

2024 Employment Year-End Roundup

INTRODUCTION

The year 2024 brought significant developments to a wide range of employment law areas, from anti-discrimination and retaliation law to labor issues. Federal courts across the country expanded the rights of employment discrimination and retaliation plaintiffs by easing their burdens of proof. The courts also faced a wave of litigation seeking to apply the Supreme Court's 2023 *Students for Fair Admissions* decision declaring affirmative action programs unconstitutional to contexts beyond college admissions—such as employment discrimination, board composition, and race-based grantmaking. In addition, several executive agencies issued regulations affecting the standards for workplace discrimination and harassment, Title IX claims, overtime exemptions, minimum wage requirements, the independent contractor test, and the rights of pregnant employees as well as the legality of non-competes. That said, it is not uncommon for policy agendas within the executive branch to shift in connection with a change in presidential administrations, and many of these regulations therefore may be subject to change in the coming months.

In the below client alert, we outline some of the most notable employment law updates from 2024, and highlight our expectations for these developments as we move into 2025.

Expanded Rights for Employment Discrimination and Retaliation Plaintiffs

Throughout 2024, several key Supreme Court and appellate decisions established more plaintiff-friendly burdens of proof in employment discrimination and retaliation cases, which will have a significant impact for employers across industries as they adjust how they must approach such cases.

In the beginning of the year, the Supreme Court unanimously ruled in *Murray v. UBS Securities, LLC*, 2024 WL 478566 (U.S. Feb. 8, 2024), that a whistleblower bringing an anti-retaliation claim under the Sarbanes-Oxley Act (“SOX”) does not have to establish that the employer acted with retaliatory intent. Rather, a plaintiff need demonstrate only that the protected activity contributed in some way to the adverse employment action in order to set forth a *prima facie* case of whistleblower retaliation. As other whistleblower protection statutes contain nearly identical language to SOX, the decision potentially has a wide-reaching impact for all federal whistleblower actions.

Murray follows a notable 2023 Supreme Court decision regarding the burdens that must be met in employment cases—*Groff v. DeJoy*, 600 U.S. 447, 143 S. Ct. 2279, 216 L. Ed. 2d 1041 (2023). In that case, the Supreme Court held that, under Title VII of the Civil Rights Act of 1964 (“Title VII”), an employer must show that the burden of accommodation “is substantial in the overall context of an employer’s business,” in order to be relieved of its burden to provide a reasonable accommodation. The Court’s decision highlights the growing strength of protections for religious employees under Title VII in recent years and foreshadowed the diminished burden on employees bringing anti-retaliation claims pronounced in *Murray*.

In April 2024, the Supreme Court in *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 144 S. Ct. 967, 218 L. Ed. 2d 322 (2024), further clarified the burdens of proof in Title VII cases, but this time for employees. Specifically, the court held that employee plaintiffs do not need to demonstrate that a discriminatory decision under Title VII caused a “materially significant disadvantage” but rather, “need show only some injury respecting [their] employment terms or conditions” that left them “worse off” than before. While the Court did not provide much guidance on the meaning of “some injury,” it listed examples, including less prestigious work assignments, the assignment of only nighttime work, and decreased visibility within the relevant department.

Outside of the Supreme Court, there were notable decisions at the appellate level concerning the McDonnell Douglas burden-shifting framework that applies in analyzing claims of discrimination under Title VII. In *Bart v. Golub Corporation*, No. 23-238, 2024 WL 1281069 (2d Cir. March 26, 2024), the Second Circuit clarified what plaintiffs need to show to survive summary judgment on a Title VII disparate treatment claim. Specifically, it stated that a plaintiff can, in showing that a defendant's legitimate, non-discriminatory reason for termination is pretextual, provide evidence that, even if the employer had a legitimate reason for its actions, the plaintiff's membership in a protected class was at least one motivating factor in the employer's adverse action. In other words, a plaintiff does not need to show that the employer's reason was entirely false. Even a termination based in part on legitimate reasons could be deemed discriminatory.

In addition, the Ninth Circuit in *Mooney v. Fife*, 2024 WL 4341366 (9th Cir. Sept. 30, 2024), enhanced a circuit split by joining other Circuits (e.g., First Circuit, Eighth Circuit, Fifth Circuit) in stating that the McDonnell Douglas framework applies to False Claims Act retaliation claims, rejecting an alternate framework drawn from First Amendment retaliation cases, which is used in the Third Circuit.

