Emerging Legal and Compliance Issus for Nonprofit Leaders

This video will provide an overview of two important and timely topics that affect non-profit organizations: artificial intelligence (AI) and the new Fair Labor Standards Act (FLSA) rules. The webinar will explain the legal and compliance implications of these topics and offer practical guidance for non-profit leaders to navigate them effectively.

Find additional resources on our event page: Emerging Legal and Compliance Issues for Nonprofit Leaders : CLA (claconnect.com)

Here is a transcription of this session:

A

Good morning or afternoon, everyone, depending on what part of the country you're in. We are very excited to have you join. I will say this has been one of our most popular webinars that we have done based on the number of folks who immediately signed up the minute we sent the invitations out.

So we know these are some hot topics today, and we're excited to share with you and with our partners here from Venable. let's see.

Diving in here. Just a quick disclaimer about the information that will be shared here today. Something standard we always share at the start of each of our webinars.

For CPE, just a quick reminder on what you heard on the lovely little video you just watched. we know CPE is important to many of you who are attending today.

Please make sure that you are attending 50 minutes of that course to get the full hour of credit. There are questions throughout. There's four of them you need to respond to three in order to get credit, showing us you're here and engaged, and we hope that you are.

so we want to be sure we're able to get you that CPE. So please be sure to follow those couple of quick instructions. Today in our session, we're going to really hit on five, different learning objectives and really two somewhat separate areas, because as we talked with our teams and a lot of our clients about what is happening in, legal and compliance areas that's of interest to you.

We, heard a lot about AI. Not shocking, definitely in the news. Not terribly new, but somewhat new. And really, I think what we're seeing, both at CLA and with our client base, is that it's really hitting us in the practical, day to day use, which means we also want to make sure that we're doing it in a way that keeps our organization safe.

The second hot topic is around fair labor standards act, or FLSA changes. And a lot of these went effective. Seven one.

But it's coming in waves, which we're going to hear more about today. talking with a lot of clients. I was with a group of nonprofits, about six weeks ago, and it was a bunch of CFO's.

And I said, what's the biggest thing that you're worried about right now? And they said, fLSA, hands down. that's the most important. So we've got two, awesome members, who will be talking about that as well.

So, without further ado, our group of presenters here today, I am Kelsey Vatis. I have the honor of leading our nonprofit practice here at CLA.

Many of you joining us today are clients and have heard and know lots about, Cla and our nonprofit teams. But just a couple of quick things. We are so proud to have over 850 people who spend all day, every day working with our nonprofit clients.

Nonprofit is not an off season at CLA. It's a year round practice. And our people are so passionate about serving all of you. And, so I get to help lead our teams that help our clients with everything from compliance assurance and tax, doing your outsourced work.

So that might be in HR or in finance or in it. we have a digital practice, which Ben, I'll introduce here in a minute, is part of, and also a wealth advisory arm where we help clients with cash management, and investment policies and management as well.

So without further ado, a quick overview of our four presenters here today. We're gonna start, with Ben and Channing. So Ben Ossie is a principal here at Claev.

If you tune into our webinars regularly, you have seen and heard Ben before. He's a common presenter and Ben's part of our digital team and is going to be talking with you about AI.

And Ben is partnered with, Channing from Venable. Venable is a great partner to CLA, and works with a lot of our clients, a law firm that works with a lot of nonprofit organizations.

So they were our first go to when we said, we really want to talk about these topics. Who do we know who would be great? so Channing works in the intellectual property group, at Venable and has a lot to share.

Then we're going to switch over and talk about our FLSA topic, and that is going to be led by Ian Ziegler, who is a compensation consultant here at CLA. I've had the privilege of working with Ian on a number of my nonprofit clients, helping them figure out the right compensation strategy.

And he has been very busy at work with all of the FLSA changes. Ian is going to partner with Ashley. Ashley is an associate at Venable. And, Ashley specifically works with a lot of independent schools.

That's how we came to know Ashley is through our independent schools practice, which we do a lot of as well. And we'll be sharing about things from kind of the employment law perspective. So that's our crew of consultants at this point.

I am going to hand it over to Ben and Channing, who are going to talk with you about.

B

Aih, great. Thank you so much, Kelsey, and thank you everybody, for being here with us today. Hopefully you, I don't know, came for the AI. and you'll stay for the FSLA.

my name is Ben Osse. I'm a principal here, as Kelsey mentioned, coming to you from our Minneapolis office. I've been with CLA for about 20 years in a number of different capacities, working with nonprofit executive teams, committees, governance, really on a host of challenges and opportunities.

And for me, the most recent leg of that has really been spent helping to build and bring our digital capabilities to our nonprofit clients. So helping them make sure that they're using best of breed software, helping them out with their data analytics, their automation, their artificial intelligence needs, and then also making sure that from a security standpoint, they've got strong cybersecurity wrapped around all of that data as well.

