https://buffalonews.com/news/local/business/buffalo-next-non-compete-agreements-ftc-ban-overtime-pay/article_e158fb58-0bed-11ef-8557-4319300cbad5.html

Non-compete agreements face ban, but legal fight kicks off

Matt Glynn
May 7, 2024

In New York State, Gov. Kathy Hochul late last year vetoed legislation that would have banned employers from requiring employees to sign non-compete agreements.
Derek Gee, Buffalo News

Matt Glynn

Non-compete agreements between employers and employees generate controversy.

Supporters defend the agreements as a way to protect employers from losing a competitive advantage when workers leave. Opponents say the agreements unfairly restrict employees' mobility and earning power, and stifle innovation.

The debate has come to a head, with the Federal Trade Commission last month voting 3-2 to ban nearly all non-compete agreements. But the legal fight is just starting.

The U.S. Chamber of Commerce has filed suit against the FTC over the change, which could slow – and perhaps ultimately block – the ban from taking effect. Non-compete agreements prevent workers who leave a company from going to work for a competitor or launching a competing business, for a specified amount of time.

The agreements can cover a wide array of workers, said Ryan Lema, a partner with Phillips Lytle.

"In New York, the idea is, what employees do you have some sort of reasonable interest in restricting their post-employment activity?" Lema said. Classic examples include senior executives, people with particular technical knowledge and employees in key sales positions, he added.

Opponents contend non-compete agreements are too broad, sometimes covering even lower-wage workers, such as fast-food restaurant managers.

If the FTC's rule takes effect, existing non-compete agreements could no longer be enforced, either, Lema said. The exception would be non-compete agreements with senior executives, which the FTC says represent 0.75% of workers.

Ryan Lema, partner at Phillips Lytle (provided photo)

By Matt Glynn News Business Reporter

In New York state, Gov. Kathy Hochul late last year vetoed legislation that would have banned employers from requiring employees to sign non-compete agreements. Hochul signaled that she would support a version of the law that would limit non-compete agreements to executives making at least $250,000 annually. But that idea failed to advance through the legislature.

The FTC's ban on non-compete agreements would contain a few exceptions, including cases where an owner sells a business and agrees to not compete against it.

The ban is scheduled to take effect in September, based on when the rule is published in the federal register. But legal challenges are expected to push back the timeline. The Chamber in its suit argues that the FTC exceeded its constitutional and legal authority.

Some nurses could be impacted by the new overtime regulations. (Derek Gee/Buffalo News)

Derek Gee/Buffalo News

Overtime for salaried workers

Another workplace change, involving overtime for salaried workers, is brewing at the federal level, with some implications for employees in New York state.

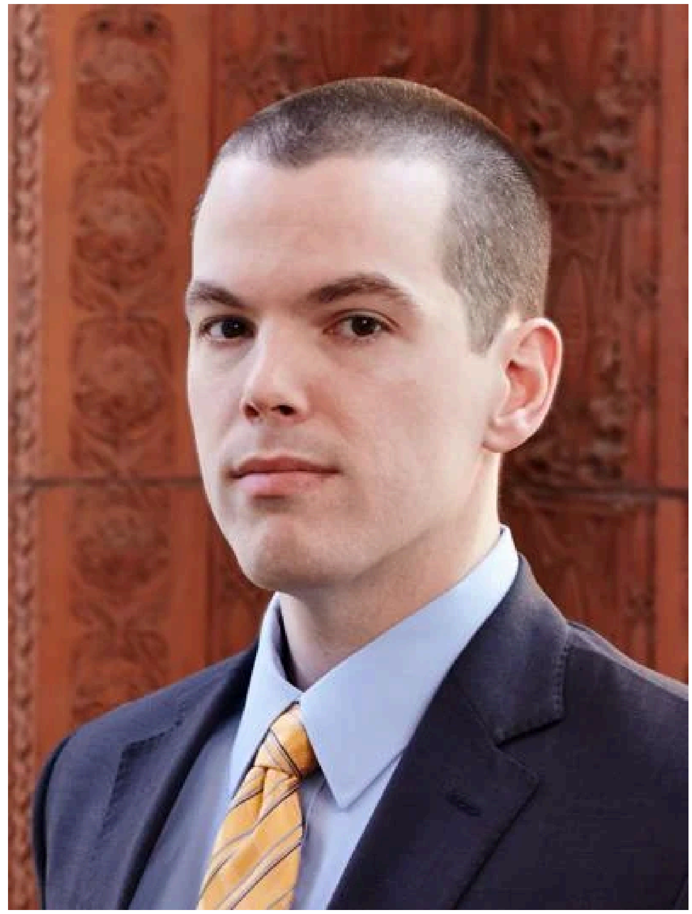
Millions more salaried workers are set to become eligible for overtime pay starting July 1, under a new federal rule finalized by the Biden administration.

"Too often, lower-paid salaried workers are doing the same job as their hourly counterparts, but are spending more time away from their families for no additional pay," acting Secretary of Labor Julie Su said in a statement. "That is unacceptable,"

Federal law generally requires all employees to be paid time and a half for hours they work beyond 40 hours a week. Some workers are exempt from that rule, including executive, administrative and professional employees.

The new rule's impact in New York State would be "significantly blunted" because of the standards for overtime pay for salaried workers already in place, said John Godwin, a partner with Hodgson Russ.

To qualify for the exemption, Godwin said those employees usually must satisfy three tests: they must be paid on a salaried basis, not hourly; they must perform certain exempt duties; and they need to be paid a minimum salary level.



John Godwin, partner at Hodgson Russ. (provided photo)

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The Biden administration's finalized rule focuses on raising the salary minimum. Currently, salaried workers earning a salary of $35,568 or less are eligible for overtime; that threshold is due to rise to $43,888 on July 1, and to $58,656 on Jan. 1.

The impact in New York state would be limited. In New York, the salaried overtime threshold for upstate workers is $58,458, and is set to rise to $60,405 at the start of 2025, and to $62,353 at the start of 2026. But the thresholds apply to executive and administrative employees, not professional employees, Godwin said.

The new rule would expand how many professional employees in New York state – including engineers, registered nurses and accountants – could collect overtime, as that threshold rises.

A salaried overtime exemption for "highly compensated employees" is also scheduled to change at the federal level. Currently, the threshold is $107,432, which will rise to $132,964 on July 1, and then $151,164 on Jan. 1.

The National Retail Federation said it is concerned the new salaried overtime rule will "curtail retailers’ ability to offer the most flexible, generous and tailored benefits packages to lower-level exempt employees across the industry."

The impending changes by the federal government will force employers to review how they manage their employees' job classifications and pay levels, Godwin said. "It's a really challenging puzzle for a lot of employers to piece together the right approach, and there's not a ton of time."

At the same, Godwin said, it is anticipated that the new rule will face a legal challenge, which could affect its implementation.

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