The Aftermath of *Students for Fair Admissions*: An Uptick in Race Discrimination Claims and Reassessing DEI Efforts

A significant ruling in 2023 that had a wide-ranging impact throughout 2024 is the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023) ("*SFFA*"). In June 2023, the Supreme Court determined that Harvard and the University of North Carolina discriminated on the basis of race through their race-conscious undergraduate admissions practices, overturning prior Supreme Court precedent that had permitted the use of race as a "plus factor" in admissions decisions. While the *SFFA* decision itself was limited to university admissions policies, in his concurring opinion, Justice Gorsuch concluded that the admissions practices at issue violated not only the Constitution but also Title VI, stating "Title VI forbids a recipient of federal funds from intentionally treating one person worse than another similarly situated person on the ground of race, color, or national origin," and drew a connection to similar discrimination prohibitions in the employment context under Title VII. Litigants have seized on this language as the impetus to apply the Court's reasoning in a variety of contexts outside the realm of education.

A. Applying *SFFA* Beyond Admissions

In the wake of the *SFFA* decision, litigants have sought to expand *SFFA*'s logic to challenge race-conscious policies and programs in other areas, including workplace discrimination, grantmaking, scholarships and internships, and the composition of boards.

In fact, the Supreme Court may soon have an opportunity to extend *SFFA*'s rationale to Title VII cases in *Ames v. Ohio Dep't of Youth Servs.*, No. 23-1039, 2024 WL 4394128, at *1 (U.S. Oct. 4, 2024) (granting certiorari). In October 2024, the Court granted certiorari to address a circuit split regarding the standard that courts apply in Title VII "reverse discrimination" suits brought by majority groups such as Caucasians, men, and heterosexuals. In applying the *McDonnell Douglas* test for evaluating discrimination claims under Title VII, some courts have also required, in the case of a majority group plaintiff, that the plaintiff show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority." *Ames* argues that this additional factor itself represents a form of discrimination against majority group plaintiffs and that the Supreme Court "should grant review and hold [...] that Title VII means what it says. The statute protects against all discrimination, and majority-group plaintiffs need not prove more to benefit from it."

Plaintiffs have also relied on *SFFA* to challenge the racial composition of board or board-like entities. For example, in *AAER v. Ivey*, 2:24-cv-104 (M.D. Ala.), the American Alliance for Equal Rights ("*AAER*") is challenging an Alabama law requiring the governor of Alabama to include two members of a "minority

race” on the state’s Real Estate Appraisers Board. AAER’s motion for judgment on the pleadings has been denied and the parties are in discovery. Similarly, in *Do No Harm v. Gianforte*, 6:24-cv-00024 (D. Mont.), the plaintiff challenges a Montana law directing the governor to “take positive action to attain gender balance and proportional representation of minorities resident in Montana” when making appointments to the state’s Medical Board. In *Newman v. Elk Grove Education Association*, 2:24-cv-01487 (E.D. Cal.), a California teacher alleged that his teachers’ union discriminated against him on the basis of race because it required board candidates to “self-identify” as a racial minority. Following the filing of the lawsuit, the union agreed to remove this requirement for its board members and to pay a \$12,000 judgment, together with attorneys’ fees, in order to settle the case.

As in *Newman*, a substantial number of defendants have decided to settle the test cases against them, generally by amending, abandoning, or clarifying the race-conscious policies at issue, rather than litigating to judgment. For example, in March 2024, the Smithsonian National Museum of the American Latino reached a settlement with the AAER in connection with a suit AAER filed challenging the museum’s Latino Studies Undergraduate Internship program, eligibility for which AAER claimed was limited to Latino applicants. See *AAER v. Zamanillo*, 1:24-cv-00509 (D.D.C.) According to the terms of the settlement, the Smithsonian had to update its website to state: “The Undergraduate Internship is equally open to students of all races and ethnicities, without preference or restriction based on race or ethnicity. The Museum does not use racial or ethnic classifications or preferences in selecting awardees for the Undergraduate Internship.”

