



April 26, 2024

Save the Date - Annual Meeting September 22-24, The Greenbrier

Please save the date for the VPCMA 76th Annual Meeting at the Greenbrier Resort in While Sulphur Springs, WV being held September 22-24, 2024. While we still working to build an exciting program of education and networking (to be announced early summer), we would like to go ahead and make available to you the Greenbrier hotel reservation link. Your association was able to secure a phenomenal room rate of \$219/night for this event, so be sure to get your rooms booked in advance. Should anyone be looking to set up dinner plans for the open Monday night, you'll need a room reservation to do so. We look forward to highlighting more on this event in the coming months.

[The Greenbrier Resort Reservations](#)

New Tools Available to Address Youth Access to Tobacco

We recently informed the membership on legislation passed in the 2024 General Assembly session that will significantly increase penalties on those who sell tobacco products to persons under 21. The bill that goes into effect July 1 will also include mandates for store owner and employee education on its provisions.

One of the most important lessons we learned in this process is that “social access” results in more than 80 percent of youth access. Social access includes obtaining product from friends, family and other social sources.

In response, the widely respected organization WeCard has developed the following point of sale materials to educate you, your employees

and customers regarding the epidemic of youth sales of tobacco and vape products due to social sourcing.

To view more on this product and to order for your business, click below.

[WeCard Web Center](#)

Special Session Will Consider Skill Games Issue

The General Assembly ended its regular session last week without passing a two-year state budget. As a result, legislators will return to the Capitol for a special session scheduled to run from May 13-15. Efforts are underway and ongoing to assure that restoration of skill games is a part of that process. As we have reported, Governor Youngkin's attempt to ban skill games within 35 miles of a casino or Rosie's slot parlor, and ½ mile of a school was resoundingly rejected by the Senate last week. If language on skill games is included in a budget compromise, it would be law only thru July 1, 2026. However, the budget is effective July 1 of this year, meaning that there is the potential to return the games to service sooner rather than waiting for traditional legislation. As this issue is likely one of dozens being negotiated behind closed doors, it is impossible to predict an outcome at this point. However, skill games restoration brings with it new revenue without tax increases and is one possible solution to the budget stalemate which focuses largely on new spending for teachers, state employees, and at-risk students. More details will be forthcoming when available.

[Annual U.S. DOT HAZMAT Registration Period Begins May 1st](#) *From EMA*

The U.S. Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) HAZMAT registration for the 2024-2025 registration period begins May 1, 2024. *Registration must be completed by July 1, 2024 for all expiring HAZMAT certificates.*

PHMSA requires both hazardous material transporters and those who ship hazardous materials through common carriers to register and pay a fee each year in return for a certificate of authority to operate in intrastate and/or interstate commerce. *Since PHMSA allows multiyear registration, not all registration certificates are up for renewal in 2024.* Current registration and expiration status may be checked on line by clicking here: [HAZMAT Registration Look-up.](#)

[Click Here to Read the EMA Compliance Report](#)

FTC Announces Rule Banning Non-Competes

From EMA

This week, the Federal Trade Commission (FTC) voted 3-2 along party lines to approve its new rule on non-competes. The new rule, which will take effect in 120 days, essentially bans non-competes for all workers, finding them “an unfair method of competition – and therefore a violation of Section 5 of the FTC Act.”

Notably, a non-compete clause is broadly defined by the new rule as a “contractual term or workplace policy that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment or operating a business in the United States after the conclusion of the employment.”

The new rule applies retroactively to prior agreements, other than those for senior executives earning more than \$151,164 a year in a “policy-making position.” Employers must provide notice to other workers subject to non-compete agreements that they are no longer enforceable.

Not limited to employees, the non-compete ban extends to independent contractors, externs, interns, volunteers, apprentices, and sole proprietors who provide a service to a person. It does not include non-competes entered into pursuant to a bona fide sale of a business entity or in a franchisor-franchisee relationship.

While the rule is final, expect legal challenges to follow. For example, the U.S. Chamber of Commerce, the nation's largest business lobby, told reporters it plans to sue over the rule, claiming the FTC is not authorized to make this rule, that non-competes are not categorically unfair, and the rule is arbitrary. The Chamber's thoughts were echoed by the opposing Republican FTC Commissioners, who cited concerns about the FTC's authority.

While employers' protectable interests are often a concern, it is important to note that this rule does not ban non-disclosure and confidentiality agreements.

Stay tuned for more information on the developing regulations for non-competes and the legal challenges that will follow.

U.S. Department of Labor Releases Final Rule on Increased Salary

Requirements for “White Collar Overtime Exemptions”

From EMA

The U.S. Department of Labor (DOL) announced on Wednesday the release of a final rule raising the minimum annual salary threshold for overtime pay eligibility. This primarily applies to executive, administrative, and professional employees, commonly referred to as the “White Collar Overtime Exemptions.”

The Fair Labor Standards Act (“FLSA”) is a federal law that regulates when employees must be paid minimum wage and overtime. Under the FLSA, overtime pay, which is due to all employees who do not fall within a specified exemption, is one and one-half times an employee’s regular pay rate for every hour that is worked beyond 40 hours in a work week. While hourly workers are generally entitled to overtime pay, salaried workers are not if they earn above a certain pay level and supervise other workers, use professional expertise or judgment, or hire and fire workers.

Currently, salaried workers making less than \$35,568 annually qualify for overtime pay when they work more than 40 hours in a week. Starting July 1, 2024, the threshold will increase from \$35,568 to \$43,888 per year. It will then increase again to \$58,656 on January 1, 2025.

The change will be most critical for employers which are now claiming an overtime exemption for employees earning more than \$35,568 annually, but less than \$58,656 annually. Upon enactment, these employees, occupying this \$23,088 band, would lose their current status as overtime exempt. Please note that the DOL did not change how bonuses are treated. Consistent with the current regulations, employers can still satisfy up to 10 percent of the new salary levels through the payment of nondiscretionary bonuses and incentive payments (including commissions) paid annually or more frequently. The new standard will likely be challenged in court by affected industry groups including EMA that have argued that excessively raising the standard exceeds the Labor Department’s authority. Unless and until there is court intervention, employers should prepare as follows:

- Review salaried employee classifications to confirm compliance with new salary thresholds to remain exempt.
- Review salaried employee classifications to determine whether employees should be reclassified as nonexempt.
- For employees reclassified as nonexempt, ensure all hours worked are properly recorded.
- For employees reclassified as nonexempt, review budgets, set hours expectations, and development policies for approval of overtime.

Barnes & Thornburg LLP, who represents the Small Business Legislative Council (SBLC) in which EMA is a member, will keep marketers apprised of industry challenges to the Final Rule. For additional information, please contact: Matt Morgan at mmorgan@btlaw.com.

2024 VPCMA Scholarship Applications Accepted Until May 15

We are pleased to announce that applications are now being accepted for the VPCMA 2024 Scholarship Program. This program is open to VPCMA members, their employees, and the children of VPCMA member company employees. Awards are made after review by the Association's scholarship committee, which considers need as well as academic achievement in their evaluations. Recipients must be high school graduates by June of this year and attend a post secondary institution of higher education in the fall of 2024. You can view the [application here](#). Complete applications must be received by May 15. You may also distribute or post [this flyer](#) for your employees.