a federal court in Arizona should not have granted summary judgment in favor of the call center in a collective action wage suit because the total time spent booting up and shutting down computers could amount to "substantial" time worked, in the aggregate, especially when factoring in occasions when the tasks took from 10 minutes to 30 minutes. The bigger takeaway, however, is that the appeals court affirmed the *de minimis* doctrine still applies in the Ninth Circuit, rejecting the employees' argument that the doctrine is no longer good law. *Cadena v. Customer Connexx LLC*, 2024 US App LEXIS 16836 (July 10, 2024).

***De minimis* burden is on employer.** The DOL brought an enforcement action asserting that a battery manufacturer violated the FLSA by failing to pay employees for the time spent changing into and out of their required uniform and showering after their shifts (tasks that, it was undisputed, were "integral and indispensable" to the employees' principal activities). The employer gave employees a 5-minute grace period at the start of each shift to dress, and a 10-minute post-shift grace period for changing and showering, but the employer did not keep track of how much time employees actually spent on these functions. DOL's expert concluded they actually spent 15.6 minutes, on average, pre-shift, and 11 minutes undressing and showering post-shift. At trial, a jury found that 11,780 employees were entitled to more than $22 million in backpay. On appeal, the U.S. Court of Appeals for the Third Circuit affirmed the instruction to the jury that the employer bore the burden of proving that any unpaid time was "trivial" or *de minimis* (joining the Seventh, Ninth, and Tenth Circuits in putting the burden of this affirmative defense on the employer). *Sec'y, United States DOL v. East Penn Mfg. Co.*, 2024 U.S. App. LEXIS 32204, Dec. 19, 2024.

The appeals court also rejected the employer's contention that it only needs to pay employees for the reasonable time it takes to complete the assigned changing and showering tasks, not the actual time. It was not swayed by the employer's fear that paying for actual time "would reward employees for dragging their feet or tending to personal matters."

Compensability of travel time. Skilled tradespersons who work away from home overnight on temporary construction assignments lasting several days or weeks are entitled to compensation under the FLSA for time spent traveling to such assignments when the travel occurs during their regular working hours, the U.S. Court of Appeals for the Seventh Circuit ruled. Travel time on non-working days also is compensable if it takes place during what otherwise would be considered the employees' usual working hours, the court held. Also, the travel time must be counted as hours worked when computing overtime pay. *Walters v. Pro. Lab. Grp., LLC*, 2024 U.S. App. LEXIS 27485 (Oct. 30, 2024).

Under 29 C.F.R. § 785.39, the FLSA rule that addresses travel "that keeps an employee away from home overnight," an employee must be compensated for travel to a remote jobsite "when it 'cuts across' his 'workday.'" The employer pointed to 29 C.F.R. § 785.35, under which ordinary commuting time between the home and workplace, whether "at a fixed location or at different job sites," is noncompensable. The appeals court explained, however, that ordinary commuting for purposes of 29 C.F.R. § 785.35 means leaving and returning home on the same workday. In this case, the employees were away from home overnight for the duration of their assignments — days or weeks at a time — so their travel time, the court said, was not "ordinary commuting." The court rejected the employer's argument that the ordinary commute is defined by what is usual in the particular work relationship and that for this mobile workforce of skilled tradespersons, who have no fixed place of business, overnight commuting to remote client jobsites is the industry norm.

Minimum Wage

Computing vehicle expenses. The U.S. Court of Appeals for the Sixth Circuit rejected two methods used by district courts within the circuit for computing delivery drivers' vehicle-related expenses under the FLSA. The appeals court addressed the issue in consolidated cases brought by pizza delivery drivers who used their personal vehicles for work and claimed their employers did not reimburse them enough to cover the cost of their vehicle expenses, thus dropping their hourly pay below the minimum wage. *Parker v. Battle Creek Pizza, Inc.*, 2024 U.S. App. LEXIS 5858 (Mar. 12, 2024).

One court held that drivers should be reimbursed based on the standard IRS mileage rate. The other said that reimbursing a "reasonable approximation" of the drivers' costs would suffice. The Sixth Circuit found that neither court used the correct method for determining whether reimbursements given to delivery drivers for the cost of using their personal vehicles resulted in a minimum wage violation. The appeals court conceded that work-related vehicle costs are "undisputedly hard to calculate" because they can depend on the location of the work and the condition and year of the vehicle used, which will vary person to person. The appeals court, however, did not offer a uniform or controlling formula for the courts to use in calculating vehicle reimbursement costs for determining whether a minimum wage violation occurred.

Overtime

***Belo* plan and irregular work hours.** The FLSA requires an employer to pay one-and-one-half times the regular rate of pay for every hour worked over 40 in a workweek. There is an exception, however. A *Belo* plan is an alternative compensation arrangement that allows an employer to pay a fixed salary to employees who work fluctuating hours when the employees' job duties "necessitate" irregular work hours, among other requirements. In a case of first impression, the Sixth Circuit held that for purposes of a valid *Belo* plan, an employee's job duties "necessitate" irregular work hours "when the inherent nature of the employee's work … place[s] the employee's hours beyond either his or his employer's power to control or predict." *Jones v. Producers Service Corp.*, 2024 U.S. App. LEXIS 5418 (Mar. 6, 2024).

In this overtime lawsuit, oilfield technicians working for a fracking company had hours that varied from week to week, sometimes sharply, based on the employer's pre-established work schedules. (Under one schedule, technicians worked 14 consecutive days and then took one week off. The other schedule had technicians work seven-days-on, four-days-off, then seven-on and three-off.) The district court concluded the employer would not be able to show the technicians' duties necessitated these irregular work hours; therefore, without considering the other *Belo* plan requirements, it found the employer could not establish it had a valid *Belo* plan.

But the appeals court found questions remained as to whether the technicians' duties "necessitated" the irregular schedules. It noted the scheduling options may be an industry requirement (oil and gas wells typically operate around the clock, requiring alternating 12-hour shifts) and the volatile demand drives irregular work hours. Also, oilfield technicians typically travel long distances to work at remote oil and gas wells and reside in hotels or "camps" while on the job. Concluding that the employer may be able to raise a viable *Belo* plan defense, the appeals court reversed a district court's grant of summary judgment in favor of the technicians on their overtime claims.

Regular rate and prevailing wage. Drivers for a Veterans Affairs Department contractor transported veterans to medical appointments pursuant to a VA contract. They were classified as "Taxi Driver" and paid $11 an hour, the rate set by the DOL for that classification under the Service Contract Act (SCA). In a separate wage determination proceeding, the Wage and Hour Division found the drivers' correct job classification was "Shuttle Driver" and they should have been paid at the corresponding $15 hourly rate. The DOL's Administrative Review Board affirmed. A group of drivers filed suit, claiming breach of contract to recoup the straight pay due and alleging violations of the FLSA's overtime provisions. *Perez v. Owl, Inc.*, 2024 U.S. App. LEXIS 19661 (11th Cir. Aug. 6, 2024).

The Eleventh Circuit held the drivers were entitled to overtime at one-and-one-half times the hourly rate their employer *should* have paid them. The regular rate should have been calculated at the wage required by law, "not the actual rate an employer paid its employees if that rate violates federal law," the appeals court explained. It also pointed out that the FLSA must be read in conjunction with other federal statutes that impose minimum wage requirements. The court found persuasive (under heightened post-*Loper Bright* scrutiny) DOL's interpretation of "regular rate" to mean the *legal* rate, noting the agency has applied this interpretation consistently for 80 years. Moreover, the DOL's interpretation was consistent with several circuit courts and with common sense.

The appeals court also held, though, that the drivers could not bring a state-law breach of contract claim to recoup the difference between the hourly rate they were paid and the prevailing rate they say they should have been paid under the SCA. There is no private right of action under the SCA. Rather, the DOL enforces the statute through internal enforcement proceedings. Although the parties could have incorporated the federal statute into their employment contract, there is no evidence they did so here.

