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**ANOTHER UPDATE 2024**  
JUNE 2024

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- Please contact an attorney to discuss your specific situation.

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**I'M BORED WITH UPDATES . . .**

- Play the Game Instead!
- How Many Soccer Balls Can You Find?



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### NEW FEDERAL RULE OVERTIME

**EFFECTIVE DATE IS July 1, 2024**

- Salary to be exempt from OT increases
  - July 1 from \$684 to \$844/week
  - Jan 1, 2025 to \$1,128/week
- New York Currently
  - \$1,200 for NYC, Nassau, Suffolk, Westchester
  - \$1,124.20 for Rest of State
- Pennsylvania currently \$875 /week

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### WHAT ELSE?

- Increase for the highly compensated employee exemption from \$107,432 to \$132,964 July 1, 2024 and to \$151,164 on Jan. 1, 2025
- July 1, 2027 earnings thresholds will update every 3 years
- <https://blog.dol.gov/2024/04/23/what-the-new-overtime-rule-means-for-workers#:~:text=Starting%20July%201%2C%20most%20salaried,become%20eligible%20for%20overtime%20pay.>
- <https://www.dol.gov/agencies/whd/overtime/rulemaking?ga=2.194334638.2020222379.1715349779-65388269.1709734408>
- <https://www.federalregister.gov/documents/2024/04/26/2024-08038/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>

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### CUE THE LAWSUITS

- 4 Lawsuits
- Challenging Whether DOL Had Authority
- Challenging Whether DOL Has Authority to Have a Salary Threshold at All
- Challenge to the Amount of the Threshold
- Injunction Likely July 1—But Will It Apply Nationwide?
- Resolution disapproving the action in the House of Representatives



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### WHAT TO DO NOW?

- Nothing. Does not affect NY until Jan. 1, 2025 AND NY is likely to raise the exempt salary December 31, 2024 anyway
- Prepare. What is your plan for end of year?



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### PAY AUDIT TIME?

- Use the Increases as the Time to Audit
  - Be Aware of Position Creep
  - Use the Actual Tests—
    - <https://dol.ny.gov/system/files/documents/2021/12/administrative-employee-overtime-exemption-frequently-asked-questions.pdf>
    - <https://dol.ny.gov/system/files/documents/2021/03/professional-employee-overtime-exemption-frequently-asked-questions.pdf>
    - <https://dol.ny.gov/system/files/documents/2021/03/executive-employee-overtime-exemption-frequently-asked-questions.pdf>
  - Document Your Reasons for the Exemption



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**REMINDER: A FEW MORE RULES FOR EXEMPT EMPLOYEES**

[https://webapps.dol.gov/elaws/whd/flsa/over-time/cr10.htm#:~:text=If%20the%20exempt%20employee%20is,disability\)%20of%20the%20exempt%20employee.](https://webapps.dol.gov/elaws/whd/flsa/over-time/cr10.htm#:~:text=If%20the%20exempt%20employee%20is,disability)%20of%20the%20exempt%20employee.)

- Pay must be made weekly regardless of quantity or quality of work
- Cannot deduct for time off unless it meets certain requirements
- Exemption must be “regular” (i.e. can’t be exempt one week and non-exempt the next)
- No such thing as a part-time exempt employee (unless you are paying the full salary)



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**INCREASE TO THE MINIMUM WAGE**

<ul style="list-style-type: none"> <li>• <b>For New York City, Westchester and Long Island:</b></li> <li>• 2024 - \$16.00/hour</li> <li>• 2025 - \$16.50/hour</li> <li>• 2026 - \$17.00/hour</li> </ul>	<ul style="list-style-type: none"> <li>• <b>For the rest of New York:</b></li> <li>• 2024 - \$15.00/hour</li> <li>• 2025 - \$15.50/hour</li> <li>• 2026 - \$16.00/hour</li> </ul>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

For 2027 and beyond, the New York Department of Labor (NYSDOL) will publish the minimum wage on October 1 each year for the rate to take effect on January 1.