Notably, in September 2024, a settlement was reached in one of the most high-profile examples of this litigation trend: *Am. All. for Equal Rts. v. Fearless Fund Mgmt.*, LLC, 103 F.4th 765 (11th Cir. 2024). As outlined in [our client alert](#), the lawsuit alleged that a hedge fund (“Fearless Fund”) violated 42 U.S.C. § 1981—the federal prohibition on racial discrimination in contracting—by operating a grant contest that awarded \$20,000 grants to select small business owners, all of whom, by the contest’s express rules, had to be Black women. The settlement of the *Fearless* case had at least two key implications for race-based grantmaking in the United States. First, the Eleventh Circuit’s June 3, 2024 opinion holding that Fearless Fund likely violated § 1981 is now the settled and binding law of the states comprising the Eleventh Circuit Court of Appeals. Second, the law of race-based grantmaking outside of the Eleventh Circuit will remain uncertain, at least until other appellate courts have ruled on the various *Fearless*-like cases now percolating through the nation’s courts.

For the cases that have not settled, a number have encountered procedural hurdles, namely dismissal due to lack of standing. For example, in *Doe v. New York University*, No. 1:23-cv-10515, 2024 WL 2847368 (S.D.N.Y. May 30, 2024), a NYU Law student challenged the NYU Law Review’s selection process that includes a review of personal statements by a “Diversity Committee.” The case, however, was dismissed for lack of standing because the plaintiff had not yet applied to the Law Review.

B. Employer Responses to SFFA and Its Progeny

Despite these settlements and procedural challenges, the threat of litigation alone has led a number of public companies and nonprofit, tax-exempt organizations including universities to reconsider their Diversity Equity and Inclusion (“DEI”) related policies and programs. Certain universities—such as the University of Michigan—are considering wide ranging changes to their programs,¹ and public companies have rolled back their DEI offices and spending in response to this litigation trend. Some charities, foundations, and other nonprofits and philanthropies are reassessing their DEI-related grantmaking and related programs, as well. The incoming administration has also made public statements suggesting that this could be an area of increased regulatory scrutiny going forward.

Based on these developments, the legality of DEI efforts will certainly be an area to keep an eye on as we move into next year.

¹ See New York Times, *University of Michigan Weighs Changes to Its Diversity Program* (last visited Dec. 20, 2024), <https://www.nytimes.com/2024/12/04/us/university-of-michigan-dei.html>.

Heightened Limitations on Agency Power

More generally, executive agencies faced a significant challenge to the scope of their authority last year in the form of two Supreme Court decisions increasing the level of scrutiny that federal courts apply to agency rulemaking activities. Indeed, federal courts are no longer required to defer to agencies' expertise when addressing the legality of their rules and regulations interpreting ambiguous statutes. Moreover, certain agency enforcement actions must now be litigated publicly in federal court, rather than via internal administrative tribunals. These developments may lead to less or more modest agency rulemaking than in years past and could put agencies in a defensive posture in light of an anticipated increase in lawsuits challenging their rulemaking authority.

On June 28, 2024, in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), the Supreme Court overturned *Chevron USA v. National Resources Defense Council*, 467 U.S. 837 (1984), thereby ending the federal judiciary's longstanding practice of deferring to agencies' reasonable interpretations of ambiguous federal statutes. The Court proclaimed that instead, courts must exercise their "independent judgment" when addressing the propriety of such agency regulations, using the ordinary methods of statutory interpretation to determine whether the subject regulation comports with its enabling statute.

This ruling marks a fundamental shift in the traditional roles of courts and agencies with respect to interpreting and implementing federal statutes, giving federal courts more power to second-guess agency regulations that likely would have remained intact under *Chevron*. This shift will necessarily impact agencies in the employment law space such as the Equal Employment Opportunity Commission ("EEOC"), the National Labor Relations Board ("NLRB"), and the Federal Trade Commission ("FTC"), opening the door to challenges to those agencies' regulations, which affect employers nationwide. Such exposure may have a chilling effect on new rulemaking by these and other agencies and may also cause such agencies to dial back already-existing rules and regulations to avoid suit in federal court.²

