

# 2024 Washington Policy Preview

Insights for HR Leaders in a Pro-Labor Policy Landscape

JANUARY 10, 2024

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## TODAY'S SPEAKERS



### **Chatrane Birbal**

*Vice President, Public Policy and  
Government Relations*  
**HR Policy Association**



### **Wenchao Dong**

*Director, Global Affairs*  
**HR Policy Association**



### **Gregory Hoff**

*Associate Counsel, Director of Labor and  
Employment Law and Policy*  
**HR Policy Association**



### **Margaret Faso**

*Senior Director, Public Policy*  
**HR Policy Association**

# Get your popcorn ready!!

## It's an election year

- 40 House members not seeking reelection (23 Democrats and 17 Republicans)
- 7 Senate members not seeking reelection (5 Democrats and 2 Republicans)
- Stalemate in Congress & limited legislative calendar
- Agencies expected to use all authority to pursue Biden labor agenda



## More Regulations!!

- Biden administration's Whole-of-Government Approach.
- Expect more agency regulation (FTC, SEC, DOL, NLRB).
- Action from agencies with limited knowledge/interaction with employer issues.

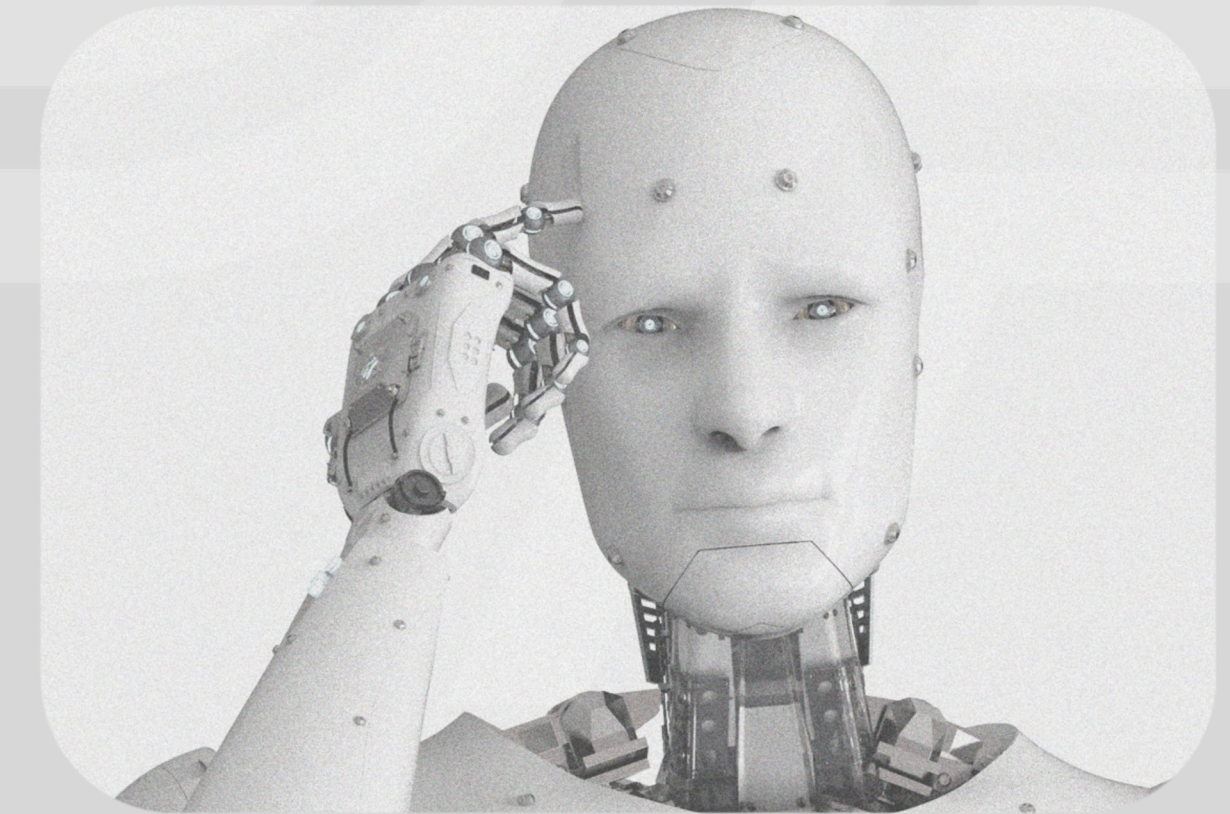
### What does that mean for member companies?

- Policy actions—from a broader array of agencies—may require updates to internal practices and policies.
- Companies mentioned by name and or called before Congress to face scrutiny over DEI, health benefits, and/or labor practices.