So I know that, AI, there are a couple of letters with just sort of, like, massive resonance going on around the globe here today. A lot of power, a lot of potential, probably a lot of hype.

and I know for the clients that I work with, it's a lot even for seasoned leaders to make sense of and get their arms around. So I'm super happy to be here today, with my colleague Channing here from Venable, really for us to share some practical and sort of credible frames of thinking for maybe how all of you as nonprofit leaders can find the signal in all of this AI noise.

So, with that, let's go ahead, Channing, and let's get into things a little bit now. this is a, pretty brief webinar here, so we're going to keep this pretty high level, but it does seem as though that given AI gets bandied about quite a bit, might just take a couple of minutes upfront here, if that's all right, to kind of define our terms a little bit.

So what exactly is it that we're talking about or people are talking about when they talk about AI and artificial intelligence? So if we think about it, AI encompasses a pretty broad area of computer science that's really focused on creating, machines that are capable of performing tasks that typically or historically, have required some kind of a human intelligence.

So it encompasses a pretty wide variety of different methodologies, different techniques, different technologies that really, are all aimed at helping machines to be able to perceive, to understand, to act, and to be able to really learn from data and also from their environment.

So as you can see here on the slide, there are sort of several subsets within that, you've got machine learning, which really focuses on building algorithms that can learn from data.

we got deep learning, which is then sort of nested within machine learning that really delves into neural network based algorithms, for kind of more complex tasks.

and also that's where we find, large language models, llmsdev, which also are gaining a lot of attention, today through, the popularity of tools such as chat, GPT, so, and in sort of sitting adjacent to all this, because at the end of the day, there's quite a bit of just big mathematics involved in this is statistics.

So that's kind of the foundation that overlaps with, with all areas here, but very important role in analytics, in algorithm training across artificial intelligence, as a whole.

So again, that's your kind of one slide primer. we could do a webinar on probably each subset within this, but for the purposes of today, I think, Channing, we should go ahead and move along, and maybe we could talk a little bit about some of the challenges, some of the opportunities, and some of the benefits, that AI is really presenting to our nonprofit clients these days.

C

That sounds great. thank you, Ben. And as Ben and Kelsey said, hi, everyone, my name is Channing Gatewood. I am an associate within Venable's IP division, specifically within Venable's intellectual property transactions team, and I'm based in the Washington, DC office there.

I'm also so happy to be here and to be joining Ben on this very relevant topic today. As Ben said, I will now be talking about some of the benefits and opportunities of artificial intelligence, particularly benefits of, AI tools, for an organization that is thinking to incorporate use of some of these tools into its operations.

So, as the slide says here, developing technology, which would include artificial intelligence, is making it increasingly easier and faster to create content and to organize and analyze information.

In addition to efficiency and speed, which those benefits speak for themselves, the use of artificial intelligence can make it easier to gather information or answers to a variety of inquiries which might then be used to inform educational materials, advertisements, and other professional materials.

And lastly, for the purposes of this list, AI is very on trend. It's relevant, it's modern, it's a hot topic. So incorporating it into an organization's practices suggests that the organization using that technology is at least trying to be modern.

It's on top of technological developments, and that it's receptive to new ideas and is very interested in staying engaged with its community, with various generations of its community.

So despite the fast evolutions of this technology, having a general baseline understanding of AI is good organizational practice.

And then in the nonprofit industry specifically, AI tools can help an organization with a variety of common tasks. For example, helping analyze data about donors, which might be used to customize certain giving campaigns to target categories of donors.

It might help with drafting email communications to members, or for drafting other content for an organization's email campaigns or social media pages.

It might assist with drafting educational content or imagery, among other tasks. And so these are just a few examples of, how the use of an AI tool might apply to a nonprofit organization specifically to help that organization more efficiently complete its tasks.

So now I'm going to pass it back to Ben.

B

Sounds good, Channing, thank you very much. I think those are great examples. And, yeah, it is. We've seen just a not surprisingly significant uptick, among our nonprofit client base, in terms of sort of really embracing and embarking on their AI journeys here.

So, very excited. Maybe we could get some examples on the chat and the q and a of how folks are deploying AI in their organizations. But, appreciate your comments here, and not to, not to put too much of a downer on this, but I do think, we should talk about the flip side a little bit and, managing some of the risks that are, coming quite quickly, excuse me, with a lot of these new technologies.

So let's talk risks and thinking about sort of the top risk that if I put myself in the shoes of, a nonprofit leader, what do I probably need to consider and be thinking about here?

I might be the chief technology officer, I might be the CEO. I might be a board member that wants to make sure that I'm a, discharging my fiduciary duties. But really, I think it boils down to the four that you see on the screen here.

most risks can find their home somewhere within these. So, kind of leading with the fact that AI models really are built on very, very large, vast amounts of data, and therefore they're also relying on the fact that that data is accurate.

So if, in fact, that data is not accurate, if it's not comprehensive, it can obviously produce inaccurate results, bias, outcomes.

