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Changes to Noncompetes and Federal Overtime Law

This Labor Relations bulletin was crafted in partnership with NECA's Government Affairs team.

On April 23, 2024, there were two separate significant news stories NECA members should be aware of. First, the Federal Trade Commission modified rules on non-compete clauses. Second, the Biden administration increased the compensation thresholds for overtime eligibility. While these changes will primarily impact non-bargaining level employees, NECA members should remain up to date on these changes as modified today and potentially in the future from legal challenges.

FTC Announces Rule Banning Noncompetes

On January 5, 2023, The Federal Trade Commission [proposed a new rule](#) that would ban employers from imposing noncompete agreements. FTC's proposed rule would generally prohibit employers from using noncompete clauses. Specifically, the FTC's new rule would make it illegal for an employer to:

- enter into or attempt to enter into a noncompete with a worker;
- maintain a noncompete with a worker; or
- represent to a worker, under certain circumstances, that the worker is subject to a noncompete.

This means employers can no longer prevent employees from taking jobs with competing businesses after they leave. The rule applies to almost all workers, including independent contractors, apprentices, and volunteers. Employers are required to rescind existing non-compete agreements and inform workers that they are no longer enforceable. There is an exception that grandfathers current senior executives earning more than \$151,164 annually and in policy-making positions, with a ban on all future provisions.

The FTC's reasoning behind the ban is that non-compete clauses stifle competition and worker mobility. They argue that employers have other tools to protect their interests, such as trade secret laws and non-disclosure agreements.

The FTC left the question of Training Repayment Agreements (TRAPs) and Scholarship Loan Agreements (SLAs) unanswered. The rule doesn't explicitly prohibit them, but the FTC expressed concern about provisions that could prevent workers from leaving a job. The FTC suggests that employers can use fixed-term contracts as an alternative to protect their investment in worker training.

The Federal Trade Commission (FTC) adopted by a 3-2 vote. Complete information of the [revised, final version of its Noncompete Rule](#), will take effect 120 days after publication in the *Federal Register*.

NECA anticipates numerous challenges to the FTC ruling, as evident in the US Chamber of Commerce and business group lawsuits filed on April 24, 2024. NECA will provide updates to these challenges when additional clarity is available.

FTC Ruling on TRAPs or SLAs:

With regard to Training Repayment Agreements (TRAPs) the FTC final rule says:

“The Commission declines at this time to either categorically prohibit all TRAPs related to leaving employment, or to exempt such provisions altogether. The Commission agrees with comments raising substantial concerns about the potential effects of such agreements on competitive conditions. As noted in the summary of the comments, commenters cited TRAPs that impose penalties that are disproportionate to the value of training workers received and/or that claimed training expenses for on-the-job training. However, the evidentiary record before the Commission principally relates to non-competes, meaning on the present record the Commission cannot ascertain whether there are any legitimate uses of TRAPs that do not tend to negatively affect competitive conditions. When TRAPs function to prevent a worker from seeking or accepting other work or starting a business after the employment associated with the TRAP, they are non-competes under § 910.1.”

The FTC also rejected comments to exempt the construction industry from the ban on non-competes because of assertions that non-competes are necessary for investment in innovation and productivity in the construction industry.

Finally, the FTC declined to exempt industries that rely on apprenticeships to train workers, saying:

“The Commission declines to exclude industries, such as real estate appraisal, plumbing, and veterinary medicine, in which an industry must purportedly invest in significant training or apprenticeship of workers before the employer considers them to be productive. The Commission finds that these employers have less restrictive alternatives—namely fixed duration contracts—to protect their investment in worker training. A return on investment in the training does not require that the worker be unable to work for a period after leaving employment. Moreover, employers stand to benefit from the final rule through having access to a broader labor supply—including incoming experienced workers—with fewer frictions in matching with the best worker for the job.”

Biden-Harris Administration Finalizes Rule Changes to Increase Thresholds for Overtime Eligibility

Effective July 1, 2024, the salary threshold will increase to the equivalent of an annual salary of \$43,888 and increase to \$58,656 on Jan. 1, 2025. The July 1 increase updates the present annual salary threshold of \$35,568 based on the methodology used by the prior administration in the 2019 overtime rule update. On Jan. 1, 2025, the rule's new methodology takes effect, resulting in the additional increase. In addition, the rule will adjust the threshold for highly compensated employees. Starting July 1, 2027, salary thresholds will update every three years, by applying up-to-date wage

data to determine new salary levels.

Key provisions of the final rule include the following:

- Expanding overtime protections to lower-paid salaried workers.
- Giving more workers pay or valuable time back with their family: By better identifying which employees are executive, administrative or professional employees who should be overtime exempt, the final rule ensures that those employees who are not exempt receive time-and-a-half pay when working more than 40 hours in a week or gain more time with their families.
- Providing for regular updates to ensure predictability. The rule establishes regular updates to the salary thresholds every three years to reflect changes in earnings. This protects future erosion of overtime protections so that they do not become less effective over time.

The full USDOL press release can be found [here](#).

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