Just a day before the *Loper Bright* decision, on June 27, 2024, in *SEC v. Jarkesy*, 144 S.Ct. 2117 (2024), the Supreme Court issued another ruling with potentially wide implications for agency power, this time with respect to agencies' enforcement authority. There, the Supreme Court held that the Seventh Amendment requires the Securities and Exchange Commission ("SEC") to litigate in federal district court—as opposed to within the SEC's internal administrative tribunals—when seeking civil monetary penalties for alleged violations of the antifraud provisions of the federal securities laws. Such a requirement will necessarily afford more rights to defendants in SEC enforcement actions, including the protections in the Federal Rules of Civil Procedure (such as the general right to discovery)³ and the Federal Rules of Evidence (such as the rule against hearsay).⁴ The requirement will also expose the SEC's internal records and general litigation tactics to public view, in light of the public's First Amendment right to access court proceedings and records. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980); *N.Y.C.L.U. v. N.Y. City Transit Auth.*, 684 F.3d 286, 298 (2d Cir. 2012).

Jarkesy's rationale could arguably apply to a host of other agencies that ordinarily would use internal adjudicative processes when they seek monetary relief, including the NLRB and FTC. While it may take several more years of litigation to test that theory, the prospect of such increased scrutiny may make these agencies more cautious when bringing enforcement actions going forward.

² Indeed, many newly released regulations have already been challenged in the months since *Loper Bright*. *Infra* at 6.

³ See generally Fed. R. Civ. P. 26.

⁴ Fed. R. Evid. 802.

Expanded Rights for Pregnant Employees

Another trend in 2024 was the continued expansion of rights for pregnant employees and those with related medical conditions at both the state and federal levels.

A. The EEOC's Final Rule Implementing the Pregnancy Workers Fairness Act

As noted in [our April 24, 2024 client alert](#), on April 19, 2024, the EEOC announced a [final rule and interpretive guidance](#) implementing the Pregnant Workers Fairness Act ("PWFA"). As a reminder, the PWFA requires covered entities to provide reasonable accommodations to qualified employees' known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions unless they would impose undue hardship.

The EEOC's final rule explains to whom the PWFA applies, the types of limitations and medical conditions covered, and the informal, interactive process by which employees can request reasonable accommodations, with numerous concrete examples. It also identifies "predictable assessments"—which are "common-sense, low-cost" reasonable accommodations that will, in virtually all cases, be found to be reasonable accommodations that do not impose undue hardship—and provides guidance on five prohibited practices under the PWFA. These include:

- i. failing to provide any reasonable accommodations;
- ii. requiring an employee to accept a reasonable accommodation (other than one arrived at through the interactive process);
- iii. denying equal employment opportunities;
- iv. requiring the employee to take leave when other accommodations are available; and
- v. adverse action on account of requesting or using a reasonable accommodation.

These regulations became effective on June 18, 2024. On November 21, 2024, the EEOC issued a [Notice of Proposed Rulemaking](#) amending its existing recordkeeping regulations under Title VII, the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA), to add references to the PWFA. The proposed rule continues the process of the EEOC introducing or amending regulations to implement the PWFA. The public must submit any comments by January 21, 2025.

B. New York's Paid Prenatal Leave Law

As explained in [our prior alert](#), the final EEOC rule is unlikely to have great practical impact on New York employers since New York State and New York City laws already require employers to provide reasonable accommodations to pregnant employees. That said, on January 1, 2025, New York became the first state in the country with a Paid Prenatal Leave Law (PPLL), which requires all private-sector employers to provide employees with 20 hours of paid leave for pregnancy-related health care services.

The New York State Department of Labor ("NYDOL") [issued general information and frequently asked questions \(FAQs\) regarding the PPLL](#) on December 19, 2024. According to this guidance, the leave can be used for "physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy." Employees can also use it for fertility treatments and end-of-pregnancy care appointments, but not for postnatal or postpartum-related appointments. The guidance also clarifies that the paid leave may be taken in one-hour increments and is separate and apart from any other leave available to employees, such as Paid Sick Leave.

Furthermore, employers cannot require an employee to use any other type of leave if an employee requests leave under the new law. And while NYDOL encourages employees to give employers as much notice as possible of their intent to use these benefits, employers cannot require employees to provide medical records or other documentation as a condition of using this leave. Nor are employers

allowed to ask employees for specific details about prenatal appointments or for confidential information about their health condition(s).

The guidance further provides that it is illegal for employers to retaliate against employees for requesting these benefits, for example, by reducing other leave options or changing work locations or hours after a request is made.

