



# HR Compliance Changes MI Employers Need to Know

AS OF  
10/01/2024



**VARNUM**



# Our Agenda

- 01 ———— **Welcome**
- 02 ———— **Presentation Discussion**
- 03 ———— **Q&A**
- 04 ———— **Wrap Up**



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# Meet Our Experts

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**Lisa Brown**

**Host**  
VP, Client Services  
HR Collaborative



**Ashleigh Draft**

**Guest**  
Labor and Employment Attorney  
Varnum LLP



**Francesca Parnham**

**Guest**  
Attorney  
Varnum LLP



# **Please be advised:**

The following was prepared for a general information presentation given on October 1st, 2024. It does not provide, and is not intended to, constitute legal advice. It may no longer be up-to-date as of your reading.



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# Big Changes Ahead:

ESTA ▪ Minimum Wage ▪ FLSA

What Michigan Employers Need to Know

October 1, 2024

Ashleigh Draft and Francesca Parnham

Varnum LLP

AS OF  
10/01/2024

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# WHAT HAPPENED?



- ***Mothers Justice v Attorney General (July 31, 2024)*** – Michigan Supreme Court ruled that the Michigan Legislature’s adoption, and subsequent amendment of two voter-initiated 2018 ballot proposals within the same legislative term, violated Michigan’s Constitution. Ordered reinstatement of the laws in their original ballot-proposal wording and updated timelines.
- **Background** - Michigan’s Constitution allows citizens to initiate laws by ballot initiative and voter decision in statewide election. In 2018, it was done twice:
  - Earned Sick Time Act
  - Improved Workforce Opportunity Wage Act
- **Adopt and Amend** - Michigan’s Legislature adopted both proposals then immediately voted to amend.
- No provision in Michigan Constitution stating whether immediate amendment is permitted after “adoption.”

# Legal Challenge & Impact



- **Lawsuit initiated in 2021** – claimed legislature action unconstitutional
  - PMLA and wage schedule remained in effect as case proceeded through courts.
  - July 31, 2024 – Supreme Court found legislation unconstitutional and sought to fashion a remedy that best satisfied the intent of the statutes while also providing typical time frames to prepare
- **Impact** – After nearly 5 years, the PMLA and 2019 minimum wage schedules and tip credit provisions will be replaced by the ballot proposal versions.
  - Changes will be effective February 21, 2025.
  - IWOWA will have an altered schedule of wage increases and tip credit phaseouts

Out with the old and in with the new:

**PMLA to ESTA**

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# PMLA v ESTA – Key Changes

## ■ PMLA

- Covered only MI employers with 50 or more employees
- Covered only nonexempt employees in MI working more than 25 hours per week and contains several exceptions
  - Defined by whether the worker is on the employer's payroll
- Requires employers to accrue or grant up to 40 hours of earned sick time/year

## ■ ESTA

- Covers **all** MI employers except federal government
- Covers **all** employees working in MI without regard to classification or type, or hours (seasonal, exempt, etc.)
  - Defined by “**service to employer**” in “business of employer”
- Requires employers to accrue or grant **up to 72** hours of earned sick time per year. Accrual is uncapped.

# PMLA v ESTA – Key Changes

## ■ PMLA

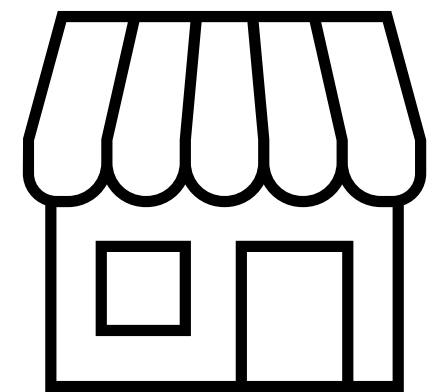
- Accrual rate: 1 hour for every 35 hours worked – capped at 1 hour per week
- Carryover of up to 40 unused hours
- Must allow employees to use up to 40 hours paid sick time per year.

## ■ ESTA

- Accrual rate: 1 hour for every 30 hours worked – no cap per week
- Carryover of **all** hours required, **no cap**
- Must allow employee to use up to **72 hours** of paid sick time per year
- “Small” businesses with fewer than 10 employees can provide only 40 paid hours paid but must allow up to the additional 32 unpaid.

