



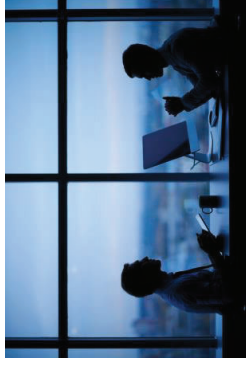
HIRSCH  
ROBERTS  
WEINSTEIN LLP

# Nonprofit Financial Managers Group 2024 Wage and Hour Legal Updates

Kathleen A. Berney, Esq.

Sarah A. Ruter, Esq.

October 31, 2024





# Introductions

→ Introductions

→ Administrative Law Update-  
Effects of the End of the  
Chevron Doctrine

→ Wage and Hour Update

→ Pay Transparency



# Administrative Law Update

- *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (June 28, 2024)
- Expressly overruled *Chevron U.S.A. Inc. v. Nat'l Resources Defense Counsel, Inc.*, 467 U.S. 837 (1984)
- *Chevron* has been cited at least 18,000 times by federal courts

## • *Chevron* Deference

- The former test for when federal courts must defer to an administrative agency's interpretation of a law or statute
- If the law or statute was “silent or ambiguous,” *Chevron* required federal courts to defer to a “permissible” agency interpretation



HIRSCH  
ROBERTS  
WEINSTEIN LLP



# Loper Bright

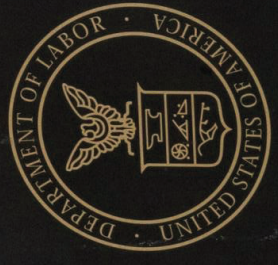
- Held that *Chevron* could not be reconciled with Section 706 of the Administrative Procedure Act, which directs federal courts to:

(1) “decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of an agency action”; and

(2) “hold unlawful and set aside agency action, findings, and conclusions found to be . . . Not in accordance with the law.”

- Agency interpretations are “entitled to respect” but do not control
- Decisions that relied on *Chevron* are still entitled to *stare decisis* and “[m]ere reliance” on *Chevron* does not justify overruling such holdings





# United States Department of Labor

## Wage & Hour Update

# Final Regulations: Minimum Salary Levels for Exemptions from Overtime

## Exemptions Impacted

- ✓ Executive
- ✓ Administrative
- ✓ Professional

## By How Much?

Today: \$844 per week  
(\$43,888 annually)

January 1, 2025:  
\$1,128 per week  
(\$58,656 annually)

## For How Long?

Automatic increase every three years based on latest earnings data

# “Highly Compensated” Employees and Bonuses

What salary makes an employee “highly compensated”?

- ▶ Previously: \$107,432
- ▶ Right now/as of July 1, 2024: \$132,964
- ▶ January 1, 2025: \$151,164

\*Non-discretionary bonuses and incentive payments can still satisfy up to 10% of the standard and special salary thresholds under certain circumstances



# Must Pass BOTH Tests

## Duties Test Analysis

- Executive
  - Managing enterprise or department
  - Direct the work of 2+ others
  - Hiring/Firing Authority
- Administrative
  - Office work related to management
  - Discretion and independent judgment
- Professional
  - Advanced knowledge/science or learning
  - Prolonged course of specialized instruction

