



## ELDI ALERT & TRAINING OPPORTUNITY

### 4 MAJOR RULES FROM FEDERAL AGENCIES ATTACK VAST MAJORITY OF BUSINESSES

Last week, two federal agencies released new rules: (1) a ban on almost all noncompete agreements (the Noncompete Rule), and (2) a revision to the minimum salary threshold which will entitle a vast number of additional employees to overtime payments (the new Overtime Rule). Those rules come on the heels of two other rules, the Independent Contractor Rule and the Joint Employer Rule, which restrict how employers can contract with third party contractors and control their workforces by deciding how to structure business organizations to limit liability. Each of those proposed rules had been on hold for some time, and now all four rules have hit in a matter of months in what can only be described as a tsunami for the vast majority of businesses.

A brief summary of the new roadblocks for employers:

**Noncompete Rule:** the Federal Trade Commission issued a rule banning virtually all noncompete agreements. The only two exceptions are noncompete clauses imposed (1) in connection with the sale of a business, and (2) on Senior Executives (defined as employees who earn in excess of \$151,000.00 and are in policy making positions). Employers must notify all other employees with noncompete clauses that those clauses no longer are in effect. Effective: 120 days after publication in Federal Register (i.e. late Summer/early Fall 2024)

**Overtime Rule:** the Department of Labor issued a rule raising substantially the minimum salary which an employee must make in order to possibly be exempt from being paid overtime. The current minimum salary is \$35,568.00/year. Employees must make at least that annual salary in order to possibly be exempt from overtime. The new levels: as of July 1, 2024, the minimum will be \$43,888.00/year and as of January 1, 2025, the minimum will be \$58,656.00/year. Those levels will automatically increase every three years. Effective: July 1, 2024.

**Independent Contractor Rule:** the Department of Labor issued a rule which substantially restricts which individuals can qualify as independent contractors. The prior rule essentially allowed classification as an independent contractor if an employer did not control the contractor's work and the contractor could make a profit or loss by managing the contractor's own business operations. The new rule requires employers to evaluate 6 factors plus any relevant "additional factors" which could show whether the contractor is dependent upon the employer for work or truly running an independent business. Two of the new factors which are a major upheaval in the classification process: (1) the degree of permanence in the work relationship, and (2) the extent to which the work performed is an integral part of the employer's business. Example for both new factors: real estate sales agents paid as independent contractors who stay with one brokerage firm for years. Effective: March 11, 2024.

**Joint Employer Rule:** the National Labor Relations Board issued a rule which significantly expanded the definition of what companies can be considered "joint employers." The new rule impacts not just franchisor/franchisee relationships, but also situations where de facto affiliated companies (such as small, closely held businesses, usually with at least some common ownership and control) use a common management company and set the same group of policies and procedures for employees. The previous rule required both potential employers to exercise "direct and immediate control" over the terms and conditions of an employee's employment to be joint employers. Under the new rule, companies with only "indirect or reserved control," based upon a review of seven factors, will be joint employers of the same employee. The rule was to go into effect on March 11, 2024 but was blocked by a Federal court on March 8, 2024. On April 10, 2024, Congress passed a resolution to overturn the rule. The White House now has to decide whether to veto the Congressional resolution, which is expected. If the White House vetoes the Congressional resolution, the rule will be reinstated and the outcome of legal challenges is unknown. Effective: TBD.

**ELDI IS HERE TO HELP EMPLOYERS NAVIGATE ALL OF THE RULE CHANGES!** We will be holding an [online ELDI BRIEFING](#) on **Thursday, May 9, 2024** to review each of the above rules and help employers plan to minimize the effects of those rules and protect their businesses. Register today, and we will get through this maze of new rules!

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**ELDI BRIEFING PRESENTED BY FOUNDER  
KIMBERLY L. RUSSELL, ESQUIRE**

**Date: Thursday, May 9, 2024**

**Time: 8:00 a.m. until 9:15 a.m. EST**

**Location: Zoom ([link to be provided](#))**

**Please register by contacting ELDI's Planning Coordinator,  
Danielle Gosciniak, at [dgosciniak@kaplaw.com](mailto:dgosciniak@kaplaw.com) or (610) 941-2586**



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