Exemptions

Administrative exemption did not apply to inside sales reps. In litigation brought by the DOL, the U.S. Court of Appeals for the First Circuit concluded that inside sales reps for a wholesale parts distributor did not meet the FLSA's administrative exemption because their primary duty was making "discrete customer sales." Applying a relational analysis, the appeals court also found this primary duty was "directly related" to the employer's business purpose of "making wholesale sales of its products." *Su v. F.W. Webb Co.*, 2024 U.S. App. LEXIS 19189 (Aug. 1, 2024).

The reps worked directly with customers throughout the sales process to "figure out what the right products are." According to the employer, the reps performed "high-level customer service" duties "to ensure customer satisfaction," responding to customer complaints and tracking the shipping

status of customer orders, and their primary function was to "promote sales generally." This role is not administrative in nature "in any sense of the word," the court said. Were the employer's interpretation of its inside sales role to be adopted, the court said, "then few salespersons would ever receive FLSA overtime protection."

Corporate pilots met HCE exemption. Corporate jet pilots who were paid between $125,000 and $160,000 annually were exempt from overtime under the FLSA's highly compensated employee exemption. The Ninth Circuit affirmed the lower court's finding that the pilots performed nonmanual labor and customarily and regularly exercised discretion as to matters of significance, including making complex decisions impacting the safety of passengers and crew. At any rate, the court said, the pilots would not be entitled to overtime because their on-call time and waiting time between assigned flights did not amount to compensable work, meaning they did not exceed 40 hours in a workweek. *Kennedy v. Las Vegas Sands Corp., Inc.*, 2024 U.S. App. LEXIS (Aug. 8, 2024).

MCA exemption applied to intrastate carriers. Tanker-truck drivers who hauled crude oil solely within the state of Texas were exempt from the FLSA under the Motor Carrier Act (MCA) exemption, the Fifth Circuit held. Even though the drivers only transported the crude oil intrastate, most of the oil was "ultimately bound for destinations outside the state," and the intrastate transport was one segment of the oil's "practical continuity of movement" out of state. Therefore, the MCA exemption applied and the drivers were not entitled to overtime. The Fifth Circuit panel reversed a district court's decision denying the employer's motion to dismiss the drivers' overtime claims. Judge Andrew Oldham, in a separate concurrence, pointed out the "incoherent" state of the law on the MCA exemption. *Escobedo v. Ace Gathering*, 2024 U.S. App. LEXIS 19025 (July 31, 2024).

MCA exemption applied to loaders. In another decision on the applicability of the MCA exemption, the Fifth Circuit held that a district court properly classified as exempt "loaders" a group of employees who loaded and secured equipment for a motor carrier. Although loading duties amounted only to about 40% of their work, this was a sufficient amount of their duties to qualify for the exemption; loading did not have to be their sole duty. Also, the independent discretion they exercise in loading the trailers directly affects the safe operation of the motor vehicles in interstate commerce, which further supports application of the exemption, the appeals court explained. *Kelley v. Alpine Site Services, Inc.*, 2024 U.S. App. LEXIS 19967 (Aug. 8, 2024).

Salary Basis Test

IT engineers didn't meet salary basis test. IT engineers did not qualify under the HCE or learned professional exemptions because their compensation structure did not satisfy the salary basis requirement. Under the salary basis test set forth at 29 C.F.R. § 541.602(a), an employee must "regularly receive[] each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." An employee can be paid additional compensation, as long as the guaranteed weekly amount is paid on a salary basis. An alternative regulation, 29 C.F.R. § 541.604(b), can apply when employees are paid more frequently than on a weekly basis, such as by the hour, as was the case here. However, hourly-rate employees are deemed paid on a "salary basis" under this provision only if they also are paid a "minimum weekly required amount paid on a salary basis" and there is a reasonable relationship between the weekly guaranteed salary and the employee's actual earnings.

Here, the engineers earned a guaranteed weekly amount equivalent to eight hours of pay at their hourly rates ($125 to $150). They were then paid their straight hourly rate for time worked beyond those eight hours and for any hours worked beyond 40 in a workweek. This two-tiered compensation structure did not satisfy the salary basis test because the engineers' guaranteed weekly compensation was based on an hourly rate of pay and their actual weekly earnings were more than five times the guaranteed weekly amount, the Fifth Circuit held, affirming a district court's decision. *Gentry v. Hamilton-Ryker IT Solutions, Inc.*, 2024 U.S. App. LEXIS 12596 (May 24, 2024).

Oil rig "reamers" met salary basis test. Offshore oil rig "reamers" who were paid under a hybrid scheme comprised of an annual salary and daily-rate job bonuses satisfied the salary basis test. Because their compensation included a guarantee of at least the minimum weekly-required amount paid on a salary basis, they could earn additional compensation without defeating the salary basis test. The reamers argued they did not satisfy the salary basis test because they do not meet the "reasonable relationship" requirement. In this case, however, the reamers met the salary basis test under C.F.R. § 541.602(a) because they were compensated on a weekly basis. The alternative approach set forth at 29 C.F.R. § 541.604(b) for employees paid on an hourly, daily, or shift basis did not apply. Nor did the reasonable relationship requirement, which applies only to § 541.604(b) compensation schemes. Because the reamers also met the minimum salary requirement and performed exempt duties (supervising rig crews and other executive duties), they were exempt from overtime. *Venable v. Smith Int'l, Inc.*, 2024 U.S. App. LEXIS 22468 (Sept. 4, 2024).

Nurses *may* have met salary basis test. The Ninth Circuit revived overtime claims in two cases brought by staff nurses for public entities, finding fact questions remained as to whether the nurses met the salary basis requirement and, thus, the professional exemption. The nurses worked for a public employer, so their annual base salary was published at the beginning of each year by ordinance. Their pay was also documented annually in their collective bargaining agreement. However, payroll assigned each staff nurse an hourly rate (the annual salary divided by 2,080, based on 40 hours per week, 52 weeks per year) and computed their paychecks based on the number of hours worked. The nurses did not always work hours consistent with these full-time equivalencies. A nurse working 30 hours per week would earn only three-quarters of base salary. Also, nurses could earn more than their base compensation by working night shifts at premium pay or by taking overtime shifts and per diem shifts (at 125% of their normal rate). *Silloway v. City and Cnty. of San Francisco*, 2024 U.S. App. LEXIS 23102 (Sept. 11, 2024).

The district court concluded that the published annual salary was "dispositive evidence" that the salary basis test was satisfied. What matters for purposes of the salary basis test, however, is the salary actually earned, not the salary set forth in the employment agreement, the appeals court said. In practice, the nurses were paid according to the number of hours they are recorded as working or otherwise credited as working. Here, the employer's own expert report reflected that, in at least 72 pay periods, staff nurses were recorded as working or being credited for fewer hours than their full-time equivalencies. It was unclear whether they received their predetermined amounts of pay during these irregular pay periods. Because it was uncertain whether the nurses satisfied the salary basis requirement, the Ninth Circuit reversed summary judgment to the employer and remanded for further discovery.

Employee/Employer Status

Volunteers were not employees. Individuals who volunteered as golf attendants at a county-owned, for-profit golf club in exchange for discounted golf were not employees under the FLSA or Florida Minimum Wage Act, the Eleventh Circuit held. The FLSA exempts a public-agency volunteer from its definition of employee if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee and the services are not the same type of services the individual is employed to perform for the public agency. The plaintiffs responded to the county's ad seeking volunteers and touting benefits such as being outdoors and playing golf at reduced fees. In exchange for working at least one seven-hour shift each week, the volunteers were entitled to "unlimited" rounds of golf at a deeply discounted rate (they could pay $5 for a $96 round of golf). The attendants also were permitted to accept tips but were not paid any wages. Reduced golf fees do not amount to "wages in another form," and the county's ad was not a promise or create an expectation of payment in exchange for work, the court held. And the workers were engaged in work providing "civic" benefits to the public, consistent with DOL regulations defining "volunteers." Therefore, as a matter of economic reality, the volunteers were not employees and were not entitled to compensation under the FLSA or Florida state law. The appeals court affirmed dismissal of the volunteers' minimum wage claims. *Adams v. Palm Beach Cnty.*, 2024 U.S. App. LEXIS 5876 (Mar. 12, 2024).