## Salary Basis Test Analysis

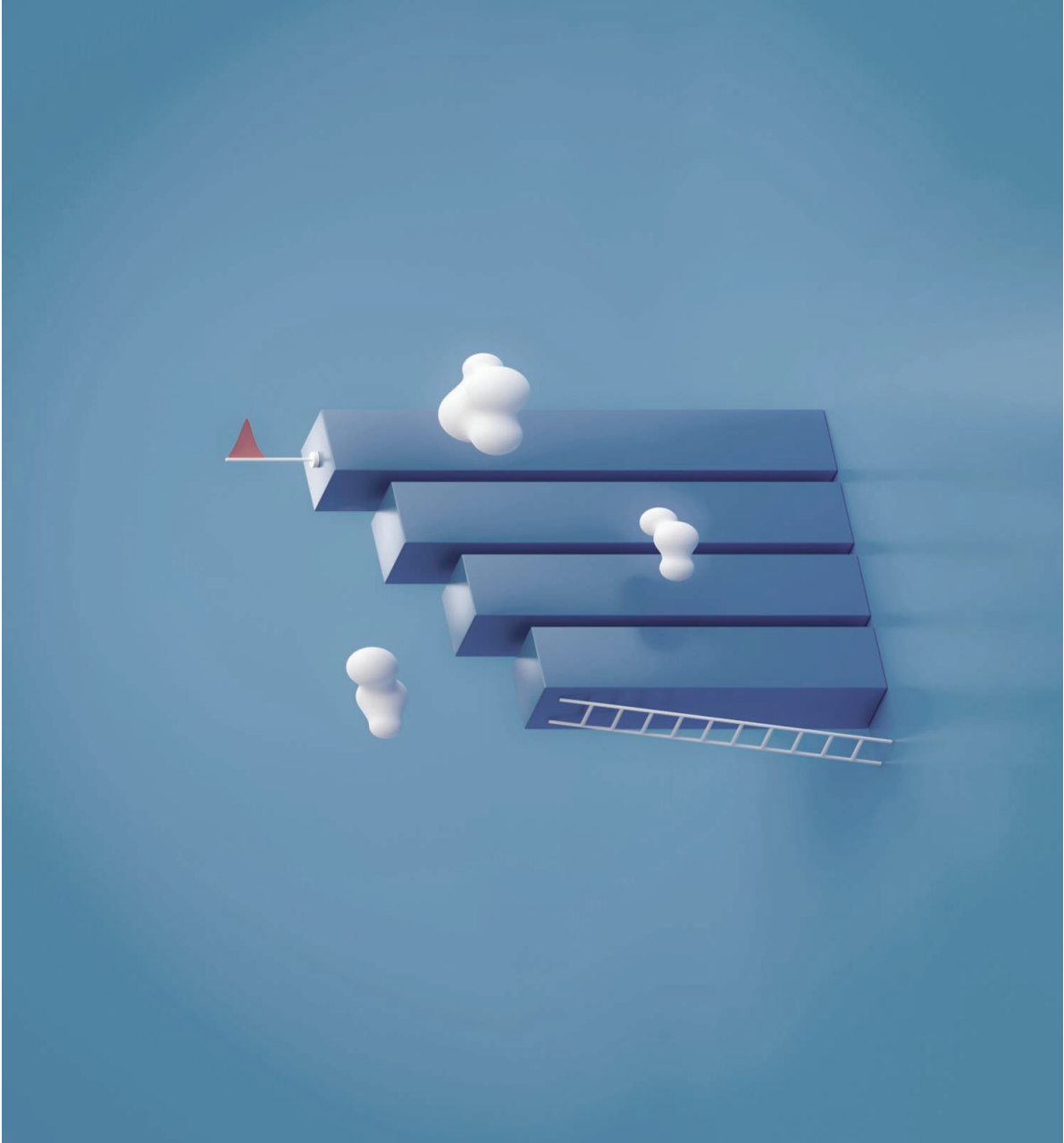
- Previously: \$35,568
- Right now/as of July 1, 2024: \$43,888
- January 1, 2025: \$58,656

# Policy Reasons for Change

- Extend overtime protections to lower-paid salaried workers
- Ensure fairness to salaried workers doing same job as hourly counterparts but not being compensated for it
- Discourage improper classification to avoid overtime



HIRSCH  
ROBERTS  
WEINSTEIN LLP



# Step 1: Pass BOTH Tests

## Duties Test Analysis

- Executive
  - Managing enterprise or department
  - Direct the work of 2+ others
  - Hiring/Firing Authority
- Administrative
  - Office work related to management
  - Discretion and independent judgment
- Professional
  - Advanced knowledge/science or learning
  - Prolonged course of specialized instruction

## Salary Basis Test Analysis

- Today: \$43,888
- January 1, 2025: \$58,656



HIRSCH  
ROBERTS  
WEINSTEIN LLP

## Step 2: Find Your Target Group

Before  
January 1:

- Look at current employees classified as exempt as of July 1, 2024 (earning \$43,888) and the new threshold of \$58,656



