Wage & Hour Developments: A Year in Review

2025

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Introduction

Jackson Lewis 2025 Wage and Hour Year in Review highlights the most important developments and trends in wage and hour law during the past year. We summarize activity at both the federal and state levels. 2025 included ongoing regulatory upheaval, a sharp shift in enforcement policies at the Department of Labor (DOL), new legislation, and precedential court decisions shaping the compliance landscape for employers as we move into 2026.

Reach out to your attorney at Jackson Lewis for more information or guidance on any of the topics in this report.

DOL Eases Up on Employers

Focus on Compliance Assistance

The DOL's Wage and Hour Division (WHD) has focused more efforts on compliance assistance. Policies and procedures announced by WHD include the following:

- DOL relaunched its voluntary Payroll Audit Independent Determination (PAID) program, which allows employers to resolve potential Fair Labor Standards Act (FLSA) minimum wage and overtime violations through self-audit and voluntarily reporting to WHD, without incurring liquidated damages or civil penalties and with a binding release of certain claims.
- DOL announced it will no longer seek liquidated damages when trying to settle wage violations through administrative proceedings.
- DOL resurrected its opinion letter program, offering useful guidance on how the DOL may apply the FLSA in specific factual scenarios.

For a deeper dive:

- DOL Resurrects PAID Program: Employers Can Self-Report, Resolve Violations
- Employers Won't Face Double Damages from DOL Wage and Hour Division's Administrative Proceedings
- DOL's First Batch of Trump 2.0 Opinion Letters Address Tip Pools, Emergency Pay + Joint Employment

Regulatory Rollback

The onset of the second Trump Administration prompted a regulatory reset at the DOL. Rulemaking from prior administrations was rescinded or left in limbo as the DOL pressed the pause button.

- The 2024 Minimum Salary Rule sharply increasing the salary threshold for application of the "white collar" exemptions was invalidated by a Texas federal court. The DOL appealed but asked the appeals court to stay any further action as DOL considers new rulemaking. Thus, the 2019 salary level remains in effect ($35,568 for the standard exemptions and $107,432 for the highly compensated exemption).
- The Biden Administration's 2024 Independent Contractor Rule adopted a broad multi-factor "economic realities" test, but the DOL has paused enforcement for that rule. The validity of the rule was being litigated in several courts. Those cases have been stayed as the DOL said it intends to formally rescind and replace it. The rule technically remains in effect for private litigation, but courts are unlikely to give it much weight given DOL itself is not enforcing it and has stated it will be rescinded.
- The 2021 "80/20 Rule," limiting the amount of time tipped workers can spend performing work not directly related to generating tips and continue to take a tip credit, was struck down by the U.S. Court of Appeals for the Fifth Circuit in 2024. In December 2024, the DOL formally rescinded the regulation, leaving in place only the original 1967 version. Despite this, in 2025 some district courts outside the Fifth Circuit still applied some version of the 80/20 Rule, leaving employers with uncertainty in this area. In 2025, DOL drafted a proposed rule purportedly to rescind the dual jobs regulation, but it has not yet been published.
- President Donald Trump rescinded President Joe Biden's executive order raising the minimum wage for federal contractors, reverting the rate to $13.30 per hour for most, and restoring previous exclusions for recreational businesses. The DOL will not enforce its rule implementing the executive order and may formally withdraw it, with future changes possible.
- A federal judge partly enjoined sweeping revisions to the Davis-Bacon and Related Act regulations. Much of the 2023 rule changes remain in effect as litigation is stayed, but the DOL has signaled it may propose changes, and some provisions are not enforced.
- The DOL on July 2, 2025, proposed restoring the FLSA "companionship services" overtime and minimum wage exemption for third-party agencies employing home healthcare workers, reversing the Obama-era exclusion. Enforcement of the 2013 rule has been paused, and if the new rule is adopted, it will restore overtime and minimum wage exemption eligibility for employers in the home care industry.

- The DOL withdrew a late-2024 proposed rule to phase out subminimum wages for workers with disabilities. Although the federal subminimum wage program continues, its use is declining as a growing number of states have phased it out, and bipartisan legislation is pending in Congress to eliminate the program.

More to come? The DOL published a proposed rule on July 2, 2025, to remove FLSA subregulatory interpretive guidance or statements of policy from the Code of Federal Regulations and transfer them to the agency's Field Operations Handbook. The most significant provisions slated for removal are:

- Part 776, the WHD's statement of policy on general coverage under the FLSA and coverage of the construction industry in particular;
- Part 779, an interpretive bulletin addressing application of the FLSA to retail and service establishments (including the 7(i) exemption for certain commissioned employees);
- Part 782, which discusses the overtime exemption for employees covered by the Motor Carrier Act; and
- Part 789, addressing the "hot goods" provision for child labor enforcement and a consumer's ability to rely on written assurances of compliance from a producer of goods in defense of alleged violations.

This proposed action does not immediately result in substantive changes to the agency guidance. It does suggest, however, that the DOL soon may revise these long-standing provisions.

For a deeper dive:

- DOL Regulatory Roundup: What Employers Need to Know
- DOL Proposes to Decodify 450+ FLSA Interpretive Guidance: What Does It Mean for Employers?

As the federal government eases its regulatory grip, employers must continue to comply with more stringent or otherwise different standards that apply under state and local wage and hour laws.

Watch for:

- A proposed minimum salary rule, with a more modest increase to the salary floor for executive, administrative, and professional (EAP) exemptions.
- An independent contractor proposed rule that may resemble the 2021 rule published during the first Trump Administration.
- A proposed joint employer rule to narrow the scope of "joint employment," replacing a 2020 rule rescinded by the Biden DOL.
- A proposed rule rescinding or revising the remaining dual jobs regulation for tipped employees.

Tax Cuts on Tips, Overtime

The One Big Beautiful Bill Act (OBBBA), signed into law July 4, 2025, ushered in sweeping federal tax cuts. Included among these provisions were employee-friendly tax deductions on tips and overtime earnings for tax years 2025 through 2028.

Overtime. The OBBBA created a limited deduction for overtime pay premiums earned for hours worked beyond 40 hours in a workweek. Premium pay is the amount paid in excess of an employee's regular rate of pay. For example, if an employee's regular rate is $15 per hour, the employee's overtime rate (time and one-half) is $22.50 per hour. Only the $7.50 overtime premium for that hour may be deducted. The annual deduction is capped at $12,500 (or $25,000, in the case of a married employee filing a joint return).

Only overtime pay required by the FLSA is eligible for the deduction, however. "Daily overtime" premiums required by state law, or premium pay pursuant to a collective bargaining agreement, for example, are not deductible (except to the extent any such amounts would also have been payable under the FLSA).

Tips. The OBBBA also creates a separate deduction for tipped workers, allowing them to deduct up to $25,000 of qualified tips earned. To be a "qualified" tip, the tip must be paid voluntarily by the customer or client, not subject to negotiation. Therefore, earnings from mandatory service charges assessed automatically to customers are not deductible. Tips received under tip-sharing arrangements count as qualified tips.

The deduction is available only for qualified tips earned by workers in an occupation which "customarily and regularly received tips on or before December 31, 2024." Typically, this refers to occupations in the hospitality industry (such as restaurants and hotels), but there are other businesses where tips are common (such as barber shops and hair salons). The IRS issued a proposed regulation identifying covered occupations that may be relied upon until a final regulation has been issued.

Employer impact. Beginning with the 2026 tax year, the IRS will begin enforcing the requirement that employers report qualified tips and qualified overtime on Form W-2 (the IRS provided penalty relief for 2025). This means additional reporting obligations and adjustments to payroll systems. For example, employers will need to distinguish FLSA overtime premium from other overtime earnings, which are not eligible for the tax deduction. The legislation also presents opportunities to reclassify overtime-exempt employees so they can benefit from the temporary partial tax relief. But there are potential drawbacks to such changes that require careful consideration.

For the hospitality industry, in particular, the tax deduction on tips may deflate a recent trend at the state and local levels to eliminate use of the tip credit employers may take against minimum wage requirements. Also, the tax deduction may push these states and localities to reconsider recently enacted laws eliminating the tip credit. (Already, Washington, D.C. paused the next phase of the city's gradual rollback of the tip credit.)

Further, the tip deduction could slow a growing trend in restaurants to replace traditional tipping with a service charge model. Here, too, the deduction on qualified cash tips may present other challenges for employers, particularly with respect to tip pool compliance.