# ESTA “Small” Business:

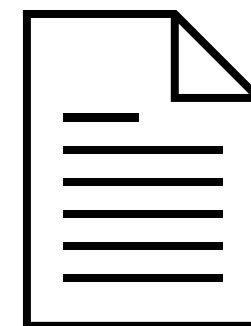
- Fewer than 10 individuals working for compensation in a week
  - Must include any workers engaged as contractors or through staffing agency
  - Whether part-time, full-time, or temporary
  - Excludes any business that had 10 or more employees on the payroll for at least 20 weeks in the current or preceding calendar year. The 20 workweeks need not be consecutive.
  - Once an employee meets the 10 or more employee threshold, the employer remains covered through the remainder of the current and following calendar year.





# OTHER KEY ESTA CHANGES

- No-fault attendance policies: Must exclude ESTA absence
- Notice
  - If foreseeable: May require 7 days' notice
  - If unforeseeable, only “as soon as is practicable”
- Medical documentation: Only permitted after 3 consecutive days of leave
  - Employers must pay for costs associated with medical documentation
  - May not delay the leave based on failure to receive documentation




# OTHER KEY ESTA CHANGES, CONT.


- Accrued and unused ESTA time preserved if:
  - Employee separates but returns within 6 months
  - Business is assumed by a successor
  - Employee transfers to separate division or entity of employer
  
- Recordkeeping (3 years)

# OTHER KEY ESTA CHANGES, CONT.

- Posting requirements
- Must be posted in English Spanish, and any other language spoken by at least 10% of the employer's workforce, if LEO has translated the poster into such language.



**Michigan Department of Labor & Economic Opportunity**  
Wage and Hour Division  
PO Box 30476  
Lansing, MI 48909-7976



GRETCHEN WHITMER  
GOVERNOR

**REQUIRED POSTER**  
**GENERAL REQUIREMENTS – EARNED SICK TIME ACT\***

SUSAN CORBIN  
DIRECTOR

Your employer's 'year' for the purposes of the Earned Sick Time Act is:

Earned Sick Time Accrual			
Number of Employees	Minimum Accrual	Minimum Paid Sick Time	Unpaid Sick Time
Less than 10 employees	1 hour for every 30 hours	40 hours in a year	32 hours (if more than 40 accrued)
10 or more employees	1 hour for every 30 hours	72 hours in a year	

- Earned sick time shall carry over from year to year, a business with less than 10 employees is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, employers with 10 or more employees are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.
- Earned sick time shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later.
- An employee may use accrued earned sick time as it is accrued.
- An employer is in compliance with the act if it provides any paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2) of Section 3 of the act. Paid leave includes, but is not limited to, paid vacation days, personal days, and paid time off.

**Earned Sick Time Uses**

An employer shall permit an employee to use the earned sick time accrued for any of the following:

- The employee's or the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.
- If the employee or the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.
- For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child, or
- For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease.
- An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

**Exercise of Rights**

- An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.
- An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. "Retaliatory personnel action" means any of the following:
  - Denial of any right guaranteed under this act.
  - A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act.
  - Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.
  - Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.
- An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

**Complaint Filing**

An employee affected by an alleged violation, at any time within 3 years after the alleged violation or the date when the employee knew of the alleged violation, whichever is later, may do any of the following:

- Bring a civil action for appropriate relief, including, but not limited to, payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows.
- File a claim with the department, which shall investigate the claim. Filing a claim with the department is neither a prerequisite nor a bar to bringing a civil action.

\*For precise language of the statute, see Public Act 338 of 2018, as amended.

Auxiliary aids, services and other reasonable accommodations are available, upon request, to individuals with disabilities.  
[www.michigan.gov/wagehour](http://www.michigan.gov/wagehour) • Toll Free 1-855-4MI-WAGE (1-855-464-9243)  
WHD 9911 (Revised 8/22/2024)



# OTHER KEY ESTA CHANGES, CONT.

- Anti-retaliation

- No retaliation for exercising a right under the Act
- **Rebuttable presumption of violation** if employer takes adverse action against an employee within 90 days of employee engaging in “opposition” type activity

- Private right of action added

- Can pursue lawsuit **or** may still file an agency claim
- Either can be filed within **3 years** of violation
- Agency claims: Agency **must** institute a legal action if unable to remedy violation
- Damages, liquidated damages, reinstatement, attorney’s fees, civil penalties awardable

