

Labor & Employment Workforce Watch

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A guide to the employment law developments most likely to impact your business.

In This Issue:

Biden Administration Proposes Significant Increase to Minimum Salary Threshold for White-Collar Exemptions

The United States Department of Labor (“DOL”) recently announced a potential new [rule](#) that will significantly raise the minimum salary for employees to qualify for the so-called “white-collar exemptions” (administrative, executive, and professional employees, among other classifications) to the overtime requirements of the Fair Labor Standards Act (“FLSA”). [read more](#)

California Strengthens Restrictions on Noncompete Clauses

California expanded its already broad restrictions on noncompete clauses by enacting Senate Bill No. 699 (“[SB 699](#)”), which takes effect on January 1, 2024. The new statute, Business and Professions Code section 16600.5, expands the scope of existing law to apply to non-competes which impact a person or entity in California at the time of enforcement, even if there was no connection to California when entered, and it also provides new enforcement mechanisms. These mechanisms include authorizing a private right of action allowing a current, former, or prospective employee to sue an employer, or a former employer, for an order finding a noncompete clause unenforceable, and allowing that employee to recover damages and attorney’s fees. [read more](#)

New Form I-9 Required Starting November 1, 2023

On August 1, 2023, United States Citizenship and Immigration Services (“USCIS”) released a new Form I-9 that employers must use to verify the identity and employment authorization of their employees. The new form recognizes the recent expansion of remote and hybrid work and must be used starting November 1, 2023. [read more](#)

Permanent Changes for Temporary Employees: Illinois Expands Protections for Temporary Employees and Implements Stricter Compliance Requirements for Temporary Agencies and Employers

[Amendments](#) to the Illinois Day and Temporary Labor Services Act (the “Act”) became effective on August 4, 2023. These amendments pose serious challenges for the way temporary labor service agencies (“Temp Agencies”) and third-party clients (“Employers”) pay, utilize, and train temporary employees. [read more](#)

2023 NLRB Update: Key Developments for All Employers

During 2023, strikes involving Hollywood writers, actors, automobile workers, and airline workers have dominated news story headlines. Meanwhile, unionization efforts affecting private employers across all industries are increasing. According to the National Labor Relation Board’s (“NLRB” or the “Board”) election statistics for January–August 2023, unions won 95% of all elections involving units over 500 members. The same NLRB data

for the first half of 2023 shows that unions had an overall 80% win rate in all representation elections. [read more](#)

Proliferating Pay Protection Laws Favoring Independent Contractors Create Perils for Businesses

Companies using independent contractors have been worried that class action lawyers or a workforce agency will challenge their classification of workers as independent contractors. For the past dozen years, we have advised companies on our [blog](#) how they can enhance their compliance with the array of federal and state laws governing independent contractors. Now there is a new concern: laws are cropping up at the state and local levels requiring companies using so-called “freelancers” to enter into specific written agreements with the contractors and pay all contractor fees upon completion of a project within a prescribed time period. These laws not only impose inflexible contract requirements and short payment periods on companies, but also double damages for late payments and other harsh penalties for violations of these new contractor pay protection laws. Some of these laws also expressly permit class actions to be filed in court. Regrettably, these laws are not uniform, so a single contract used on a nationwide basis by companies engaging independent contractors across the U.S. may create liabilities in multiple jurisdictions. [read more](#)

Two-Year Transition Relief Announced for Roth Catch-Up Contributions

On August 25, 2023, the IRS provided long-awaited guidance related to the SECURE 2.0 requirement that catch-up contributions for high-income participants in 401(k), 403(b), and governmental 457(b) plans be made as Roth contributions. [Notice 2023-62](#) provides for a 2-year administrative transition period that will be welcome relief to retirement plan sponsors and record keepers alike. Code Section 414(v)(7)(A), which was adopted as a result of Section 603 of SECURE 2.0, provides that for plan years beginning after December 31, 2023, catch-up contributions for participants with compensation in excess of \$145,000 (indexed) for the preceding calendar year must be made as Roth contributions. In addition, a plan that has high-income participants subject to these new rules must offer any other catch-up eligible participant the ability to make catch-up contributions as Roth contributions. [read more](#)

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