So said another way, in plain English, if you put garbage in, you're going to get garbage out. So quite a bit there. That's got some implications for, again, back to where are you in your kind of artificial intelligence journey, really?

need to make sure that you're building a strong data foundation from the bottom up, because that's going to also impact, any models that you might choose to deploy within your environment.

So number two, I'd say put an AI in the hands of people who don't know how to use it, or without the appropriate guardrails in place, and we'll flip over to what some of those best practices or recommended practices and guardrails could be.

but ultimately you do want to, make sure that folks are trained, and that you're managing those risks, and avoiding some of those consequential outcomes, that could be risky for your organizations.

So, third, intellectual property legal risks. Channing could probably speak to this. as I mentioned, the best models out there are built on a lot of data.

I think in some cases that data might be copyrighted. the legal implications, I think, of what that brings with it, for many people still feel quite unclear.

so intellectual property, ip legal risks, are certainly part of that consideration. Again, we'll hit on some recommended practices on that in just a minute. and then I just wrap with, similarly sort of privacy concerns, those large data sets, portions of those are typically sourced from the Internet.

So those could include, personal information, managing sort of individual rights, to that data is a challenge. and obviously, if, you as an organization are collecting personally identifiable information, that sort of compounds and elevates, that risk for you as well.

So that's sort of the big four, I think, what I'd call in terms of risks that we see. so let's do a knowledge check here quickly before we move on.

Which, of these is not an AI risk, a, models built on incomplete, inaccurate data sets, b, poorly educated employees using aih, c, managing individual rights related to data source from the Internet, or d, all of these are AI risks.

And, yep, kind of threw a softball on that one. Looks like folks are, for the most part nailing that we're at 95% on d. And that is correct.

all of these are in fact AI risks. So, let's do this. I just want to hit for a minute, on kind of the cybersecurity angle, specifically of this.

and there are kind of, as you can see from the slide here, two sides to this coin a little bit. You've got, cybercriminals who are exploiting the fact that there are quite a few free and cheap AI services that they can use to create sophisticated, excuse me, sophisticated attacks, pretty quickly.

they also probably, are perhaps a bit less concerned with some of the same risks that, folks on this webinar are. So they got AI tools that now are being used to really construct malicious code, create convincing deepfakes, spread disinformation, mimic people's voices.

There are just new tools hitting, kind of, kind of cyber criminal frontier, that we haven't encountered or seen before. there are AI powered malware and ransomware, tools available those pose significant cyber threats.

if I step back from AI, ransomware is still one of the biggest, cybersecurity risks overall for our nonprofit clients. so all to say, they've got new tools in their toolkit that really help them kind of, speed up access to systems, the ATT and ck, and also, really a brought down kind of expertise and the cost, that's been required historically, for those kinds of attacks.

So on the flip side of that, there are also benefits to nonprofit organizations, even in using AI to combat, cybercriminals from a security standpoint.

So arguably, I think I'd say AI overall benefits organizations more than it probably does the criminals. but that said, there are high costs, and skill requirements to be able to maintain those sorts of benefits inside an organization.

Part of the reason, CLA is very passionate on our journey to help democratize access to AI, even for small to mid sized nonprofit organizations. And really, at the end of the day, I think it's a good reminder and an interesting statistic to say, look, at the end of the day, regardless of this artificial intelligence and all of these tools, 82% of data breaches really are caused by human error.

So at the end of the day, we're all organizations built on people. so keep that in mind. So with some of those risks as backdrop, a, few comments on cybersecurity.

Chanting, what practices do you recommend to nonprofit leaders so they can really kind of get their arms around this and properly govern AI in their organizations?

C

Yes, thank you again, Ben. So, as Ben said, this section, now we're going to discuss some good recommended practices for an.org that is thinking about using an AI tool or thinking about permitting its workers or employees to use certain AI tools for work.

Number one on this list. It is good practice to establish a policy for AI use by members, contractors, employees, and any other individuals who will be performing work for the organization.

That might also include volunteers and interns. For example, if an organization is still becoming familiar with certain AI tools and considering and exploring how it wants to interact with those tools how it wants to possibly enter information into those tools.

It then would be good practice to require workers to acknowledge in writing that they will not submit any of the organization's confidential or sensitive information to an AI tool unless that organization has given the worker clear written permission to do so.

An.org might also choose to implement a policy concerning what specific AI tools can be used on the organization's systems and in what contexts.

Another good practice is to stay abreast of data protection laws that would include international laws and AI specific legislative developments. This would include legislation addressing if or how any creative works that are developed by an organization might be eligible for copyright protection, trademark, or patent protection.

That's an ongoing conversation within federal agencies. Legislation might also concern the use of artificial intelligence in advertisements for various industries, for use in hiring, or for other categories of use, and I give those examples to highlight how AI related legislation is very broad and can cover topics across a wide range.

So establishing a habit or even designating a person or a department within the organization to read up on these developments every so often will help the to stay informed on how those developments might impact how the organization itself can use AI tools.