HIRSCH  
ROBERTS  
WEINSTEIN LLP

# Step 3: Decide What To Do

## Convert To Non-Exempt Status

Convert to hourly tracking and payment of overtime for these employee

**OR**

## Raise Salaries

To meet the required thresholds in accordance with the DOL Rules' timeline



HIRSCH  
ROBERTS  
WEINSTEIN LLP



# Massachusetts Wage & Hour Court Decisions



HIRSCH  
ROBERTS  
WEINSTEIN LLP

# Interplay of Overtime and Commissions

- Many companies treat hourly pay as a “draw” against future commissions
- Mass SJC says including Overtime Premium Pay as part of the Draw Violates Wage Laws
- Could Result in Millions of Dollars in Damages



# Retention Bonus is Not Wages Under Massachusetts Wage Act

- *Nunez v. Syncsort Incorporated* No. 23-ADCV-63NO (App. Div. Sept. 6, 2024)
  - Retention bonus had two conditions: (1) that Nunez remain employed at the company on his regular work schedule and (2) that Nunez remain in good standing through and by the designated retention dates. Wage Act does not explicitly define “wages,”
  - Based on the text of the Wage Act or prior judicial rulings, wages included holiday and vacation, due under an agreement, commissions that are determined due and payable, and excluded contributions to deferred compensation plans, severance pay, discretionary bonus programs, and sick time.
  - Contingent compensation (except commissions DDP) not considered wages
  - Retention bonus not wages



## *Reminder: Reuter v. City of Methuen*

Must pay on the day of termination or face treble damages on wage total

Miscalculation of wages can result in treble damages

Strict liability statute, no good faith defense



# Massachusetts's Paid Leave Law

UI standard governs  
financial eligibility

12 weeks paid  
family leave

20 weeks paid  
medical leave

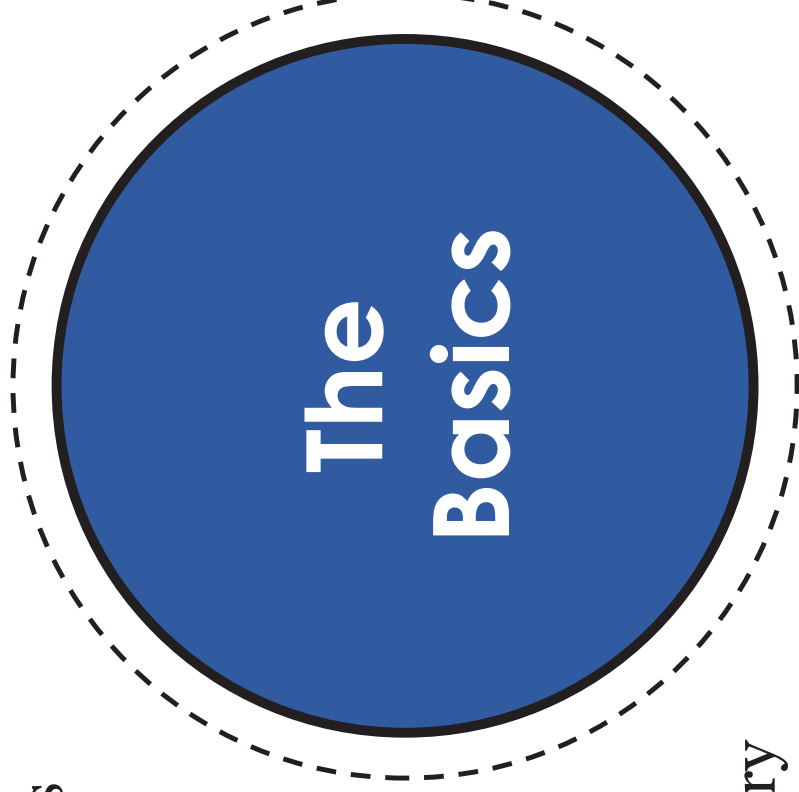
26 weeks paid military  
caregiver leave

26-week combined  
leave cap

Partial wage  
replacement

Regulations

Job protection



HIRSCH  
ROBERTS  
WEINSTEIN LLP

# MA PFML 2024 UPDATE

	2024	2025	Difference
Max Weekly Benefit	\$1,149.90	\$1,170.64	↑ \$20.74
State Avg. Weekly Wage	\$1,796.72	\$1,829.13	↑ \$32.41