# ESTA QUESTIONS AND AMBIGUITIES

- Who counts as an “employee”?
- What are the limits of “closely associated” for determining family member?
- What will count as an existing policy that would be considered to satisfy ESTA?
- Treatment of PMLA time upon transition to ESTA?
- Michigan’s Dept. of Labor and Economic Opportunity (LEO) expected to provide further guidance

# Compliance Preparation

- Effective Date of ESTA: February 21, 2025
- Employers must develop compliant policies and begin full compliance February 21, 2025



# Could things change again?

- No appeal from Supreme Court decision
- Regulations might add clarity
- Remain alert – further legislative action may be in the works

Legislative leave-behind document created by a coalition of 55 business groups →

## The MI Supreme Court's Decision on Mandatory Paid Sick Leave

*Top Things Lawmakers Need to Know About the Impact of the Supreme Court's Decision on Paid Leave*

### DISRUPTIVE AND BAD FOR EMPLOYEES

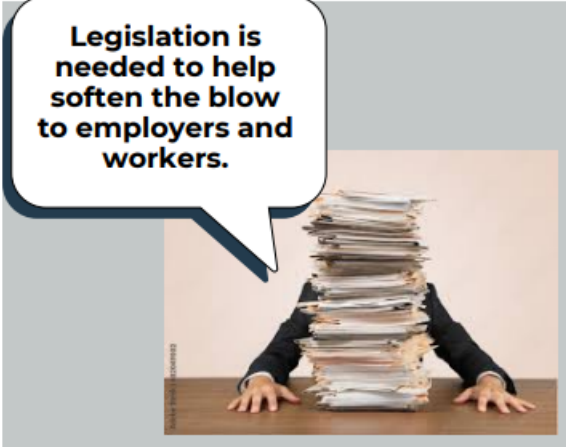
The Earned Sick Time Act will force employers of all sizes and types to rethink their existing paid leave policies. Because the Act micromanages things like notification and increments that time can be used and adds avenues for costly litigation against businesses for compliance mistakes, most employers will move to separate sick time from other paid time off (PTO) banks -- even though most employees prefer a combined bank.

- **Our Ask:** Exempt employers with paid leave policies that meet or exceed the number of hours required under the act, including all forms of paid leave.

### NO EXEMPTIONS

Sick leave must be expanded to all employees (full-time, part-time, seasonal, temporary workers, independent contractors, subcontractors); all employers with one or more employees must comply. Very few states have laws as extensive as Michigan.

- **Our Ask:** Add a small employer exemption or expand the current small employer threshold. Apply Earned Sick Time Act to full- and part-time employees averaging 20 or more hours per week; exempt seasonal, temporary workers, independent contractors, and subcontractors. There's good precedent and logic to exempting employers with fewer than 50 employees (federal Family Medical Leave Act [FMLA]).



### LITIGATION NIGHTMARE

The Act allows employees to sue businesses and automatically assumes the employee's side for unfavorable personnel actions (via a rebuttable presumption), putting employers in the position of having to defend their HR decisions in court. No other state has a rebuttable presumption, creating a disincentive to hiring and entrepreneurship in Michigan.

- **Our Ask:** Remove the language allowing for a private right of action and rebuttable presumption. Enforcement and penalties should be handled by the State.

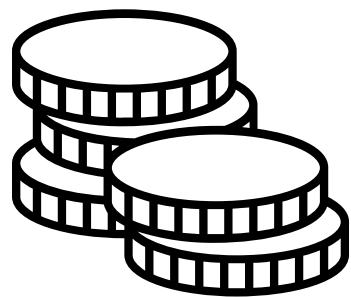
Out with the old and in with the new:  
IWOWA Wage Law Changes

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# What will the Improved Workforce Opportunity Wage Act Do?

- Increase to the state's minimum wage
- Annual changes to the minimum wage thereafter based on inflation
- Phase out the current tip credit provisions that currently allow employers of employees who customarily receive tips to count a portion of the employee's tips in calculating whether the employees have been paid minimum wage.
  - Tip credit phased out over a four-year period



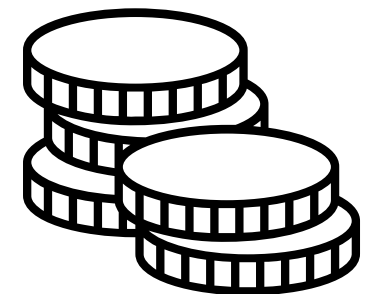
# Balancing Act

- To balance the interests in restoring the IWOWA intent and account for the passage of time, the Court ordered a modified schedule:
- General Minimum Wage:
  - February 21, 2025: \$10.00 PLUS an inflation adjustment to be announced – Anticipated to be approximately \$12.50 overall.
  - Annual adjustments for inflation thereafter.
- Tipped Workers' Minimum Wage:
  - February 21, 2025: 48% of state minimum wage. Scheduled increases each year thereafter. Full phaseout complete in four years.



