

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with greenery.

BUSINESS IN 2024

WEEKLY WEBINAR SERIES



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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda

Subhash Viswanathan – (12:05PM-12:15PM)

- USDOL Issues Final Overtime Rule

Bradley Hoppe – (12:15PM-12:25PM)

- FTC Stakes Position on Non-Compete Clauses

Aarti Chandan – (12:25PM-12:35PM)

- What to Know about Gender Based Restrictions on Scholarships and Student Aid

Victoria Okraszewski – (12:35PM-12:45PM)

- Cyber Incident Reporting for Critical Infrastructure Act of 2022 Rulemaking Advances

G. Oberfield – (12:45PM)

- Wrap Up

USDOL Issues Final Overtime Rule



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Executive, Administrative, and Professional Exemptions

- Current minimum weekly salary is \$684 per week
- July 1, 2024 – will increase to \$844 per week
- January 1, 2025 – will increase to \$1,128 per week
- Salary levels must be exclusive of board, lodging, or other facilities
- No changes to the duties requirements
- Still includes exceptions from the salary level and salary basis requirements for teachers, lawyers, doctors, medical interns, and medical residents

Highly Compensated Employee Exemption

- Current minimum annual salary is \$107,432 per year
- July 1, 2024 – will increase to \$132,964 per year
- January 1, 2025 – will increase to \$151,164 per year
- No changes to duties requirements
 - Must satisfy at least one element of the duties test for the executive, administrative, or professional exemption

Automatic Increases

- Every three years beginning on July 1, 2027
- Minimum weekly salary for the executive, administrative, and professional exemptions will be based on the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
- Minimum annual salary for the highly compensated employee exemption will be based on the 85th percentile of earnings of full-time salaried workers nationally

Comparison to New York

- Executive and Administrative Exemptions – 2024
 - \$1,200 per week in downstate New York
 - \$1,124.20 per week in upstate New York
- Executive and Administrative Exemptions – 2025
 - \$1,237.50 per week in downstate New York
 - \$1,161.65 in upstate New York
- No minimum salary to qualify for the professional exemption
- Can count board, lodging, or other allowances and facilities toward the minimum weekly salary

FTC Stakes Position on Non-Compete Clauses



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President Biden's July 2021 Executive Order

- On July 9, 2021, President Biden issued an Executive Order on the use of non-compete agreements.
- The EO encouraged the Federal Trade Commission (“FTC”) to curtail the unfair use of non-competes and related covenants.
- The EO did not contain any language supporting a broad prohibition on the use of non-compete agreements to protect an employer’s legitimate business interests.

FTC's Proposed Rule in January 2023

- FTC released its initial proposed rule on January 5, 2023.
- The proposed rule sought to ban all non-competes for “workers” with very limited exceptions.
- FTC received over 26,000 comments during the mandatory comment period, the vast majority of which supported the ban.

FTC's Final Rule Banning Non-Competes

- FTC voted on April 23, 2024 to approve the final rule.
- The final rule declares the vast majority of non-competes against “workers” an unfair method of competition.
- The final rule also prohibits the use of de facto non-competes.
 - Broad non-disclosure provisions;
 - Financial penalty provisions; and
 - Broad non-solicitation/non-interference provisions.
- Effective date is 120 days from publication in Federal Register.

Exceptions to Non-Compete Ban

- Non-competes during employment are permitted.
- Non-competes for “Senior Executives” in effect as of the Effective Date are permitted (new agreements after that date are barred).
- Non-competes ancillary to the sale of a business are permitted.
- The rule does not apply to pending litigation or future litigation where a cause of action for breach of non-compete has “accrued.”

Employer's Obligations under Rule

- Employers must notify all “workers” subject to the rule that the non-compete will not be enforced against that employee.
 - “Worker” defined broadly to include employees, independent contractors, interns, volunteers, apprentices, etc.
 - Extends to prior employees/contractors/etc. subject to non-competes.
- There is model language in the rule that satisfies requirement.
- Notice must be delivered by mail, email or text message within 120 days of the final rule being published to the Federal Register.

What Employers Should Be Doing Now

- Wait and see with respect to non-compete ban – there will be legal challenges to the FTC’s final rule on numerous grounds.
- Begin identifying workers (existing and past) subject to non-competes ban so that you can comply with the notice requirement by the Effective Date.
- Review agreements for “de facto” non-competes to make sure non-disclosures and non-solicits are no broader than necessary.

What to Know about Gender Based Restrictions on Scholarships and Student Aid



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Title IX

- Title IX prohibits discrimination based on sex in education programs and activities that receive federal assistance.
- This includes a ban on single sex-scholarships, unless they meet certain narrow exceptions as to how they are administered and awarded.