Expectations for the Coming Year

While many executive agencies rolled out additional regulatory protections for employees during the past year, there is a possibility that some of these regulatory changes could be rolled back under the new administration. This is especially so in light of the enhanced scrutiny administrative agencies will face following the Supreme Court's decision in *Loper Bright*. See *supra* at 4. Below are some key regulatory developments that took place in 2024, along with our assessment of whether they ultimately may be dialed back under the new administration.

A. The FTC's Ban on Non-Competes

On April 23, 2024, the FTC [issued](#) a [final rule](#) banning most post-employment non-compete clauses as an “unfair method of competition” prohibited by Sections 5 and 6(g) of the FTC Act. As explained in our [May 28, 2024 client alert](#), the rule defined a “non-compete clause” as “a term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from (1) seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or (2) operating a business in the United States after the conclusion of the employment that includes the term or condition.” The rule applies to an expansive category of workers, including employees, independent contractors, externs, interns, and volunteers—with the exception of senior executives who entered into non-compete agreements before the rule's effective date.⁵

Although the rule was scheduled to take effect on September 24, 2024, as noted in our [September 11, 2024 alert](#), it faced numerous legal challenges and was enjoined by the U.S. District Court for the Northern District of Texas on August 20, 2024. See *Ryan, LLC v. Federal Trade Commission*, Case No. 3:24-cv-986 (N.D. Tex. Aug. 20, 2024) (Memorandum Opinion and Order on Summary Judgment Motions).⁶ Relying on *Loper Bright*, the *Ryan* court found that the rule both exceeded the FTC's rulemaking authority under the FTC Act and was “arbitrary and capricious” in violation of the Administrative Procedure Act (“APA”). While at least one other federal court disagreed with this assessment,⁷ enforcement of the rule is now prohibited under a nationwide injunction unless and until the *Ryan* decision is appealed. It remains to be seen whether the new administration will choose to continue to pursue this appeal or withdraw the proposed rule.

That said, employers should continue to ensure that they are positioned to comply with the non-compete rule should any appeals court reinstate the regulation. Furthermore, employers should stay abreast of state and local laws that may limit or prohibit non-compete agreements.

Indeed, last year, the New York legislature passed a bill banning virtually all non-competes. The bill was heavily criticized for lacking nuances such as salary minimums and exceptions for high-level employees—and was vetoed by Governor Kathy Hochul on December 22, 2023. A more moderate version of the prohibition may be on the horizon, as Governor Hochul [made clear](#) that she would support

⁵ However, as noted in the May 28, 2024 alert, we would expect traditional public charities and grant making foundations to be exempt from the rule, as the FTC's jurisdiction does not extend to entities that are not “organized to carry on business for [their] own profit or that of [their] members.”

⁶ See also *Properties of the Villages v. FTC*, 5:24-cv-316 (M.D. Fla.).

⁷ See *ATS Tree Servs. LLC v. FTC*, 2:24-cv-01743 (E.D. Pa. July 23, 2024) (Memorandum Opinion on Motion for Preliminary Injunction).

a non-compete ban in New York so long as it strikes a balance between protecting middle-class and low-wage earners, “while allowing New York’s businesses to retain highly compensated talent.” A similarly broad non-compete ban—[introduced on February 28, 2024](#)—is also being discussed within the New York City Council sub-committee on Consumer and Worker Protection. Therefore, even if the FTC’s ban is ultimately rescinded, New York City employers should be aware of this increased interest by local lawmakers in limiting non-compete agreements between employers and workers.

Employers nationwide should also be aware of a new California non-compete ban that arguably extends to agreements signed or performed in other states. On January 1, 2024, California introduced a statute banning non-competes (subject to a narrow set of exceptions) “regardless of where and when the contract was signed,” even if “the employment was maintained outside of California.”⁸ While the scope of the statute has been challenged in federal courts across the country,⁹ no California appellate court has issued a binding decision on this issue. Therefore, employers with a presence in California should keep an eye out for additional developments regardless of their geographic location or state of incorporation and should use California-compliant agreements for California employees even if the company is based or incorporated elsewhere. Employers with no presence or current employees in California should also be prepared to comply with the law if any of their employees move to California.