College athletes *could* be employees. In a detailed discussion of the employment status of college athletes, the Third Circuit affirmed a district court's refusal to dismiss minimum wage claims brought by athletes against the National Collegiate Athletic Association (NCAA) and other defendants seeking compensation for the time spent representing their schools. The appeals court found the athletes' amateur status and the "revered tradition of amateurism" did not bar the athletes from bringing wage claims under the FLSA. It did not resolve the merits of whether the athletes were actually statutory employees. It remanded for the district court to apply a common-law economic realities test, rather than the factors set forth by the U.S. Court of Appeals for the Second Circuit in a decision involving unpaid college interns, a factually distinguishable scenario of little relevance to college athletics. *Johnson v. NCAA*, 2024 U.S. App. LEXIS 16953 (July 11, 2024).

Manager was an employer. A hotel manager who handled day-to-day operations at a number of his father's hotels was a statutory employer under the FLSA, the Eleventh Circuit held. The manager was a paid employee and, like the plaintiff front desk clerk, lived onsite. He was the plaintiff's direct supervisor and scheduled employees, assigned them work, and signed paychecks. He exercised some control over hotel finances and had authority to adjust hotel rates. "Employer" is defined broadly under the statute to include "any person acting directly or indirectly in the interest of an employer in relation to an employee." The appeals court rejected the defendant's contention that the son did not have control or decision-making authority over the plaintiff's compensation and did not exercise control over hotel finances. The court noted that, under circuit precedent, individual liability "is not limited to upper management and executives." Therefore, the son could be held individually liable (along with his father) in an FLSA action brought by a hotel employee. *Spears v. Bay Inn & Suites Foley, LLC*, 2024 U.S. App. LEXIS 15002 (June 20, 2024).

Inspector was an independent contractor. A skilled welding inspector for a company that provided inspectors for oil and gas industry customers was an independent contractor, not an employee under the Fifth Circuit's economic realities test. The inspector formed his own company, marketed

the company's services, and exercised autonomy over decisions that could affect profit or loss. He worked for the defendant on a project-by-project basis and was free to accept or reject projects. He also worked for other clients. He performed the work independently and invoiced the defendant for payment (under his company's name). He used his own vehicle, devices, and supplies in completing client projects, and invested his own funds in obtaining necessary welding certifications and credentials. Applying these facts to the various independent contractor factors, the appeals court concluded they supported a finding of independent contractor status and affirmed the district court's decision granting summary judgment in favor of the defendant. *Gray v. Killick Grp., LLC*, 2024 U.S. App. LEXIS 21869 (Aug. 28, 2024).

Procedural Rulings

***Bristol-Myers* applies to collective actions.** The Seventh Circuit joined a growing number of federal circuits to hold the Supreme Court's 2017 decision in *Bristol-Myers Squibb v. Superior Court* applies to putative FLSA collective actions. With the growing number of circuits applying *Bristol-Myers* in the FLSA context, it is much harder for employees to pursue massive nationwide collective actions and to engage in forum shopping to bring those actions in a favorable jurisdiction. *Vanegas v. Signet Builders, Inc.*, 2024 U.S. App. LEXIS 20780 (Aug. 16, 2024).

In *Bristol-Myers*, the Supreme Court held a California federal court did not have personal jurisdiction over claims against a non-resident company brought by out-of-state plaintiffs. Personal jurisdiction requires that the claims "arise out of or relate to" the defendant's contacts with the forum state. That jurisdictional requirement applies to each individual claim brought by each plaintiff, the Supreme Court explained. The out-of-state plaintiffs could not meet the requirement.

Vanegas was a putative wage-hour collective action against a construction company incorporated and headquartered in Texas which operates nationwide. The suit was filed in Wisconsin, where the named plaintiff worked, so the federal court had jurisdiction over the named plaintiff's claims. The Seventh Circuit held that *Bristol-Myers* jurisdictional requirements apply to FLSA collective actions. Therefore, employees who wanted to opt-in to the suit would have to show the court had jurisdiction over their individual wage and hour claims. Because the claims of employees outside Wisconsin did not arise from contacts with Signet in Wisconsin, the court lacked jurisdiction, and the out-of-state employees could not opt-in to the suit.

For a deeper dive:

- It's been a busy month for *Bristol-Myers*
- Another Circuit Rules *Bristol-Myers* Applies to FLSA Collective Actions, Bars Out-of-State Opt-Ins

Federal FLSA complaints continue to decline

Lawsuits filed in federal court under the FLSA have declined steadily in recent years — 2024 continued the trend:

Complaints filed in 2022 = 5,972
Complaints filed in 2023 = 5,531
Complaints filed in 2024 = 4,954

The drop in cases is welcome news, to be sure, but the number of filings is still daunting. Also, a considerable percentage of these cases are brought as putative collective actions, which can carry significant liability. Moreover, these numbers do not reflect wage and hour cases brought in state court and, in numerous jurisdictions, state court is the main forum for wage and hour claims — particularly in jurisdictions with more employee-protective statutes (California, most notably). Finally, these figures do not reflect the claims filed with state agencies or the many wage and hour disputes resolved through private arbitration or settlement as a growing number of companies requires arbitration of wage disputes.

The bottom line: Compliance is key. Regular audits of your wage and hour practices can help keep your business out of court.

State Law Updates

Independent Contractor/Temp Worker Updates

California

Freelance Worker Protection Act. California S.B. 988 imposes minimum requirements relating to contracts between a hiring party and a freelance worker. Under the new law, "freelance worker" is defined as: (1) A person or organization composed of no more than one person, whether or not incorporated or employing a trade name; (2) hired or retained as a bona fide independent contractor by the hiring party to provide "professional services" (as defined under the California Labor Code); (3) in exchange for an amount equal to or greater than $250.

The law requires that an agreement between a hiring party and a freelance worker be in writing and include names and addresses of both parties; an itemized list of services, their value, and the compensation method; payment due dates or mechanisms for determining them; and due dates for the freelance worker to report completed services for processing timely payment. Once a freelance worker has commenced providing services, a hiring entity is prohibited from requiring the worker to accept less compensation or provide more services than previously agreed in order to receive timely payment. The law always puts in place certain prohibitions against retaliation.

The Act applies to freelance-style services listed in Labor Code Section 2778(b)(2). The Act applies to contracts entered into or renewed on or after Jan. 1, 2025.

Illinois

Day and Temporary Labor Services Act. Several amendments to the Day and Temporary Labor Services Act (DTLSA) were enacted in 2024. Public Act 103-1030, signed by Governor JB Pritzker on Aug. 9, 2024, clarified the amount of work that entitles a temporary laborer to equal pay. The original law stated the equal-pay requirement was effective once a temporary laborer had been "assigned" to a third-party client for 90 days. Under P.A. 103-1030, equal pay is instead required after a temporary laborer "performs more than 720 hours of work in a 12-month period" for a third-party client, with the clock starting on April 1, 2024.

P.A. 103-1030 also offers a new option for computing "equal pay." The original law required equal pay to be determined using the rate of either: (a) the third-party client's lowest paid, directly hired, similarly situated employee with the same or substantially similar seniority to the temporary laborer; or (b) if no such similarly situated employee exists, then the lowest paid, directly hired employee with the closest level of seniority to the temporary laborer. This "comparator" method is still allowed, but as another alternative, the amendments allow for temporary laborers to be paid the median wages of workers working in the same or a substantially similar job classification (as reflected in BLS occupational classifications and regional pay data). Under this new option, once a temporary laborer has worked for the third-party client for 4,160 hours during a 48-month period, the required wages then increase from the median to the 75th percentile in the BLS data. The amendments also clarify that it is the temporary staffing agency's responsibility to determine the amount of equal pay due, based on information provided by the third-party client, and to pay the temporary laborer correctly. Under the amendments, the equal-pay provision does not apply if the "comparator" employees (the third-party client's directly hired employees) are covered by a valid collective bargaining agreement (CBA).

