

# Employment Law Updates

Indiana Association of Rehabilitation Facilities (INARF)

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Kevin Stella

[kstella@hallrender.com](mailto:kstella@hallrender.com) / (317) 977-1426





# Topics

- A Groundbreaking U.S. Supreme Court Case
- DOL to Raise Minimum Salary Requirement for Overtime
- DOL Independent Contractor Rule
- Pregnancy Worker Fairness Act (PWFA)
- Non-Competes Under Attack
- Workplace Religious Rights

# Groundbreaking U.S. Supreme Court Case



# Impactful Supreme Court Ruling

*Loper Bright Enter., et al. v. Raimondo, et al.*

- SCOTUS overruled *Chevron v. National Resources Defense Council*.
  - Under *Chevron*, federal courts were compelled to defer to a federal agency's interpretation of ambiguous statutory language.
- What does *Loper Bright decision* mean for recently enacted agency policies?



# DOL to Raise Minimum Salary Requirement for Overtime

# Three Requirements to Treat as Exempt

1. Perform certain type of duties (e.g., executive, administrative, professional)
2. Paid on a “salary basis”
  - a. Predetermined weekly amount not subject to variation based on quality or quantity of work performed each week
3. Salary must meet the minimum threshold



# Background

Minimum salary has been raised 8x since 1938

- Under G.W. Bush: \$23,600
- Obama Final Rule: \$47,000 (struck down by TX district court)
- Trump Final Rule: \$35,568





# Biden Rule

- Increased minimum threshold to \$43,888 on July 1, 2024
- Increases minimum threshold to \$58,656 on January 1, 2025
- Increased “Highly Compensated” exemption threshold to \$132,964 on July 1, 2024
- Increases “Highly Compensated” exemption threshold to \$151,164 on January 1, 2025
- Auto adjusts every three years based on labor data
- A few legal challenges were filed by employers, but no widespread success yet in seeking injunction on the rule
- Legal challenges pending





# Department of Labor Developments

- Recent Developments Regarding the Increase to Salary Threshold:
  - ***Mayfield et al. v. Dep't of Labor*** – In September 2024, the Fifth Circuit held that the DOL has power to define salary levels as part of its regulatory responsibilities. (Note: This case arose out of a challenge to the 2019 DOL salary threshold increase rule).
  - ***State of Texas v. Dep't of Labor*** – In June 2024, following the overturning of Chevron, a Texas federal judge issued a preliminary injunction temporarily blocking the DOL's salary threshold rule from taking effect for State of Texas employees.
  - ***Flint Avenue LLC v. Dep't of Labor*** – N.D. Texas Court denied plaintiff's motion for a preliminary injunction, finding that plaintiff lacked standing for a nationwide injunction and failed to show irreparable harm. Cross-motions for summary judgment are pending.
  - ***Assoc. of Christian Schools Int'l v. Dep't of Labor*** – Plaintiff filed suit in September 2024, arguing that the final rule violates fundamental separation-of-powers principles. Case is pending in D.C. Circuit Court.
- **Practical Takeaway:** Despite challenges, for now employers should continue to comply with the minimum salary threshold and prepare for the January 1, 2025, salary threshold increase.

# DOL Independent Contractor Test



# Department of Labor- Independent Contractors

- New Department of Labor (DOL) Rule (effective March 11, 2024) – addresses worker classification under the Fair Labor Standards Act (FLSA)
- The 2024 rule replaces a Trump-Era rule
- New rule allows for the consideration of additional factors relevant to the overall question of economic dependence of a worker
- According to the DOL, the rule is intended to
  - *“reduce the risk that employees are misclassified as independent contractors while providing a consistent approach for businesses that engage with individuals who are in business for themselves.”*



# Department of Labor – Independent Contractors

- Six factors to be considered in determining whether a worker is an employee under the FLSA or an independent contractor:
  1. Opportunity for profit or loss depending on managerial skill,
  2. Investments by the worker and the employer,
  3. Permanence of the work relationship,
  4. Nature and degree of control,
  5. Whether the work performed is integral to the employer's business,
  6. Skill and initiative.
- Other factors may be considered
- Not one factor given more weight over others
- One of many rules for classifying independent contractors (e.g., IRS rule)
- Lawsuits are pending challenging the rule



# Pregnancy Worker Fairness Act (PWFA)

# Pregnancy & Postpartum Protections

- In June 2023, the Pregnant Workers Fairness Act (PWFA) went into effect, placing heightened obligations upon employers to accommodate pregnant and postpartum employees.
- The EEOC issued its Final Rule for the PWFA in April 2024.
- EEOC's regulation became effective June 18, 2024.