Will the states follow suit? Bills to exempt overtime earnings or tipped income from state income taxes were introduced in more than 20 state legislatures in 2025. Several states that conform automatically to federal tax law have embraced the OBBBA's temporary partial deductions on tips and overtime earnings, while other states have instead opted to decouple from the OBBBA's overtime or tip deductions, requiring taxpayers to add back any federal tip or overtime deductions to their state taxes.

For a deeper dive:

- OBBBA's Tips + Overtime Tax Break: Reclassification Considerations, Reporting Requirements, Industry Impact + More

Watch for:

- Increased employee interest in being classified as non-exempt to benefit from the tax relief.
- Continuing legislative activity at the state level adopting similar tax relief on overtime and tipped earnings.

Supreme Court Clarifies Employer's Burden

In its lone 2024-25 opinion interpreting the FLSA, the U.S. Supreme Court clarified the evidentiary burden on employers when asserting a statutory exemption as a defense to an overtime claim. *EMD Sales, Inc. v. Carrera*, 145 S. Ct. 34, 2025 U.S. LEXIS 364 (Jan. 15, 2025).

In a unanimous decision, the justices held that employers are not required to meet a heightened, "clear and convincing" standard of proof to establish that an FLSA exemption applies. Rather, the lesser "preponderance of the evidence" default burden applies. The decision reversed an outlier decision from the Fourth Circuit Court of Appeals, easing the burden of proof for employers in Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

Although this case involved application of the FLSA's outside sales exemption, the reasoning applies to all statutory exemptions. The bottom line: Employers do not face a greater burden when justifying the basis for identifying certain employees as FLSA-exempt, welcomed news for employers.

For a deeper dive:

- U.S. Supreme Court Makes Clear There Is No Heightened Standard for Employers to Establish an FLSA Exemption Applies

Next up: The Supreme Court this term will consider whether the Federal Arbitration Act's (FAA) transportation worker exemption, which excludes from the FAA's coverage "transportation workers" who are "engaged in foreign or interstate commerce," applies to "last mile" drivers. These drivers deliver locally goods that have traveled in interstate commerce, but the drivers do not themselves transport the goods across borders or interact with vehicles that do cross state borders.

If the transportation worker exemption applies, then the drivers' arbitration agreements are not enforceable under the FAA. An employer seeking to enforce their agreements

must rely on state law, which often is less favorable to arbitration. The underlying case is a collective action alleging the drivers were misclassified as independent contractors under the FLSA.

Arbitration agreements have been used by employers as a means of resolving employment disputes efficiently, controlling the costs and excess liability of wage and hour class and collective actions. Chipping away at the enforceability of arbitration agreements by expanding the FAA exemption threatens to undermine this critical line of defense.

The justices granted the petition for certiorari in the case, *Flowers Foods v. Brock*, No. 24-935, on Oct. 20, 2025. Oral argument has not been scheduled.

Trending: Portal-to-Portal Act

Disputes over the compensability of time spent in pre- and post-shift activities are a perennial source of wage and hour litigation. Federal claims brought under the FLSA are governed by the Portal-to-Portal Act (PPA), which amended the FLSA to make time spent traveling to and from principal work activities noncompensable. The PPA makes other preliminary or postliminary activities noncompensable unless those activities are "integral and indispensable" to the employee's primary duties. Determining whether pre- and post-work activities are "integral and indispensable," however, can sometimes be a challenge.

Two federal appeals courts issued precedential decisions addressing these issues in 2025.

- The **Third Circuit** Court of Appeals ruled that home health aides employed by a home healthcare agency must be paid for the time they spent traveling between clients' homes during their workday. The appeals court concluded that this time was integral and indispensable to the employees' principal activity of providing in-home healthcare services. The employer argued that the employees' duties did not require traveling between clients — the employees had simply chosen to take on more than one client in a given workday. The appeals court concluded, however, that the employer permitted employees to schedule more than one client in a day; therefore, their workday necessitated this travel time. Consequently, the travel time was compensable. The Supreme Court has denied the employer's petition seeking review of the decision. *Sec'y United States DOL v. Nursing Home Care Mgmt.,* 2025 U.S. App. LEXIS 2219 (Jan. 31, 2025).
- In contrast, the **Eleventh Circuit** held that a temporary labor agency was not required to pay workers for the time they spent traveling to jobsites from the labor hall, where they were required to go to pick up work assignments, or the time spent at the hall waiting for that transit. The appeals court concluded that the time spent waiting for the optional employer-provided transit and traveling to the jobsite were not integral and indispensable to the workers' principal duties because the workers were free to go directly to the jobsite using their own transportation. The fact that the workers were required to report to the labor hall was not enough to make this time compensable under the PPA. The agency also did not have to compensate workers for the time they spent picking up and returning employer-provided tools to the labor hall. Here, too, collecting and returning tools were not an indispensable part of their duties, because some jobs did not require the use of tools, some jobsites supplied the needed tools, and the employees had the option to bring their own tools. *Villarino v. Pacesetter Pers. Serv., Inc.,* 2025 U.S. App. LEXIS 31927 (Dec. 5, 2025).

In the states: Does the Portal-to-Portal Act apply?

Many states have expressly incorporated the PPA or have enacted similar provisions so the federal PPA would also apply under state law. But in several states, courts have held state wage and hour laws do not incorporate the federal PPA.

A **Pennsylvania federal court** held that warehouse workers at a retail distribution center were entitled to compensation for pre- and post-shift walking time between the facility entrance and their home department. The district court cited Pennsylvania Supreme Court precedent addressing the identical issue, which provides a broad interpretation of "hours worked" under the Pennsylvania Minimum Wage Act (PMWA), as well as long-standing PMWA regulations, and rejected the employer's contention that the regulatory definition was unconstitutionally vague. The court also concluded that Pennsylvania law does not follow the federal PPA and that the PMWA, passed 21 years after the PPA, contains no exclusion for "walking time." *Davis v. Target Corp.*, 2025 U.S. Dist. LEXIS 28957 (E.D. Pa. Feb. 19, 2025).

More recently, the **Nevada Supreme Court** held that the Nevada Wage and Hour Statute (NRS) did not incorporate the federal PPA exclusions. Thus, numerous pre- and post-shift activities would be considered compensable under Nevada law, even if these activities would be noncompensable under federal law. 2025 Nev. LEXIS 56 (Oct. 30, 2025). However, new legislation then reversed the decision. S.B. 8 was passed during a special session of the state legislature. It amended

the NRS to incorporate the federal PPA's limitations on compensable time and adopted additional limitations on compensable time that are in the FLSA.

Similar cases are pending in other states:

- The **Second Circuit** certified to the Connecticut Supreme Court the question whether under Connecticut law, employees must be compensated for the time spent going through mandatory post-shift security screenings. In the decision below, the federal district court concluded that Connecticut had implicitly adopted the federal PPA framework. The plaintiffs argued that Connecticut never adopted the PPA, however, and that the district court erred by effectively importing it. The Second Circuit observed that the definition of "hours worked" in the Connecticut statute does not clearly incorporate federal law, and that there is no authoritative Connecticut court decision adopting the PPA. The appeals court reasoned that Connecticut's wage statutes may define "hours worked" more broadly than the PPA, so state law may require compensation for screening time even if federal law does not. Although the plaintiffs asked the appeals court to certify the question whether Connecticut law incorporates the FLSA and its PPA amendment, the appeals court certified the more direct question of whether the security screening is compensable. 2025 U.S. App. LEXIS 6166 (Mar. 17, 2025).
- The **Seventh Circuit** asked the Illinois Supreme Court to resolve directly whether the Illinois Minimum Wage Law (IMWL) incorporates the PPA. The appeals court observed that the IMWL's overtime provisions parallels the FLSA, that the Illinois regulations instruct the state DOL to look to federal standards for guidance, and that several Illinois courts have applied federal standards to IMWL claims. On the other hand, the appeals court noted, the IMWL does not explicitly incorporate the PPA and its exclusion from compensable time, and the Illinois regulations defining "hours worked" align with the definition reflected in *pre*-PPA U.S. Supreme Court decisions. Concluding there were compelling arguments on each side, the appeals court asked the state's high court to resolve the unsettled question of state law. 2025 U.S. App. LEXIS 16689 (July 8, 2025).

What it means

In states that have not adopted the PPA, pre- or post-shift work long considered noncompensable under federal law may be deemed compensable under state law. In these jurisdictions, if the state high courts hold the federal PPA does not apply, there is a significant risk of litigation by employees claiming they are entitled to pay for pre- and post-shift activities such as walking to timeclocks or workstations, traveling to offsite jobs, waiting to clear a security screening and undergoing such screenings, and booting up work computers.