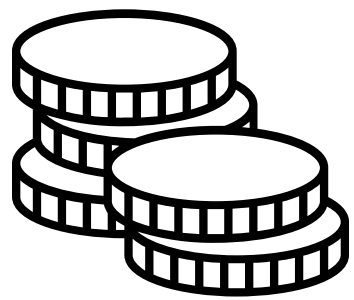
# Scheduled Minimum Wage Increases

- Current Minimum Wage
  - \$10.33 per hour as of January 1, 2024
  - Previously, the state was on track to have scheduled increases achieve \$12.05 by 2030
- A new wage scale is anticipated from the Michigan Department of Treasury by November 1, 2024
- Every November thereafter, the State Treasurer shall increase the minimum wage based on the rate of inflation.
- The adjusted minimum wage rate shall be published by November 1 of the year it is calculated and shall be effective beginning January 1 of the succeeding year.



# Scheduled Minimum Wage Increases

- Note: These numbers are approximate and will be subject to change based on the minimum wage determinations made by the Michigan Dept. of Treasury

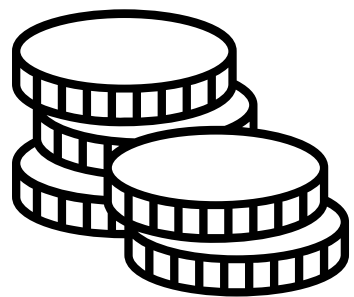


## IWOWA Forecasted Increases

Date	Minimum Wage	Minimum Cash Wage	Tip Credit
February 21, 2025	\$12.48	\$5.99 (48%)	\$6.49
February 21, 2026	\$13.29	\$7.97 (60%)	\$5.32
February 21, 2027	\$14.16	\$9.91 (70%)	\$4.25
February 21, 2028	\$14.97	\$11.98 (80%)	\$2.99
February 21, 2029	TBD	90% of Minimum Wage	TBD
February 21, 2030	TBD	100% of Minimum Wage	Prohibited

# The Tip Credit

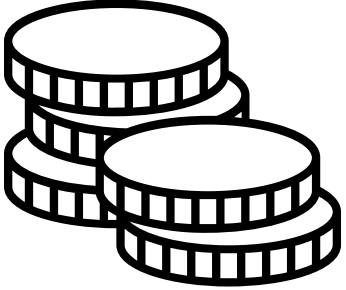
- Provisions in effect since 2019
  - Tipped minimum wage is currently 38% of state minimum wage
  - 2024: \$3.93



Date	Tipped Minimum Wage
February 21, 2025	48% of new minimum wage
February 21, 2026	60% of new minimum wage
February 21, 2027	70% of new minimum wage
February 21, 2028	80% of new minimum wage

# Tip Credit Forecast

- Note: These numbers are approximate and will be subject to change based on the minimum wage determinations made by the Michigan Dept. of Treasury