The DTLSA has required temporary staffing agencies to provide employment notices to temporary laborers when assigning laborers to a third-party client. P.A. 103-1030 requires temporary staffing agencies to include in these notices the seniority and hourly wage of the comparator or, if applicable, the standard occupational classification used to determine the wage of the temporary laborer. Finally, the amendments require temporary staffing agencies to provide an application receipt to temporary laborers who apply for an assignment but who are not assigned to a third-party client.

Maryland

Increased penalties for misclassification. The Maryland state legislature increased from $5,000 to $10,000 the maximum civil penalty that can be assessed against an employer that knowingly misclassifies a worker as an independent contractor instead of an employee. Maryland HB 465, as initially introduced, added criminal penalties for misclassification, and for contractors and subcontractors that commit wage theft. The enacted version, which took effect Oct. 1, 2024, was stripped of this provision.

Minnesota

Misclassification of construction employees. H.F. 5247, enacted during the state's 2024 legislative session, amended the Misclassification of Construction Employees law, MN Stat. Sec. 181.723, to clarify the distinction between independent contractors and employees within the construction industry. Recently amended law lists 14 requirements that must be met for an individual to qualify as an independent contractor in the construction context, replacing the previous nine-factor test. The new standard replaces previous factors for determining worker classification, such as whether the individual in question "maintains a separate business with the individual's own office, equipment, materials, and other facilities," with new considerations such as whether or not the individual operates a business that "was established and maintained separately from and independently of the person for whom the services were provided or performed." The amendments apply to building construction or improvement services provided or performed on or after March 1, 2025.

Rideshare driver compensation protections. The Minnesota state legislature passed HF 5247, perhaps the country's strongest labor protections bill for rideshare drivers. The new law provides that rideshare drivers statewide must earn a minimum of $1.28 per mile and 31 cents per minute, before tips, for rides provided. Rideshare drivers also must earn a minimum of $5 per trip and receive 80% of any potential rider's cancellation fee, provided the driver has already left to pick up that potential rider. Additionally, wheelchair accessible vehicle drivers are entitled to an additional 91 cents for every mile driven. Minimum rates for drivers are not guaranteed for each trip. Rather, under the law, drivers must be paid their minimum rates on average over a two-week pay period. If driver's earnings averaged below the wage floor over a given pay period, the transportation network companies are required to account for the difference.

"Earnings" garnishment protections. Minnesota employers are prohibited from discharging or otherwise disciplining either an employee or an independent contractor as a result of earnings garnishment authorized under MN Stat. Sec. 571.71. The law previously provided for recovery of lost "wages." As amended, the law provides for the broader

recovery of lost "earnings." The statutory remedies provide that employers in violation of this section may be subject to court-ordered reinstatement of the aggrieved party and other relief deemed appropriate. Additionally, if the employer-employee or employer-independent contractor relationship existed before the violation, the employee or independent contractor must recover twice the "earnings" lost as a result of the violation. The new statutory protections and remedies became effective Aug. 1, 2024, and only apply to causes of actions commenced on or after this date.

New Jersey

Temporary Workers' Bill of Rights. The Third Circuit upheld a federal district court's refusal to enjoin the Temporary Workers' Bill of Rights. *New Jersey Staffing All. v. Fais*, 2024 U.S. App. LEXIS 18168 (July 24, 2024). The statute, which took effect in May 2023, provided additional rights to temporary workers, including wage and hour protections, regarding their employment through temporary help firms. The statute requires staffing companies to pay temporary workers at least "the average rate of pay and average cost of benefits, or the cash equivalent thereof, of employees of the third-party client performing the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." An alliance of staffing firms challenged the statute and sought to enjoin the state from enforcing it. The district court found the staffing firms were not likely to succeed on their constitutional challenge, however, and denied their motion for a preliminary injunction. On interlocutory appeal, the Third Circuit affirmed.

The New Jersey Department of Labor issued final regulations enforcing the statute, which became effective Sept. 16, 2024.

New York

Freelance Isn't Free Act. The Freelance Isn't Free Act took effect Aug. 28, 2024, after its initial effective date of May 20, 2024, was postponed as a result of some legislative shuffling. The law requires that a business provide any freelance worker with a written contract if the freelance work is worth at least $800, inclusive of multiple projects over a 120-day period. The New York State Senate amended the Act by removing it from the New York Labor Law, which is enforced by the New York State Department of Labor (DOL), and codified it in the New York General Business Law (NY State Senate Bill 2023-S8039), which is enforced by the New York attorney general.

The Act defines a "freelance worker" as "any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services" in exchange for compensation. The Act sets a 30-day deadline for payment in full unless another time frame is agreed to by the parties. The statute imposes specific notice requirements, specific contract term requirements for independent contractor agreements, and recordkeeping requirements for the hiring entity. It also contains enforcement and damages provisions (including a civil action for damages).

Other Developments

Alabama

No withholding for overtime. The Alabama tax code is temporarily modified to provide that all overtime pay received by full-time hourly wage-paid employees for hours worked above 40 in a workweek are excluded from gross income and, therefore, are exempt from Alabama state income tax and not subject to withholding. The temporary exemption is extended and applies for tax years beginning on or after Oct. 1, 2024, through June 30, 2025.

There are reporting requirements on employers during the exemption period. Employers must report to the state department of revenue the total aggregate amount of overtime paid in the tax year and the total number of employees who received overtime pay by Jan. 31, 2024. Starting Oct. 1, 2024, employers are required to report the total amount of wages paid, not just overtime pay, to those employees.

Arizona

Failed ballot measures. Arizona voters rejected Proposition 138, the Tipped Workers Protection Act. If passed, the ballot measure would have amended the state constitution to allow an employer to pay up to 25% less than the hourly minimum wage to employees who regularly receive tips or gratuities if the employer can show that the employee's combined wages and tips total at least the standard minimum wage plus $2.00 per hour for all hours worked. The Arizona Restaurant Association introduced the ballot measure as a counter to ongoing efforts by worker advocates to pass the One Fair Wage Act, which would gradually eliminate the tip credit in Arizona.

Glendale, Arizona, voters rejected Proposition 499, the Hotel and Event Center Minimum Wage and Wage Protection Act. It would have mandated a $20 minimum wage for employees at hotel and event centers in the city, with increases annually, as well as service charge payments and premium pay. The measure also called for the establishment of a city Department of Labor Standards charged with investigating violations and enforcing the law's requirements.

California

PAGA gets an overhaul. California Governor Gavin Newsom signed two bills on July 1, 2024,amending the state's Private Attorneys General Act (PAGA), which deputizes private parties to enforce the California Labor Code on behalf of the state. The amendments include important changes to PAGA's

early evaluation and cure options, standing requirements, and penalties. The amendments also empower courts with discretionary authority to ensure that PAGA actions remain manageable. The amendments apply to PAGA actions filed on or after June 19, 2024, unless the underlying PAGA notice was submitted to the Labor Workforce Development Agency (LWDA) and the employer prior to that date.

For a deeper dive:

- California Overhauls Private Attorneys General Act
- New California PAGA FAQ

Manageability concerns and PAGA actions. The California Supreme Court held that a trial court does not have discretion to strike or narrow a PAGA action based upon manageability grounds, resolving a split of authority on the issue. The court noted the statutory and procedural differences between class actions (which must be manageable, as a requirement of Rule 23) and PAGA, which does not expressly require manageability. While trial courts "do not generally possess broad inherent authority to dismiss claims," courts have other tools, including the ability to limit the evidence to be presented at trial to ensure manageability. *Estrada v. Royalty Carpet Mills*, 2024 Cal. LEXIS 123 (Jan. 18, 2024).