# Who will Regulate AI First?

## Initiatives include:

- Leader Schumer's SAFE Innovation Framework.
- White House OSTP "Blueprint for an AI Bill of Rights."
- White House Executive Order on AI (DOL guidance expected April 2024).
- Senator Cassidy's White Paper on AI.
- Commerce Department RFI on AI Accountability Policy.

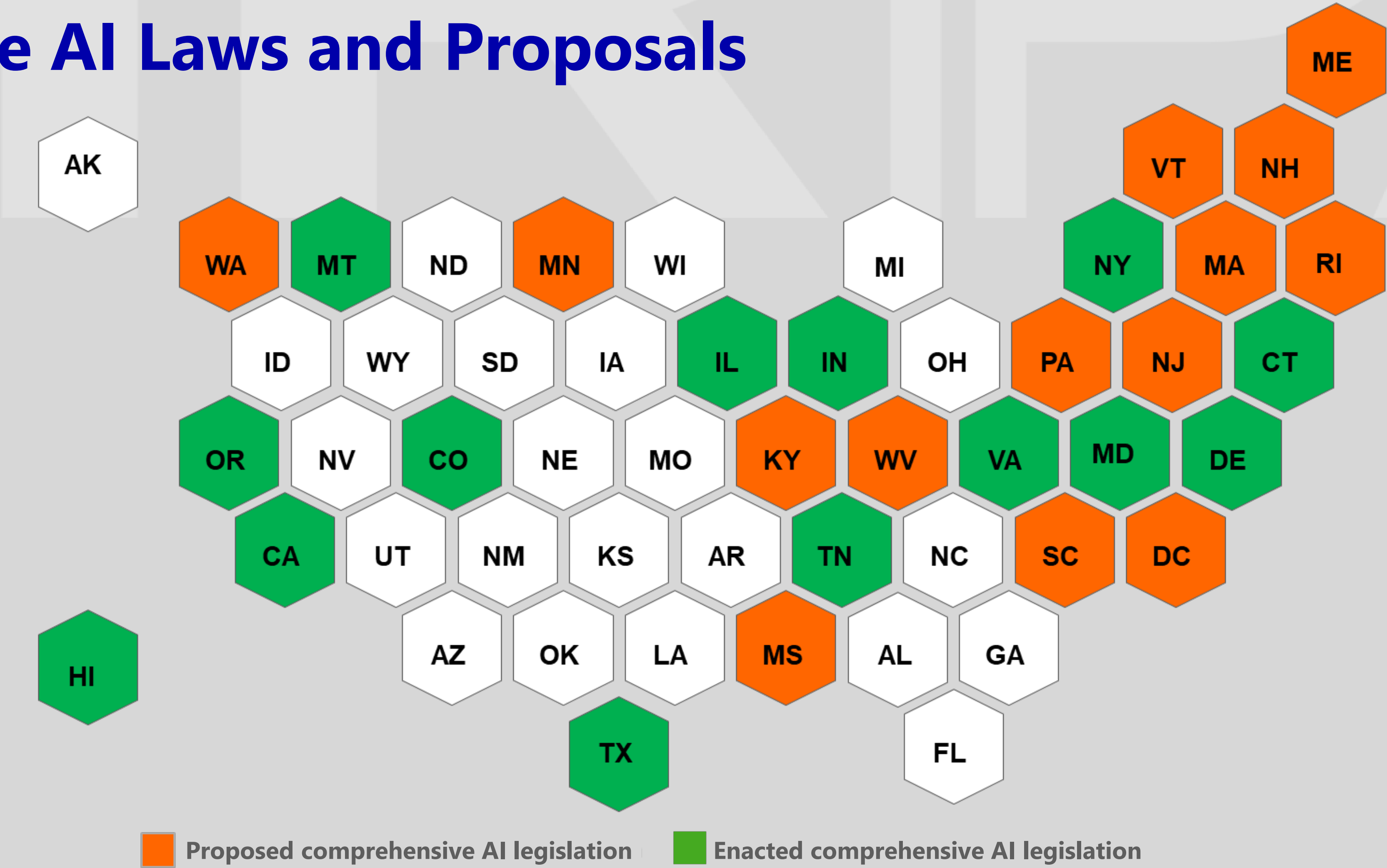


**Outlook:** AI will continue to garner much attention, but all proposals are in early stages.

**Implications for companies:** The HR function will become more technical, cross-functional with IT. Employers could be subject to multiple requirements for compliance and risk.

