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COME ON DOWN! LET'S MAKE SURE *THE PRICE IS RIGHT*: DEMYSTIFYING WAGE AND HOUR ISSUES IN LIGHT OF RECENT CHANGES TO THE FSLA, STATE LAWS, AND RECENT COURT DECISIONS

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DEMYSTIFYING WAGE AND HOUR ISSUES IN LIGHT OF RECENT CHANGES TO THE FSLA, STATE LAWS, AND RECENT COURT DECISIONS

A. Introduction

Both Department of Labor activity and private litigation related to wage and hour violations have shown no signs of slowing in recent years. The DOL recovered over $273 million in back wages and damages in 2024.[1] Similarly, wage and hour class and collective actions continue to be filed across the country, with larger reported settlements in 2024 ranging from $13.5 million to $233 million. Allegations can span a range of activities, including failure to pay local or state minimum wages, misclassifications, failure to provide accurate wage statements in accordance with state law, failure to provide required meals and rest periods, and failure to compensate hourly workers for off the clock work.

Compounding these concerns are changes to wage and hour laws and enforcement activities at the federal level, as well as the proliferation of new wage and hour laws at the state and local levels. For employers, and especially multistate employers, it's more important (and difficult) than ever to stay abreast of changes in the law and avoid violations that can lead to agency investigations or dangerous litigation.

B. Pay Transparency

Pay transparency laws are rapidly expanding and evolving across the United States, creating new compliance challenges and risks for employers. While these laws can vary, generally they require employers to disclose wage information to job applicants and employees at different stages of the hiring and employment process. The core goals of these laws are to promote pay equity across gender, race, and other protected classifications, and to ensure greater fairness in compensation practices.

Many jurisdictions, for example, now mandate the listing of salary ranges and benefits in job postings or their disclosure at specific points in the recruitment process. Others require employers to provide such information upon request. Additionally, the recent increase in remote hiring adds complexity, as employers must comply with the pay transparency laws of the applicant's location, even if operations are based elsewhere.

In short, staying ahead of these evolving requirements is essential for legal compliance, risk mitigation, and maintaining competiveness in hiring.

a. Noteworthy Pay Transparency Laws

[1] *See* DOL Impact in Fiscal Year 2024 at https://www.dol.gov/agencies/whd/data.

The chart below provides a brief roundup of pay transparency laws taking effect in 2025, which add to the growing number of states that have passed similar laws over the last few years, including California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, New York, Rhode Island, Washington, and Washington D.C.

State	Effective Date	Notable Points
Illinois[2]	January 1, 2025	Amendment to the Illinois Equal Pay Act. Applies to employers with 15 or more employees. Covers all positions performed at least in part in Illinois or where the employee reports to an Illinois-based supervisor, office, or work site.
Minnesota[3]	January 1, 2025	Applies to employers with 30 or more employees in Minnesota. Mandates that job postings contain either a salary range or fixed pay rate, as well as a general description of benefits and other compensation.
New Jersey[4]	June 1, 2025	Applies to employers with 10 or more employees over 20 calendar weeks that do business, have employees, or take applications in New Jersey. Mandates disclosure of an hourly rate or salary range and a general description of benefits and other compensation in both internal and external job postings. Specifically provides that the requirement does not "prohibit an employer from increasing the wages, benefits, and compensation identified in the job posting at the time of making an offer for employment to an applicant."
Vermont[5]	July 1, 2025	Applies to employers with 5 or more employees.

[2] *See* Ill. Public Act 103-0539 at https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0539.
[3] *See* Mn. Statutes 2022 at https://www.revisor.mn.gov/laws/2024/0/Session+Law/Chapter/110/.
[4] *See* SB2310 at https://pub.njleg.state.nj.us/Bills/2024/S2500/2310_R1.PDF.
[5] *See* VT Act No. 155 at https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT155/ACT155%20As%20Enacted.pdf.

State	Effective Date	Notable Points
		Requires employers to disclose in each job advertisement the compensation or range of compensation for the position.
Massachusetts[6]	October 29, 2025	Requires the disclosure of pay ranges for a job. Applies to employers with 25 or more employees in Massachusetts.

