

Employment Law Update
April 19, 2024



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Federal Developments



NLRB's New Joint Employer Rule

- Companies are joint employers if they “**possess the authority to control** (whether directly, indirectly, or both) ... one or more of the employees’ essential terms and conditions of employment.”
- This would affect virtually all arrangements with staffing companies and franchisor/franchisee relationships.
- It was scheduled to take effect on 3/11/24, but on 3/8/24, a federal judge in Tyler ruled it unlawful.
- **Recommendation:** Monitor for developments, but don’t panic.

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Exemptions from Overtime

- On 8/30/23, the U.S. DOL released a proposed rule increasing (1) the **salary level** for executive, administrative, and professional exemptions from \$684 per week (\$35,568/year) to \$1,059 per week (\$55,068/year), and (2) the total annual compensation for the **highly compensated exemption** from \$107,432 to \$143,988.
- A final rule cleared the White House on 4/10/24 and is expected soon, and then the legal challenges will ensue.
- **Recommendation:** Monitor for developments, but don’t panic.

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The War on Non-Compete Agreements

- On 1/5/23, the FTC issued a proposed rule banning most non-compete agreements. It would apply retroactively.
- The draft proposal received 26,813 comments during the 60-day public comment period.
 - On 4/16/24, the FTC announced that it will hold a **highly** unusual open meeting on 4/23/24 (open to the public via webcast) to outline the final rule and immediately proceed to a vote.
 - Expect legal challenges to any final rule.

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The War on Non-Competes cont'd

- The NLRB's General Counsel and at least one NLRB region have taken the position that non-compete and non-solicitation agreements violate the National Labor Relations Act.
- **Increasing number of state law restrictions**
 - Effectively banned in CA, CO, MN, ND, and OK, and more states are likely to follow (NY potentially)
 - Even when not banned, there are increasing limitations. For example, 20+ states now bar certain non-compete agreements for employees earning < \$100,000.
- **Recommendation:** Review your agreements for any needed updates; monitor for additional developments.

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The Pregnant Workers Fairness Act

- The Pregnant Workers Fairness Act (PWFA), effective 6/27/23, requires reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions.
- On 4/15/24, the Equal Employment Opportunity Commission (EEOC) issued its final rule implementing the PWFA. It will be published in the Federal Register on 4/19/24 (ie, today) and become effective 60 days later.

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The Pregnant Workers Fairness Act cont'd

- The EEOC's rule includes examples of reasonable accommodations, guidance regarding limitations and medical conditions for which employees or applicants may seek reasonable accommodation, and guidance encouraging early and frequent communication between employers and workers.
- **Recommendation:** Update accommodation policies/forms; train supervisors and HR employees on the PWFA's requirements and recognizing potential requests for accommodations under the PWFA; review the EEOC's guidance when facing the issue.

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Job Transfers Cannot be Discriminatory – *Muldrow v. City of St. Louis (4/17/24)*

- The city transferred a police officer to a different position, with the same rank and pay but different duties and schedule. She filed suit, alleging sex discrimination.
- The lower courts held she could not pursue her claim because the transfer did not affect her title, salary, or benefits.
- The Supreme Court unanimously disagreed, ruling a plaintiff “need show only some injury respecting her employment terms or conditions. The transfer must have left her worse off, but need not have left her significantly so.”
- **Recommendation:** Evaluate job transfers just as you would terminations.

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Texas Developments



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Texas' Ban on Vaccine Mandates – Effective 2/6/24

- A new law prohibits employers from taking “adverse action” against employees, contractors, or applicants for refusing a COVID-19 vaccine.
- \$50,000 penalty for each violation, unless remedied by hiring the applicant or reinstatement, with full back pay and benefits
- **Recommendation:** Review and update vaccination/workplace safety policies for compliance.

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Texas' CROWN Act – Effective 9/1/23

- The Respectful and Open World for Natural Hair Act (CROWN Act) prohibits (1) discrimination based on “hair texture or protective hairstyle commonly associated with race,” and (2) a “dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race.”
- **Recommendation:** Review EEO, anti-discrimination, anti-harassment, and dress code/grooming policies for compliance, and train managers and supervisors.

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Texas' New Law on Workplace Violence Prevention – Effective 9/1/23

- The new law requires all employers, regardless of size, to post a notice of “the contact information for reporting instances of workplace violence or suspicious activity to the [Texas] Department of Public Safety.” The notice must be posted (1) “in a conspicuous place in the employer’s place of business”; (2) “in sufficient locations to be convenient to all employees”; and (3) “in English and Spanish, as appropriate.” See: <https://www.twc.texas.gov/sites/default/files/fdcm/docs/workplace-violence-poster-twc.pdf>
- Additionally, certain healthcare facilities are required to adopt workplace violence prevention plans by 9/1/24.
- **Recommendation:** Post the required notices.

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North Dallas Chamber of Commerce
Human Resources Conference

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