**HRPA Action:** The Association submitted comments to all the initiatives above and will continue advocacy efforts to support AI and innovation in the workplace.

# State AI Laws and Proposals



## EU: The Artificial Intelligence Act

The proposed EU Artificial Intelligence Act aims to classify and regulate artificial intelligence applications based on their risk to cause harm.

- The Act will apply extraterritorially to any provider or distributor of AI whose services or products reach the EU market.
- Recruitment, HR and worker management tools can be deemed as high risk and impose transparency requirements.

**Outlook:** Being the first legislative proposal of its kind in the world, the Act is expected to set certain standards for AI regulations in other jurisdictions.

**Implications for members companies:** Multinational firms will have to decide whether to adopt the standards globally or to adopt EU-specific AI systems.

**HRPA Action:** HRPA will continue to monitor international regulations as they may impact global members and inform U.S. policymakers.

## Biden's Global Labor Agenda

President Biden's Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally:

- Increased coordination within the U.S. and allied governments.
- Uses trade policy and tools to address labor rights concerns in other countries.
- Uses existing trade law authorities to promote internationally-recognized labor standards.

**Outlook:** The federal government will continue to focus on forced labor enforcement.

**Implications for companies:** Leverage the most effective transnational labor tool in their toolbox – the Rapid Response Mechanism under the USMCA.

**HRPA Action:** The Association has reached out to agency representatives to discuss implications for member companies.

# Anticipated Final Mental Health Parity Rule

The final rule will likely impose new mental health parity obligations on employer health plans, emphasizing network access metrics. Rule would:

- Increase the standards related to network composition
- Require employer plans to collect and evaluate specific data points related to network composition
- Require employers to certify third-party administrator's analyses.

**Outlook:** Final Rule could come as early as 2024.

**Implications for members companies:** Mental health reimbursement rates will increase, compliance costs will rise, and access to in-network mental health and substance use disorder providers is likely to improve.

**HRPA Position:** The Association is concerned with a number of provisions in the proposed rule and submitted comments in October 2023.

## Price Transparency and PBM Reform

Lower Costs, More Transparency Act (H.R. 5278)

Sponsor: Rep. Cathy McMorris Rodgers, (R-WA)

- Increases fiduciary responsibility of pharmacy benefit managers (PBMs).
- Requires PBMs to annually disclose compensation, fees, rebates, alternative discounts, co-payment offsets, and more.
- Includes site-neutral payments (only applies to Medicare).

**Outlook:** The bill passed the House with broad bipartisan support and will be taken up in the Senate. Expect hospitals and PBMs to strongly oppose.

**Implications for members:** Enactment would allow employers to better manage their health care costs by increasing pharmaceutical and hospital price transparency.

**HRPA Position:** HRPA wrote letters of support and advocated for the passage of this bill. HRPA will continue to work with the Senate as they mark up similar legislation.

## Pregnant Workers Fairness Act Implementing Regulations

The PWFA requires employers to provide "reasonable accommodations" for pregnant employees and job applicants.

- The Act directed the EEOC to issue implementing regulations for the law.
- The EEOC's proposed regulations include an expansive list of qualifying conditions.
- Employers could be required to provide reasonable accommodations to employees unable to perform essential job functions for up to 40 weeks.

**Outlook:** Final regulations are expected within weeks.

**Implications for companies:** Employers may need to adjust their leave plans/prepare accordingly for the possibility of extended absences for employees with pregnancies/pregnancy-related conditions, as necessary.

**HRPA Position:** While the Association vigorously supported the PWFA, we submitted comments in opposition to the proposed regulations.

## Paid Leave, Gaining Momentum

Congressional Bipartisan working group has released an RFI & framework document.

- Legislative text as soon as this year.
- Provide federal paid leave program.
- Preempt state requirements.

**Outlook:** Despite progress, with a divided Congress, the odds of passing a paid leave bill are slim.

**Implications for members:** Could end the patchwork of State and Local paid leave mandates. Employers should weigh current costs of paid leave benefits against the annual fee and compliance cost with national paid leave standards.

**HRPA Position:** The Association will continue to advocate for a national paid leave standard to ease the current burdens companies are facing as they comply with various state requirements.

## A New Board Diversity Requirement?

- SEC proposed rule on disclosures of board diversity (at a minimum, race and gender on an individual basis) has been in the works for years and remains on the agenda.
- Rule requires each company to have at least one diverse director (or explain why it does not)

**Outlook:** Proposed Rule Expected October 2024.

**Implications for members companies:** Companies must provide the disclosure in their proxy statements (or Forms 10-K if a proxy statement is not filed) or on their websites. Failure to comply could result in delisting.