Public entities exempt from Labor Code, PAGA. The California Supreme Court held that public employers are exempt from obligations under the Labor Code such as overtime compensation and meal and rest breaks, unless specifically stated. Also, PAGA penalties do not apply to public employers. That exclusion covers all public entities, including those not specifically governmental in nature, such as the defendant in this case: a hospital operated by a public agency established to manage, administer, and control the medical center by the Board of Supervisors of Alameda County. *Stone v. Alameda Health System*, 2024 Cal. LEXIS 4425 (Aug. 15, 2024).

PAGA construction industry exemption. Certain employees in the construction industry are exempt from PAGA requirements. AB 1034, passed in 2024, extended that exemption until Jan. 1, 2038. The exemption applies to construction industry employees covered by a CBA that expressly provides for wages, hours of work, and working conditions; provides premium wage rates for overtime; and provides employees with a regular hourly pay rate of not less than 30% more than the state minimum wage. In addition, the CBA must prohibit all Labor Code violations that are redressable pursuant to PAGA and provide a grievance and binding arbitration process to redress those violations. The CBA must expressly waive PAGA requirements in clear and unambiguous terms and authorize the arbitrator to award any and all remedies available under the Labor Code, with the exception of penalties that would otherwise be awardable to the LWDA.

Fast-food minimum wage. AB 1228, legislation passed in 2023 which took effect April 1, 2024, requires California's fast-food restaurants to pay covered employees a minimum wage of $20 an hour. The minimum wage will increase by the lesser of 3.5% or the average change in the Consumer Price Index each Jan. 1 from 2025 to 2029. AB 610, signed March 26, 2024, amended the definition of "fast food restaurant" to exempt restaurants in airports, hotels, event centers, theme parks, museums, and certain other locations. Exempted businesses do not need to comply with the minimum wage requirement.

Raises for workers at healthcare entities. A multi-tiered statewide minimum wage schedule for employees of certain covered healthcare facilities took effect Oct. 16, 2024. The increase was enacted pursuant to legislation passed in 2023 and slated to take effect June 1, 2024, but Gov. Newsom postponed the effective date due to budget concerns. Employees of healthcare entities must be paid between $18 and $23 an hour, depending on the type and size of healthcare facility. That rate will increase in stages to $25 an hour, with further increases as adjusted for inflation, on timelines that vary in duration based on the type and location of the entity.

Proposition 32 failed. Voters in California rejected Proposition 32, which would have increased the minimum wage to $18 for all employers by 2026. Under the proposition, the minimum wage increases depended on the size of the employer. Specifically, employers with 26 or more would have had to pay $17 hourly for the remainder of 2024 and $18 hourly beginning on Jan. 1, 2025. Employers with 25 or fewer employees would have had pay $17 hourly beginning Jan. 1, 2025, and $18 hourly beginning Jan. 1, 2026. Moreover, the minimum wage would have continued to adjust annually for inflation.

Clarifying "hours worked." The California Supreme Court addressed three inquiries posed by the Ninth Circuit related to the definition of "hours worked" within the context of the California wage order applicable to the construction, drilling, logging, and mining industries, as well as the Labor Code. The case involved employees working on a solar power facility on privately owned land with limited access on and off the highway. Their entry was sometimes delayed because they had to go through gates, security checkpoint(s) (which moved during the scope of the project) and they had to drive slowly to protect endangered species in the area. *Huerta v. CSI Electrical Contractors,* 2024 Cal. LEXIS 1446 (Mar. 25, 2024).

First, the California Supreme Court held that time spent on an employer's premises awaiting and undergoing an employer-mandated exit procedure that included a vehicle inspection was compensable as "hours worked." Second, the court held the travel time from the security gate to employee parking lots is compensable if the security gate was the first

location where the employee was required to be present for an employment-related reason. However, the court noted separately that the employer's "ordinary workplace rules" for employees driving to the worksite in their personal vehicles did not establish sufficient employer control to render the travel time compensable on that basis.

Finally, the court held that when an employee is covered by a CBA that complies with Labor Code section 512 and the wage orders, and the employer provides the employee with an unpaid meal period, that time is nonetheless compensable as "hours worked" if the employer prohibits employees from leaving the premises or designated area during the meal period and if the prohibition prevents the employee from engaging in otherwise feasible personal activities. However, the court interpreted Wage Order No. 16, section 10(D) and (E) "to permit employees to bargain for a *voluntary* paid on-duty meal period." In other words, an exemption from section 10(D) permits workers to negotiate a contract for on-duty meal periods even when "the nature of the work" does not "prevent[] the employee from being relieved of all duty." That does not, however, mean employees can bargain away the right to pay for an on-duty meal period.

Good-faith belief defense. "Under long-established law, an employer cannot incur civil or criminal penalties for the willful nonpayment of wages when the employer reasonably and in good faith disputes that wages are due," the California Supreme Court observed. Yet, courts in California have been divided over whether an employer's good-faith belief will also bar Labor Code section 226 penalties for a "knowing and intentional" failure to report the same unpaid wages or any other required information, on a wage statement. In this case, the California Supreme Court held that if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law. *Naranjo v. Spectrum Security Services, Inc.*, 2024 Cal. LEXIS 2438 (May 6, 2024).

PAGA plaintiffs can't intervene. The California Supreme Court ruled that an individual who brings a PAGA action does not have the right to intervene in another PAGA action involving overlapping claims against the defendant. As the Supreme Court observed, the case at hand "involves what has become a common scenario in PAGA litigation: multiple persons claiming to be an 'aggrieved employee' within the meaning of PAGA file separate and independent lawsuits seeking recovery of civil penalties from the same employer for the same alleged Labor Code violations." Three individuals filed separate PAGA actions against Lyft. One of the plaintiffs obtained a $15 million settlement, and the other plaintiffs filed separate motions to intervene and submitted objections to the settlement. Subsequently, they filed motions to vacate the judgment. The trial court denied the motions, and an appellate court affirmed those denials. One plaintiff filed a petition for review with the Supreme Court, arguing he had the right to intervene as "a deputized against of the state under PAGA."

The Supreme Court majority, however, found that allowing another PAGA plaintiff to intervene was not consistent with the legislature's intent in enacting PAGA. It also concluded that negative consequences would result. The court noted that in lieu of intervention, plaintiffs in overlapping PAGA actions can voice their concerns about a proposed settlement to the LWDA, which may submit informal comments to the court on the fairness of a proposed settlement. *Turietta v. Lyft, Inc.*, No. S271721 (Aug. 1, 2024).

Colorado

Incentive pay for holiday shifts. The Colorado Supreme Court held that the Colorado Minimum Wage Order (currently, COMPS Order 39) requires that incentive pay for working on a holiday be counted in the regular rate of pay for calculating overtime for non-exempt employees. The court arrived at its conclusion based on Rule 1.8.1 of the COMPS Order, which excludes "holiday pay" (where the employee did not work) from the regular rate but includes "all compensation paid to an employee" and "shift differentials," which would encompass incentive pay for working a holiday shift. *Hamilton v. Amazon.com Services LLC*, 2024 Colo. LEXIS 829 (Sept. 9, 2024).

Requiring holiday incentive pay to be included in the regular rate for overtime purposes deviates from federal law. Before this decision, employers in Colorado that provide holiday pay generally followed the FLSA. Federal regulations provide that "extra compensation" paid to workers on holidays can be considered an "overtime premium" and not counted toward the regular rate of pay so long as it is not less than time and one-half of the regular rate. But holiday incentive pay is different, the Colorado Supreme Court stated: it is compensation for actual work performed on a holiday and therefore, falls in the category of "all compensation paid" for performing work, and so must be counted toward the regular rate. The court also reasoned that holiday incentive pay is essentially the same as a shift differential: a "higher wage or rate because of undesirable hours or disagreeable work." As for the apparent friction with the FLSA, the court said Colorado law is more protective than the FLSA, which merely "set a floor" for employee compensation.