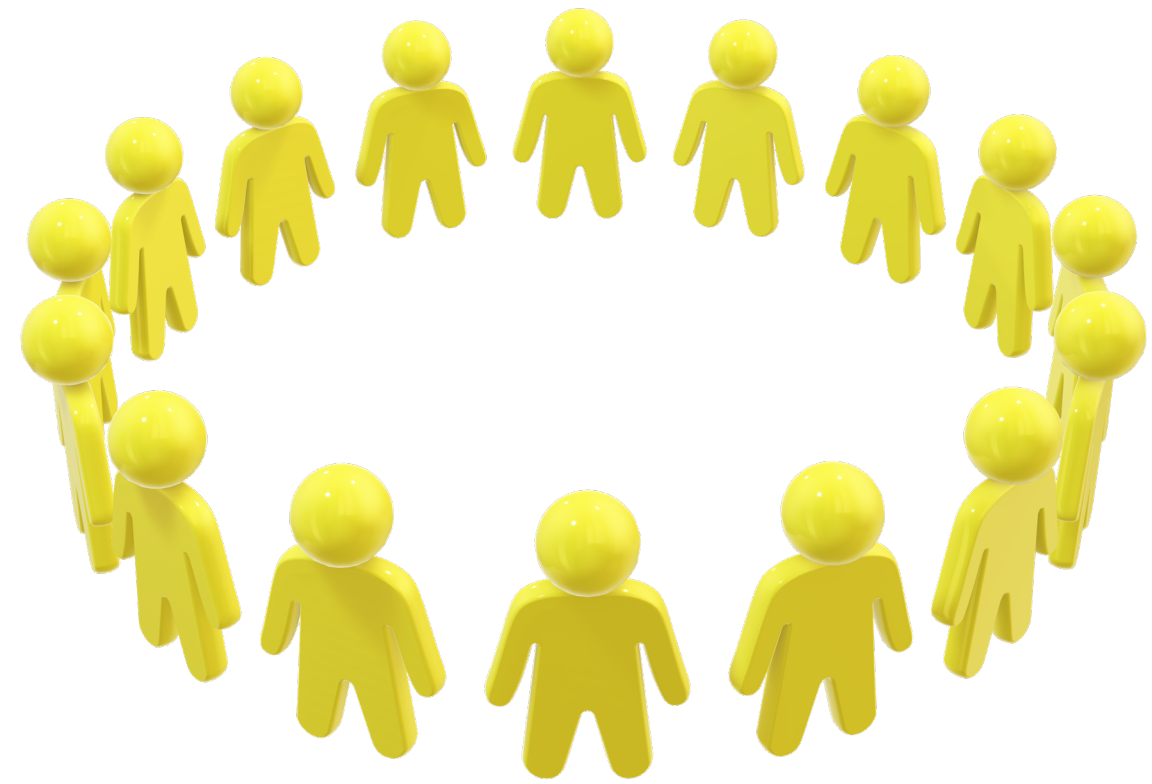


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February 21, 2030	TBD	100% of Minimum Wage	Prohibited



# Training Wage – No Change

A training wage of \$4.25 per hour may be paid to employees 16 to 19 years of age for the first 90 calendar days of employment.



# Potential Implications

- Ripple effect on other wage rates and overall economic impact
- Impact on restaurant employers



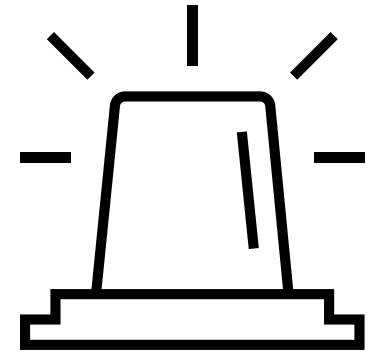
An estimated 600 servers and bartenders rally in Lansing on Sept. 18 to preserve the tipped minimum wage scale

# Compliance Preparation

- Employers must prepare for new wage rates February 21, 2025

# Could things change again?

- No appeal from Supreme Court decision
- Regulations might add clarity
- Remain alert for changes from the legislature before February 2025





# FLSA Increased Overtime Threshold

AS OF  
10/01/2024

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# The Fair Labor Standards Act (FLSA)