Employers should regularly review the pre- and post-shift tasks that employees undertake each workday and how much time they must spend on the premises before they reach their worksite. What portions, if any, of this time must be paid? Employers should consider working with counsel who can conduct a detailed analysis in order to identify and mitigate potential risks. This could be especially helpful to employers with operations in non-PPA states or states where it is unclear whether the PPA is incorporated.

Federal Appellate Decisions

Federal appellate courts in 2025 grappled with the evidence that litigants must present to support or defend wage and hour claims, requirements for exemption and independent contractor status, retaliation under the FLSA, and numerous procedural issues impacting litigation of FLSA claims.

Evidentiary Burden

- The **Second Circuit** Court of Appeals concluded that an employee met her evidentiary burden to survive the employer's motion for summary judgment on her claims that her employer, a local laundromat chain, failed to pay her for the extra shifts she worked at two locations, some of which required her to work more than a total of 40 hours per week. In her sworn declaration, the employee stated that she worked 32 hours per week at one location and about 8 hours per week (or more) at two other locations but was never paid for her work at the latter two locations. In her deposition, she testified that her time sheets appeared to have been altered and part of her pay was allocated to a supervisor. The district court concluded that the employee did not produce sufficient evidence from which a reasonable jury could find in her favor. The Second Circuit reversed. The appeals court pointed to the relaxed burden that applies when, as here, the employer's records are (allegedly) inaccurate. The plaintiff need only show the amount of uncompensated work she performed "as a matter of just and reasonable inference," and she met that burden here. *Knox v. CRC Mgmt. Co., LLC,* 2025 U.S. App. LEXIS 8327 (Apr. 9, 2025).
- The **Seventh Circuit** held that a technical support specialist did not present sufficient evidence to support her claim that she worked substantial overtime without pay. The employee made vague assertions that she

worked weekends and late hours taking calls, answering emails, and traveling to client sites outside of business hours patching client servers. She provided no coherent testimony about how many hours she worked most weeks, offered only rough estimates, and failed to show a consistent pattern of overtime hours. Her evidence of the amount of uncompensated overtime she worked was vague, conclusory, inconsistent, or "flatly refuted." The appeals court clarified that while a lower "just and reasonable inference" standard may apply to show the extent and amount of hours worked when time records are inaccurate or missing, that standard applies only to *damages* — and only after the plaintiff first establishes that she actually worked overtime. *Osborn v. JAB Management Serv., Inc.,* 2025 U.S. App. LEXIS 1389 (Jan. 22, 2025).

- The **Eighth Circuit** reversed a district court's order granting summary judgment in favor of a healthcare employer in an enforcement action brought by the DOL on behalf of employees. At issue was whether the employer knew or should have known that employees had worked through their unpaid lunch breaks. The employer automatically deducted meal periods but said its timesheet policy permits employees to submit temporary timesheets to record missed meal breaks. But no such timesheets were submitted during the audit period, and more than 800 timesheets were submitted after that period. This evidence supported a reasonable inference that the employer failed to effectively communicate — and employees lacked knowledge of — the timesheet policy. As to damages, because the employer failed to maintain accurate payroll records, the extent of uncompensated work need not be proven with precision. The DOL could estimate unpaid time "as a matter of just and reasonable inference," a burden that was satisfied here. *Micone v. Levering Reg'l Health Care Ctr., LLC,* 2025 U.S. App. LEXIS 6967 (Mar. 26, 2025).

- The **Eleventh Circuit** ruled that an employee provided sufficient evidence to create a genuine dispute over the hourly rate and overtime rate at which he was paid. Therefore, it found a district court improperly granted summary judgment in an employer's favor on overtime claims. The parties presented conflicting handwritten notes regarding the overtime rate at which the employee was paid. The district court found the employee's deposition testimony contradicted his notes and rejected the testimony as "inherently self-interested." Addressing a matter of first impression, the district court held, "[W]here the only evidence in support of a plaintiff's claim is the plaintiff's own sworn statements (affidavit or deposition testimony), which are undermined by the plaintiff's prior writings, the plaintiff cannot survive summary judgment." The appeals court, however, pointed to circuit precedent holding that even "self-serving and/or uncorroborated" testimony can be enough to avoid summary judgment if the testimony is based on personal knowledge. *Guevara v. Lafise Corp.,* 2025 U.S. App. LEXIS 2152 (Jan. 30, 2025).

- The **Eleventh Circuit** affirmed a district court's finding that an employer did not violate tip pool regulations because the evidence established the employer did not retain any of the tips and, to the extent tips from the tip pool were missing, the only other individuals with access to the tips were other tipped employees. Therefore, the servers' minimum-wage claim failed. *Weinstein v. 440 Corp. dba The Ridge Great Steaks & Seafood,* 2025 U.S. App. LEXIS 18629 (July 25, 2025).

Exemptions

- The **Fourth Circuit** held that fire battalion chiefs were exempt from overtime under the FLSA's highly compensated employee (HCE) exemption. The battalion chiefs were paid a predetermined, biweekly amount equivalent to either 80 or 106 hours of pay, regardless of the number of hours they actually worked. They also received additional compensation for "off-schedule" hours. The appeals court found the complicated pay scheme satisfied the exemption's salary-basis requirement, affirming the district court's holding but finding the court below had applied the wrong salary basis test. The district court determined the chiefs were hourly rate workers and so applied the test at 29 CFR 541.604(b), which applies to employees paid on an hourly, daily, or shift rate. The appeals court, however, found the appropriate test was at 29 CFR 541.602(a), for employees paid on a weekly or less frequent basis. The appeals court rejected the notion that the municipality's use of hourly units to calculate the chiefs' pay transformed the battalion chiefs into hourly employees, triggering the 604(b) test. The operative question, the court explained, is how employees are paid in practice, not how compensation is administratively calculated. *Kelly v. City of Alexandria,* No. 23-1752 (Dec. 31, 2025).

- The **Fifth Circuit** held that oil well monitoring employees qualified for the HCE exemption from overtime. The employees worked as measurements while drilling field specialists (MWDs) performing quality control duties consistent with the administrative exemption: monitoring well data, checking survey data, reviewing and editing data at the end of jobs, and ensuring data accuracy before transmission to clients. The district court erred in finding that the MWDs had to exercise discretion and independent judgment to satisfy the exemption. Although discretion and independent judgment are required to meet the standalone

administrative exemption, it was not a requirement of the HCE exemption, which sets a lower bar, the appeals court explained. *Gilchrist v. Schlumberger Tech. Corp.*, 2025 U.S. App. 17356 (July 14, 2025).

- The **Sixth Circuit** held that an employer's pay arrangement did not satisfy the salary-basis test for application of the HCE exemption. The employee was guaranteed $800 per week — equal to only 8 hours of pay — and then paid $100 for every additional hour worked, typically totaling about 52 hours each week. This compensation plan did not satisfy the "reasonable relationship" test. The appeals court interpreted the phrase "on a weekly basis" in 29 C.F.R. § 541.602(a) to require that the predetermined amount paid weekly compensate the employee for a full week's worth of work, not just a portion like 8 hours. The week must function as the foundational unit of pay, a predetermined amount that reflects compensation for the general value of a week's work, not just the first few hours. Because the employee's guaranteed $800 bore no relationship to his actual weekly workload, he was not salaried and could not be treated as exempt. The Sixth Circuit also found the DOL has statutory authority to issue regulations establishing a salary basis requirement for application of the EAP exemptions. (In 2024, the Fifth Circuit concluded the DOL had authority to adopt a minimum salary requirement.). *Pickens v. Hamilton-Ryker IT Sols., LLC,* 2025 U.S. App. LEXIS 7569 (Apr. 1, 2025).

Independent Contractors

- The **Fourth Circuit** affirmed a district court's finding that a nurse staffing agency that supplied nurses to healthcare facilities was liable to those nurses for more than $9.3 million in uncompensated overtime. In a DOL enforcement action, the district court rejected the agency's claim that the nurses were independent contractors (and thus not entitled to overtime), concluding the six-factor "economic realities" test of employment status was satisfied here. On appeal, the Fourth Circuit held the lower court properly applied this test and allocated the burden of proof correctly in so doing. Also, the appeals court held the employer failed to establish a good-faith defense against liquidated damages because it sought legal advice only after the DOL initiated an investigation, among other reasons. The staffing agency's petition for en banc rehearing was subsequently denied. *Chavez-DeRemer v. Med. Staffing of Am.,* 2025 U.S. App. LEXIS 17726 (July 17, 2025).