Recent Complaints

- Over recent years, the U.S. Department of Education, Office for Civil Rights (OCR) has opened hundreds of investigations into sex-specific scholarships and programming.
- The investigations are generally focused on scholarships and programs that are available exclusively to women.
 - E.g. on-campus coding and STEM camps for female K-12 students and scholarships that are limited to female students or whose criteria grant preference to female students.

Ensuring Compliance with Title XI

- Generally, the best and only way to ensure compliance with Title IX is to administer and award scholarships and aid in a manner that makes each award available to individuals regardless of sex or gender.
- “Pool and match” method noted by OCR as a way to ensure compliance.

Don't Forget the Descriptions

- The title or description of a scholarship, fellowship, or other form of financial assistance can be reasonably perceived as sex-restricted, and Title IX may be implicated.

If You Receive a Complaint, Be Proactive!

- Ensuring that scholarships and other financial assistance are compliant with Title IX takes time.
- Don't wait until you receive a Complaint! Undertake a review of scholarships now to identify potential issues.

Cyber Incident Reporting for Critical Infrastructure Act of 2022 Rulemaking Advances



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Cyber Incident Reporting for Critical Infrastructure Act (CIRCI)

- Enacted in March 2022.
- Required the Cybersecurity and Infrastructure Security Agency (CISA) to develop regulations on cyber incident reporting.
- Under CIRCI, covered entities must report covered cyber incidents and ransomware payments to CISA.
- On April 4, 2024, CISA published its Notice of Proposed Rulemaking (NPRM) in the Federal Register.

CISA's Proposed Cyber Incident Reporting Rule: Covered Entities

- CIRCIA defines a covered entity as “an entity in a critical infrastructure sector, as defined in Presidential Policy Directive 21.”
- CISA proposed two additional requirements for a critical infrastructure to be a covered entity:
 - Sized-Based Criterion; or
 - Sector-Based Criterion

CISA's Proposed Cyber Incident Reporting Rule: Covered Incidents

- The NPRM requires covered entities to report only “substantial cyber incidents,” which is defined as:
 - A substantial loss of confidentiality, integrity, or availability of information;
 - A serious impact on safety and resiliency of operational systems and processes;
 - A disruption of ability to engage in business or industrial operations, or delivered goods or services; or
 - Unauthorized access facilitated through or caused by a: (1) compromise of a cloud service provider, managed service provider, or other third-party data hosting provider; or (2) supply chain compromise.
- Examples of cyber incidents that are not “substantial”:
 - Any lawfully authorized activity of a government entity or state, local, tribal or territorial government entity;
 - When a cyber incident is executed in good faith in response to a request by the owner or operator of the information system; or
 - The threat of disruption, such as extortion.

CISA's Proposed Cyber Incident Reporting Rule: Reporting Requirements

- The NPRM includes three reporting obligations for covered entities:
 - Covered cyber incidents must be reported to CISA within 72 hours;
 - Ransomware payments must be reported to CISA within 24 hours of the payment; and
 - If a covered entity experiences a joint covered cyber incident and ransomware payment, a report must be filed within 72 hours of the cyber incident occurring.
- Covered entities must submit a supplemental report when:
 - Substantially new or different information becomes available; or
 - The covered entity makes a ransomware payment in connection with a previously reported incident.

CISA's Proposed Cyber Incident Reporting Rule: Reporting Requirements Exceptions

- The NPRM includes three exceptions to the reporting requirements:
 - A covered entity is required to submit *substantially similar information* within a *substantially similar timeframe* to another federal agency that has an *information sharing agreement and mechanism* with CISA;
 - The covered entity, or specific functions of those entities, concern the Domain Name System (DNS); and
 - A federal agency is required to report the incident to CISA pursuant to Federal Information Security Modernization Act (FISMA).

CISA's Proposed Cyber Incident Reporting Rule: Contents of the Report

- The report must include certain information, such as:
 - Covered entity's name;
 - Entity type;
 - Address;
 - Contact information;
 - Description of the incident
 - Information about the perpetrator; and
 - Mitigation and response activities.
- Supplemental Reports must include:
 - The purpose of the supplemental report;
 - Any new information;
 - If applicable, notice of any ransom payment; and
 - If applicable, notice that a cyber incident has concluded.

CISA's Proposed Cyber Incident Reporting Rule: Enforcement

- The NPRM includes enforcement mechanisms if a covered entity does not report a covered cyber incident:
 - A request for Information;
 - Subpoena; and
 - Referral to the Attorney General for suspension, debarment, and contracting actions
- Prior to an enforcement action, CISA will consider the complexity of the covered cyber incident and the covered entity's prior interactions with CISA or its understanding of the policies and procedures for reporting for covered cyber incidents and ransom payments.

Your Questions



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WORKPLACE 2024

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New York Employment Law: The Essential Guide

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Thank You

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