

CLIENT ALERT:
**The New Minimum Salary and the Ban on Non-Competes Litigation Update
Introduction**

July 16, 2024

We have been tracking challenges filed in federal court to the new minimum salary rule and the FTC's ban on non-competes. In recent weeks, two significant orders have come out of the federal courts for the Northern District of Texas. First, a federal judge denied a preliminary national injunction of the U.S. Department of Labor's (the "DOL") final rule raising the salary thresholds for exempt employees, allowing the rule to take effect on July 1. Second, a federal judge granted a limited preliminary injunction of the Federal Trade Commission's (the "FTC") final Non-Compete Clause Rule set to take effect on September 4, 2024, and stated that a decision on a nationwide injunction will be delivered at the end of August. For Maine employers this means both rules are moving ahead....for now. But stay tuned as that could change soon.

The DOL's Salary Exemption Rule

As previously reported, the DOL released their final rule on April 23, 2024, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees. This rule increased the minimum salary required for two classes of employees, executive, administrative, or professional employees ("EAP" employees) and highly compensated employees ("HCE" employees), to qualify for the Fair Labor Standards Act's ("FLSA") overtime exemption.

On July 1, the U.S. District Court for the Northern District of Texas denied a motion for a nationwide preliminary injunction, allowing the rule to come into effect. This means that as of July 1, the federal threshold to qualify for overtime exempt status for EAP employees increased to \$844 per week (equivalent to \$43,888 annually) and for HCE employees increased to \$132,964 annually.

The question remains whether other lawsuits pending in Texas will result in a nationwide injunction that could invalidate the new rule. Right now, phase two of increased minimum salary requirements are still on track to take effect on January 1, 2025, at which time the EAP employee threshold will increase to \$1,128 per week (equivalent to \$58,646 annually) and the HCE employee threshold will increase to \$151,164 annually.

We expect that additional court rulings may come down in September, and we will keep you informed of any developments.

The FTC's Non-Compete Clause Rule

As previously reported, the FTC issued their final rule (also known as the Non-Compete Clause Rule) virtually banning the use of all non-compete clauses between employers and employees. This rule is scheduled to take effect on September 4, 2024. On July 3, 2024, a different federal court in the Northern District of Texas granted a limited preliminary injunction that applied only to the named plaintiffs in that case, without issuing a nationwide injunction. The judge there concluded that “the plaintiffs are likely to succeed on the merits” for their claim that the “FTC lacks statutory authority to promulgate the Non-Compete Rule.” This is an encouraging sign for employers who have argued as much since the FTC’s final rule was first introduced back in April. The Texas judge intends to return a final ruling on August 30, 2024, five days prior to the rule’s deadline.

We will continue to follow these cases closely and update you. If you have any questions, please contact Peter Lowe at plowe@brannlaw.com.