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OHIO LIBRARY COUNCIL

HR LEGAL UPDATE

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Today's Agenda

- New Salary Threshold for Overtime Exemptions
- EEOC Guidance on Workplace Harassment
- PWFA Final Rule
- Marijuana



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New Salary Threshold for Overtime Exemptions

Department of Labor Raises Salary Threshold for Overtime Exemptions

- On April 23, 2024, DOL released its final rule raising the salary thresholds for being exempt from overtime under the Fair Labor Standards Act (FLSA)
- Substantial salary level increases coming:
 - July 1, 2024
 - January 1, 2025
 - July 1, 2027
 - Every three years thereafter

Department of Labor Raises Salary Threshold for Overtime Exemptions

- Current salary thresholds (effective until July 1, 2024):
 - Executive, administrative, and professional employees = \$684 **per week**
 - Highly compensated employees = \$107,432 **annually**

Department of Labor Raises Salary Threshold for Overtime Exemptions

- Salary thresholds (effective July 1, 2024):
 - Executive, administrative, and professional employees = **\$844 per week (\$43,888 annually)**
 - Highly compensated employees = **\$132,964 annually**

Department of Labor Raises Salary Threshold for Overtime Exemptions

- Salary thresholds (effective January 1, 2025):
 - Executive, administrative, and professional employees = **\$1,128 per week (\$58,656 annually)**
 - Highly compensated employees = **\$151,164 annually**

Department of Labor Raises Salary Threshold for Overtime Exemptions

Date	Weekly Salary	Annual Salary	Highly Compensated Employees
Until July 1, 2024	\$684	\$35,568	\$107,432
July 1, 2024	\$844	\$43,888	\$132,964
January 1, 2025	\$1,128	\$58,656	\$151,164
July 1, 2027, and every three years thereafter	To Be Determined		

Department of Labor Raises Salary Threshold for Overtime Exemptions: Takeaways

- This rule will likely face legal challenges, which may prevent it from going into effect.
 - 2016 Obama DOL rule: attempted to increase the salary threshold; litigation ensued; rule halted.
 - 2019 Trump DOL rule: increased the salary threshold by less than Obama DOL rule; litigation ensued; rule not halted; 5th Circuit appeal pending.
- Best practice: prepare for new rule to take effect on July 1, 2024.
 - Review exempt workforce to determine who will be most impacted by new rule.



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EEOC Guidance on Workplace Harassment

EEOC Releases Final Guidance to Prevent Harassment in the Workplace

- On April 29, 2024, the EEOC published final guidance on harassment in the workplace.
- “The new guidance updates, consolidates, and replaces the agency’s five guidance documents issued between 1987 and 1999, and serves as a **single, unified agency resource on EEOC-enforced workplace harassment law.**”

EEOC Final Guidance Regarding Workplace Harassment: Key Highlights

1. Protection for Transgender Employees

- According to the EEOC's guidance, examples of harassment include:
 - Denial of access to a bathroom consistent with the individual's gender identity.
 - Intentional and repeated misgendering of an individual.
 - Harassment of an individual because they do not present in a manner stereotypically associated with their gender.

EEOC Final Guidance Regarding Workplace Harassment: Key Highlights

2. Broadened Pregnancy-Related Protections

- The definition of sexual harassment now includes pregnancy, childbirth, ***and other related medical conditions***.
- According to the EEOC's guidance, employees are protected against harassment for decisions related to lactation, contraceptive choices, and the decision to have, or not to have, an abortion.

EEOC Final Guidance Regarding Workplace Harassment: Key Highlights

3. Protection for Virtual Harassment

- “As with a physical work environment, conduct within a virtual work environment can contribute to a hostile work environment.” Examples include:
 - Sexist comments during a video meeting.
 - Ageist or ableist comments in a group chat.
 - Racist imagery visible in an employee’s home/remote office.
 - Sexual comments about a bed in or near an employee in a video image.

Clarified Liability Standards

Liability standard when harassment involves termination, demotion, failure to promote/transfer, etc.

If harassment includes or culminates in a change to victim's employment, employer is liable.

If the evidence establishes that the harassment caused the change in employment, employer has **no defense to liability**.

Liability standard for hostile work environment

It depends. Primary factor is **who** is doing the harassing. Other factors include whether there has been a tangible employment action, what steps the employer took to cure the harassment, and what steps the victim took to complain about the harassment.

EEOC Final Guidance Regarding Workplace Harassment: Next Steps

- Expect legal challenges to the EEOC's guidance.
- In the meantime:
 - Consider whether your policies are compliant with the EEOC's current guidance.
 - Train managers to identify and prevent workplace harassment.
 - Investigate all complaints and take prompt and effective remedial action when improper conduct is found.