Likely it will increase to the minimum weekly salary for exempt administrative and executive employees, too.

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**FREELANCE WORKER’S LAW**

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### New York Freelance Worker Law

- What Is a “freelance worker”
  - Single individual (or their business)
  - Hired as independent contractor for at least \$800
  - Single contract or the Aggregate of all contracts
- Effective **August 28, 2024** and applies only prospectively



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### WHAT'S REQUIRED

- Written Contract
- Payment Requirements
- Records



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### What's Required in the Agreement?

- “name and mailing address of both” parties;
- “an itemization of all services to be provided by the freelance worker,
- value of the services to be provided pursuant to the contract,
- rate and method of compensation”
- the date on which compensation is due or “the mechanism by which such date will be determined”;
  - If not present, it is 30 days after work finished
- “the date by which a freelance worker must submit a list of services rendered under such contract”; and



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### What Else?

- Prohibits making payment due conditioned on accepting less
- Must keep agreement for six (6) years
- No contract = presumption to the freelancer
- Retaliation for Insisting on Rights under the Law Prohibited and Subject to Lawsuit



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### PENALTIES FOR VIOLATION

- Complaint to DOL; AG Investigation; Private Right of Action
- Double Damages
- Attorneys' Fees and Costs
- \$250 Statutory Damages if No Contract
- 6 year statute of limitations for non-payment or discrimination/retaliation
- 2 year statute for failure to provide a written contract
- AG can also seek civil penalties of \$1,000 to \$3,000
- Pattern or Practice Penalty of \$25,000



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### Who Is Excluded?

- sales representatives;
- attorneys, or "any person engaged in the practice of law";
- licensed medical professionals; and
- construction contractors



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**WHAT ABOUT**

- Rules from Commissioner of Labor
- Model Contract
  - Nothing Yet.
- Want to Get Started Early?
  - <https://www.nyc.gov/assets/dca/downloads/pdf/workers/Model-Contract-Freelance.pdf>



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**NEW PROTECTIONS FOR PREGNANT WORKERS**

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**NEW PAID TIME OFF**

- 20 Hours Paid Prenatal Leave Each Year (January 1, 2025)
  - Doctor's appointments, procedures or other types of prenatal care



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### PAID LACTATION BREAKS

<https://dol.ny.gov/system/files/documents/2024/06/p705-policy-on-the-rights-of-employees-to-express-breast-milk-in-the-workplace-24-1.pdf>

- New York Labor Law 206-c
- Applies to All Employers Regardless of Size
- Employers Must Provide the Policy on Hire, Every Year thereafter; When they Return to Work Following Birth of a Child
- Employee Must Give Employer Reasonable Advance Notice
  - Employee Requests in Writing
  - Employer Must Respond to Request in Writing within 5 days



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### WHAT IS THE BREAK?

- Paid Break of 30 Minutes
  - Allowed to use regular breaks or meal time to take a longer paid break if needed
  - Can also take shorter breaks
- Remote Workers Have Same Rights
- Law Already Required Employer to Allow Breaks “at least” Every 3 Hours



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### WHAT IS THE ROOM?

- Private room or alternate location
- Cannot be a restroom or toilet stall
- Room Requirements
  - Close to employee’s work area
  - Good light
  - Private
  - Accessible clean running water nearby
  - Electrical outlet (unless no electricity to worksite)
  - Chair
  - Flat Surface



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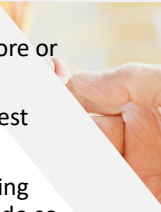
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**WHAT ELSE?**

- Cannot require employee to work before or after shift to make up the time
- Must Continue to abide by meal and rest breaks
- Cannot require employee to work during breaks, BUT employee can voluntarily do so
- Complaints to DOL; Also Has a Private Right of Action