B. New DOL Rules

A similar dynamic is unfolding with respect to several new rules promulgated by the Department of Labor (DOL).

a. Independent Contractor Rule

On January 10, 2024, the Wage and Hour Division of the DOL modified DOL’s guidance regarding the test for who qualifies as an employee or an independent contractor under the Fair Labor Standards Act (“FLSA”), via a [final rule](#) that took effect on March 11, 2024. This rule rescinds an [earlier one](#) issued in 2021 under the first Trump Administration.

As a reminder, federal courts generally use a six-factor “economic realities” test to determine whether a worker qualifies as an employee or independent contractor under the FLSA. Those factors are:

1. **Does the worker’s managerial skill affect his or her opportunity for profit or loss?** (If so, the worker is more likely an independent contractor.)
2. **How does the worker’s investment compare to the employer’s investment?** (A higher investment by the worker makes it more likely that he or she is an independent contractor.)
3. **Is the relationship between the worker and the employer permanent or indefinite?** (If the relationship is finite in duration, sporadic, or non-exclusive, the worker is more likely an independent contractor.)
4. **What is the nature and degree of the employer’s control over the worker?** (The less control exercised by the employer, the more likely the worker is an independent contractor.)
5. **Is the work performed by the worker an integral part of the employer’s business?** (The less integral the work is, the more likely that the worker is an independent contractor.)

⁸ Cal. Bus. & Prof. Code § 16600.5.

⁹ E.g., *DraftKings Inc. v. Hermalyn*, 118 F.4th 416, 418 (1st Cir. 2024); *Poer v. FTI Consulting, Inc.*, No. 24-CV-04725-JSC, 2024 WL 4859085, at *1 (N.D. Cal. Nov. 20, 2024); *Bowser v. Found. Bldg. Materials, LLC*, No. 8:24-CV-01643-DOC-SK, 2024 WL 4255057, at *1 (C.D. Cal. Sept. 20, 2024).

6. **Does the work require special skill and initiative?** (If so, the worker is more likely an independent contractor.)

The new rule advises that the DOL will consider all six factors based on the totality of the circumstances, such that no one factor, or group of factors, has any predetermined weight. The rule further advises that the “ultimate inquiry” is whether, as a matter of economic reality, a worker is economically dependent on the employer for work (and is therefore an employee) or is in business for him or herself (and is therefore an independent contractor).

As explained in our [March 19, 2024 client alert](#), the new rule departs from the 2021 rule in two significant ways. First, the new rule considers investments made by the worker and the employer as a standalone inquiry—set forth as factor 2 above—whereas the 2021 rule did not consider this inquiry independently and therefore, used only five factors. Second, while the 2021 rule designated two “core factors” (opportunity for profit or loss and the employer’s nature and degree of control) as carrying more weight than the others, the new rule weighs all of the factors equally and encourages a case-by-case factual assessment.

Given the recent history of rulemaking on this issue and the upcoming change in administration, the DOL may ultimately replace the new rule with the 2021 rule or a similar version. Employers should be mindful of this potential change so that they can timely ensure that their workers are properly classified under applicable guidelines and regulations. However, the new rule would apply only to the DOL’s interpretation of the FLSA, and do not otherwise modify obligations imposed by federal, state, or local law. Therefore, employers should consider New York State [guidance](#) and [publications](#) on which workers qualify as independent contractors before implementing any changes.

b. Overtime Rules

Likewise, the DOL announced another [final rule](#) on April 26, 2024, increasing the minimum compensation levels for the “executive, administrative, and professional employee” (EAP) exemptions and the highly compensated employee (HCE) exemptions to the FLSA’s overtime premium pay requirements. Under that rule, the minimum compensation levels would increase as follows:

- The current \$684 per week threshold for the EAP exemptions would increase to \$844 per week on July 1, 2024, and increase again to \$1,128 per week on January 1, 2025; and
- The current \$107,432 annualized salary for the HCE exemption would increase to \$132,964 per year on July 1, 2024, and to \$151,164 per year on January 1, 2025.

The rule further provided that these thresholds would be updated automatically every three years based on salary data from the U.S. Bureau of Labor Statistics.