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PWFA Final Rule

Pregnant Workers Fairness Act (PWFA)

- Key requirements:
 - **Reasonable accommodations** for known limitations related to pregnancy, childbirth, or related medical conditions.
 - To allow performance of essential functions.
 - ... unless the accommodation will cause an **undue hardship**.
 - **Similar** (but **not** the same) to ADA analysis.

EEOC PWFA Final Rule: Effective June 18, 2024

- Unlike the ADA analysis...
- The PWFA allows an employee or applicant to be qualified **even if they cannot perform one or more essential functions of the job** if:
 - Inability to perform the essential function(s) is “temporary,”
 - Employee could perform the essential function(s) “in the near future” and
 - Inability to perform the essential function(s) can be reasonably accommodated.
- The terms “temporary,” “in the near future,” and “can be reasonably accommodated” are not defined in the statute.

EEOC PWFA Final Rule: Effective June 18, 2024

- EEOC Final Rule: Released April 15, 2024 – provides interpretive guidance implementing the PWFA.
- Upon an employee's request, an employer will need to **consider eliminating one or more essential functions** of a job **for up to 40 weeks** during an employee's pregnancy **and for an additional amount of time** after its conclusion, unless doing so poses an undue hardship.

EEOC PWFA Final Rule: Effective June 18, 2024

- EEOC’s “non-exhaustive list of potential reasonable accommodations” includes:
 - **Frequent breaks**; sitting/standing; **schedule changes**; paid and unpaid leave; **remote work**; reserved parking; light duty; temporarily suspending one or more essential functions.
- An employer may obtain medical documentation **only if** it is reasonable under the circumstances **to determine if the employee has a qualifying condition** and needs an adjustment or change at work due to the limitation.

EEOC PWFA Final Rule: Effective June 18, 2024

- Regulations address certain definitional shortcomings in the statute
 - “Temporary” means lasting for a limited period of time, not “permanent” and may extend beyond “in the near future”
 - “In the near future” means, generally, 40 weeks from the start of the temporary suspension of an essential function
 - “Can be reasonably accommodated” means temporary suspension of an essential function of the position, or potentially other alternative arrangements

EEOC PWFA Final Rule: Effective June 18, 2024

- Factors to consider when determining if temporary suspension of one or more essential function would cause undue hardship:
 - The length of time that the employee will be unable to perform the essential function(s).
 - Whether there is work for the employee to accomplish.
 - The nature of the essential function, including its frequency.

EEOC PWFA Final Rule: Effective June 18, 2024

- Whether the employer has provided other employees in similar positions who are unable to perform the essential function(s) of their positions with temporary suspensions of those functions and other duties.
- If necessary, whether there are other employees, temporary employees, or third parties who can perform or be temporarily hired to perform the essential function(s) in question.
- Whether the essential function(s) can be postponed or remain unperformed for any length of time and, if so, for how long.



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Marijuana Legalization

Marijuana's Changing Landscape

- Employers still have the right to prohibit employees from possessing marijuana on the job;
- Employers still have the right to prohibit employees from being under the influence of marijuana while working.
- Employers still have the right to test for marijuana, but that gets complicated . . .

Positive Test ≠ Impairment

Drug	Time detectable in urine
marijuana	3 days for a single use 5–7 days for moderate use (4 times per week) 10–15 days for daily use 30+ days for heavy use
cocaine	2–4 days
amphetamines	48 hours
opioids	48 hours for heroin 48 hours for codeine 48–72 hours for morphine 2–4 days for oxycodone 3 days for methadone
barbiturates	1 day for short acting (pentobarbital) 3 weeks for long acting (phenobarbital)
benzodiazepines	3 days for short acting (lorazepam) 1 month for long acting (diazepam)
PCP	8 days
synthetic cannabinoids	72+ hours

- A drug test will not reveal whether an employee is impaired or under the influence of marijuana.
- Detection time is well past the window of intoxication and impairment.
- Alcohol is blood soluble – THC is fat soluble and can be released into blood long after ingestion (possibly as long as 30 days).
- The decline of alcohol is predictable – THC is not.
- Degree of alcohol in blood is closely related – but not THC.

Drug Testing Best Practices

- **Review substance abuse policies**
 - Clarify whether marijuana, including medical marijuana, is a prohibited substance.
 - Clarify whether you will accommodate medical marijuana and with what means (but be careful of the risk for negligent hiring or supervision).
- **Review workplace safety standards (OSHA)**
- **Know whether the Drug Free Workplace Act applies**
(Federal Contractors and Grantees).



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Questions?