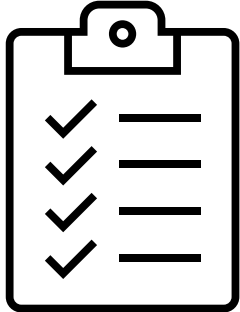
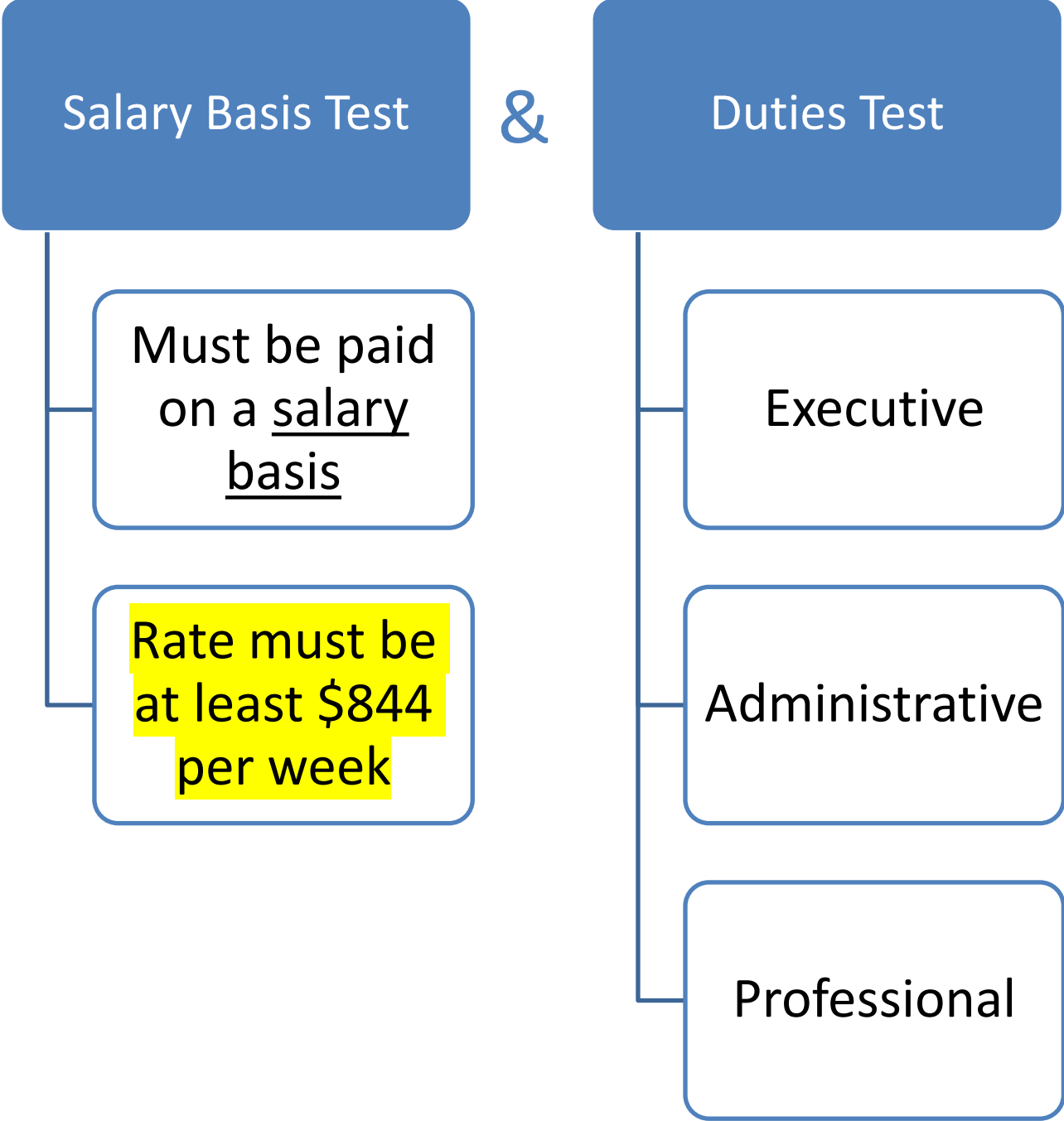


- The primary federal wage and hour law in the United States.
- Enforced by the U.S. Department of Labor, which has broad investigative authority.
- Sets forth requirements related to minimum wage and overtime pay obligations, break time for nursing mothers, child labor laws, etc.
- Prevailing plaintiffs in wage and hour lawsuits may recover:
  - The amount of their unpaid wages,
  - An additional amount as liquidated damages, and
  - Their attorney's fees and costs.

# Review: What does it mean to be FLSA “exempt”?

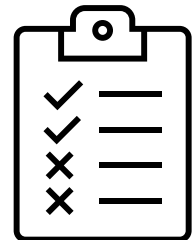
- The FLSA allows employers, when specific requirements are satisfied, to treat certain employees as EXEMPT from both the minimum wage and overtime pay requirements.
- Employers have the burden of demonstrating that an exemption is appropriate.
- Simply labeling an employee as “exempt” is not enough – even if the employee agrees to the designation.

# Path to FLSA Exemption



Remember, both the salary basis test and the duties test must be met.

# Path to FLSA Exemption



The salary basis test will be met if the employee is both paid on a salary basis and paid at the required level.

## Salary Basis Test

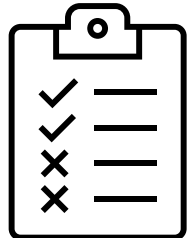
Must be paid on a salary basis

Rate must be at least \$844 per week

- ✓ Must regularly receive a predetermined salary on a weekly or less frequent basis; and
- ✓ Must receive full salary for any week in which some work is performed, without regard to the number of hours worked.



