

Employment Law Update: What's the Scoop?

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Today we will cover...

- Federal and agency updates
- Nebraska state law changes and proposals
- Employer considerations

SCOTUS

- *Chevron* overturned
- *Muldrow* lessened standard for “adverse action”
- Affirmative action in higher education (and employment?)
- Religious accommodations



The *Chevron* doctrine



- Under *Chevron*, courts have sometimes been required to defer to “permissible” agency interpretations
- *Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce* overturned the *Chevron* doctrine

What does this mean for employers?

- Continue to follow agency regulations and guidance unless and until a court rejects it
- Likely to affect pending legal challenges to federal agency rules

What is an adverse action?

- Title VII claims require the employee to suffer an “adverse employment action”
- *Muldrow v. City of St. Louis*



What does this mean for employers?

- Easier for employees to bring workplace discrimination suits
- Might support challenges to DEI initiatives and reverse discrimination claims

Affirmative action

- SCOTUS struck down affirmative action programs in college admissions
- Impact on workplace diversity initiatives?



Religious accommodations

- What is an “undue burden”?
- What does this mean for employers?



Federal agency updates

- EEOC
 - The Pregnant Workers Fairness Act
- DOL
 - Independent Contractors
 - FLSA Salary Thresholds
- FTC
 - Non-Compete Final Rule



Pregnant Workers Fairness Act



- Requires reasonable accommodations for limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions
- EEOC's final rule went into effect in June 2024

PUMP Act

- Providing Urgent Maternal Protections (“PUMP”) for Nursing Mothers Act
- Requires employers to provide reasonable break time for the expression of breast milk for one year after birth of nursing child



Independent contractors



- DOL's final rule took effect in March 2024
- Distinguishes independent contractors from employees using "economic realities" test

The “Economic Realities” test

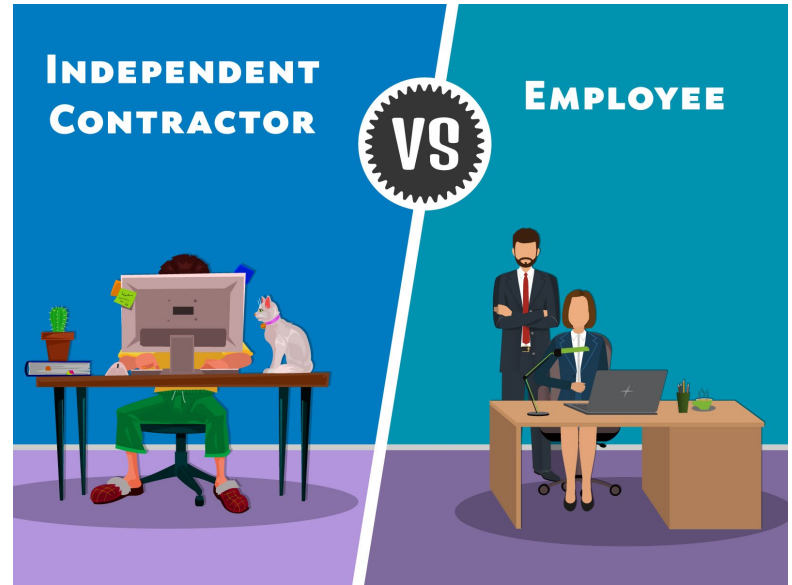
- The worker’s opportunity for profit or loss depending on his or her managerial skill;
- The extent of the relative investments of the employer and the worker;
- The permanency of the relationship;

The “Economic Realities” test

- The degree of control exercised or retained by the employer;
- Extent to which the work is an integral part of the employer’s business; and
- Whether the work performed requires special skills and initiative.

What does this mean for employers?

- Carefully review independent contractors on an individualized basis
- Remember other tests exist



FLSA salary threshold

Year	Executive, Administrative, and Professional Employee Salary Threshold	Highly Compensated Employee Salary Threshold
<i>By July 1, 2024</i>	\$844 per week (\$43,888) annually	\$132,964 annually
<i>By January 1, 2025</i>	\$1,128 per week (\$58,656 annually)	\$151,164 annually
<i>Beginning July 1, 2027, and Every Three (3) Years Thereafter</i>	DOL will automatically update the salary thresholds for executive, administrative, professional, and highly compensated employees based on earnings data.	

- DOL released final rule
- Increased salary level for certain overtime exemptions

Non-compete ban

- Section 5 of the FTC Act (15 U.S.C. § 45) broadly prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce



FTC's Rule

- Effective September 4 – FTC would consider it an “unfair method of competition” for an employer to:
 - Enter into or attempt to enter into a non-compete clause with a worker;
 - Maintain or attempt to enter into a non-compete clause with a worker; or
 - Represent to the worker that the worker is subject to a non-compete clause where the employer has no good faith basis to believe so.

Current Status

- August 20, 2024 Texas federal judge issued a nationwide injunction
- FTC's website:



On August 20, a district court issued an order stopping the FTC from enforcing the rule on September 4. The FTC is considering an appeal. The decision does not prevent the FTC from addressing noncompetes through case-by-case enforcement actions.

Nebraska

- Convenience of the Employer Rule
- Paid Sick Leave
- Medical Marijuana



Questions?

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