Training costs. Colorado implemented new restrictions on employers' ability to recoup training costs from employees who leave employment. Previously, an employer was permitted to recover training and education expenses after an employee leaves employment if the training provided was specialized and distinct from routine on-

the-job training. Colorado HB 24-1324, Attorney General Restrictive Employment Agreements, took effect Aug. 7, 2024. It amended the state's noncompete law to authorize the Colorado attorney general to establish requirements on transferability of the skills acquired and credentials obtained by the employee from the training provided. The attorney general may also set penalties and pursue enforcement for violations, including recovery of up to three times the amount the employer sought to recover from the former employee. Former employees may not seek damages for violations of the training repayment provisions if the attorney general has obtained recovery.

Hawaii

Catch-all exemption. HB 2463, which took effect June 21, 2024, increased the minimum salary floor for application of Hawaii's catchall exemption from the state wage and hour law's minimum wage and overtime requirements. Previously, the catchall exemption covered employees who earn a guaranteed salary of at least $2,000 per month. A higher salary threshold now applies: the catchall exemption applies to employees who earn a guaranteed compensation totaling $4,000 or more per month.

The catch-all exemption applies without regard to the duties performed by the employee. However, under Hawaii law, there are numerous other statutory exemptions in HRS Sec. 387-1. Those exemptions may encompass employees who earn less than $4,000 monthly, including those not covered by the FLSA and individuals who, among other exemptions, work "[i]n a bona fide executive, administrative, supervisory, or professional capacity" or as outsides salespersons or outside collectors.

Idaho

Equal pay for furloughed prisoners. HB 654, which took effect July 1, 2024, requires private employers that employ prisoners pursuant to the furlough program operated by the state department of corrections to pay the same salary range offered to their other employees with similar experience, education, and other qualifications. Private employers also must make available to employed prisoners the same benefits offered to similarly situated employees, such as healthcare benefits and paid leave.

Illinois

Increased pay stub requirements. As of Jan. 1, 2025, Illinois employers are required to issue itemized pay stubs to employees at each pay period, in paper or electronic format (at the employee's election). The pay stubs must reflect an employee's hours worked, rate of pay, overtime pay and overtime hours worked, gross wages earned, deductions made from the employee's wages, and the total of wages and deductions year to date. Employers must maintain a copy of pay stubs for at least three years and furnish copies of pay stubs to current or former employees upon request. Failure to comply with the pay stub requirements may result in civil penalties up to $500 per violation (on top of damages currently available under the Illinois Wage Payment and Collection Act). The pay stub requirements were enacted pursuant to SB 3208, signed by Governor JB Pritzker on Aug. 9, 2024.

Kentucky

Shortened limitations period. The statute of limitations to sue or bring an administrative action under Kentucky's Wage and Hour Act (among other employment causes of action) has been reduced from five years to three years. The change comes pursuant to HB 320, which took effect July 15, 2024. The shorter limitations period is in line with the filing period for federal employment claims (but departs from the state's general five-year statute of limitations). The shorter limitations period is not retroactive; it applies only to claims brought after HB 320's effective date.

Louisiana

Final payments of bonuses, commissions. The Louisiana Wage Payment Act (LWPA) requires an employer to pay out to an employee all compensation due upon termination. Louisiana Act 556, which took effect Aug. 1, 2024, amended the LWPA to provide that commissions, incentive pay, and bonuses are considered due in an employee's final wages *if* they had been earned at the time of separation *and* the commissions, incentive, or bonus has not been modified in accordance with the terms of an employer's written policy.

Previously, an employer could not condition payment of a commission on receipt of payment from the customer. Act 556 allows the employer to establish a written policy that commissions, incentive pay, and bonuses are not "earned" until the employer receives the payment that generated those earnings. The employer also may adjust the amount owed in commissions if the customer changes the order that generated the commission. In addition, Act 556 amended the LWPA to extend the amount of time an employer has to pay a bonus due to an employee upon discharge, allowing the employer a reasonable period of time to calculate the bonus due.

New Orleans workplace rights. New Orleans voters approved a ballot measure on Nov. 5, 2024, the Parishwide Home Rule Charter Amendment, to include workplace rights in its municipal bill of rights. The bill of rights now includes such rights as a workplace that complies with all federal, state, and local laws and regulations, including wage and hour laws, and the right to receive fair living wages. Eighty percent of voters approved the ballot measure, with only 20% of voters opposing. However, the measure is largely symbolic. Louisiana state law prohibits municipalities from imposing a minimum wage requirement on private-sector employers.

Maine

Maine DOL gets more enforcement authority. On Aug. 9, 2024, An Act to Increase Enforcement and Accountability for Wage Violations went into effect, granting the Maine Department of Labor (MDOL) the authority to remedy wage violations without obtaining a judgment in court. The Act amends 26 MRSA §53 and authorizes the director of the MDOL to order any employer in violation of state wage laws to pay the "unpaid wages determined to be due, as well as an additional amount equal to twice the amount of unpaid wages as liquidated damages and a reasonable rate of interest."

The Act does not alter an employer's exposure for a wage violation under Maine state law. Indeed, Maine law allows treble damages and interest (as well as reasonable attorney's fees) to be awarded by the court upon judgment of a wage violation. The Act, however, grants the MDOL the power to order such remedies without obtaining a judgment in court. The Act gives the MDOL the proverbial teeth to enforce its own determinations. The Act did not impact the MDOL's pre-existing power to assess fines for wage violations. However, it confirms that an employee may not receive payment more than once for the same unpaid wages, liquidated damages, and interest. It also authorizes the MDOL to receive such payment on behalf of an employee and to make payment to the employee. The Act is intended to streamline the MDOL's resolution of wage violations and is championed by the MDOL as part of its ongoing efforts in strategic enforcement of state wage and hour laws.

Maryland

Changes to paystub notice requirements. Maryland has long required employers to provide notice of the rate of pay, paydays, and other information at the time of hire. Maryland employers must provide a paystub reflecting the employee's gross earnings and deductions (sick and safe leave balances also are required each time wages are paid, although they need not be on the pay stub). As of Oct. 1, 2024, the rate of pay, paydays, and leave benefits must be provided in writing at the time of hire, and the paystub may be written or online. Additional information must be provided to employees as well.

The written or online paystub must include the employer's name (as registered with the State of Maryland), address, and telephone number; date of payment; pay period beginning and ending dates; number of hours worked during the pay period (unless the employee is exempt from federal and state overtime requirements); all rates of pay; additional bases and amounts of pay (including bonuses, commissions on sales, or other bases); applicable piece rates and the number of pieces completed at each piece rate for each employee paid at a piece rate; gross and net pay earned during the pay period; and the amount and description of each deduction made from pay.

Massachusetts

Voters keep tip credit intact. Massachusetts voters rejected Question 5, a ballot measure that would have phased out the tip credit against the minimum wage for tipped workers. The amount employers of tipped workers would be entitled to take as a credit against the hourly minimum wage would have decreased in stages, and the minimum hourly wage the employer would have to pay a tipped worker would increase, until Jan. 1, 2029. At that point, tipped workers would have to be paid 100% of the full Massachusetts hourly minimum wage.

Bonuses aren't "wages" under Wage Act. A retention bonus is not a "wage" within the meaning of the Massachusetts Wage Act, a Massachusetts state appeals court held. The court addressed the issue in a lawsuit brought by a senior executive who was discharged in a reduction in force. At hire, he was offered a retention bonus, to be paid in two installments. He met the conditions for payment and timely received the first payment. But he was not paid the second half at termination. Applying a narrow interpretation of "wages" within the meaning of the Wage Act, the appellate court concluded the retention bonus here was "contingent compensation" because it was conditioned on the employee meeting certain conditions, and so did not fall within the statutory definition of "wage" under the Act. *Nunez v. Syncsort Inc.,* No. 23-ADCV-63NO (Sept. 6, 2024).