However, on November 15, 2024, the U.S. District Court for the Eastern District of Texas vacated the rule in its entirety as agency overreach based on the principles in *Loper Bright*. See *Texas v. U.S. Dep’t of Lab.*, No. 4:24-CV-468-SDJ, 2024 WL 4806268 (E.D. Tex. Nov. 15, 2024). In a 62-page opinion, the court reasoned that the rule exceeded DOL’s statutory authority by creating a predominantly salary-based test instead of the FLSA’s duties-based test, thereby flouting its authority under the FLSA. As a result, the rule is now stayed (paused) nationwide and the minimum salary thresholds for these exemptions have reverted to those set by the DOL under the first Trump administration in 2019. While DOL filed a notice of appeal on November 26, 2024, the appeal may be withdrawn subsequent to the forthcoming change in administration.

These developments do not impact more employee-friendly state-law overtime requirements, which continue to apply in states with such laws. For example, New York’s overtime rules generally give greater protections than the FLSA’s—and therefore, New York employers should continue to ensure

that they comply with those standards. Indeed, as of January 1, 2025, the minimum threshold for EAP exemptions is \$1,200 per week in New York City and Nassau, Suffolk, and Westchester Counties, and \$1,161.65 per week in the rest of the state.¹⁰

Further, in New York City, Long Island, and Westchester County, the minimum wage increased to \$16.50 per hour effective January 1, 2025, and to \$15.50 per hour in the remainder of the State. The federal minimum wage remains static at \$7.25 per hour. As a reminder, employers must follow more employee-friendly state and local minimum wage laws.

c. Proposed Rule Ending Section 14(c) Certificates

Finally, on December 4, 2024, the DOL's Wage and Hour Division announced a Notice of Proposed Rulemaking that would phase out the issuance of FLSA Section 14(c) certificates, which allow employers to pay employees with disabilities subminimum wages. Under the proposed rule, the DOL would stop issuing new Section 14(c) certificates, and only allow current certificate holders to apply for renewals for three years after the effective date. After that three-year period, all Section 14(c) certificates will expire and all workers previously paid subminimum wages thereunder will be required to be paid at or above minimum wage. Comments are due on January 17, 2025. It is unclear what, if any, impact the upcoming change in administration might have on this new rule, given the lack of prior action on this issue during the first Trump Administration.

C. The EEOC's New Guidance on Harassment in the Workplace

On April 29, 2024, the EEOC issued its new [Enforcement Guidance](#) on Harassment in the Workplace (the "Guidance"), its first update to the EEOC's workplace harassment guidance since 1999.

Along with many new developments incorporated into the Guidance, the EEOC extended its protections to cover discrimination based on pregnancy and pregnancy-related conditions, as well as sexual orientation and gender identity. The latter update brings the Guidance in line with the Supreme Court's 2020 holding in *Bostock v. Clayton County*, that Title VII's prohibition against sex discrimination extends to discrimination on the basis of sexual orientation and transgender status. The EEOC also recognized potentially unlawful forms of workplace harassment against LGBTQ+ individuals, such as:

- i. epithets;
- ii. physical assault;
- iii. disclosing an individual's sexual orientation or gender identity without permission ("outing");
- iv. intentionally using a name or pronoun inconsistent with the individual's known gender identity ("misgendering");
- v. denying access to a bathroom or other sex-segregated facility consistent with the individual's gender identity; and
- vi. other harassing conduct toward the individual because they do "not present in a manner that would stereotypically be associated with that person's sex."

While the new administration may attempt to dial back this aspect of the Guidance under *Loper Bright*, it will be difficult to fundamentally alter its underlying principles in light of the *Bostock* decision upholding Title VII's protections to LGBTQ+ individuals.

¹⁰ 12 N.Y.C.R.R. § 142-14.2.

Because *Bostock* was decided in 2020 and states like New York enacted protections for LGBTQ+ employees long ago, most employers will not need to update their handbooks to account for this aspect of the Guidance. Nonetheless, it is a good idea to review the Guidance to glean a better understanding of how discrimination based on sexual orientation and gender identity may play out in the workplace.

D. DOE's Final Title IX Regulations

Finally, on April 19, 2024, the Department of Education (DOE) released a [final rule under Title IX](#), which altered key principles of the previous version of the rule issued in 2020, during the first Trump Administration. In particular, the new rule expands the scope of conduct prohibited by Title IX, increases schools' responsibility to prevent and respond to Title IX complaints, and adopts a more complainant-friendly evaluation process. The new rule took effect on August 1, 2024.