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**RELATED—NEW FAQ FOR EMPLOYEES**

- **HARASSMENT AND DISCRIMINATION**
  - <https://www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions>



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**NON-COMPETE AGREEMENTS**

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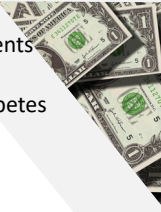
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### FTC BANNED NON-COMPETES

**Takes Effect September 4, 2024**

- Bans Virtually All Non-Compete Agreements Including Those Already In Place
- For Senior Executives, Existing Non-Competes Remain in Place
  - \$151,164 or more annually
  - Policy-making position
- Sale of a Business Exception (must show 25% ownership)
- All Contrary State Laws Void



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### WHAT ELSE

- Prohibit non-competes on worker's including independent contractors and unpaid workers
- Broad wording to include agreements that have the "effect" of prohibiting workers from seeking or accepting other employment (NDAs?)
- But, can enforce noncompetes where "cause of action arose prior to the effective date"



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### PROBLEM FOR EMPLOYERS-- NOTICE

- Requires Employer to Provide clear and conspicuous notice to workers subject to a prohibited non-compete, in an individualized communication, that non-compete clause will not be enforced against them

<https://www.ftc.gov/legal-library/browse/rules/noncompete-rule>



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A new rule enforced by the Federal Trade Commission makes it unlawful for us to enforce a non-compete clause. As of [DATE EMPLOYER CHOOSES BUT NO LATER THAN EFFECTIVE DATE OF THE FINAL RULE], [EMPLOYER NAME] will not enforce any non-compete clause against you. This means that as of [DATE EMPLOYER CHOOSES BUT NO LATER THAN EFFECTIVE DATE OF THE FINAL RULE]:

- You may seek or accept a job with any company or any person—even if they compete with [EMPLOYER NAME].
- You may run your own business—even if it competes with [EMPLOYER NAME].
- You may compete with [EMPLOYER NAME] following your employment with [EMPLOYER NAME].

The FTC's new rule does not affect any other terms or conditions of your employment. For more information about the rule, visit [ftc.gov/noncompetes](https://www.ftc.gov/noncompetes). Complete and accurate translations of the notice in certain languages other than English, including Spanish, Chinese, Arabic, Vietnamese, Tagalog, and Korean, are available at [ftc.gov/noncompetes](https://www.ftc.gov/noncompetes).

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### CUE THE LAWSUITS

- 4 --AT LEAST
- Rulings on Preliminary Injunctions Expected July 3 in Texas; July 23 in PA (unless Texas is a nationwide injunction)

More Info:  
[https://www.ftc.gov/system/files/ftc\\_gov/pdf/Non-Compete-Fact-Sheet.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Non-Compete-Fact-Sheet.pdf)



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### WHAT DO EMPLOYERS DO?

- Make a Plan—  
What Is the Real Business Interest?
- Review Existing Agreements
  - Non-Solicitation
  - Non-Disclosure



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**RELATED NY LAW—LIQUIDATED DAMAGES IN SETTLEMENT AGREEMENTS**

**WHAT IS PROHIBITED?**

1. Clauses where the complainant is required to pay liquidated damages for violations of non-disclosure or non-disparagement clause.
2. Clauses where the complainant is required to forfeit all or part of the consideration for the agreement for a violation of a non-disclosure or non-disparagement clause.
3. Clauses that contain or require any affirmative statement, assertion, or disclaimer by the complainant that the complainant was not in fact subject to unlawful discrimination, harassment, or retaliation.