- The **Eleventh Circuit** held that a reasonable jury could find insurance adjusters who were classified by contract as independent contractors were statutory employees under the FLSA based on the circuit's *"Scantland"* economic realities factors. Although the adjusters were paid fixed day-rates and possessed specialized licenses and skills, five of the six economic realities factors supported a finding of employee status. The employer exercised strict control over their schedules and work methods, the adjusters had no opportunity for profit or loss based on managerial initiative, there was minimal investment by the adjusters, compared to the companies' provisioning of key equipment and systems, they held multi-year exclusive assignments of indefinite duration, and their work was integral to the company's work. These facts reflected economic dependence indicative of an employment relationship. *Galarza v. One Call Claims, LLC,* 2025 U.S. App. LEXIS 26955 (Oct. 16, 2025).

Retaliation Under the FLSA

- The **Fifth Circuit** affirmed summary judgment in favor of a municipality in a retaliation suit brought by the city's former public health district director. The appeals court concluded that the employee did not engage in FLSA-protected activity by sending an email discussing the delay in her pay increase and concerns about the city cutting off her COVID-era overtime pay. The court found these statements did not reference FLSA rights or frame her concerns as an FLSA violation. At bottom, the email amounted to "abstract grumbling or vague expression of discontent" rather than a complaint of illegal conduct. Because the email was not a sufficiently clear complaint that a reasonable employer would understand it as an assertion of FLSA rights and a call for their protection, the email was not a protected informal complaint under the FLSA. *Rodriguez v. City of Corpus Christi,* 2025 U.S. App. LEXIS 4911 (Mar. 3, 2025).

- The **Ninth Circuit** revived the retaliation claim of a nightclub performer whose scheduled appearance at another venue was canceled after the performer filed suit. The plaintiff filed a collective action against Sassy's, where the plaintiff performed several nights a week, alleging that Sassy's misclassified performers as independent contractors. Citing the lawsuit, one of Sassy's owners, also a partner and manager of Dante's, canceled the plaintiff's scheduled appearance at Dante's and barred the plaintiff from performing at Dante's in the future. The plaintiff amended the complaint to name the owner as a defendant to the underlying claims and to add a retaliation claim. The district court concluded that the plaintiff could not assert a retaliation claim because they were not an employee of Dante's when the lawsuit was filed. The appeals court reversed, explaining that an alleged retaliator need not be the worker's current or direct employer to state a FLSA

retaliation claim. Liability may extend to any person acting "directly or indirectly in the interest of" an employer. The decision expands potential liability for retaliation to related but separate business entities, owner/managers, and other parties that do not directly pay the plaintiff. *Hollis v. R&R Rests., Inc.*, 2025 U.S. App. LEXIS 30112 (Nov. 18, 2025).

FLSA Collective Actions: The Evolving Law

Standard for Authorization of Collective Actions

In recent years, important procedural principles governing the applicable standard when deciding whether FLSA collective actions can proceed have been evolving. Two significant decisions in 2025 continued this trend.

The **Seventh Circuit** was the third federal appeals court to depart from the standard two-stage "conditional" certification model for determining whether a case can proceed as a collective action and notice of the pending litigation can be sent to potential opt-in plaintiffs. The appeals court found the traditional two-step approach in collective actions too lenient, but it also found the more recent frameworks adopted by the Fifth and Sixth Circuits too restrictive. Rather than adopt a rigid test, the Seventh Circuit provided a more flexible framework for district courts to decide in each case whether they have the evidence they need to make the determination whether to authorize notice. In a significant departure from the traditional approach, district courts within the Seventh Circuit must give employers the opportunity to rebut plaintiffs' evidence that potential opt-ins are similarly situated. *Richards v. Eli Lilly & Co. and Lilly USA, LLC*, 2025 U.S. App. LEXIS 19667 (Aug. 5, 2025). The Supreme Court denied a petition to review the Seventh Circuit's holding, leaving intact a four-circuit split on the proper standard for authorizing a collective action.

Application of Bristol-Myers to FLSA Collective Actions

There is a growing consensus that the Supreme Court's 2017 decision in *Bristol-Myers Squibb Co. v. Superior Court of California* applies to FLSA collective actions. Addressing a case of first impression, the **Ninth Circuit** joined the clear majority of federal circuits to hold that *Bristol-Myers* applies. (The Third, Sixth, Seventh, and Eighth Circuits have adopted this position; only the First Circuit has held otherwise.) In circuits that have held *Bristol-Myers* applies, district courts may not exercise jurisdiction over the claims of out-of-state plaintiffs unless the forum court has general jurisdiction over the defendant-employer. That means an employer cannot be subjected to a nationwide collective unless the plaintiffs sue in the state where the employer is headquartered or incorporated. The appeals court declined, however, to abandon the two-stage certification process for collective actions. *Harrington v. Cracker Barrel Old Country Store, Inc.*, 2025 U.S. App. LEXIS 16147 (July 1, 2025).

Petitions for Supreme Court review are pending.

For a deeper dive:

- Seventh Circuit *Richards*: A New Flexible Framework for Courts Issuing Notice of Collective Actions
- Ninth Circuit Hands Employers Split Decision on Key Procedural Aspects of FLSA Collective Actions

Other Procedural Rulings

- The **First Circuit** ruled that a court's "significant delay" in ruling on a motion to send notice of a pending FLSA collective action did not categorically require equitable tolling of the statute of limitations, excusing opt-in plaintiffs from making individualized showings that extraordinary circumstances prevented them from timely opting in. District courts have discretion as to when to authorize notice. In this case, the plaintiff's deficient pleadings required amending the complaint to cure the deficiencies, causing the delay in ruling on the notice motion. The opt-in plaintiffs failed to exercise their own due diligence in pursuing their claims prior to receiving notice of the case at hand, a requirement for equitable tolling under the FLSA. *Kwoka v. Enter. Rent-A-Car Co. of Bos., LLC*, 2025 U.S. App. LEXIS 15057 (June 18, 2025).
- In a procedurally complex "hybrid" case, the **Second Circuit** concluded that it lacked jurisdiction over a restaurant's appeal of a $5 million judgment in favor of servers on minimum wage and overtime claims under the New York Labor Law (NYLL). The servers had brought both NYLL and FLSA claims but conditionally dismissed the FLSA claims. By agreement, only the (more employee-protective) NYLL claims were tried to a jury, and the servers prevailed. The servers reserved the right to reinstate their FLSA claims if they did not prevail on the appeal of the NYLL judgment, and the district court issued an order allowing for reinstatement if the judgment were reversed or vacated on appeal. The court also issued a Rule 54(b) partial final

judgment for the NYLL claims, allowing an immediate appeal. The appeals court held that the conditional dismissal of the FLSA claims meant there was no final judgment and, citing long-standing policy against allowing piecemeal appeals, held the partial final judgment order was improper. Allowing the NYLL appeal to proceed alone, the appellate court said, means it likely would have to revisit the same factual and legal questions in a second appeal if the plaintiffs reinstated their FLSA claims. *Zivkovic v. Laura Christy LLC*, 2025 U.S. App. LEXIS 11781 (May 15, 2025).

- In a case of first impression, the **Third Circuit** held that in a hybrid class and collective action, plaintiffs may waive FLSA rights not asserted by class members when settling a Rule 23 class action. The plaintiff alleged violations of the FLSA and Pennsylvania Minimum Wage Act (PMWA). The district court conditionally certified an FLSA collective and 10 employees opted into the case. The parties then reached a classwide settlement agreement on the PMWA claims covering 59 class members. Under the settlement, all class members — except those who explicitly opted out — would release their wage and hour claims against the employer, including claims under the FLSA. Although the class members who opted in to the FLSA collective would get a share of an additional $5,000 pool for those claims, class members who had not opted in waived their unasserted FLSA claims. The district court rejected the settlement. It found the waiver "neither fair nor reasonable" and also concluded that the FLSA's opt-in mechanism prohibited the waiver of FLSA claims by individuals who did not join the collective. The appeals court, however, held that the FLSA does not prohibit the waiver of unasserted FLSA claims in a court-approved Rule 23 settlement. While such settlements are not per se unfair, a court must consider whether the settlement is "fair, reasonable, and adequate" under Rule 23's rigorous settlement approval procedures. *Lundeen v 10 W. Ferry St. Oper. LLC*, 2025 U.S. App. 26901 (Oct. 16, 2025).

FLSA Litigation by the Numbers

The number of FLSA lawsuits filed in federal court rose slightly in 2025, according to Pacer court data. The bump is a reversal from what had been a steady drop in FLSA cases over the last several years.

2023 = 5,531
2024 = 4,957
2025 = 4,963

Of the cases filed, approximately 30% were class actions, according to Courtlink data, a percentage that has stayed consistent over the past three years.