Another good practice is to avoid submitting confidential information or trade secrets to an AI platform, and this is somewhat in line with the first good practice on this list, and that employees should be encouraged to take caution in submitting confidential information to an AI platform, if not outright prohibited from doing so.

And, again, this gives the organization some sense of control over how its organization, excuse me, how its information is shared with those tools, as it determines what tools it is comfortable using and how.

Another good practice is to review the terms of use of the particular AI platform that the organization is using to understand that platform's views on ownership.

So, for example, will the organization using the AI tool actually own the output that it receives that might be addressed within the terms of use, and to also understand any of the AI tools use restrictions.

For example, some AI tools prohibit commercial use of any output that is generated for users, so then using that output, perhaps on merchandise or advertisements, could be a violation of those terms.

So ignoring these restrictions could lead to a contractual breach of the AI tools terms of use, and then open the door to legal questions and complications, which would then defeat the purpose of using the AI tool in the first place.

So before an organization dives into using a tool or gets too comfortable, it's good practice to review the terms that govern the organization's use of that tool, and then moving forward accordingly.

Another good practice and this ties into more ip. Specifically, if intending to use a pre existing item or preexisting content to instruct an AI tool.

So for example, using an existing image unrelated to the organization, to then instruct an AI tool to create a similar image and then using the output that's received from that AI tool.

First, an organization should try to identify and review any rights associated with that pre existing content before submitting it to the AI platform. This is somewhat in line with the previous point.

There might be restrictions on how that preexisting content can be used, such as even an outright restriction on using that content with AI tools. So that's something to be aware of first, before using that preexisting content with an AI tool.

Another good practice, Ben touched on this a bit, is organizations should fact check any content that's generated by an AI platform before publishing that output as its own or as fact.

That's just generally good practice to fact check, do another check of any, information, proceed from a software program or outside source. And then lastly for this list, when using an AI tool to generate content, particularly if that content will then be delivered to another outside party, the organization that's using the AI tool, it's good practice to disclose to the other party that an AI tool was used in the creation of that content, just to ensure transparency in what's being delivered, and to then allow that outside party to make its own decisions for how it wants to handle the content it received based on that information.

All right, so those are some good practices for an organization that's starting to use an AI tool. So now I'm going to turn it back to Ben for the next knowledge check.

B

All right, that sounds great. Thank you, Channing, appreciate that. Correct. We got, another knowledge check going here. So this one's going to take a temperature on sort of where you are again, in terms of your, I don't know, confidence or to comfort with your AI tools.

So how well do you believe your current tools and technologies? And I might extend that to say, policies, governance, all of the things that we've talked about, how well do those support your efforts?

Excuse me? In really leveraging and managing AI? curious to see how many of you would say, exceptionally well, we've got this nailed. How many of you might say, feels adequate for most of the things that we need to use them for?

And how many of you are saying, oh my goodness, nope, we need better tools, and we've got some work to do internally.

Okay, interesting looking spread, Channing. I imagine, based on our conversations, you're probably not surprised by these results.

Some of that depends on maybe how aggressively or assertively I think an organization is really pursuing deployment of AI in their organization. But a small slice, about 4%, really out in front, feeling like they've got this, under full control, about 41% or so, feeling like, all right, we're managing, we're getting along, and a little over half saying, we really need to pay some attention to this, and maybe, invest, some resource in, getting our arms around our AI situation with that.

Kelsey, I think that wraps up the AI portion here, but, any good questions flowing in or where we head next?

A

Yeah, thanks, Ben. Lots of good questions. Keep them coming, everyone. We're working to respond to them as much as we can. there were a lot of questions before Channing started talking about, what are some good tips and tricks around?

I loved the term AI hygiene, that people should be doing. And so I feel like Channing really did a great job addressing, what are those policies and procedures and just kind of daily practices to get in place.

One question I loved, and I'd be interested for both of you in your thoughts, are, what are the top three areas that we're seeing nonprofits use AI? And I might give a shout out someone put in the chat, a great example of this, which was they asked, are you seeing organizations use AI?

to create minutes of, like, board meeting, committee meetings, things like that? and I would say, I think that's an easy, low hanging fruit where I am seeing some of my clients who are starting to use that with always that, make sure you have a human in the loop.

Right. The technology is not going to be perfect, but as many nonprofits have moved to more virtual meetings, in particular, the, AI things like Microsoft, Copilot, et cetera, can be really great at summarizing those minutes and, giving you at least a jumping off point to save a lot of personnel time.

So I'll throw that one in there. thanks to, I think it was an archdiocese out there who raised that one as a question. I know you all have lots of committees who meet and probably lots of minutes to track.

but curious, Ben Channing, where else are you seeing, nonprofits utilize AI today?

B

Sure. I love that question, Channing. I'm happy to jump in with a couple comments, and you can maybe round it out. I agree, Kelsey. Endorsed. Yeah. Also seeing use of it. I think a use case that's pretty common is summarization of minutes for sure.