*Question: Does this apply to severance agreements?*



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**Muldrow v. City of St. Louis**

- QUESTION: Can a “neutral” action be a form of “adverse action” for discrimination purposes?
- FACTS: Lateral Transfer of an Employee for a Discriminatory or Retaliatory Reason
- ANSWER: Employee need only show “some harm”
- Practical Effect--No Decisions Should Be Made with a Discriminatory or Retaliatory Motive



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### ***Loper Bright Enterprises v. Raimondo***

- What is *Chevron Deference*? Courts defer to an administrative agency's reasonable interpretation of an ambiguous statute
- *Loper* is widely expected to change that
- Effect? More lawsuits. Less deferral to Administrative Agencies
- *Note: This is likely what the FTC Non-compete Judges are Waiting for*



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**LAWSUIT UPDATE**

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### **ADA ACCESSIBILITY CLAIMS GO DIGITAL**

-  **Website**
-  **Mobile Site**
-  **Apps**
-  **On-line Store**
-  **On-line Services**



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**WHAT ARE THE NUMBERS?**

<https://info.usablenet.com/ada-website-compliance-lawsuit-tracker>

**YEAR END 2023**

- New York, California, and Federal courts
- 1,519 lawsuits in state courts (33%)
- 3,086 in federal courts (67%)
- Over 700 Lawsuits against Companies with Previous Lawsuits
- At least 8,200 lawsuits filed in 2023

<https://www.audioeye.com/post/ada-compliance-lawsuit/>

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**WHAT ARE THE NUMBERS?**

<https://info.usablenet.com/ada-website-compliance-lawsuit-tracker>

**APRIL 2024**

<b>303</b>	<b>83</b>	<b>76</b>
New Lawsuits Filed	Defendants Had a Previous Lawsuit	Defendants Sued for Third Party Program

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**NEW YORK**

NEW YORK IS THE #1 PLACE OF ADA WEBSITE COMPLIANCE LAWSUITS OVER 200 CASE FILED EACH MONTH IN 2023

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**WHAT BUSINESSES ARE A TARGET?**

- Most Companies Have Annual Revenue Under 25 Million
- Businesses with E-Commerce are an Easy Target



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**WHAT'S THE RESULT**

- Monetary Settlement \$5,000-\$25,000
- Attorneys' Fees for Defense \$5,000-\$20,000 (if settled)
- Expert Fees \$5,000-\$25,000 (assessment and recommendations)
- Other Relief—Compliance Requirements; Penalties for Failure to Meet Compliance



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**WHAT ISSUES ARE RAISED IN LAWSUITS?**

- Failure of a Website to Be Accessible to Screen Readers for the Blind (Alternative Text)
- Failure to have keyboard (not mouse) navigation
- Lack of Accessible Navigational Links or Menus
- Failure to Have Captions for Videos
- Hotels/Restaurants—  
Inadequate Descriptions of Rooms, Places

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**April 24, 2024 Department of Justice (DOJ) published final rule under Title II of the ADA**

- Applies to State and Local Governments
- BUT It's a Preview for Private Sector



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**WHAT'S IN THE RULE?**

- Adopts Web Content Accessibility Guidelines, Version 2.1 Levels A and AA as the standard
- Limited exceptions for archived web content and preexisting PDFs, etc.
- Contains language that rejects many of the defenses used in website litigation defense—particularly staffed telephones
- Clarifies obligations with regard to 3<sup>rd</sup> party content

**Practical Effect: This is now the standard for everyone**



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**WHAT CAN BUSINESSES DO?**

Compliance with Recommended Best Practices

- WCAG 2.1 or 2.2



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 **WHAT IS WCAG?** 

1. Web Content Accessibility Guidelines
2. Web Content Accessibility Guidelines Developed through World Wide Web Consortium
3. Sets Guidelines for how to make Web content more accessible to people with disabilities

<https://www.w3.org/WAI/standards-guidelines/w3c-process/>

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 **DON'T FORGET...**

- Update Handbooks for new required policies and amendments
- Annual Harassment Training
- Wage Rate Sheets
- Do a spot check on wage and hour
- COVID Pay Is Still a Thing



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 **YOUR QUESTIONS**

• LOOK AND FIND ANSWER—

**19 OR 20**

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