

**LEGISLATIVE UPDATE****EARLY MAY 2024 UPDATE**

Grover Wallace – GVHRA & Montana
State Legislative Director

GVHRA MISSION: *To connect and inspire members to create a collaborative environment for people to do their best work*

New Overtime Rule Raises Salary Level in Two Phases

April 24, 2024

The U.S. Department of Labor’s (DOL’s) two-part approach to implementing its [new overtime rule](#)—establishing one raise of the salary-threshold level on July 1 and another on Jan. 1, 2025—gives employers options for adjusting the pay of their exempt employees.

Under the Fair Labor Standards Act (FLSA), workers who work more than 40 hours a week are entitled to overtime pay, which is set at 1.5 times their regular rate, unless the employee is otherwise exempt. Three tests are used to determine if an employee is a “bona fide executive, administrator or professional” and therefore exempt: **(1)** the employee must be paid a “predetermined and fixed salary,” **(2)** that meets or exceeds a certain threshold; and **(3)** the employee must perform certain defined work responsibilities.

Effective July 1, the Fair Labor Standards Act’s (FLSA’s) annual salary-level threshold for white-collar exemptions to overtime requirements will increase from \$35,568 to \$43,888. As of Jan. 1, 2025, the annual salary threshold will rise to \$58,656.

The final rule, which will affect millions of workers, is, as of 2025, an increase of nearly 65 percent. “It’s a very big jump,” said Natalie Bare, an attorney with Duane Morris in Philadelphia.

“Although SHRM and its membership support reasonable increases to the EAP [executive, administrative and professional] salary threshold that reflect the modern economy, the nearly 65 percent increase from the current level may not be in line with local wage rates for employees holding administrative, professional, and executive positions in some areas of the country,” said Emily M. Dickens, SHRM chief of staff, head of government affairs and

corporate secretary, in a [statement](#). “For this reason, SHRM advocated for a more nuanced, geographically tailored approach to any increase in the EAP salary threshold.

SHRM LINK ARTICLE: [New Overtime Rule Raises Salary Level in Two Phases \(shrm.org\)](#)

FTC Bans Most New Noncompete Agreements Nationwide

Rule makes all existing noncompete agreements except for those covering senior executives unenforceable

APRIL 23, 2024

The U.S. Federal Trade Commission (FTC) today approved a proposed final rule banning most new noncompete clauses in employment contracts—a sweeping rule affecting millions of workers.

The rule also makes all existing noncompete agreements except for those covering senior executives unenforceable and requires employers provide notice to current and former workers that their noncompete clauses are no longer in effect. The FTC defines the term “senior executive” to refer to workers earning more than \$151,164 annually who are in a “policy-making position.”

The final rule reflects some changes from the original Notice of Proposed Rulemaking, but the substance is the same, said Jonathan Crook, an attorney in the Charlotte, N.C., office of Fisher Phillips.

Crook added that senior executives as defined in the rule is “an extremely limited population, which the FTC estimates to constitute fewer than 0.75 percent of all workers.”

The rule goes into effect 120 days following its [publication in the *Federal Register*](#). Enforcement could be further delayed by likely legal challenges. The U.S. Chamber of Commerce has already pledged to sue the agency over the rule.

The rule defines “noncompete clause” to mean a contractual term that blocks a worker from working for a competing employer, or starting a competing business, within a certain geographic area and period of time after the worker’s employment ends.

The rule also applies in some cases to agreements that require employees to pay back the employer for training costs if the worker’s employment terminates within a specified time period.

All [current state laws limiting noncompetes would be preempted](#) unless they provide greater worker protection than the FTC rule.

SHRM LINK ARTICLE: [FTC Bans Most New Noncompete Agreements Nationwide \(shrm.org\)](#)

DOL Finalizes Fiduciary Rule

April 23, 2024

The Department of Labor (DOL) on April 23 finalized the long-awaited fiduciary rule, which aims to modernize and increase investment advice standards for retirement accounts.

The rule, called the [Retirement Security Rule: Definition of an Investment Advice Fiduciary](#), updates the definition of an investment advice fiduciary under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code so that providers adhere to “high standards of care and loyalty” when recommending investments. It ensures that financial advisors, brokers and insurance agents are held to the fiduciary standard on rollover individual retirement accounts.

The rule will take effect on Sept. 23. It was [originally proposed in October](#).

“The final rule and related amended prohibited transaction exemptions require trusted investment advice providers to give prudent, loyal, honest advice free from overcharges,” [the DOL said in a statement](#). “These fiduciaries must adhere to high standards of care and loyalty when they recommend investments and avoid recommendations that favor the investment advice providers’ interests—financial or otherwise—at the retirement savers’ expense.”

The rule applies a best interest standard to advice that plan sponsors receive about which investments to include in 401(k) and other employer-sponsored plan lineups. The rule, however, clarified that human resource professionals will not be interpreted as giving professional advice when they discuss general aspects of the retirement plan a company provides.

SHRM LINK ARTICLE: [DOL Finalizes Fiduciary Rule \(shrm.org\)](#)

[UPCOMING CALENDAR EVENTS:](#)

KEY DATES AND DEADLINES:

MAY

6

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MAY 31	<u>OSHA Walkaround Final Rule</u> In a final rule issued March 29, the Occupational Safety and Health Administration (OSHA) clarified that workers may authorize another employee or nonemployee to serve as their representative to accompany an OSHA compliance officer during a workplace inspection.
JUN 23	<u>SHRM Annual Conference & Expo 2024 (Through June 26 in Chicago and virtually)</u> Join other forward-thinking HR professionals at the world's largest HR conference. Get ready for four days of learning, networking, inspiration and professional growth.

WEBCASTS/CONFERENCE SESSIONS

[5 Trends Defining the Future of Hiring](#)

May 6, 2 p.m. ET / 11 a.m. PT

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