# Path to FLSA Exemption



The duties test will be met if the employee meets the criteria of either the executive, administrative, or professional exemption.

## Duties Test

Executive



Primary duty is management of the business or a subdivision of the business. Must regularly direct the work of at least two other full-time employees. Authority to hire and fire, or input on such decisions given particular weight.

Administrative



Primary duty is performance of office or non-manual work directly related to the management of the employer (not production). Exercise of discretion and independent judgment on significant matters.

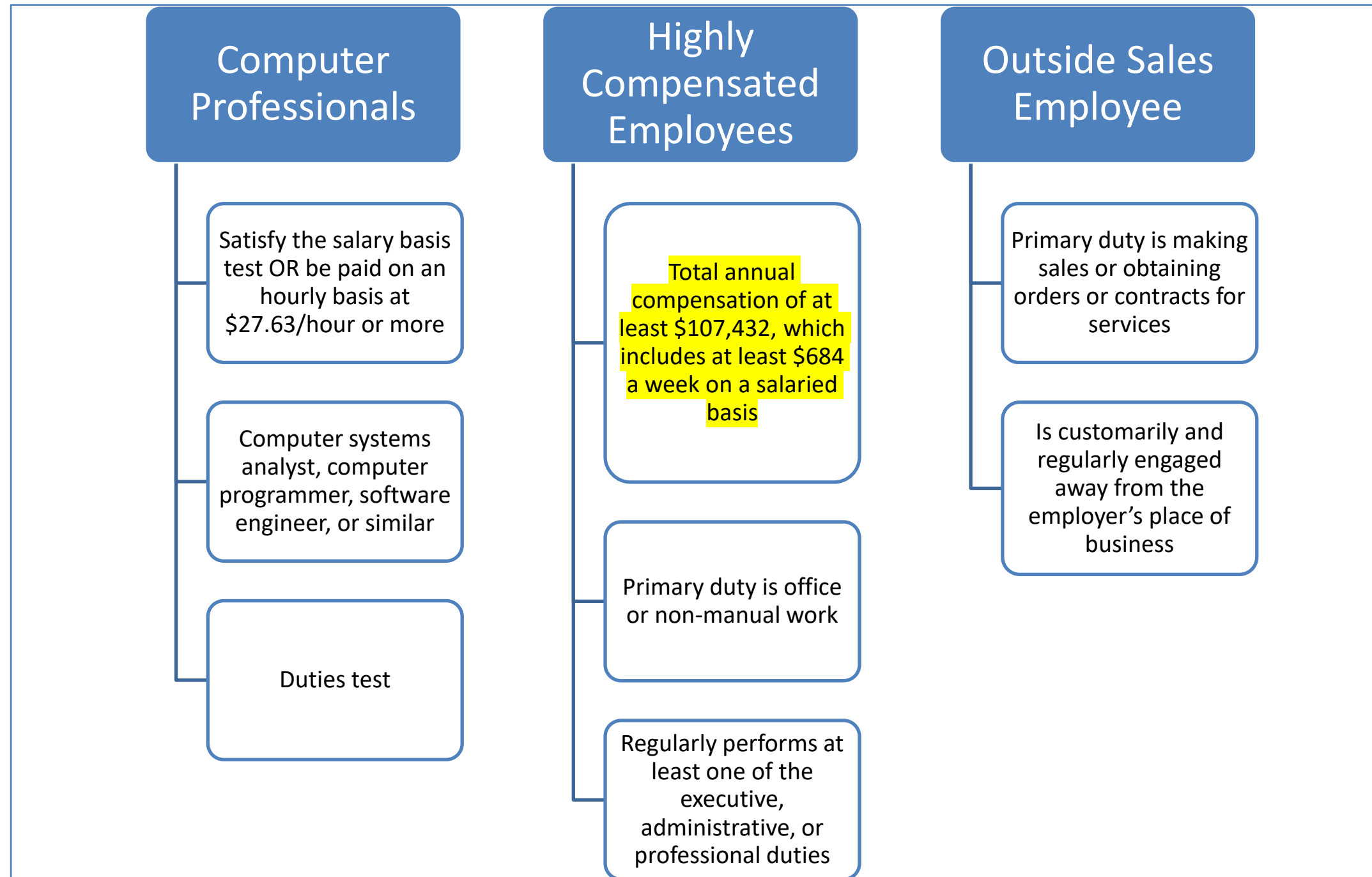
Professional



Learned or creative professional, teaching professional, lawyer or physician. Work requires knowledge of an advanced type or requires inventions, originality, or talent in a recognized artistic field.