The hotspots
Complaints filed: the top five states

New York	1,195
Florida	863
Texas	362
Ohio	221
Illinois	207

These numbers do not reflect wage and hour cases brought in state courts. In jurisdictions where state wage and hour laws are more protective than the FLSA, state court is often the main forum for wage and hour claims. The numbers also do not account for claims filed with state agencies or resolved through private arbitration or settlement.

In 2025, Jackson Lewis defended more FLSA lawsuits in federal court than any other law firm.

In the States: Child Labor Laws in Flux

Several states have amended their child labor laws in recent years, an ongoing evolution that reflects diverging policy views on government's role in regulating youth employment. In 2025, a number of states strengthened child labor protections and several other states relaxed the regulatory burden.

- California's A.B. 3234, which took effect Jan. 1, 2025, requires employers that conduct voluntary child labor compliance audits to publish the audit results and findings online.

- Colorado updated its Youth Employment Opportunity Act with H.B. 24-1095, increasing protections for minors and penalties for child labor violations and bolstering enforcement, including public disclosure for violations. The legislation provides safe harbor for employers who were misled by a minor regarding their age, provided that the employer verified the minor's age through a reliable third party. The provisions took effect Jan. 1, 2025.
- Illinois' comprehensive overhaul of its child labor law, S.B. 3646, took effect Jan. 1, 2025. It specifies prohibited occupations and workplaces in which minors cannot work, details the hours and times of day that minors may work (depending on their age), and requires employers to ensure that the minor has a valid employment certificate. The new law also stiffened reporting obligations for injuries and fatalities involving minors and outlined civil and criminal penalties for violations.
- Nevada Assembly Bill 215, effective Oct. 1, 2025, reduced the allowable weekly hours for minors under 16 years old from 48 hours to 40 hours and imposed new night work restrictions for 16- and 17-year-olds on school nights.
- New York enacted amendments to its child labor provisions as part of a state budget measure, effective May 9, 2025. The amendments sharply increase civil penalties for child labor violations: from up to $1,000 to as much as $10,000 for a first violation; from up to $2,000 to a maximum $25,000 for a second violation; and from a maximum of $3,000 for third and subsequent violations to penalties of $10,000 to $55,000. Also, a separate penalty scale now applies when a violation results in serious injury or death to a minor. The amendments also centralize minor-employment certification and recordkeeping (for hiring of minors). The changes to minor employment certification take effect May 9, 2027.
- Utah's H.B. 19, signed into law on March 25, 2025, adopted new misdemeanor and felony level penalties for repeated or serious child labor violations. The amendments to the state's child labor provisions also enhance the Utah Labor Commission's authority, empowering the agency to seek law enforcement investigations of suspected child labor violations and to share information with law enforcement in certain circumstances.
- Washington's Youth Worker Protection Act (H.B.1644), enacted in 2025 and scheduled to take effect July 1, 2026, increases penalties for child labor violations and expands the enforcement and oversight authority of the state's Department of Labor & Industries, including pre-permit safety inspections for certain work activities. The law also bars employers with repeated serious violations from hiring minors.

In contrast:

- Indiana amended its youth employment statute, effective Jan. 1, 2025, to allow 16- and 17-year-olds to work the same hours as adult workers without obtaining parental consent. The law also was amended to permit 14- and 15-year-old workers to work until 9:00 p.m. on any day between June 1st and Labor Day. Employers with at least five minor employees must register their minor employees in the state's Youth Employment System.
- In West Virginia, S.B. 427 took effect July 11, 2025. The legislation eliminated the state's traditional work permit requirement from a school or county official in order to employ 14- and 15-year-olds and replaced it with an age certificate issued by the state's commissioner of labor and written parental or guardian consent to employ a minor.

Ohio Gov. Mike DeWine on Dec. 3, 2025, vetoed a measure to allow 14- and 15-year-olds to work until 9:00 p.m. during the school year with parental consent. Currently, they can only work until 9:00 p.m. during the summer or school breaks and can only work until 7:00 p.m. during the school year. (Lifting this restriction would require amendments to the FLSA. Ohio lawmakers passed a resolution urging Congress to amend the FLSA accordingly.)

More State Law Highlights

Reach out to your attorney at Jackson Lewis for more information on state-law wage and hour developments.

Arizona

- S.B. 1159, enacted April 2, 2025, increased the cap on unpaid wage claims that can be filed with the Industrial Commission of Arizona (ICA) from $5,000 to $12,000, expanding workers' ability to seek resolution for wage disputes through the ICA rather than file suit in court.

Arkansas

- Pursuant to Act 397 passed into law in March 2025, the Arkansas Division of Labor may independently investigate and bring actions to recover unpaid wages. The law likewise contains tolling provisions and a right for employees to join the Division's investigation and complaint.

- Pursuant to Act 743 passed into law in April 2025, Arkansas has adopted the IRS regulations and factors contained in those regulations for classification of workers as independent contractors or employees.

California

- S.B. 648 empowers the California labor commissioner to investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of the Labor Code. Before S.B. 648, the labor commissioner lacked explicit authority to issue citations or civil actions when employers were alleged to have misused or withheld gratuities. Under the new law, enforcement mechanisms mirror those for minimum wage violations. This enforcement authorization took effect Jan. 1, 2026.

- A.B. 692 makes it unlawful for California employers to require employees to repay debts or fees to the employer, training provider, or debt collector when employment ends, with limited exceptions. The law prohibits contract terms that impose repayment obligations tied to job termination, except in specific cases such as government loan forgiveness programs, tuition for transferable credentials, approved apprenticeships, or certain discretionary bonuses at the onset of employment. These exceptions must meet strict conditions, such as notice separate from the employment contract and prorated repayment.

Colorado

- The Colorado Supreme Court held that a two-year limitations period (or three years, for willful violations) applies to claims under the Colorado Minimum Wage Act, not the longer six-year catch-all limitations period that some state courts have applied. The decision limits the potential liability period for employers facing state-law minimum wage and overtime claims and prevents plaintiffs from statute shopping based on the more favorable statute of limitations. *By the Rockies LLC v. Perez*, 2025 Colo. LEXIS 848 (Sept. 15, 2025).

- H.B. 25 1001, which took effect Aug. 6, 2025, increases penalties for independent contractor misclassification and raises maximum awards for administrative wage claims.

- H.B. 25 1208, effective Feb. 1, 2026, amends Rule 6.2.3 to allow Colorado local governments with a higher minimum wage rate to set a higher tip credit than the state offset when adopting local minimum wages, as long as the tipped minimum wage for any such locality is at least the state tipped minimum wage (the state minimum wage less the $3.02 tip credit).

District of Columbia

- On July 28, 2025, the District of Columbia Council voted 7 to 5 to partially repeal Initiative 82, thereby slowing down increases in the tipped wage and ultimately capping it at 75% of the full minimum wage from 2034 forward. The tipped wage will remain at the current rate of $10 an hour until summer of 2026. (Employers are still required to make up the difference between the tipped wage and D.C.'s full $17.95 minimum wage if gratuities do not cover it.) From there, it gets more complicated: on July 1, 2026, the tipped wage will increase to 56% of the full minimum wage. Beginning July 1, 2028, the tipped wage will be 60% of the minimum wage. Every two years from then on, that percentage will go up by 5%, so that by July 1, 2034, the tipped wage would be 75% of the minimum wage. It would remain at that rate every year thereafter.

Florida

- On June 2, 2025, the governor signed S.B. 606, making significant amendments to Section 509.214 of the Florida Statutes regarding "operations charges" in restaurants. Previous Florida law allowed restaurants to impose service charges that are not distributed to employees as tips, provided proper notice was given to customers. S.B. 606 substantially modified those requirements, creating new obligations for restaurant owners regarding how operations charges are communicated and distributed. Under the amended law, an "operations charge" is defined as any additional fee or charge that a public food service establishment adds to the price of a meal that is not a government-imposed tax, including charges designated as a "service charge," "gratuity charge," "delivery fee," or similar terminology. The amended statute requires restaurants to provide clear and conspicuous notice to customers about service charges in several ways. The law does not create a private cause of action, but it does create more stringent notification requirements for how restaurants communicate automatic gratuity charges to customers. S.B. 606 will go into effect on July 1, 2026.

Georgia

- The Georgia Dignity and Pay Act (Act 46), signed May 1, 2025, phases out subminimum wages for workers with disabilities paid under FLSA §14(c). Employers without a federal 14(c) certificate as of July 1, 2025, are immediately barred from using the subminimum wage. Employers with a valid 14(c) certificate on or before July 1, 2025, may pay workers with disabilities the subminimum wage through July 1, 2026. Thereafter, employers must pay at least 50% of the federal minimum from July 1, 2026–June 30, 2027.