Michigan

Amendments to ballot initiatives struck down. The Michigan Supreme Court invalidated the Michigan legislature's amendments to a 2018 voter ballot initiative, the Improved Workforce Opportunity Wage Act. The Act proposed step increases to the state's minimum wage rate and annual minimum wage increases indexed to inflation. The measure also proposed to gradually pare back the tip credit employers could take against the minimum wage for employees who customarily and regularly earn tips. The Michigan legislature adopted the ballot initiative intact, so that it would not appear on the November 2018 ballot. Then, within the same legislative session, the legislature significantly amended the measure. The Amended Wage Act set a lower minimum wage increase (not to exceed $12.00 per hour until 2030) and left the tip credit in place. Proponents of the original ballot measure filed a legal challenge. Ultimately, the case made its way to the Michigan Supreme Court. The Supreme Court held that the legislature could not adopt and then amend the ballot initiatives in the same legislative session. *Mothering Just. v. AG*, 2024 Mich. LEXIS 1454 (July 31, 2024).

The consequence is that Michigan employers will face a significantly higher minimum wage. The rate employers may pay tipped employees also will increase to 48% of the new minimum wage. On Jan. 1, 2025, the minimum wage increased

to $10.56 per hour, and the tip credit rose to $4.01 per hour. On Feb. 21, 2025, the minimum wage will increase to $12.48 per hour, and the tip credit goes to $5.99 per hour. Barring further legislative action, those rates will rise steadily each February based on inflation. The tip credit will gradually go away and be eliminated entirely as of 2030.

Minnesota

Minimum wage law revisions. Minnesota's minimum wage law was revised to eliminate the reduced minimum wage rates applicable to small employers (with annual gross revenue less than $500,000), youth workers under the age of 18, and J-1 visa workers employed at hotels, motels, or lodging facilities. As of Jan. 1, 2025, the minimum wage rate for all employees is $11.13 an hour. This is an increase from the previous statewide minimum wage of $10.85 for large employers and $8.85 for small employers and reflects a statutorily mandated adjustment for inflation. The minimum wage law still allows for a "training wage," payable for a period of 90 days, to workers under the age of 20. The training rate is $9.08 per hour as of Jan. 1, 2025.

Timely payment of gratuities. An amendment to Minnesota's Minimum Wage and Gratuity law (Sec. 177.24) clarified the state's gratuity law regarding debit, credit, or electronically conveyed tips. HF 3852, which took effect Aug. 1, 2024, notes that gratuities received by employees by debit, charge, credit card, or electronic payment must be credited to the pay period when it is received. Additionally, where a gratuity is received by these means, the full amount of gratuity indicated in the payment must be distributed to the employee no later than the next scheduled pay period.

Minimum wage for nursing home workers. Pursuant to MN Stat. Sec. 181.213 Subdiv. 1(b), the state legislature tasked the Minnesota Nursing Home Workforce Standard Board (created by statute during the 2023 legislative session) with adopting rules establishing initial standards of wages for Minnesota nursing home workers. On April 29, 2024, the board voted to set minimum wages for certified nursing assistants at $22 per hour by 2026, on average, and $23.49 by 2027. The plan required legislative approval to increase payment rates from the state's Medical Assistance program for nursing home care, at a cost to Minnesota of $2.2 million in 2028 and $6.9 million in 2029.

Additionally, the board voted on Nov. 7, 2024, to require 150% pay for nursing home workers on 11 state holidays. The Nov. 7 vote was challenged by two trade associations representing Minnesota nursing homes. In late November, the groups filed suit in federal court on the grounds that the proposed rules impose costly standards on nursing homes while preventing them from covering costs with raised rates. The litigation is ongoing.

Missouri

Minimum wage hike passed. Missouri voters approved Proposition A in November, a ballot measure to increase the state's minimum wage to $13.75 hour on Jan. 1, 2025, with an increase to $15.00 in Jan. 2026, and annual adjustments thereafter based on the Consumer Price Index.

Nevada

Subminimum wage bar. AB 259, which took effect Jan. 1, 2025, prohibits organizations that provide jobs and day training services from entering into new contracts that pay subminimum wages to individuals with disabilities. The restriction comes pursuant to legislation enacted in 2023 to gradually eliminate subminimum wages in the state. Providers may not pay subminimum wages at all to disabled individuals on or after Jan. 1, 2028.

New Jersey

Domestic workers covered. The New Jersey Domestic Workers' Bill of Rights (SB 723) took effect July 1, 2024. The legislation removes an exclusion for "domestic workers" under the New Jersey Wage and Hour Law and requires employers of domestic workers to provide meal and rest breaks and a day off (unpaid) after six consecutive workdays. The legislation establishes penalties for violations of the law and authorizes the commissioner of labor and workforce development to issue rules and develop a complaint procedure for enforcement. The commissioner has not yet issued regulations.

New York

Pay frequency litigation. New York Labor Law (NYLL) Section 191(1)(a) requires that "[a] manual worker shall be paid weekly and not later than seven calendar days after the end of the week in which the wages are earned," subject to various exceptions. The New York State Appellate Division, First Department, in *Vega v. CM & Assocs. Constr. Mgmt., LLC*, held there is a private right of action for untimely payment of wages by employers. 175 A.D.3d 1144, 107 N.Y.S.3d 286, 2019 N.Y. App. Div. LEXIS 6464 (1st Dep't 2019). Hundreds of lawsuits were filed in its wake, seeking millions of dollars in "liquidated damages" (equal to 100% of the late-paid wage) against employers who paid wages biweekly instead of weekly. The New York State Appellate Division, Second Department, in *Grant v. Global Aircraft Dispatch, Inc.*, however, rejected *Vega*, and held the NYLL did not confer a private right of action for late-wage claims. 223 A.D.3d 712, 204 N.Y.S.3d 117, 125 (2nd Dep't 2024). New York state appellate courts are thus divided. The New York Court of Appeals has not yet addressed the issue, but it may do so in 2025 (an appeal in *Grant* is pending). Many cases have been stayed pending further appellate review.

Injury-in-fact for wage notice claims. Section 195 of the Labor Law, which was adopted as part of New York's Wage Theft Prevention Act, requires an employer to provide an employee, at the time of hiring, with a notice (1) describing the employee's rate of pay for regular and for overtime hours; (2) stating whether the employer intends to credit allowances for items such as tips, meals, and lodging toward the employee's minimum wage; (3) describing certain health care benefits; and (4) providing other basic information. In addition, each time wages are paid, the employer must furnish a statement detailing the calculation of regular and overtime pay for that pay period, along with information on deductions and minimum wage allowances. The Labor Law provides for statutory damages of up to $10,000 for the failure to provide the required wage notices and wage statements.

Employers who fail to provide such notices or provide incomplete (*i.e.*, failing to identify the employer's phone number) or inaccurate (*e.g.*, incorrectly listing the payday) have been subject to lawsuits for these statutory penalties. Some district courts dismissed these claims, finding the plaintiffs lacked standing to sue because they did not identify any concrete injury in fact, and that a state law imposing penalties for statutory violations cannot create Article III standing without an injury in fact. Other district courts permitted these cases to proceed without identifying the concrete injury suffered.

The Second Circuit held that an employee lacks standing to pursue statutory damages in federal court for technical violations of New York's wage notice and wage statement requirements, unless the employee can plausibly allege a concrete injury-in-fact arising from those violations. *Guthrie v. Rainbow Fencing Inc.*, 2024 U.S. App. LEXIS 22103 (2d Cir. Aug. 30, 2024).

The employee claimed he never received any wage notices during his seven years of employment, and asserted he suffered an "informational injury" as a result. But that was not enough, the appeals court concluded. He needed to show a causal connection between the lack of wage statements and some further harm. "A plaintiff-employee may have suffered an injury-in-fact sufficient to establish standing when, for example, inaccurate or noncompliant notices prevented the employee from obtaining full payment of wages in a timely fashion. But the plaintiff-employee cannot 'assume[] [t]his conclusion without analysis' or rely on 'speculation and conjecture,'" the court explained. As a result of the decision, lawsuits identifying technical violations without any injury will be dismissed, but plaintiffs' attorneys will go to greater lengths to try to link violations to concrete injuries.

