

Southwest Montana SHRM

Affiliate of the Society for Human Resource Management

Chartered in Bozeman, MT



LEGISLATIVE UPDATE

AUGUST 2024 UPDATE



Grover Wallace – Southwest MT &
Montana State Legislative Director

Southwest Montana SHRM MISSION:

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

Court Blocks Effective Date of FTC’s Noncompete Rule for Plaintiffs Only

Observers believe judge’s decision suggests that rule will eventually be struck down

July 8, 2024

The organizations that sued to block the Federal Trade Commission’s (FTC’s) final rule [prohibiting most noncompete agreements](#) from taking effect will not have to abide by the rule until their litigation is resolved, a federal judge ruled July 3.

The U.S. District Court for the Northern District of Texas granted the preliminary injunction and postponed the effective date of the rule for the plaintiffs: Ryan, LLC; the U.S. Chamber of Commerce; the Business Roundtable; the Texas Association of Business; and the Longview Chamber of Commerce. The ruling applies to the organizations as employers; businesses that are members of the groups and associations would still need to follow the FTC’s new noncompete rule when it takes effect Sept. 4, though the judge said the court would rule on the merits of the rule on or before Aug. 30.

Lawsuits were quickly filed against the rule when it was announced, arguing that the FTC lacks the authority to prohibit noncompete agreements. SHRM and others filed amicus briefs in support of [delaying the rule from going into effect](#) while litigation is ongoing.

The FTC’s ban would cover all existing and new noncompete agreements for U.S. workers with exceptions for certain industries (airlines, financial services, and nonprofits) and would prohibit employers from creating new noncompete agreements with “senior executives,” defined as people earning more than \$151,164 annually who are in a “policy-making position.”

The rule would also require employers to provide notice to current and former workers that their noncompete clauses are no longer in effect.

SHRM LINK ARTICLE: [Court Blocks Effective Date of FTC’s Noncompete Rule for Plaintiffs Only \(shrm.org\)](#)

Enhanced E-Verify Begins Testing Phase

July 9, 2024

U.S. Citizenship and Immigration Services (USCIS) recently announced the trial launch of E-Verify+, the next generation of the government's electronic employment verification system.

E-Verify+ would fundamentally change the way employment eligibility verification is conducted, integrating the Form I-9 process with E-Verify and shifting much of the process away from HR to the new hires themselves.

The trial launch of E-Verify+ will include live testing and assessment of the user experience. Feedback from the testing will be incorporated when E-Verify+ is released for wider use.

Under the updated process, new hires would electronically enter their biographic information, citizenship or immigration status, and acceptable identity documents into E-Verify+ using their secure personal account. Once the system confirms the employee's identity and employment eligibility, it notifies the employer, who will finish the verification by examining the documents. The submitted information will be used to create a completed Form I-9 that the employer can download and store.

The current process relies on employers to correctly enter information on the Form I-9 and then transcribe that information into E-Verify, a practice that is less secure and sometimes results in data entry errors that can lead to E-Verify mismatches, Fay said.

With E-Verify+, new hires would be notified if further action is needed to determine their employment eligibility, and they would resolve E-Verify mismatches directly with the government. This would eliminate the need for the employer to act as an intermediary and create a more secure and private process that can speed up case resolution, according to USCIS.

Another new development is that employees would be able to carry their verification status with them when they change jobs. Currently, employees and employers must complete a new Form I-9 and enter a new E-Verify case each time the employee starts a new job.

SHRM LINK ARTICLE: [Enhanced E-Verify Begins Testing Phase \(shrm.org\)](https://www.shrm.org/employee-experience/learning-and-development/articles/2024/07/09/enhanced-e-verify-begins-testing-phase)

Agencies' Influence over Employers May Erode After Supreme Court Decision

June 28, 2024

Employers may have to follow fewer regulations and could be in a better position to challenge rules from federal agencies like the U.S. Department of Labor (DOL), now that the U.S. Supreme Court has overruled a 1984 decision that held courts should defer to federal agencies' reasonable interpretations of ambiguous laws passed by Congress.

Chief Justice John Roberts Jr. wrote in the June 28 majority opinion that the 40-year-old *Chevron* decision that gave federal agencies the final say over how to interpret congressional statutes is misguided because agencies have no special competence in resolving statutory ambiguities, adding that "courts do."