The use of subminimum wage is eliminated completely on July 1, 2027.

Hawaii

- Act 115, signed into law on May 29, 2025, adds new sections to Chapter 387 of the Hawaii Revised Statutes that require the Department of Labor and Industrial Relations to issue formal orders of wage payment violations when the department's investigation shows an employer has violated wage and hour laws or rules. Act 115 also establishes clear procedures for appeal and judicial review of such orders. The measure also empowers the director to enforce final wage-violation orders in court and clarifies that penalties collected (at least $500, or $100 per violation) will be deposited into a state labor law enforcement fund. The legislation also strengthens criminal penalties for unpaid wages and violations of the wage statute (including a class C felony for intentional underpayment). Act 115 also expressly excludes "tips or gratuities of any kind" from the definition of wages under the state's Wage and Hour Law, except for purposes of the statute's minimum wage provision.

Illinois

- The Illinois Supreme Court ruled that performance bonuses count toward overtime calculations. The court noted that the Illinois Minimum Wage Law is in line with the FLSA on this issue, and federal regulations support its holding. Determining whether to include bonuses in the regular rate for purposes of calculating overtime pay can be challenging and costly, and Illinois employers face steep penalties if overtime is not properly calculated. *Mercado v. S&C Elec. Co.*, 2025 Ill. LEXIS 12 (Ill. S. Ct. Jan. 24, 2025).

- A federal district court in Illinois refused to enjoin enforcement of amendments to the Illinois Day and Temporary Labor Services Act that require temporary staffing agencies to provide "substantially similar benefits" (formerly, "equal benefits") or cash equivalent of the same to temporary employees who work for third-party clients for more than 720 hours in a rolling 12-month period. The previously enjoined law is now in effect, and employers must abide by it. *Staffing Servs. Ass'n of Ill. v. Flanagan*, 2025 U.S. Dist. LEXIS 97744 (N.D. Ill. May 22, 2025).

- Public Act 104-0135 took effect Aug.1, 2025, amending the penalties provision of the Illinois Wage Payment and Collection Act in two ways. First, for claims filed with the Illinois Department of Labor (IDOL) and adjudicated through an administrative hearing, damages of 5% (rather than 2%) will accrue for each month the underpayments remain unpaid until the date the final order and decision of the department becomes a debt due and owed to the state. Second, for any employer that has been demanded or ordered by IDOL or the court to pay wages or final compensation, the employer will be required to pay a nonwaivable administrative fee to the IDOL in the following amounts: $500 (rather than $250) if the amount ordered by IDOL as wages owed is $3,000 or less; $750 (rather than $500) if the amount ordered by the IDOL is more than $3,000 but less than $10,000; $1,250 (rather than $1,000) if the amount ordered by the IDOL is $10,000 or more.

- Effective Jan. 1, 2026, Public Act 104-0076 amends Illinois' Nursing Mothers in the Workplace Act to clarify that employers must provide paid break time for employees to express breast milk for one year after childbirth, unless doing so would cause an "undue hardship" as defined by the Illinois Human Rights Act. These breaks may run concurrently with existing break periods, but employers cannot require employees to use paid leave or reduce their compensation during this time.

- The Illinois Dignity in Pay Act (H.B. 793) signed into law Jan. 21, 2025, gradually phases out the use of 14(c) subminimum wage for employees with disabilities over five years, until the subminimum wage is eliminated completely by Dec. 31, 2029. The legislation provides transition assistance for employers holding 14(c) certificates.

Kentucky

- The Kentucky Supreme Court held that liquidated damages under the state's wage and hour statute (KRS 337.385) are discretionary rather than mandatory, given that the statute's good-faith provision permits an award ranging from zero to an amount equal to unpaid wages. In this case, the trial court properly exercised its discretion to deny liquidated damages to a police officer in a wage and hour suit because the officer had signed timesheets attesting to their accuracy; the employer participated in an audit and attempted to correct pay practices; and the record evidence suggested the parties had an understanding about the work schedule arrangement at issue here. The high court also held that retirement hazardous-duty pay is a fringe benefit rather than "wages" under Kentucky law and was therefore not recoverable. Finally, it held that a trial court's drastic reduction of an attorney's fee award from $91,000 to $2,500 was not reasonable. It emphasized that the purpose of fee-shifting provisions in wage and hour laws is not merely to compensate prevailing counsel, but to ensure meaningful enforcement of the wage and hour protections. *Wheeler v. City of Pioneer Vill.*, 2025 Ky. LEXIS 205 (Ky. S. Ct. Sept. 18, 2025).

Louisiana

- Act. No. 113, which took effect Aug. 1, 2025, amended the Louisiana Wage Payment Act to clarify that the statute's provisions on employees' final pay at termination do not apply to "profits interest granted or issued by an entity taxed as a partnership for federal income tax purposes." The exclusion applies only to partnerships; there is no such exclusion for limited liability companies.

Maine

- Public Law 2025, ch. 232, which took effect Sept. 24, 2025, extended the state's minimum wage and overtime provisions to agricultural workers.

Maryland

- The Maryland Supreme Court held that the federal "de minimis" doctrine applies to claims under the Maryland Wage and Hour Law (MWHL) and Maryland Wage Payment and Collection Law. The de minimis doctrine provides that if the amount of time spent engaged in a task is trivial, it is not compensable. This case involved time spent by employees waiting for security screenings at the end of their shifts, which typically took anywhere from three to eight minutes, but in some instances took 15 minutes or more. In finding the de minimis doctrine applied to their claims, the state supreme court rejected the argument that this holding would conflict with its 2023 decision that Maryland law has not incorporated the federal PPA. (See "Trending: Portal to Portal Act," above.) The de minimis doctrine clearly applied under the FLSA in 1965 when the MWHL was enacted, which was patterned after the FLSA; in contrast, the PPA is a later amendment to the FLSA not embraced by Maryland law. 2025 Md. LEXIS 250 (July 3, 2025).

Massachusetts

- The Massachusetts Supreme Judicial Court held that a bonus conditioned on remaining employed until a specified date does not fall within the definition of a "wage" under the Massachusetts Wage Act requiring immediate payment upon discharge. Unlike wages for labor or services performed, bonuses operate as conditional incentives intended to encourage employees to remain, the court explained. Consequently, disputes over retention bonuses are governed by ordinary contract law, which means the Wage Act's treble damages and fee-shifting provisions do not apply. *Nunez v. Syncsort Inc.*, 2025 Mass. LEXIS 543 (Oct. 22, 2025).

Michigan

- S.B. 8, a compromise bill signed into law on Feb. 21, 2025, amended the state's Wage Act and accelerated the schedule of minimum wage increases for employees in Michigan. It staved off a complete phaseout of the tip credit for workers who receive tips, however. S.B. 8 imposed a larger-than-planned minimum wage increase for Jan. 1, 2026, to $13.73 an hour (up from the original $13.29 increase) and a revised formula for annual adjustments to the minimum wage rate. The legislation also sharply reduced (from $6.49 to $4.74 per hour) a scheduled increase to the minimum wage rate for employees who customarily earn tips. The trade-off, however, is that S.B. 8 rescinded the elimination of the tip credit employers may take against the minimum wage for tipped workers. Instead, the amendments gradually reduce the amount of the tip credit 2% annually through 2031, at which point the tip credit will be equal to 50% of the standard minimum wage. S.B. 8 also added a civil penalty of $2,500 for violations of the minimum wage provision for tipped employees. Finally, the legislation eliminated a coverage exclusion for Michigan employees who were only subject to the Act because the Michigan minimum wage exceeded the federal minimum wage. Michigan employers not otherwise covered by FLSA exemptions must also comply with Michigan's overtime requirements.

Minnesota

- S.F. 17, signed by the governor on June 14, 2025, amends state meal and rest break requirements. Effective Jan. 1, 2026, employers must allow a paid 15-minute rest break (or enough time to use the nearest restroom, whichever is longer) every 4 hours, and an unpaid 30-minute meal break every 6 hours, in lieu of the previous 8 hours. Failure to allow the required breaks can result in employer liability for the break time at the employee's regular rate of pay, plus an additional equal amount in liquidated damages. S.F. 17 also expanded the authority of the state's Department of Labor and Industry commissioner to pursue injunctive relief to prevent violations.