So even just yesterday I couldn't attend a client finance committee meeting, and they had an AI tool residing alongside the meeting. And I got a notification to my email that both minutes and also summary were prepared for m me to take a look at.

Obviously I'm going to look at them right, with that human grain of salt but easy use case there, especially with some of the mainstreaming of tools and whether you're on a Microsoft stack or something else, I think my top three, number one and Channing, you hit on this.

But fundraising, I mean if we think about it, marketing, in the commercial sector and fundraising and nonprofits has always been kind of an upfront leader in AI use, and some of the early tools predating the things that we're looking at here today.

So whether that is I think part of what's different with some of the generative AI that we're seeing is for example tools and solutions that can help write grants, right?

So maybe it gets the content 80% of the way there, human finishes it up. So fundraising is number one. number two sort of pushes things to the predictive side again. Back to fundraising that might be being able to predict donor churn, knowing when to nudge those donors to get that renewal rate, notched up.

For some of our educational clients it's around predicting student matriculation, student churn to make sure that students are staying in school. could be volunteer matching.

So based on my interests, my needs, my skill set, can I match my volunteer pool to my beneficiary needs, and use AI to be able to do that. So that's number two.

The third, I just say is kind of the unsexy stuff, it's automation. but that's the kind of stuff that can take away a lot of manual process, save tons of time for our clients, staff teams.

and getting a little more specific about that, some of the AI tools that we're able to help our clients deploy in their environments, do some of the work of like reading documents and extracting information, that perhaps staff used to spend hours or days sort of combing through and manually pulling out and rekeying into another platform.

So those are my top three.

D

Sure.

C

And I can maybe add one more that we've become aware of a little bit more recently is organizations having the opportunity to license their content out to an AI tool.

And so essentially giving an AI tool the organization over that AI tool, permission to use the organization's content as training data, so as the data that the AI tool uses to inform the output that it delivers to other users.

So that's kind of an emerging use that we're seeing. but it allows the organization that entered into that agreement. It's generally would be a licensing agreement of sort to benefit, financially, but also participate in this AI boom.

And I, utilize or maximize the research that it's collected for an AI tools use. So it's sort of a financially beneficial way that an organization might interact with these tools and again, keep some control over how its information is used, because then it would be able to dictate with, council, of course, assisting some of the terms of that arrangement.

A

Yeah, that's a great example. That's a great example. Channing, a couple of things coming up in the q and a as you all are sharing that one. I just, this made me laugh.

what percentage of Cla's partners have, last names with double as in them? because Ben and I both do. so Ben and I both happen to be out of Minneapolis, and, he's norwegian and I married one, so we might be the only ones who do.

But, that just made me laugh a little. Thanks for that, whoever submitted that one. another question here that I just think would be helpful for maybe, Channing to comment on, or Benjen, which was, we gave the example of using AI for board minutes, and the question was, well, is there an issue with that in terms that that's confidential information we don't want going out to everyone?

So I think there is a good distinction here between kind of closed AI that's used within your organization and, OpenAI that is now available to the public, because you certainly wouldn't want your board minutes necessarily going on, an open platform that everyone would have access to.

So anything, Channing or Ben, that you would want to add to that question in particular?

B

Channing, I'll defer to you on this one first.

C

Okay. I think we implied that we could probably do an additional presentation about confidentiality and compliance.

so, yes, there are still lots of questions about best practices to maintain confidential information. this kind of ties back to one of my last slides about policies.

I, think it is good practice for an organization to really sit down and think about how it wants to categorize its information, what information is more sensitive than other types of information, and then being clear with its employees about that about some of these questions, ambiguities, and then clarify to the employee and the policy.

Well, this category of information, we prefer to keep more internal. but this other category of information is, okay, it's all right to use various tools with these.

So, it's an evolving question. I think compliance also falls in here, too. Thoughts about, compliance with certain data protection laws might impact what information is or is not shared with AI tools.

but I do think the policy is a good first step, an AI workplace policy that we mentioned to force the organization and its employees to think about how it wants to handle certain types of information, whether it's internal use versus external use.

So I think that's a good first step.

A

Perfect. All right, well, lots of good questions coming in here, and we will have Ben and Channing help answer them in the q and a as we shift to our other portion. And if we don't get it answered today, we will follow up.

I know some of the questions coming in are very organization specific, and we love those, we love those kind of use cases. so keep them coming. At this point, we are going to move here to talking about fair labor standards act, or FLSA.

A nice mouthful. so let's go ahead and bring up Ashley and Ian, who are going to walk us through that. But first, Ashley, Ian, can you each give a little bit more of an introduction of yourselves?

E

yes, certainly. Thank you, Kelsey. So, Ian Ziegler. I'm, out of Pittsburgh, Pennsylvania. I've been in compensation for 18 years, which means I've been following and interpreting the FLSA for 18 years as well.

twelve of those years, I've been working with many hundreds of different clients, to kind of understand how the FLSA applies to them. And I've been leading the, consult, the compensation consulting practice here at CLA for about three and a half years.