"The Supreme Court has made a monumental decision in *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*, overruling *Chevron* deference," said Emily M. Dickens, chief of staff, head of government affairs, and corporate secretary for SHRM.

“This ruling overturns decades of established precedent, fundamentally changing how courts evaluate the boundaries of regulatory authority and executive actions,” Dickens added. “This decision sets a new precedent to guide lower courts to not give deference to a federal agency’s interpretation of laws when challenged.”

Expect More Employers to Challenge Rules

“Employers typically follow agency regulations and even nonbinding agency guidance so as to keep well within the bounds of permissible conduct,” said Timothy Taylor, an attorney with Holland & Knight in Tysons, Va. “What I think we’ll see is a new willingness to challenge regulations in court as inconsistent with their statutory text.”

The court’s overruling of *Chevron* deference is “a big deal,” he added. The assumption no longer holds that federal labor and employment rules are written in stone. The court’s decision gives employers new tools for pushing back when agency rulemakings are overly aggressive, Taylor said.

“Agencies will need to more carefully pick their battles,” he said. More aggressive rulemakings, especially when an agency attempts to assert new jurisdiction or to extend novel interpretations of the law, may be harder to justify, Taylor said. For example, the Federal Trade Commission ventured into new rulemaking territory when it banned most noncompete agreements, [a rule that is being litigated](#).

“The practical effect for employers may be that rulemaking activity is dampened—but by no means ended—and that rulemaking challenges are supercharged by the decision,” he said.

SHRM LINK ARTICLE: [Agencies’ Influence over Employers May Erode After Supreme Court Decision \(shrm.org\)](#)

UPCOMING CALENDAR EVENTS:



SHRM has launched its fourth annual [August In-District Advocacy Campaign](#), scheduled during the August Congressional Work Period from Aug. 3 to Sept. 8. During this time, members of Congress will be in their home states and districts to meet with constituents and provides a valuable opportunity to share your expertise and local perspective with policymakers.

KEY DATES AND DEADLINES:

AUGUST 15TH - Social Responsibility Perspectives and Opportunity for HR

Location: Profitable Ideas Exchange (PIE) - 795 Manley Rd, Bozeman, MT 59715 (2-story building on the left of the driveway)

Price: Free ****Registration Required****

Event Type: Southwest Montana SHRM Hosted – Meeting

OCTOBER 3 & 4TH – Helena Chapter DEI and Legislative Seminar

Location: Helena. HHS Auditorium

Event: Sessions on DEI and Legislative/Legal updates for Montana

OCTOBER 1-3. MT Arbitration and Labor Relations Conference

Location: Copper King – Butte MT

Price/Registration: \$300

Event: Three-day conference on Labor Relations and Arbitration.

SEPT.
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[Investment Advice Fiduciary Rule Takes Effect](#)

The DOL has finalized the long-awaited fiduciary rule, which aims to modernize and increase investment advice standards for retirement accounts. The rule updates the definition of an investment advice fiduciary under the Employee Retirement Income Security Act and the Internal Revenue Code so that providers adhere to “high standards of care and loyalty” when recommending investments.

SEPT

[National Suicide Prevention Awareness Month](#)

September is Suicide Prevention Awareness Month—an effort to destigmatize suicide, educate the public on the importance of mental health care, and provide prevention resources to those who need them.

WEBCASTS/CONFERENCE SESSIONS

[WORKFORCE COMPLIANCE TRENDS FOR 2024](#)

August 7, 2 p.m. ET / 11 a.m. PT

<https://gateway.on24.com/wcc/eh/3511880/lp/4637401/workplace-compliance-trends-for-2024>

[REAL LIFE TERMINATION LESSONS: How to Know if it's Okay to Fire an Employee](https://gateway.on24.com/wcc/eh/3511880/lp/4659798/real-life-termination-lessons-how-to-know-if-its-okay-to-fire-an-employee)

Aug 8, 2024 12:00 PM EDT

<https://gateway.on24.com/wcc/eh/3511880/lp/4659798/real-life-termination-lessons-how-to-know-if-its-okay-to-fire-an-employee>

THANK YOU