- On April 9, 2025, Hennepin County secured Minnesota's first criminal wage-theft conviction under the 2019 Wage Theft Act. The defendant, owner of a painting company with a contract for a public works project, was convicted of failing to pay over $37,000 to five employees and theft by swindle. The court imposed three years' supervised probation, 200 hours of community service, prohibition from public contracting, and $42,266.64 in restitution. When passed, the 2019 Act was one of the most stringent wage theft laws in the country, making it a felony to steal

more than $1,000. Yet few have been charged under the statute, and none of those had resulted in a conviction prior to this enforcement action. *State of Minnesota v. Frederick Leon Newell,* 27-CR-23-445; S.F. 17, art. 5, § 6.

- St. Paul's Wage Theft Ordinance (Chap. 224A) went into effect on Jan. 1, 2025, requiring employers to provide additional notice information at the beginning of employment as well as imposing several notice posting requirements. In addition to the information required under Minn. Stat. § 181.032(d), written notices must contain (1) the date on which employment is to begin; (2) notice of St. Paul's minimum wage rates and an employee's entitlement to such rates; (3) where applicable, the voluntariness of gratuity sharing; and (4) applicable overtime policy, including when overtime must be paid and at what rates. For current employees to whom notice has not been given, the St. Paul notice must be signed by the employee and provided in writing prior to any effective change date. Employers must annually notify employees of their rights under the ordinance, post a notice of employee rights in English and any language spoken by employees, and include the notice in any handbook provided to employees. St. Paul's Labor Standards Enforcement and Education division posted final rules in Dec. 2025 governing enforcement.

- The Eighth Circuit declined to reverse a lower court's decision refusing to enjoin Minnesota's 2024 amendment to its Misclassification of Construction Employees law. The law, which took effect Mar. 1, 2025, adopted a 14-factor test for distinguishing independent contractors from employees within the construction context. A coalition of trade groups had appealed the district court's denial of a preliminary injunction, arguing that the law's 14-factor test is "strict yet vague." The appeals court disagreed, finding the coalition could not show the law was likely to be unconstitutionally vague, among other reasons. *Minn. Chapter of Associated Builders & Contrs., Inc. v. Blissenbac*h, 2025 U.S. App. LEXIS 27955 (Oct. 24, 2025).

- The Minnesota legislature clarified in S.F. 2884 that paid on-call firefighters, as defined in Minn. Stat. § 424A.001, subd. 10, are included under the wage statute requiring that employers pay all wages earned by an employee at least once every 31 days.

Missouri

- Pursuant to H.B. 567, signed into law on July 10, 2025, Missouri's minimum wage law applies to public employers, effective Aug. 28, 2025. Previously, public employers were exempted from the minimum wage law. H.B. 567 also repealed a portion of the minimum wage increase passed in a 2024 voter initiative. Proposition A would have based future increases to minimum wage on the Consumer Price Index beginning in 2027.

Nevada

- The Nevada labor commissioner issued two advisory opinions related to daily overtime requirements. AO-2025-01, issued Jan. 6, 2025, clarifies how daily overtime applies when an employee who is eligible for daily overtime regularly works a 4/10 schedule but exceeds 10 hours on one workday. For an employee making less than 1.5 times the minimum wage, daily overtime under NRS 608.018 begins only after the scheduled 10 hours in a 4/10 arrangement. Accordingly, an employee who works 12 hours on the first day of the week but 10 hours on the remaining 3 days is owed only 2 hours of daily overtime for that week. The opinion also reaffirms that the long-standing "control/decision" framework still governs: if the employee initiates a schedule change (such as flexing hours), daily overtime may not be triggered so long as total weekly hours do not exceed 40. But if the employer alters the agreed 4/10 schedule in a way that reduces hours later in the week, the employer may become liable for daily overtime over 8 hours. AO-2025-05, issued June 25, 2025, clarifies how overtime must be calculated when an employee who is eligible to earn daily overtime works both more than 8 hours in a day and more than 40 hours in a week. In this scenario, employers must apply whichever overtime measure (daily or weekly) results in the greater overtime benefit to the employee. The opinion clarifies there is no "stacking" beyond the higher amount.

New Jersey

- The New Jersey Supreme Court ruled that commissions are "wages" under the state's Wage Payment Law (WPL) and therefore are subject to the WPL's protections. Compensating an employee by paying a commission for labor or services rendered always constitutes a wage, the supreme court said. Commissions cannot be excluded from "wages" by calling them a "supplementary incentive," which is compensation intended to motivate employees to go "above and beyond" their usual work. The supreme court rejected the employer's contention that because the commission was for selling a new, non-core product — personal protective equipment during the COVID-19 pandemic — the commission was compensation outside the salesperson's regular labor or services. *Musker v. Suuchi, Inc.*, 2025 N.J. LEXIS 213 (Mar. 17, 2025).

- The New Jersey Department of Labor and Workforce Development (NJDOL) is embracing its enhanced power to combat independent contractor misclassification by filing litigation, announcing several successful enforcement efforts in 2025. On Sept. 18, 2025, the NJDOL announced that it reached a $19.4 million settlement with Lyft after an audit concluded that more than 100,000 drivers were improperly classified as independent contractors. Among other settlements, the NJDOL on Nov. 25 announced a settlement with a truck driving school that failed to properly classify commercial driver's license instructors as employees, failing to pay overtime and timely pay the full amount of wages due, among other violations. In December, the agency filed suit alleging a retailer has misclassified delivery drivers as independent contractors in violation of New Jersey law.

New York

- In a significant victory for New York employers, the New York State Legislature passed a bill to limit damages available for violations of the state's pay frequency statute, NYLL 191. The bill was passed as part of the state's budget on May 8, 2025, and signed into law on May 9, 2025. Before the amendment, some courts held that NYLL 191, which requires employers to pay "manual workers" on a weekly basis, allowed for a private right of action and that the penalty for violating the law is liquidated damages equal to 100% of the late-paid wages. Thus, an employee who earned $50,000 and was paid all their wages, but paid bi-weekly, instead of weekly, would be owed $25,000 per year in damages (one week of the two-week period being "late"). With New York's six-year statute of limitation, that would amount to $150,000 for only one employee. This is true even though the employee was already paid the wages, albeit one week "late." Under the legislation amending NYLL, however, the damages are limited to interest (at 16%) for the alleged seven days the wages were paid late, a significant reduction.

- The budget bill also amended the NYLL to expand the enforcement tools available to the New York State Department of Labor, including authority to impose a 15% surcharge on unpaid wage judgments and "quasi-sheriff" powers to levy and sell an employer's assets but without the customary marshal or sheriff fees. The amendment also allows employees to directly enforce wage orders personally.

- New York's Trapped at Work Act (§§1050-1055) took effect Dec. 19, 2025. The legislation amends the NYLL to prohibit employers from requiring workers to sign "stay-or-pay" agreements — provisions that require employees to repay money to their employer if they leave employment before a specified period. The Act restricts employers from requiring workers to sign "employment promissory notes" as a condition of employment, deeming such agreements unconscionable, against public policy, and unenforceable. Covered agreements include provisions that obligate employees to repay training or other costs tied to continued service (subject to certain exceptions). Civil penalties range from $1,000 to $5,000 per violation. In addition, employees who successfully defend against an employer's suit to enforce a prohibited agreement may recover attorneys' fees.

- The Second Circuit ruled that workers performing fire alarm testing and inspection on public works projects in New York are entitled to prevailing wages under NYLL 220. The appeals court also certified two unresolved questions of New York law to the state's highest court, the New York Court of Appeals: whether the promise to pay prevailing wages is implicit in every public works contract (such that workers may sue for breach of contract to enforce the prevailing wage requirement even if the contract does not expressly include the required language); and whether agreements to shorten the statute of limitations in public works contracts to one year are enforceable against workers bringing third-party beneficiary breach of contract claims to enforce the prevailing wage law. *Walton v. Comfort Sys. USA (Syracuse), Inc.*, 2025 U.S. App. LEXIS 23260 (Sept. 9, 2025).

- In 2025, the New York City Council passed laws to expand the higher minimum wage guarantee of $21.44 to cover not only delivery workers delivering food from restaurants, but also delivery workers delivering groceries. Other bills passed provide additional protection including a tipping option in apps when orders are placed and a requirement that drivers be paid no later than several calendar days after the end of a pay period.

Ohio

- The Pay Stub Protection Act (H.B. 106), which took effect April 9, 2025, requires Ohio employers to provide a detailed, written or electronic earnings and deductions statement to employees at each pay period on regular paydays. The statement must provide details of the amount of each addition or deduction from wages paid during the pay period and the basis for the addition/deduction, among other information.