# PWFA – Final Rule

- Covered entities must reasonably accommodate qualified employees and applicants with known limitations **related to pregnancy, childbirth, or related medical conditions**, unless doing so would impose an undue hardship.
  - “Limitations” are physical or mental conditions
- “Qualified individual” if:
  - the inability to perform the essential function is for a temporary period;
  - the employee will be able to perform the essential function in the near future; and
  - the employer can reasonably accommodate the employee’s inability to perform the essential function.
- Not for bonding or for childcare
- Employers may only obtain medical documentation if it is reasonable under the circumstances to determine whether the employee has a qualifying condition and needs a change or adjustment at work due to a limitation.





# PWFA – Final Rule

- Expansive reading/definition of “pregnancy, childbirth, or related medical conditions”
- Non-exhaustive list . . . includes:
  - Pregnancy (current, past, potential)
  - Lactation (including breastfeeding and pumping)
  - Infertility
  - Fertility treatments
  - Miscarriage
  - General depression and postpartum depression
  - Gestational diabetes
  - Anemia
  - Carpal tunnel
  - Morning sickness
  - Migraines
  - High blood pressure

Note: PWFA intended to cover conditions that do not rise to the level of a disability like the ADA





# PWFA – Final Rule

- Undue hardship has same definition as in ADA – “*significant difficulty or expense incurred by employer*”
- Examples of possible reasonable accommodations:
  - Additional / Longer / More flexible breaks to rest, drink, eat, etc.
  - Parking
  - Changing work schedule, such as having shorter hours or later start time
  - Telework
  - Temporary assignment
  - Temporary suspension of essential functions
  - Light duty or help with lifting or other manual labor
  - Leave to attend appointments or recover from childbirth or other related medical conditions to pregnancy or childbirth

Note: Per regulations, an employer cannot require an employee to take leave if another reasonable accommodation can be provided



# PWFA - Final Rule & Abortion

- The April 2024 Final Rule interpreted the term “related medical conditions” in the PWFA as including abortion, which in turn requires employers covered by the PWFA to provide reasonable accommodations to their employees for abortion care.
- The following courts have issued rulings blocking EEOC enforcement of the abortion accommodation mandate against particular parties:
  - Western District of Louisiana (*Louisiana v. Equal Emp’t Opportunity Comm’n*) – holding that the EEOC lacked “clear congressional authorization” to impose an abortion accommodation mandate on public and private employers.
  - District of North Dakota (*Catholic Benefits Association et al. v. Burrows et al.*) – Injunction granted prohibiting enforcement of PWFA claims related to abortion or infertility treatments against plaintiffs (Catholic Benefits Association, its members, Diocese of Bismarck, etc.).



# PWFA – Legal Challenges / Activity

## Other Developments:

- ***Texas v. Garland*** – Northern District of Texas court enjoined enforcement of PWFA against the state of Texas (but private employers in Texas are still covered by PWFA).
- ***Tennessee et al. v. Equal Emp't Opportunity Comm'n*** – Suit over PWFA Final Rule by 17 State Attorneys General (AGs) dismissed by Arkansas District Court on June 14, 2024, finding that the AGs lacked standing and failed to show a likelihood of irreparable harm. AGs have appealed.
- EEOC actively filing lawsuits against employers (*See, e.g., EEOC v. Gracious, LLC d/b/a Gracious Bakery + Café; EEOC v. Polaris Industries, Inc.; and EEOC v. Urologic Specialists of Oklahoma, Inc.*).





# PWFA – Final Rule

## Practical Takeaway:

Health care employers should:

- ensure they are providing necessary accommodations to pregnant and breastfeeding employees;
- review their policies to ensure they comply with these new laws;
- train supervisors and managers; and,
- closely monitor evolving case law to ensure continued compliance with current standards.