# Path to FLSA Exemption – Special Circumstances

## Specialized Exemptions



## Even More Specialized Exemptions

- Motor Carrier Act Exemption (exempt from overtime pay only)
- Commissioned Retail Sales Exemption (exempt from overtime pay only)
- Certain seasonal employees
- Domestic service employees
- Motion picture producing industry

# Why is the DOL Proposing these Changes?



The Biden Administration is trying to put more pay into workers' pockets, partly because efforts to raise the federal minimum wage have stalled.

# Why is the DOL Proposing these Changes?



U.S. DEPARTMENT OF LABOR

MENU

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### News Release

## DEPARTMENT OF LABOR ANNOUNCES PROPOSAL TO RESTORE, EXTEND OVERTIME PROTECTIONS FOR 3.6 MILLION LOW-PAID SALARIED WORKERS

*Proposed rule would ensure that more workers receive extra pay for long hours*

**WASHINGTON** – The U.S. Department of Labor today announced a notice of proposed rulemaking that would [restore and extend overtime protections to 3.6 million salaried workers](#). The proposed rule would guarantee overtime pay for most salaried workers earning less than \$1,059 per week, about \$55,000 per year.

“For over 80 years, a cornerstone of workers’ rights in this country is the right to a 40-hour workweek, the promise that you get to go home after 40 hours or you get higher pay for each extra hour that you spend laboring away from your loved ones,” said Acting Secretary Julie Su. “I’ve heard from workers again and again about working long hours, for no extra pay, all while earning low salaries that don’t come anywhere close to compensating them for their sacrifices. Today, the Biden-Harris administration is proposing a rule that would help restore workers’ economic security by giving millions more salaried workers the right to overtime protections if they earn less than \$55,000 a

Submit Feedback

The Department of Labor anticipates that the new threshold will extend overtime protections to 3.6 million salaried workers.

# Where We've Been

	2004	2016 (rescinded)	2019	2024 (July 1)	2025 (Jan. 1)
Salary Threshold	\$455 / week (\$23,660 per year)	\$913 / week (\$47,476 per year)	\$684 / week (\$35,568 per year)	\$844 / week (\$43,888 per year)	\$1,128 / week* (\$58,656 per year)
Highly Compensated Employee Threshold	\$100,000	\$134,004	\$107,432	\$132,964	\$151,164*



Current Rule

\*Automatic updates every three years



# 2024 Rulemaking Details

## Where did these new numbers come from?

- The DOL is proposing to set the standard salary threshold at the 35<sup>th</sup> percentile of weekly earnings for full-time salaried workers in the lowest-wage Census Region (the South).
- Using 2022 census data, this 35<sup>th</sup> percentile equals \$1,059 per week.
- The HCE exemption is tied to the 85<sup>th</sup> percentile of full-time non-hourly workers nationally.

# How to Prepare

## ■ Analysis Steps

1. Identify all positions that are currently classified as FLSA exempt.
2. Determine whether they are properly classified under the current standards.
3. Determine whether they will remain properly classified under the new standards.
4. For exempt employees earning less than \$1,128 per week:  
Raise salary to at least \$1,128/week OR  
Re-classify as non-exempt: track hours and pay overtime for all hours over 40 in a workweek.
5. Consider ways to manage/ limit overtime. Be aware of unauthorized hours working from home.

# **Please be advised:**

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To discuss how these legal changes will affect your workplace, call or email Ashleigh and Francesca using the contact information below.



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# Building a Compensation Strategy to Attract Talent in MI



**October 10<sup>th</sup>, 2024**  
**11:00 AM**  
**Zoom Webinar**





# HR



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# Share Your Feedback

## Compliance Changes Survey

Thank you for attending our Compliance Changes in 2025 webinar. Please take a few minutes to share your experience with us.

On a scale of 1 to 10, how likely are you to refer a friend or coworker to an HR Collaborative event?

0  1  2  3  4  5  6  7  
 8  9  10

What did you enjoy about the event?



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**Thank YOU!**