Oregon

- H.B. 2248, which took effect in late September 2025, established the Employer Assistance Division within the Bureau of Labor and Industries (BOLI) tasked with providing education, training, and interpretive guidance, including advisory opinions. Reliance can shield employers from BOLI fines when acting in good faith on that guidance.
- S.B. 906, which took effect Jan. 1, 2026, requires that employers give new hires an explanation of all earnings and deduction codes, pay periods and pay rates, and benefits that can appear on itemized statements, with updates provided at least annually.
- S.B. 426, signed May 29, 2025, amends ORS ch. 652 to impose joint and several liability on owners and direct contractors for unpaid wages on many construction projects.

Pennsylvania

- The city of Philadelphia on May 27, 2025, enacted the Protect Our Workers, Enforce Rights Act amending the city code to broaden the definition of who may file a wage theft complaint. Any "employee" (including independent contractors misclassified as such) who performs work in Philadelphia is explicitly authorized to file a complaint for unpaid wages, regardless of immigration status. Additionally, the Office of Worker Protections, as opposed to just the offices the mayor designates, may now initiate investigations based on information, even if a formal complaint has not yet been filed — allowing the city to proactively enforce the law in high-risk industries.

Rhode Island

- H.B. 5679/S.B. 70, which took effect Jan. 1. 2026, requires employers to provide newly hired employees with written notice at the start of employment containing information related to wages, rates and basis of pay, pay schedule, exemption status, possible deductions from pay, the employer's identifying information and other information. Employers must retain a signed copy of the notice from each employee acknowledging receipt.

South Carolina

- In a wage payment law dispute between a physician assistant and the medical practice that employed him, the South Carolina Court of Appeals concluded that employers cannot retroactively make changes to bonus or compensation terms of an employee. Pursuant to the South Carolina Payment of Wages Act, written notice of any changes to the terms of pay must be provided to the employee at least 7 days before they become effective. In this case, changes to the terms of the bonus that were made after the bonus amount was calculated were ineffective. The court explained that any ambiguities in a bonus or commission agreement will be construed against the employer. The court also rejected the argument that the wage payment act claim was barred by the statute of limitations, instead applying a "discovery rule" and finding that the employer failed to provide enough information to the employee to let them know that they had a claim for unpaid wages. *Hess v. Morphis Pediatric Group of Lancaster, P.A.*, 2025 S.C. App. LEXIS 43 (S.C. Ct. App. Aug. 29, 2025).

Vermont

- Act 40, which took effect July 1, 2025, amended 21 V.S.A. § 342a(d) to provide that if the Vermont commissioner of labor finds that wages were willfully withheld, the order of collection must include up to two times the employee's unpaid wages as additional damages, split 50/50 between the employee and the commissioner to offset administrative costs. Previously, the liquidated damages award was discretionary, not mandatory.

Virginia

- The Supreme Court of Virginia held that commissions are excluded under the Virginia Wage Theft statute. The plaintiffs, former sales employees paid primarily or exclusively by commission, alleged that their employer unlawfully withheld earned commissions after their employment ended. The trial court dismissed their claims, but the appeals court reversed, holding that commissions qualified as "wages" under the statute. The state high court reversed. It noted that the statute, Code § 40.1-29, expressly references "wages" and "salaries" but not commissions, while other state statutes explicitly include "commissions" alongside "wages" and "salaries," indicating that the omission here was deliberate. *Groundworks Operations, LLC v. Campbell*, 2025 Va. LEXIS 76 (Dec. 30, 2025).

Washington

- In a case of first impression, the Washington Supreme Court held that the state Department of Labor and Industries (L&I) is not required to issue a formal administrative demand to an employer before the agency can file suit to recover wages owed to employees, along with double damages and attorney's fees. Under the state's wage law (RCW 49.48.040(1)(b)) the L&I must demand payment of unpaid wages from the employer as a prerequisite to filing suit, but the request does not have to be in the form of a formal demand letter seeking a precise amount of payment at this preliminary stage of an enforcement proceeding. An

"informal directive" to the employer to comply with the applicable law allegedly violated will suffice at this stage. *Dep't of Labor and Indus. v. Cannabis Green LLC*, 2025 Wash. LEXIS 261 (May 29, 2025).

- The Washington Supreme Court held that a plaintiff does not need to prove that they are a "bona fide" or "good faith" job applicant to sue prospective employers for violations of the Washington Equal Pay and Opportunities Act, which requires that job postings include salary range and benefits information. The applicant's "subjective intent in applying" is irrelevant, the state supreme court explained. A plaintiff need only apply to a specific job posting to be a "job applicant" within the meaning of the statute, the supreme court held. *Branson v. Wash. Fine Wine & Spirits, LLC*, 2025 Wash. LEXIS 442 (Sept. 4, 2025).

Tracking pay transparency laws?

States and localities continue to enact legislation imposing requirements to disclose pay ranges and benefits offerings in job postings and internally. Follow Jackson Lewis' Pay Equity Advisor Blog to stay on top of emerging developments.

- Pursuant to H.B. 1879, enacted April 21, 2025, hospitals must provide patient care employees with uninterrupted meal and rest breaks and may interrupt these breaks only in instances of an unforeseeable emergency or urgent patient-care event. The hospital and direct care employees can mutually agree (in writing) to waive a meal or rest period or to adjust the timing of these periods, subject to certain conditions. Hospitals are required to report missed and waived meal and rest breaks in quarterly compliance reports to L&I. The provision takes effect Jan. 1, 2026.

Minimum Wage Increases

The following state minimum wage increases went into effect Jan. 1, 2026, unless otherwise noted. Some states also have city or other local minimum wage increases for 2026. Several states have different hourly minimum wage rates for youth workers or workers in specific industries. In addition, numerous states have separate tipped minimum wage rates that differ from the federal or do not recognize a separate tipped minimum wage at all.

Contact an attorney at Jackson Lewis for details on local or nonstandard minimum wage rates.

Need the latest? Subscribe to Jackson Lewis' **Minimum Wage Watch**.

Alaska	$14.00 (effective July 1, 2026)
Arizona	$15.15
California	$16.90
Colorado	$15.16
Connecticut	$16.94
Dist. of Columbia	$17.95 (as of July 1, 2025)
Florida	$15.00 (effective Sept. 30. 2026)
Hawaii	$16.00
Maine	$15.10
Michigan	$13.73
Minnesota	$11.41
Missouri	$15.00
Montana	$10.85
Nebraska	$15.00
New Jersey	$15.92
New York	$16.00 $17.00 (New York City, Nassau, Suffolk, Westchester counties)
Ohio	$11.00
Oregon	$15.05 (as of July 1, 2025) $16.30 (Portland metro) (as of July 1, 2025) $14.05 (nonurban counties) (as of July 1, 2025)
Rhode Island	$16.00
South Dakota	$11.85
Vermont	$14.42
Virginia	$12.77
Washington	$17.13

Prevailing wage changes

Numerous states have adjusted prevailing wage rates in 2025 or have broadened the scope of coverage under their prevailing wage laws. Our Government Contracts and Compliance Practice Group works in tandem with the Wage & Hour Practice Group to assist federal and state contractors in adhering to prevailing federal and state wage requirements. Our attorneys advise on compliance with the Service Contract Act, the Davis-Bacon Act, and the Davis-Bacon Related Acts, and the differing state standards. We also help employers address implementation or recission of executive orders related to the minimum wage for workers in new federal contracts.

Minimum Salaries for the White-Collar Exemptions

The following state minimum annual salaries for the executive, administrative, and professional exemptions became effective Jan. 1, 2026, unless otherwise indicated.

Alaska	$1,120 weekly/$58,240 annually (effective July 1, 2026)
California	$1,352 weekly/$70,304 annually
Colorado	$1,111.23 weekly/$57,784 annually
Maine	$871.16 weekly/$45,300.32 annually
New York	$1,199.10 weekly/$62,353.20 annually
	$1,275.50 weekly/$66,300 annually (New York City, Nassau, Suffolk, Westchester counties)
	(applicable to executive and administrative exemptions only; professional exemption follows federal law)
Washington	$1,541.70 weekly/$80,168.40 annually

On the Radar

What's in store for 2026? Watch for:

- Deregulatory rulemaking from the DOL
- More legislation and regulatory action at the state and local level as the federal DOL shifts to compliance assistance
- Increase in legislation restricting "stay or pay" provisions to recoup training or other costs from departing employees
- Continued litigation over the compensability of pre- and post-shift off-the-clock activities
- More independent contractor litigation, particularly among transportation and gig workers
- Rise in exempt misclassification claims as Gen AI transforms how exempt employees perform their jobs
- Erosion of the service charge model as tax relief incentivizes tipped compensation
- Ongoing evolution of FLSA collective action procedures

Thank you for your interest in the

2025 Wage & Hour Developments: A Year in Review

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