As a reminder, Title IX of the Civil Rights Act prohibits discrimination on the basis of sex in federally-funded education programs and activities.

a. Broader Scope of Title IX Protections

Like the EEOC's Guidance, the DOE's new rule broadens the definition of sex discrimination to include discrimination based on pregnancy, pregnancy-related conditions, sexual orientation, and gender identity.

Similarly, instead of "sexual harassment"—a term from the 2020 rule—the rule prohibits "**sex-based harassment**" on the basis of sex stereotypes, sex characteristics, pregnancy, pregnancy-related conditions, and LGBTQ+ status. The rule also revives the more flexible, pre-2020 standard for whether conduct constitutes sex-based harassment. Indeed, the 2020 regulations required that harassing conduct be (1) severe, (2) pervasive, **and** (3) objectively offensive. In contrast, the new rule requires that sex-based harassment be (1) unwelcome, (2) subjectively and objectively offensive, and (3) so severe **or** pervasive (4) that it results in a limitation or denial of a person's ability to participate in or benefit from the recipient's educational program or activity.

b. Increased Onus on Schools to Prevent and Respond to Complaints

Furthermore, the DOE's new rule increases the scope of schools' responsibility to prevent and respond to Title IX violations and complaints in a variety of ways. These include:

- i. Replacing the rigorous "actual knowledge" standard that triggered the requirement for schools to take action under the 2020 rule, with a more relaxed standard whereby schools must respond when they have "knowledge of conduct that reasonably may constitute sex discrimination";
- ii. Requiring certain school employees to notify their Title IX Coordinator when they have information about conduct that reasonably may constitute sex discrimination; and
- iii. Requiring Title IX Coordinators to monitor school education programs and activities for barriers to reporting potential sex discrimination, and to take steps reasonably calculated to address them.

c. More Complainant-Friendly Evaluation Process

Finally, the rule relaxes the Title IX complaint evaluation process in two ways that favor complainants. First, it adopts a lower evidentiary standard as the default for evaluating complaints. While the 2020 rule permitted schools to choose between a preponderance of the evidence standard (where the

evidence of a violation must be more likely than not) **or** clear and convincing evidence standard (where the evidence of a violation must be highly and substantially more likely to be true), the preponderance of the evidence standard is now mandatory unless the school uses the higher standard for all comparable proceedings.

Second, the new rule provides greater protection for complainants during Title IX hearings by:

- i. Removing the requirement for in-person cross examinations during Title IX hearings; and
- ii. Allowing complainants to request alternative arrangements to avoid direct confrontation with respondents, such as using separate rooms or screens.

In response to these changes, dozens of states and private parties filed lawsuits seeking to block enforcement of the rule in its entirety or in part, predominantly on the grounds of agency overreach.¹¹ Courts have granted these requests in 26 states.

In light of this response, and the forthcoming change in administration, the DOE may ultimately withdraw the new rule and reinstate the 2021 version or something similar in the new year. Employers who are subject to Title IX should ensure that their policies and handbooks comply with the current version of the rule in their jurisdictions but stay on the lookout for further changes and be prepared to make updates accordingly.

CONCLUSION

It is clear that 2024 was filled with notable changes to the employment law landscape in a variety of areas. However, the extent to which these changes last remains to be seen. We will continue to share new developments.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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¹¹ *E.g.*, *Louisiana v. U.S. Dep't of Educ.*, 2024 WL 2978786 (W.D. La. June 13, 2024), appeal docketed, No. 24-30399 (5th Cir. June 25, 2024); *Tennessee v. Cardona*, 2024 WL 3019146 (E.D. Ky. June 17, 2024), appeal docketed, No. 24-5588 (6th Cir. June 26, 2024); *Kansas v. U.S. Dep't of Educ.*, 2024 WL 3273285, at *22 (D. Kan. July 2, 2024), appeal docketed, No. 24-3097 (10th Cir. July 11, 2024); *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342 (N.D. Tex. July 11, 2024); *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, 2024 WL 3381901 (N.D. Tex. July 11, 2024); *Arkansas v. U.S. Dep't. of Educ.*, 2024 WL 3518588 (E.D. Mo. July 24, 2024).