Ashley?

D

Thanks, Ben. my name is Ashley Sykes. I'm an associate at Venable. as Kelsey mentioned, I am a part of the independent schools practice, here at Venable.

we are a, select group of attorneys that specialize. All we do is represent nonprofit, independent schools. I'm sure we have a couple of, a few of them on our webinar here today.

As I know, CLA partners with independent schools frequently also, and I am an employment lawyer by trade, and advise, independent schools and other nonprofits on all matters of employment law, from soup to nuts, hiring, performance management, discrimination, harassment issues, investigations.

And a large part of our everyday practice is handling FLSA issues. So it's something that we handle every day. And this is one of the, this is probably what, the second or third time we've had a big FLSA shake up, during my career as an attorney.

And this one, this one seems to be sticking. So we are diving headfirst into addressing the updates in the FLSA that came, from these new regulations.

E

Thank you, Ashley. So if you're here from the AI portion and FLSA is kind of new to you, we will take a kind of a step back here and I'm going to bed talking more about the updates.

but we should probably tell you, what the fair labor Standards act is really all about, because you might not have been here to hear this piece of it.

So the basic intent of the law is to determine who must be paid overtime. Those people are called non exempt people and which employees don't have to.

And that can be exempt. So you can still pay exempt people over time. It's just nothing very common practice in most industries, specifically in nonprofit, it's to establish a minimum wage.

So there was no minimum wage, that was established back in the 1930s when this law came, into effect. And the minimum wage hasn't really changed on a federal level for quite some time.

It was like seven and a quarter. It's current one. hard to find people in this economy and labor market who wish to work for seven and a quarter. So a lot of the minimum wage movement has been happening on the state level and the city, or county levels.

So that's where we've been seeing the most, minimum wage changes. if you're going to have, overtime over 40 hours for a federal, it's different in places like Florida and California, but for federal it's 40, 40 hours in a workweek.

You need to know, how to have the record keeping of their hours and a few other things that you're probably already taking down on paper. So you have to just define, record keeping requirements in this law.

And then finally, just remember, it's an older law. It created federal level child labor laws. So in the thirties, this law served to get the kids, from getting their education in the factories and in the mines, and back into the schools where the government had wished them to be in the first place.

this is not the only law of the land state and local laws may supersede the. The FLSA. So if the state or local laws are considered more generous, whichever is the most generous law, rules.

And when it comes to numbers, it's pretty easy. So, higher minimum wages, from the state level or local level, mean that you have to pay that higher amount. Same, with, salary thresholds, which we'll be talking about at the federal level, not necessarily at the state level.

Today, we have people from all across the country. It would be very hard to. To touch all 50 states, and even some, territories of the United States.

M in, this update. So my piece is more of an update, actually. We'll be going into a few more details about some of the job duties, tests, and common misclassifications.

so, like I had mentioned, since it's an update, we'll talk about the minimum salary threshold. What do I mean when I'm talking about that? Well, there are three things that any employee needs to pass in order to be considered exempt and not have to be required to get overtime.

The one is you have to be paid on a salary or a fee basis. Fee basis is very uncommon in nonprofits. I'm not going to touch on that. But a salary basis is basically, you're guaranteed a certain amount of money, every work week that you work, and then you have to pass a job duties test.

There are, at least five of them. not all states. Take all five, Ashley. We'll talk about that in a moment. But the third piece is, you have to have a minimum salary amount weekly.

And we'll talk about the annualized numbers just so that it's a little easier to wrap our heads around. this is the piece that has really moved a lot in the recent, past.

there is a, situation where there's a highly compensated employee test as well. And all that is to say is that if, after July 1, if you are paid over $133,000 and you have an office job that has at least one of the exemption, duties, checked off, you don't have to pass the whole job duties test.

It's more of an administrative burden, relief than it is anything else. And I don't really see that in nonprofit very often. This would be, typically like, executive assistants.

I would usually find this if I was working with, a multibillion dollar organization. So if the salary, threshold, the minimum salary requirement, affects millions, of people, this highly compensated employee situation, would only affect a couple hundred thousand.

so for those of you who came for this, specific part of our two part series here on AI and FLSA. My knowledge check is, kind of to see, how current you are with your knowledge of the salary minimum.

so, we have four different numbers here. These are all, at one time, the correct salary minimum. But on July 18 today, which one of these is going to be considered the law of the land?

So we have 443,888. 35,568. 23,660.

58,656. All right, so our numbers are coming in a, little bit hesitantly.

I've got about 50%, on a. And then the, the runner up is, d, which is 58,000.

I don't see much more movement, here. So everybody who got a is correct. the good thing is, is all these numbers have been correct or will be correct in the, in the, either future or the past.

so 23,000 was previous number starting with 35,000. That was up until, the end of June of this year. And if the law continues to be in effect, it will implement 58,000 in, January 1 of 2025.

So let's look how that seems from a graphical perspective. So, 2019, the minimum was 23,660.