North Carolina

Higher penalties for recordkeeping violations. North Carolina employers that violate the state wage and hour law's recordkeeping provisions face higher civil penalties due to legislation that took effect June 3, 2024. NC SB 542 increased to $750 (from $250) the minimum penalty for a violation of G.S. 95-25.23A. The maximum penalty is $4,500 (up from $2,000). Previously, North Carolina labor commissioner was to consider the size of the business, gravity of the violation, and whether the violation involved an employee under 18 years of age. The amended statute removed these considerations when assessing a penalty.

No guarantee of fees to prevailing plaintiff. A North Carolina appellate court affirmed a trial court's decision denying attorney's fees to a prevailing plaintiff in a suit for unpaid commissions brought under the North Carolina Wage and Hour Act. Although the statute is remedial in nature, it leaves the award of attorney's fees subject to the sole discretion of the trial court. The appeals court also found the trial court was not required to issue findings of fact as to the reasonableness of its decision to deny fees; nor was the court required to determine whether the fee request was reasonable before declining to award them. *Brown v. Caruso Homes, Inc.*, 2024 N.C. App. LEXIS 431 (May 21, 2024).

Oregon

Predictive scheduling law amended. The Oregon legislature revised the Oregon Family Leave Act (OFLA) and, in doing so, revised the Predictive Scheduling law to provide that predictive scheduling penalty pay under 653.455 is not owed to employees if the reason an employer cannot provide 14 days' notice of work assignments is if "the employer is provided with less than 14 days' notice before the first day of the work schedule of the need for leave under OFLA or Paid Leave Oregon, or of the return from the use of leave, and the employer makes a change to the schedule of an employee who was temporarily assigned to specific shifts to cover for an employee on leave under OFLA or PLO."

Quota notice requirements. Oregon HB 4127, which took effect Jan. 1, 2025, added new notice requirements for warehouse workers. The statute requires warehouse distribution centers to provide each employee with written documentation of any quota to which the employee is subject. The documentation must include the quantified number of tasks to be performed, or materials to be produced or handled, within a defined time period, among other information.

Puerto Rico

Restrictions on overtime work. Puerto Rico Secretary of Labor Gabriel Maldonado issued an opinion advising that neither the Puerto Rico Constitution nor Puerto Rico Act 379 impose limitations on employers requiring employees to work overtime (beyond paying a premium rate for overtime hours worked). The opinion, issued Sept. 13, 2024, revokes the previous multifactor guidance issued by the Puerto Rico Department of Labor (PRDOL).

Puerto Rico Act 379 provides that any time worked over eight hours in a calendar day and over 40 in a week must be compensated generally at one-and-one-half times the regular rate of pay. The Puerto Rico Constitution mandates that workers have a right to an ordinary work schedule not exceeding eight hours in a day; any time worked over eight hours must be paid at no less than one-and-one-half times the rate established by law. Previous PRDOL guidance interpreted the law to mean that overtime should be an exception and not the norm. Thus, employers could only require workers to work overtime under "extraordinary" circumstances and subject to multiple conditions, including that overtime must not impact workers' health and safety, that workers must receive prior notice, and other requirements.

Secretary Maldonado noted employers should still be cognizant of potential risks to the health and safety of employees when requiring overtime work. Absent these potential risks, it is PRDOL's position there are no other limitations to imposing overtime work under Puerto Rico law beyond paying a premium rate for work performed over eight hours in a calendar day or 40 hours in a week. The rationale underlying Secretary Maldonado's opinion also would apply to FLSA-covered employers.

Rhode Island

Minimum wage for domestic workers. Legislation that took effect June 24, 2024 (HB 7532) removed an exemption from state minimum wage requirements for domestic workers in Rhode Island. Previously, "any individual employed in domestic service or in or about a private home" was classified as not an employee for the purposes of Rhode Island's minimum wage laws. As a result, domestic workers were only entitled to the federal minimum wage of $7.25 hour.

South Carolina

Subminimum wage prohibited. South Carolina has eliminated the subminimum wage for individuals with disabilities. The prohibition took effect August 2024 pursuant to a joint resolution passed during the 2021-22 session to gradually phase out the subminimum wage for individuals with disabilities.

Tennessee

Portal-to-Portal Act adopted. Tennessee HB 2110 took effect July 1, 2024, aligning the state's wage and hour law to the FLSA's compensable time provisions. Tennessee has adopted the federal Portal-to-Portal Act, meaning the time spent traveling to and from work, or performing pre- or postliminary activities, is no longer compensable work under Tennessee law, unless *de minimis*, among other exceptions.

Washington

Quota law for warehouses. Legislation that took effect July 1, 2024, regulates the use of production quotas or production standards for employees working at warehouse distribution centers. HB 1762 requires covered employers to provide new employees with a written description of all applicable quotas, the potential adverse employment actions if the quotas or production standards are not met, and any associated incentives or bonus programs. Employers also must provide notice of changes to quotas before being subject to the new quota and an updated description of each quota to which the employee is subject within two business days of the change. When establishing quotas or production standards, employers must include time for rest breaks, reasonable travel time to rest and meal break locations, time to do work subject to the quota, and time to use the bathroom (including reasonable travel).

Minimum Wage Increases

The following state minimum wage increases went into effect Jan. 1, 2025, unless otherwise noted. Some states also have city or other local minimum wage increases for 2025.

Several states have different hourly minimum wage rates for youth workers or workers in specific industries. In addition, numerous states have separate tipped minimum wage rates that differ from the federal or do not recognize a separate tipped minimum wage at all.

Contact an attorney at Jackson Lewis for details on local or non-standard minimum wage rates.

Alaska	$11.91 ($13.00 effective July 1, 2025)
Arizona	$14.70
California	$16.50
Colorado	$14.81
Connecticut	$16.35
Delaware	$15.00
Dist. of Columbia	$17.50 (as of July 1, 2024)
Florida	$13.00 ($14.00 effective Sept. 30, 2025)
Illinois	$15.00
Maine	$14.65
Michigan	$10.56 ($12.48 effective Feb. 21, 2025)
Minnesota	$11.13

Missouri	$13.75
Montana	$10.55
Nebraska	$13.50
Nevada	$12.00
New Jersey	$15.49
	$14.53 (employers with fewer than 6 employees)
New York	$15.50
	$16.50 (New York City, Nassau, Suffolk, Westchester Counties)
Ohio	$10.70 (large employers)
Oregon	$14.70 (as of July 1, 2024)
	$15.95 (Portland metro) (as of July 1, 2024)
	$13.70 (Non-urban counties) (as of July 1, 2024)
Puerto Rico	$10.50 (as of July 1, 2024)
Rhode Island	$15.00
South Dakota	$11.50
Vermont	$14.01
Virginia	$12.41
Washington	$16.66

Minimum Salaries for the White-Collar Exemptions

The following state minimum annual salaries for the executive, administrative, and professional (white-collar) exemptions became effective Jan. 1, 2025. Jackson Lewis' attorneys can provide additional details.

Alaska	$952.80 weekly ($49,545.60 annually)
California	$1,320.00 weekly ($68,640.00 annually)
Colorado	$1,086.25 weekly ($56,485.00 annually)
Maine	$845.21 weekly ($43,950.92 annually)
New York	$1,237.50 weekly ($64,350.00 annually) in New York City, Nassau, Suffolk and Westchester Counties
	$1,161.65 weekly ($60,405.80 annually) in remainder of the state
	[applicable to executive and administrative exemptions only; professional exemption follows federal law]
Washington	$1,332.80 weekly ($69,305.60 annually) 1-50 employees
	$1,499.40 weekly ($77,968.80 annually) 50+ employees

Looking Ahead...

What to Expect in the Year Ahead

What lies ahead in 2025? Listen to our podcast on what to expect in wage and hour developments in the coming year.

Back to the Future for Core Wage and Hour Concerns

Thank you for your interest in the

2024 Wage & Hour Developments: A Year in Review

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