**HRPA Position:** The Association does not feel there is a need to mandate Board Diversity, based upon existing disclosures.

## Will we ever see HCM?

SEC to release prescriptive HCM disclosure requirements potentially including:

- Workforce composition.
- Turnover.
- Skills and development training.
- Compensation and benefits.
- Diversity (possibly including independent contractors).

**Outlook:** Proposed rule expected April 2024.

**Implications for companies:** The SEC's demands for human capital metrics impose increased compliance costs on companies, risking misinterpretation and affecting talent management and retention.

**HRPA Action:** The Association continues to strongly promote a principles-based rule, discouraging overly prescriptive metrics. The Association's Center staff will continue advocacy efforts. We will submit formal comments once a proposal is published in the Federal Register.

## FTC to Issue Final Rule on Non-Competes

- The Federal Trade Commission proposed a rule that would ban nearly all non-compete clauses in contracts.
- Existing agreements would be voided.

**Outlook:** Final rule expected April 2024

**Implications for Member Companies:** Companies would be prohibited from entering into non-compete agreements and would have to rescind all existing non-compete agreements.

**HRPA Position:** The Association submitted comments, participated in public forums, and will continue to advocate against an outright ban on the of non-compete agreements.

## New York's Governor Vetoes Non-Compete Bill

- Governor, Kathy Hochul (D) vetoed a bill that would have banned noncompete agreements.
- Governor, Hochul supported a more moderate ban on non-compete provisions including a \$250,000 salary threshold.
- The bill is likely to resurface this year.
- Other state legislatures could also consider bills to prohibit noncompete agreements.

*“New York has a highly competitive economic climate and is home to many different industries. These companies have legitimate interests that cannot be met with the Legislation’s one-size-fits-all approach.”* **Governor Kathy Hochul**

## NLRB: More Radical Change on the Way

- Several significant Board decisions issued towards the end of 2023 will start making an impact in 2024.
  - *Cemex* – card check union recognition.
  - *Stericycle* – restrictions on employee handbooks/workplace rules and policies.
  - *McLaren Macomb* – restrictions on severance agreements.

## NLRB: More Radical Change on the Way (CONT.)

- More union-friendly, anti-employer changes to come:
  - Restrictions on mandatory employer-held meetings.
  - Restrictions on non-compete agreements.
  - Restrictions on workplace monitoring.
  - Restrictions on arbitration agreements.
  - Increased union access to employer property.

**Outlook:** The Board will continue to act as the vanguard of the Biden administration's pro-labor agenda.

**Implications for Member Companies:** Regardless of whether employers have unionized employees, Board actions will restrict and interfere with employers' ability to manage the workplace and engage with employees.

**HRPA Position:** The Association will continue to submit briefs and comments advocating for more neutral and sensible policymaking from the Board and engage with the rest of the business community on litigation strategies to overturn harmful Board decisions.

## Final OSHA Walkaround Rule

- Allows workers to designate a union or worker representative to accompany an OSHA inspector during a site visit, regardless of whether the representative is an employee of the employer.

**Outlook:** Final Rule is expected in April 2024.

**Implications for Member Companies:** The rule as proposed would open the door for unchecked union access to employer work sites. Employers would have almost no say over the number of union reps – nor their level of access.

**HRPA Position:** The Association submitted comments in opposition to the proposed rule.

## DOL to Issue Final Overtime Rule

- The proposed rule would increase the minimum salary for the FLSA overtime exemption from \$35,586 to nearly \$60,000.
- The “white-collar” (highly compensated employee) salary threshold would be increased from \$107,432 to \$143,988.

**Outlook:** Final Rule Expected April 2024.

**Implications for Member Companies:** Employers may be forced to reclassify thousands of exempt employees as non-exempt and/or adjust salary levels accordingly.

**HRPA Position:** The Association submitted comments in opposition to the proposed rule in October 2023.

# DOL Issues Final Independent Contractor Rule

- Final rule makes it much more difficult to classify workers as contractors
- Six factor “economic realities” test:
  - Opportunity for profit or loss
  - Investments by the worker/employer
  - Permanence of the work relationship
  - Nature and degree of control
  - Whether work performed is integral to the employer’s business
  - Skill and initiative

**Outlook:** The rule will be effective beginning March 2024, but may be challenged in court by the business community.

**Implications for Member Companies:** The rule could force employers to reclassify thousands of contractors as employees and/or reevaluate their use of contingent workers in general.

**HRPA Position:** The Association submitted comments in opposition to the rule, arguing that it was overly broad and mischaracterizes the misclassification issue.