



# SCWA Legislative & Regulatory Update

**April 30, 2024**



## **FTC Announces Rule Banning Non Competes**

On Tuesday, April 23, 2024, the Federal Trade Commission (FTC) voted 3-2 along party lines to approve its new rule on non-competes. The new rule, which will take effect in 120 days, essentially bans non-competes for all workers, finding them “an unfair method of competition – and therefore a violation of Section 5 of the FTC Act.”

Notably, a non-compete clause is broadly defined by the new rule as a “contractual term or workplace policy that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment or operating a business in the United States after the conclusion of the employment.”

The new rule applies retroactively to prior agreements, other than those for senior executives earning more than \$151,164 a year in a “policy-making position.” Employers must provide notice to other workers subject to non-compete agreements that they are no longer enforceable.

Not limited to employees, the non-compete ban extends to independent contractors, externs, interns, volunteers, apprentices, and sole proprietors who provide a service to a person. It does not include non-competes entered into pursuant to a bona fide sale of a business entity or in a franchisor-franchisee relationship.

While the rule is final, expect legal challenges to follow. For example, the U.S. Chamber of Commerce, the nation's largest business lobby, told reporters it plans to sue over the rule, claiming the FTC is not authorized to make this rule, that non-competes are not categorically unfair, and the rule is arbitrary. The Chamber's thoughts were echoed by the opposing Republican FTC Commissioners, who cited concerns about the FTC's authority.

While employers' protectable interests are often a concern, it is important to note that this rule does not ban non-disclosure and confidentiality agreements.

Stay tuned for more information on the developing regulations for non-competes and the legal challenges that will follow.

[To view the rule click here.](#)

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## **Changed Overtime Rule for Salaried Employees**

The U.S. Department of Labor announced on Tuesday, April 23, 2024, the release of a final rule raising the minimum annual salary threshold for overtime pay eligibility. This primarily applies to executive, administrative, and professional employees, commonly referred to as the “White Collar Overtime Exemptions.” [The 383 page Final Rule can be seen here](#) and is briefly summarized below.

The Fair Labor Standards Act (“FLSA”) is a federal law that regulates when employees must be paid minimum wage and overtime. Under the FLSA, overtime pay, which is due to all employees who do not fall within a specified exemption, is one and one-half

times an employee's regular pay rate for every hour that is worked beyond 40 hours in a work week. While hourly workers are generally entitled to overtime pay, salaried workers are not if they earn above a certain pay level and supervise other workers, use professional expertise or judgment, or hire and fire workers.

Currently, salaried workers making less than \$35,568 annually qualify for overtime pay when they work more than 40 hours in a week. Starting July 1, 2024, the threshold will increase from \$35,568 to \$43,888 per year. It will then increase again to \$58,656 on January 1, 2025.

The change will be most critical for employers which are now claiming an overtime exemption for employees earning more than \$35,568 annually, but less than \$58,656 annually. Upon enactment, these employees, occupying this \$23,088 band, would lose their current status as overtime-exempt.

The new standard will likely be challenged in court by affected industry groups that have argued that excessively raising the standard exceeds the Labor Department's authority. Unless and until there is court intervention, employers should prepare as follows:

- Review salaried employee classifications to confirm compliance with new salary thresholds to remain exempt.
- Review salaried employee classifications to determine whether employees should be reclassified as nonexempt.
- For employees reclassified as nonexempt, ensure all hours worked are properly recorded.
- For employees reclassified as nonexempt, review budgets, set hours expectations, and development policies for approval of overtime.

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## CTA Legislative Update

The Protect Small Business and Prevent Illicit Financial Activity Act (S. 3625) remains pending before the Senate Banking Committee, currently led by Sen. Sherrod Brown (D-OH).

That legislation would implement a one-year delay of the CTA's reporting requirements for existing entities; its companion bill passed the House 420-1 late last December.

Meanwhile, bicameral legislation to repeal the CTA altogether is in the works.

We expect that legislation to drop in the coming weeks, so be on the lookout for updates on that front.