C. State and Local Paid Sick Leave Laws

Paid sick leave laws ensure that employees can take short-term leave without losing income. While about 78% of private-sector U.S. workers have access to paid sick leave, lower-wage, part-time, and public-facing employees disproportionately lack this benefit.[7] The reasons for leave which are protected under paid sick leave laws vary, but typically include: recovery from illness; seeking medical (including, sometimes, preventive) care; caring for ill family members; and, in all states but Nebraska, safe leave from work following an incident of violence.[8]

All state and local paid sick leave laws prohibit retaliation against employees who use paid sick leave. Certification requirements vary widely, but most state and local paid sick leave laws allow employers to require documentation after at least two consecutive days of absence.

At the federal level, while the FMLA provides eligible employees of employers with 50 or more employees up to 12 weeks of unpaid, job-protected leave for specified family medical reasons, it does not require *paid* leave – employees may choose or be required to use available paid time off concurrently with FMLA leave.

a. Noteworthy Paid Sick Leave Laws

In recent years, there has been a significant shift in the landscape of paid sick leave across the U.S. With no federal mandate in place, individual states and localities have taken the initiative to enact their own laws. This movement has gained momentum, especially recently in the wake of public health challenges, prompting a reevaluation of worker protections and benefits.

The chart that follows below highlights some of the recent and noteworthy paid sick leave laws that have been enacted or will take effect soon, reflecting the evolving priorities in

[6] *See* Ma. H.B. 4890 at https://malegislature.gov/Bills/193/H4890.
[7] National Compensation Survey, "Employee Benefits in the United States, March 2023," U.S. Department of Labor Bureau of Labor Statistics, September 2023, https://www.bls.gov/ebs/publications/employee-benefits-in-the-unitedstates-march-2023.htm.
[8] Issue Brief, "State Paid Sick Leave Laws," U.S. Department of Labor, Women's Bureau, December 2024, https://www.dol.gov/sites/dolgov/files/WB/StatePaidSickLeaveLaws.pdf.

labor legislation.[9] It is also worth noting that several states are expanding the scope of their existing paid sick leave laws by lowering the minimum number of employees required for coverage. For example, Connecticut and Michigan will gradually decrease their employer size thresholds between the years 2025 and 2027, broadening access to paid leave protections for employees at smaller companies.

State/Location	Effective Date	Notable Points
Alaska	July 1, 2025	Passed ballot initiatives on November 4, 2024. No waiting period for use of leave. "Covered Employer" = one or more employees.
Missouri	May 1, 2025	Passed ballot initiatives on November 4, 2024.
Nebraska	October 1, 2025	Passed ballot initiatives on November 4, 2024.
Connecticut	2012	On January 1, 2025, the definition of "Covered Employer" decreased from 50 or more employees in the state to 25. On January 1, 2026, this will decrease again to 11 or more employees in the state.
Nevada; Maine; Illinois	2020; 2021; 2024	Provide for paid leave, not just paid *sick* leave.
New York City, NY	2014	"Covered Employer" = 5 or more employees or 1 or more domestic workers.

D. Independent Contractor Issues

The Biden-era DOL rule for determining whether a worker is an employee or independent contractor under the FLSA, which became effective March 11, 2024, remains effective today. The Biden DOL rule reverted back to a broader "economic reality" test, rescinding the 2021 independent contractor rule issued during Trump's final days of his first presidency, which was viewed as more favorable to businesses.

The 2024 rule eliminates the prior emphasis on "core factors" like control and profit opportunity, and instead directs employers to consider six non-exhaustive factors, including the nature of the work relationship, investments made by the worker and employer, and whether the work is integral to the business. No single factor controls the outcome, making the analysis more complex

[9] *Id*.

and fact-specific. In effect, the Biden rule is more worker-friendly, making it harder for businesses to classify workers as independent contractors.

