



LIVINGHR | Q3 2024

# The Inside Scoop

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Your favorite compliance nerd is back with more fun after the rollercoaster that was Q1 (and Q2). If you're new here, every quarter (mostly; I took a small hiatus in Q2), I take some current compliance topics and break them down in a way that's amusing and ideally easy to understand.

Oh, and hey, if you see something in blue, it just means that it's a clickable link that takes you to the source material. Meaning I read it so you don't have to.

## **This Summer's Hottest Competition** (*and I don't mean the Olympics*)

Remember all those things we talked about in Q3 of last year? Of course you do; you clearly read these thoroughly and diligently and commit every detail to memory. Just in case though, we talked about how some of the alphabet soup troupe (NLRB, FTC, DOJ) were coming for non-competes... and here we are. [They did!](#) And it's being challenged across the board. What makes it weirder is the lack of the Chevron defense (in case you're not sure what I mean: basically, the Chevron defense is what just about every judge/attorney/court has referenced for the last 40 years in terms of precedent when deciding how to interpret laws). The Supreme Court [struck that down recently](#), so a lot of our legal friends now aren't sure how they can or should interpret laws, and it also can create some chaos since there are no longer widely held standards.

So here's the down-low on non-competes: by and large, they were already unenforceable in some states. The new reg was slated to go into effect 120 days after it's published in the final register (so September-ish).

### **So, what now?**

If the law holds, you'll need to send notice to almost all employees with non-competes once the law goes into effect, and the FTC thoughtfully provided us with a [template](#) for that. (Swell, aren't they?) NDAs, trade secret laws, and some non-solicitation requirements still remain in effect (and can be enforced). If the challenge goes through, non-competes can be back on the table. In this weird post-Chevron era, this is the time to lean on attorney friends. We happen to know a few great ones.

It's also a great time to do a culture survey if you haven't done one recently – the new law (if passed) means employees who leave can bring their friends along, so our take is that it's best to get in front of any issues as quickly as possible. Happy people don't ....er.....leave their employers and take their friends with them. They just don't! And wouldn't you know, that's something we can help with. Some might say we're experts.



## Mo' Money, Mo' Problems

Probably just not in the same way Biggie was talking about.

The DOL is taking some heat right now (because pretty much everything is being challenged), but in essence, they [raised the minimum salary threshold](#) for employees to be able to be classified as exempt on July 1 of this year to \$43,888, with increases starting January 1, 2025, and automatically every 3 years after that. It kind of makes sense when you think about it, since inflation has been inflating, which means wages should also go up.

## So, what now?

We need to look at two things: classifications and wages. From here, this is where we map out what the impact looks like, and plan for things to go through in January. They may or may not, but it's better to plan for it now. And look, some classifications are as clear as Blue Lake (Google it), while others are as clear as mud.

We reallllly want to lean on attorneys here. I personally would not want to get on the DOL's list, and I'm pretty sure they're more diligent than Santa. I might also suggest doing a full analysis, because just adjusting the lowest levels can create compression, and compression leads to unhappy people. See above. Can your favorite friends at livingHR do that for you? Yes. Yes, we can.



## If You Wouldn't Say It to The Rock...

The EEOC released its [finalized guidance](#) on what's considered workplace harassment, its first update since 1999. It includes provisions that address harassment involving customers, contractors, and other 3rd parties, in addition to between employees and leaders. It also includes updated clear guidelines as it relates to gender identity, transition, and sexual orientation that were previously not stated outright, as well as clearer provisions about what type of online and AI behaviors may be considered harassment. They even provided some very specific guidance for our friends in the construction industry called ["Promising Practices for Preventing Harassment in the Construction Industry"](#) (listen y'all, I didn't name it). The idea though, is that it provides very specific guidance to help prevent harassment in the construction industry, which is awesome.

## So what now?

Now's the time to look at your handbooks and the training you're doing with your teams, especially your managers. We happen to take a very cool, very fun (as much as it can be, anyway) approach to both, so I might humbly suggest bringing us in to handle for you.

The [key provisions](#) doc provided by the EEOC is worth a read and isn't quite as painful as some of their other material. By and large, though, if it's not something you'd say to The Rock's face, is it even something you should say at work?

That's it for now. Remember: livingHR = friend. We're always here to help!

## Sources

- <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>
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- <https://www.ftc.gov/legal-library/browse/rules/noncompete-rule>
- <https://www.dol.gov/newsroom/releases/whd/whd20240423-0>
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