That's a pretty hard number to receive. no overtime for working any kind of job. And so that bumped up significantly to 35,000 and change in 2020.

And, then we went through, Covid and great, inflationary period of time. Wages increased, faster than they have in the last four years.

And so now we find ourselves with an increase of 43,000 and change, almost 44,000, on July 1. So you need to have been paying people in the last few weeks, that, 844, dollars a week, or 43,888, annualized.

So it goes up again in July or in January, 58,700. So happy new year to all the employees. As long as this continues to stick, that number is not pulled out of the sky.

That's the 35th percentile of the lowest census region, which happens to be the south. And in July of 2027, it's going to go up again, by that same factor, the 35th percentile of exempt employees in the south likely, and we don't know how, how high that number is going to increase.

But since they categorically take 35% of those that would be qualified to be exempt and then remove them, the number is going to be up.

So, this is just a broad, brush of our approach, of how, we at Cla like to walk, the clients, through the process of determining, what your impact is and when do you make a change.

you want to review your FLSA classifications, look at it with fresh eyes. It's not a very easy law to interpret, and there are lots of exceptions. There are exceptions for teachers and clergy, when it comes specifically to nonprofit, organizations.

and those are some of the exceptions that would be most interesting to you, because you want to make sure you have that all correct. so, then you want to identify your impacted employees.

How many employees, are in exempt jobs, but are just not paid enough, to be considered exempt anymore. What are you going to do with them?

and develop a communication plan. This is not one we're going to really dive into here because it's going to be very, specific to your current situation and your specific organization.

but you do want to have something, put together because people are going to have questions and then, don't wait to implement the July changes. Those should have been implemented already.

but you will want to way to implement your January changes probably into December. And I'll probably let Ashley talk about why we'd want to do that, just quickly before we transition over to her piece.

this is the first bucket review, your FLSA classification. So, like I said, it's not a very easy law to interpret. There's a lot of case law and opinion letters and fact sheets to review.

So you're going to want to take, a look at all your jobs before you move forward to figure out the impact. Update your job descriptions. The job description matters. The job title does not matter.

If you call somebody a manager, it doesn't make them an executive. under the executive test, we need to go a little bit further than that. Download, the current payroll file, because we need to know how

much people are being paid today and how that's going to actually affect, or not affect their exemption status.

And then you need to pull the city and state information as well, because as we said, city and county, and state information can be more beneficial to the employee.

And thus you have to really look at that rather than the, FLSA requirements. And then at this point, I would bring in somebody who, has a deep focus on the FLSA to walk through the, executive administrative, professional, computer and outside sales duties tests, because this is where it gets pretty, pretty, nuanced.

and very dependent upon, the facts and circumstances of your situation. And, I think I'm going to hand it off to you, Ashley, and you can, take them through some of the higher level situations.

D

Thank you. and, yeah, like, like Ian said, these exemptions can be really fact specific. and so it is really, really helpful to, engage a consultant or your legal counsel who's very, very well versed in the FLSA, because it's really difficult to make.

To, parse, through some of that gray area with the opinion letters that have been issued and different guidance on these exemptions.

and what we've been seeing thus far in helping our clients implement these FLSA updates is, there's really a lot, there's a small, a relatively small group of employees who are being affected by these specific updates in the FLSA.

And, so we're talking about these employees who, are just on the threshold of this salary basis. So once the updates occurred, they're no longer meeting the meeting that salary basis threshold, but they're otherwise meeting the duties tests.

One of the other issues that we've been finding is during these audit FLSA classification audits that our clients have been doing, they've been identifying some other positions where, it looks like either, the position wasn't originally classified correctly, or the person's job has changed throughout the years that they no longer meet some of the duties tests for the exemption for which they originally qualified.

So then we have, we've identified other job positions that have been misclassified for other reasons other than this new update better that we've had to deal with. And that's where we're falling into, reviewing these job descriptions and making sure that we are properly classifying our, our entire staff and not just those being affected by the FLSA, updates.

So we're going to walk through the high level duties tests for, the exemptions that we see most often, because we're in the nonprofit realm, I took off the outside sales, exemption, but we'll walk through quickly.

I know we're pressed for time, so we'll go through pretty quickly on these high levels and just, talk about some of the common, misclassifications that we've had that I tend to see in my practice.

So we'll start with the executive exemption. the executive, you hear an executive, you think, okay, this is, our CEO, our president, our head of school, and, our department heads, and that's and that's correct.

the executives have an authority to hire and fire. they direct the work of two or more full time equivalent employees. And, they are, their primary duty is m managing their department unit or the organization.

typically the issues that we find are, an employee says that they're an executive, but they don't actually supervise anybody.

or they supervise two or more full time equivalents, but they actually spend the majority of their time performing non exempt duties, clerical duties, office duties, that kind of thing.

and here the biggest things that we will see in nonprofit, in nonprofit organizations are executive assistants. anything that has an executive title in there, in the job title.

