Pay Matters: Spring 2024

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Read on to stay informed and in compliance with relevant alerts and insights that matter most for your payroll.

The DOL Adopts New Independent Contractor Rule

Effective March 11, 2024, the U.S. Department of Labor's (DOL) Final Independent Contractor Rule replaced and rescinded the 2021 rule that was published under the Trump Administration.

Background

Prior to the 2021 rule, the independent contractor test looked at 7 factors to determine whether a worker should be classified as an employee or independent contractor. Each of these factors carried equal weight, but guidance was vague. Under the 2021 final rule, the test was divided into two groups:

1. Two core factors which carried more weight: (1) the nature and degree of the worker's control over their work and (2) the worker's opportunity for profit and loss.
2. Three additional factors: (1) the amount of skill required for the work, (2) the degree of permanence of the job, and (3) whether the work is part of an integrated unity of production.

2024 Final Rule

Under the final rule, the DOL will use an "economic realities" test based on the following six factors, each carrying equal weight:

- The opportunity for profit or loss depending on managerial skill;
- The investments by the worker and the employer;
- The degree of permanence of the work relationship;
- The nature and degree of control;
- The extent to which the work performed is an integral part of the employer's business; and
- The skill and initiative of the worker.

As the new rule is already in effect, now is the time to review your worker status if you have not already done so and determine with legal counsel if changes are necessary.

NLRB Joint Employer Rule Halted

Days before going into effect, a Texas Court vacated the National Labor Relations Board's (NLRB) much contested new joint-employer rule. The new rule would have made it more likely for multiple companies to qualify as joint employers and thereby share liability for labor law violations as well as legal obligations to negotiate with unions.

Under the 2020, Trump-Era rule, direct and immediate control over the most important elements of a worker's job was required to trigger joint employment. The new rule expanded the joint employment triggers to include indirect and unexercised control, potentially pulling many more companies into a joint-employment status.

The NLRB is likely to appeal this decision. For now, employers should continue to determine independent contractor status under the existing 2020 rule.

IRS Announces First Ever ACA Penalty Amount Decrease for 2025

The IRS announced an adjustment to the employer shared responsibility payments for 2025.

For the first time since the start of the ACA, penalties will decrease for applicable large employers (employers who employed 50 or more full-time employees during the preceding calendar year) who fail to offer health coverage that meets affordability and minimum-value requirements.

The penalties may be triggered if at least one full-time employee obtains a premium tax credit or subsidy from a health insurance exchange. For employers who do not offer health coverage, the 2025 4980H(a) penalty amount will be $2,900, down from $2,970 in 2024. For employers who offer coverage that is unaffordable or does not meet minimum-value requirements, the 2025 4980H(b) penalty amount will be $4,350, down from $4,460 in 2024.

For more information on ACA affordability and minimum-value requirements, please visit the IRS website as well as Viventium's ACA Compliance page.

New York Governor Hochul 2025 Budget Proposal Includes Significant Changes to CDPAP

Earlier this year, New York Governor Hochul had announced her Executive Budget Proposal for 2025. The governor later released her 30-day amendments to the proposal. Both include some significant changes to the Consumer Directed Personal Assistance Program (CDPAP), including the following:

- Elimination of wage parity benefits to CDPAP caregivers;
- Implementation of a new authorization process for providing fiscal intermediary (FI) services;
- Changes to the definition of an FI;
- Limitations on a licensed home care services agency (LHCSA)'s participation in the state CDPAP; and
- Establish "maximum daily and weekly hours" for home care workers.

The proposal is subject to an extended negotiation process with state legislatures before a budget agreement is reached on April 1, 2024. So far, both the Senate and Assembly have passed resolutions rejecting the Governor's CDPAP changes. In addition, the April 1 deadline is often extended. Viventium will continue to monitor the budget process and provide an update once complete.

New Jersey Enacts Domestic Worker Bill of Rights

New Jersey has enacted the New Jersey Domestic Worker's Bill of Rights, covering domestic workers under state wage and discrimination laws.

Domestic workers for purposes of the bill include those who work in a residence and provide care for either a child or a sick, elderly, or disabled individual. Services include housekeeping, cooking, and any other domestic service purpose.

Notably, the law does not cover home health aides paid through Medicare or Medicaid.

The law also requires meal and rest breaks for domestic workers as well as an unpaid day off for live-in domestic workers after 6 consecutive days of work for the same employer.

Local Minimum Wage Updates

Locality	Minimum wage	Effective Date
Los Angeles, CA	$17.28	7/1/24
Malibu, CA	$17.27	7/1/24
Santa Monica, CA	$17.27	7/1/24
Santa Fe City, NM	$14.60	7/1/24
Santa Fe County, NM	$14.60	7/1/24
Montgomery County, MD	$17.15 (large employer) $15.15 (mid-size employers) $15.00 (small employers)	7/1/24
Renton, WA	$20.29 (large employers) $18.29 (small employers)	7/1/24

This information is for educational purposes only, and not to provide specific legal advice. This may not reflect the most recent developments in the law and may not be applicable to a particular situation or jurisdiction.