# Non-Competes Under Attack

# Non-Compete Clauses

- FTC's Final Rule adopted the following restrictions:
  - A complete ban on new non-competes with all workers of for-profit companies; and
  - Existing non-competes for workers who are not Senior Executives are no longer enforceable after the effective date.
- Senior Executives:
  - In a "policy-making position,"; and
  - Received actual or annualized total annual compensation of at least \$151,164.
- Employers must tell non-executive workers that the clauses will not be enforced.
- Does not apply to not-for-profit entities.
  - If entities claiming tax-exempt status are structured and operated to generate profits, they may still be covered by the Final Rule.
- Does not ban other types of restrictive covenants.



# Non-Compete Clauses

- U.S. Chamber of Commerce and Ryan, LLC sued the FTC in Texas federal courts to enjoin enforcement of the Final Rule.
- In August, that federal court in Texas set aside the FTC's rule nationwide.
- The court determined:
  - i) the FTC exceeded its statutory authority in issuing the Final Rule; ii) the Final Rule is arbitrary and capricious; iii) the proper remedy was for the Court to “hold unlawful” and “set aside” the Final Rule; and iv) the set aside remedy has “nationwide effect[,]” as opposed to being party-specific.
- On October 18, 2024, the FTC filed a notice of appeal in this case, seeking to overturn the injunction in the Fifth Circuit.
  - Note: On September 24, 2024, the FTC also filed a notice of appeal in a Middle District of Florida case in which the court issued a preliminary injunction of the Final Rule limited to the plaintiff in that case.

# Indiana - Non-Compete Clauses

- Indiana state legislature passed laws restricting non-compete for physicians.
- Summary:
  - Agreements entered on/after July 1, 2023 with PCPs (includes family med; general peds; internal med) cannot have non-competes
  - Beginning on July 1, 2023, a physician non-compete will not be enforceable if . . .
    - a. Employer terminates physician without cause
    - b. Physician terminates for cause
    - c. Agreements expires and parties have fulfilled contractual obligations
  - Other legal requirements, like provision allowing for buy-out of a non-compete; mediation rights; patient notice rights



# Workplace Religious Rights

# SCOTUS Changes Undue Hardship Test for Religious Accommodations

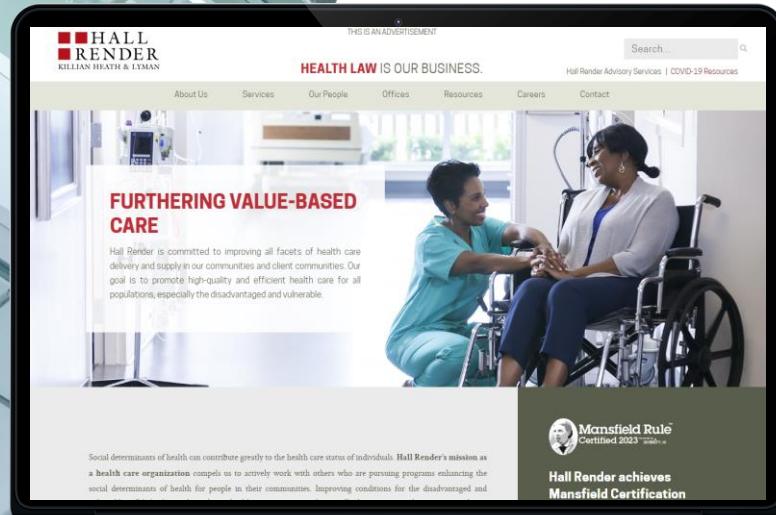
- Before *Groff v. DeJoy* (for the last 46 years)...
  - Employer could deny religious accommodation request if it imposed “more than a de minimis” cost or effort
- After *Groff v DeJoy*...
  - Employer must show burden would result in “substantial” increased costs in relation to overall conduct of its particular business

# What Should You Do?

- Religion/politics line blurring?
  - Remember religious belief must be “sincerely held” – easier than new undue hardship test?
  - EEOC: Give employee benefit of doubt unless object evidence to contrary
  - Expect lots of case law on horizon
- In the meantime: Tread carefully – it may come down to a jury decision
- Conduct individualized assessment
- Engage in a good faith interactive process (and document it)







# Questions?

For more information on these topics visit [hallrender.com](https://hallrender.com).

**Kevin Stella**

**[kstella@hallrender.com](mailto:kstella@hallrender.com)**

**(317) 977-1426**