That may not, it may be more of a seniority title, but not necessarily a change in duties. also, we see other, in small organizations, we see director roles where they're directors because they're, but they're the only person in the department.

So you run into an issue because they don't act. They're not actually managing a staff. They just happen to be the highest, most senior and only person in the department.

So, like a single HR director, we may run into an issue. so, yeah, that's the executive exemption. moving into the administrative exemption, this one's also a really tricky one to get right, because, employers mistakenly will believe that anyone who works in a, quote, unquote, administrative capacity and who's paid a salary will automatically qualify.

So that would mean everybody in the business office, any sort of admin assistant would be, could qualify as, under the administrative exemption, but that's not necessarily the case.

the duties here that are the really big kickers are, the employee has to be, their duty needs to include the exercise of discretion and independent judgment with respect to matters of significance.

Now, this has to be a matter of significance is, something that is consequential to the operation of the organization.

it's just, the guidance from the DoL states that an employee, doesn't exercise discretion and independent judgment with respect to matters of significance only because the organization will experience financial losses if they fail to perform their job properly.

That won't always qualify. and, operating expensive equipment, that is not a significant, that is not a matter of significance under the DoI's interpretation.

So, here, administrative common administrators are chief finance, CFO's, human resources directors, communications directors, here again, office personnel who are doing, who do not meet the duties tests, they may not qualify.

An interesting one here we found is controllers, where, they do exercise some level of, in matters of significance, but they don't actually exercise independent discretion and judgment.

where, we have controllers who exercise very, they prepare financial, important financial statements. They prepare the, the organization's form 990, but they do so under the specific direction of the CEO, the president, the CFO.

so in that case, that may be something that trips up an organization with regard to classification.

A

Thanks, Ashley. I'm just going to jump in here for a minute. Looking at time, I do want to make sure we hit on kind of some of the hot topics, and questions, and that we get to our last polling question for CPE.

the most common question has to do with interaction with state law and how that works on these thresholds. So maybe we can jump to slide 25 and you can hit on that. And then we will, do the quick, knowledge check.

D

Yeah, absolutely. So interaction with state law, this is an area if the state laws, I mean, California, Washington state, New York, potentially, they all impose higher, wage and hour mandates in many cases.

And in those cases where a state has a higher salary basis threshold, the state law will govern. So you should be very aware of not just these federal changes, but also any changes that occur at the state level and make sure that you're complying with the state law and your jurisdiction.

A

Awesome. Yeah, that's really helpful. We had lots of people in the q and a dropping in in my state. I think this is the number. can we clarify and we'll certainly get back to people on all your questions there.

There's a lot coming in right now. Ian, why don't we go ahead and jump here to the, knowledge check so we can be sure to get that out.

And Ashley, while he's doing the knowledge check, the other big question maybe you could speak to is just legal challenges of this because we know that there's a lot of questions coming in around what is happening there.

D

Right. so go ahead, Ian, if you want to go ahead and do the knowledge check, and then I'll talk while everyone's answering.

E

Certainly. So we just want to try to get a feel for how confident you are with your ability to, navigate the new FLSA roles. And you can even just think about this as the FLSA, in broad, because it is kind of complicated.

So, a, you're very confident. You're very, confident. B, you're somewhat confident and see you need help. So, moving over to the results here, we have, I would say a majority of people say that they're.

They're. They're very confident or somewhat confident. Someone confident leading the pack at 70%. a few of us need help. 5%.

D

Right. Well, that's why we're here. All right, well, let's, talk about the legal challenges really quick, if we can go back to slide 28 here.

currently, the biggest challenge to the FLSA rule currently was in the state of Texas, where they filed a lawsuit to temporarily enjoin the dol's rule.

FLSA rules. in this case. This case really, only applied as to employees of the state of Texas.

So when on June 28, the court granted the motion for preliminary injunction, it really only barred enforcement of the FLSA salary basis rule as to state of Texas employees only.

so it does not apply. It does not, affect other employers and their requirement to implement these changes.

So at this point, it does. It is a. it is time to implement. We are no longer waiting. the July 1 effective date has passed, so we should be working to be in compliance with this, with these updates.

I did see a note about Chevron, and I applaud all of you for. For following the, Supreme Court's overturning of the Chevron doctrine. And you're right, this could affect any other legal challenges, to the FLSA rule, both this one or in the future.

It remains to be seen, how courts will take it in the future, how they will address the dol's interpretations of their own rules and of their own statutes, in the future.

I'm sure we can see more, but it's unclear so far how that. Whether that will. That will help employers, or make.

And make it more difficult for the dol to, make these kinds of changes in the future. So we're on a wait and see, in that regard.

A

Excellent. All right, well, thank you so much again. Thanks, everyone, for your engagement. These are. I think this is the most questions I've ever seen in a webinar, so clearly two hot topics. We appreciate you joining us, and catch us next month for our next, installment in our monthly nonprofit webinar series.

Thanks again to Channing and Ashley from Venable for joining us today. Everyone, have a great day.

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