Misclassification risks have serious consequences, including liability for unpaid wages and overtime. As a result, employers must be prepared to audit current classifications, update policies, and adjust worker statutes as needed.

a. Six-Factor Economic Reality Test

The following factors should guide the assessment of whether a worker is an employee under the FLSA or an independent contractor in business for themselves:[10]

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; and
6. Skill and initiative.

While employers still must comply with the Biden-era 2024 rule, the Trump administration has signaled that the DOL, under the leadership of Secretary of Labor Lori Chavez-DeRemer, will abandon the Biden-era independent contractor rule and begin a new rulemaking process to restore a more employer-friendly regulation. While this employer-friendly change may soon occur, employers also must be cognizant of different rules that may apply on state-by-state basis.

E. Changes Impacting FLSA Exemptions

The Biden administration DOL sought to raise the minimum salary threshold for overtime exemptions from $35,568 to $43,888 in 2024, and again to $58,656 in 2025, with automatic updates every three years thereafter—changes that could have extended overtime protections to around four million additional workers. However, in November 2024, a federal judge in Texas vacated the DOL's April 2024 rule, holding that the drastic increase in salary thresholds resulting in a change in exempt status for milliions of workers conflicted with the FLSA's intent of focusing upon worker's duties. The Court also held that automatic future adjustments improperly bypassed the DOL's notice and comments requirements.[11] As a result, the minimum salary threshold for

[10] *See* DOL Fact Sheet 13, "Employee or Independent Contractor Classification Under the Fair Labor Standards Act (FLSA)", at https://www.dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship.
[11] *See* combined cases of *State of Texas v. U.S. Dep't of Labor*, No. 4:24-cv-499 (S.D. Tex. 2024) and *Plano Chamber of Commerce, et al. v. U.S. Dep't of Labor*, No. 4:24-cv-468 (S.D. Tex. 2024).

white collar exemptions revered back to $35,568 (and $107,432 for highly compensated employees).

Under the Trump administration we may see a modest salary threshold increase in the next year or two, but it is unlikely we will see a renewed effort to increase the threshold as aggressively as with the Biden administration. Currently, only a few states have state-specific salary-level thresholds (e.g., Alaska, California, Colorado, Maine, New York, Washington). However, if the federal government fails to increase the threshold, more states may opt to legislate increases under their own wage and hour laws, piling on to the wage and hour complexities that multistate companies must navigate.

a. *E.M.D. Sales, Inc. v. Carrera*;[12] Preponderance of the Evidence Standard for Proving Exemptions

Exactly two months after *Texas/Plano v. DOL*, on January 15, 2025, the U.S. Supreme Court issued a unanimous decision in *E.M.D. Sales*, clarifying that employers need only prove an employee's exemption from the FLSA's minimum-wage and overtime requirements by a preponderance of the evidence—not by clear and convincing evidence.

The case involved sales representatives who sued food distributor E.M.D. for unpaid overtime. E.M.D. did not deny that the employees worked more than 40 hours per week without receiving overtime pay, but claimed the workers qualified as "outside salespersons," a category exempt from protection under the FLSA. The district court and Fourth Circuit disagreed, concluding that E.M.D. failed to prove "by clear and convincing evidence" that the employees qualified as outside sales persons.

The U.S. Supreme Court reversed, emphasizing that the default standard in civil litigation—the preponderance of the evidence—applies absent a statutory or Constitutional directive to the contrary, or in certain other uncommon cases (e.g., "the government must satisfy a clear and convincing evidence standard in order to take away a person's citizenship").[13] Writing for the Court, Justive Kavanaugh rejected arguments that a higher burden was needed to protect "[t]he public's interest in a well-functioning economy where workers are guaranteed a fair wage," noting that many important labor protections, including those under Title VII of the Civil Rights Act, still operate under the preponderance standard.

Thus, employers are required to demonstrate that an employee is exempt from the FLSA's minimum-wage and overtime-pay provisions by a preponderance of the evidence standard.

[12] *See E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 145 S.Ct. 34, 220 L.Ed.2d 309 (2025).
[13] *See Id.* at p. 5.