HIRSCH  
ROBERTS  
WEINSTEIN LLP

# PFML: New or Noteworthy

- Contribution rates for employers and employees will remain the same for 2025
- Usage is up substantially (25.6% increase in approved applications over 2023)
- Accrual of benefits not required during absence consistent w/ policy (recent court decision)
- “Topping Off” = Supplementing PFML weekly benefit w/ accrued paid time off (PTO) benefits
  - *LAWW\* – PFML Benefit = Amount of Top Off of PTO Benefit*
- Employer Written notice requirements
  - Current employees – rate changes
  - New hires – w/i 30 days of hire, incl. employee acceptance or denial, signed Mandatory workplace poster

PFML

# Trends and Challenges

## Employee

- Fails to notify employer of need for leave & absence
- Fails to communicate with employer during leave
- Fails to apply for PFML

## Employer

- Overpayments
- PFML policy or policy gaps
- Leave designation to employee, incl. concurrency
- Performance management



HIRSCH  
ROBERTS  
WEINSTEIN LLP

# Words From DOL: FMLA

Don't forget to issue  
timely FMLA Notice!

- ✓ General Notice
- ✓ Eligibility Notice
- ✓ Designation  
Notice



HIRSCH  
ROBERTS  
WEINSTEIN LLP



# Pay Transparency

# Key Points of Pay Transparency Laws



Equal Pay for Equal Work

Valid reasons for a pay difference can exist (e.g., experience level, location)

Do not request pay history from a candidate

Do not base offers on a candidate's pay history

Employees can discuss wages without fear of retaliation







# Pay Scale Required

- California
- Colorado
- Connecticut
- District of Columbia
  - Hawaii
- Illinois (1/1/2025)
  - Maryland
- Massachusetts (7/1/2025)
- Minnesota (1/1/2025)
  - New York
  - Nevada
- Rhode Island
- Vermont (7/1/2025)
  - Washington
- Jersey City, NJ
  - Ithaca, NY
- New York City, NY
  - Albany County, NY
- Westchester County, NY
  - Cincinnati, OH
  - Toledo, OH

# The Pay Transparency Revolution Has Arrived In Massachusetts

Governor Healey signed the bill into law on July 31, 2024

Starting February 1, 2025, private employers with 100+ Massachusetts-based employees must submit copies of federal EEO-1 reports to Massachusetts State Secretary.

Starting July 1, 2025, private employers with 25+ employees in Massachusetts must disclose pay ranges in all job postings (including postings made by third parties – LinkedIn, Indeed, etc.)

# Key Provisions

## Salary Range Posting Requirements

Private employers must:

- Disclose the pay range for a position on job postings;
- Disclose the pay range for a position to employees who are offered a promotion or transferred to a new position; and
- Provide the pay range for a position to an employee holding the position or an applicant for the position upon request.

## Reporting Obligations

Private employers with 100 or more employees must submit an annual EEO data report with workforce demographic and pay data.

## “The Gold Standard” – Sample Language

XYZ Company, in an effort to be transparent with applicants about salary and in compliance with various state pay disclosure requirements [insert any in particular that apply to this position], publishes the following information which is current as of [date]. Salary Minimum: \$85,571.20 Salary Maximum:\$182,956.80 The base salary range above represents the low and high end of the XYZ Company salary range for this position. Actual salaries will vary and may be above or below the range based on various factors including but not limited to location, experience, and performance.

The range listed is just one component of XYZ Company’s total compensation package for employees. Other rewards may include annual bonuses, short- and long-term incentives, and program-specific awards. In addition, XYZ Company provides a variety of benefits to employees, including health insurance coverage, an employee wellness program, life and disability insurance, a retirement savings plan, paid holidays and paid time off (PTO) [customize].

# What Now?

- ✓ Check for compliance with Massachusetts Equal Pay Act
- ✓ Review current practices for postings, determining compensation and communicating pay range information to employees
- ✓ Note current and prospective employees' locations as you may already be subject to similar requirements in other states



# Questions?



**Kathleen A. Berney**  
[kberney@hrwlawyers.com](mailto:kberney@hrwlawyers.com)  
617-348-4335



**Sarah E. Ruter**  
[sruter@hrwlawyers.com](mailto:sruter@hrwlawyers.com)  
781-235-4879