

Understanding the New Regulation on Independent Contractors

Sponsored by:

PAYCHEX

HR | Payroll | Benefits | Insurance

Sponsored by:



Speakers



Michael Layman

*Sr. VP Government and
Public Affairs*

International Franchise
Association

mLAYMAN@Franchise.org



Brian Schnell

*Chair of Franchise Practice
Faegre Drinker*

brian.schnell@faegredrinker.com



Alison Stevens

*Senior Director
Paychex*

avstevens@paychex.com



HR | Payroll | Benefits | Insurance

Executive Summary (1/2)

Labor pressures remain significant but are easing in 2024

34%

#1 Business Challenge

34% of businesses cite the cost and quality of labor as the #1 business challenge, but eased from 2023

80%

Unfulfilled job openings

80% of the respondents reported that their franchises have unfulfilled job vacancies.

54%

Qualified applicants

Qualified applicants increased slightly in 2023 with 54% of respondents reporting some to many qualified applicants vs. 42% in 2022.

61%

Wage growth

While 81% of the respondents increased wages in past 6 months, only 61% are planning to increase in next 6 months, indicating cooling job market.

Executive Summary (2/2)

Emerging issues: Demand slowdown, finance cost, margin compression



9%



Inflation concerns

Inflation, third leading business challenge, dropped in rank, with only 9% of respondents citing it as their primary concern, down from 20% the previous year.

Price increases

As inflation softening and weakening consumer demand take effect, franchises are experiencing a slowdown in their ability to increase prices to offset costs.

Emerging concerns

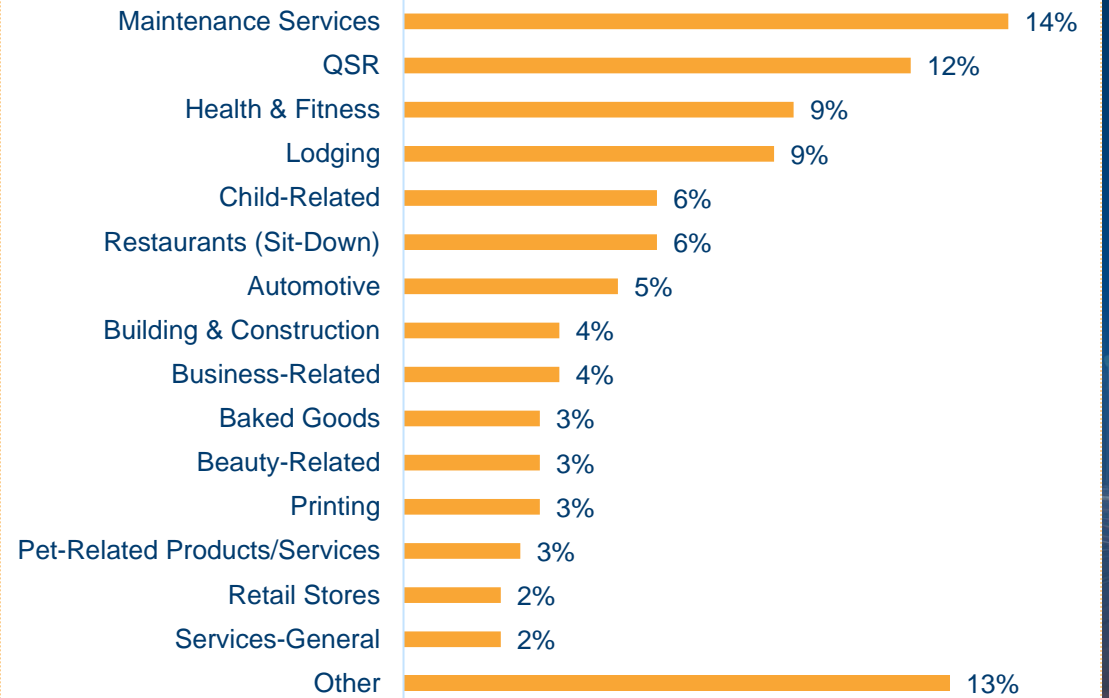
The emerging challenges for franchises in 2024 include the cost of financing and consumer demand, which were inconsequential last year.

Investment focus

Wage inflation surpassing businesses' price-raising capacity has led to margin compression, prompting increased investments in technology, marketing, and training.

ABOUT THE SURVEY

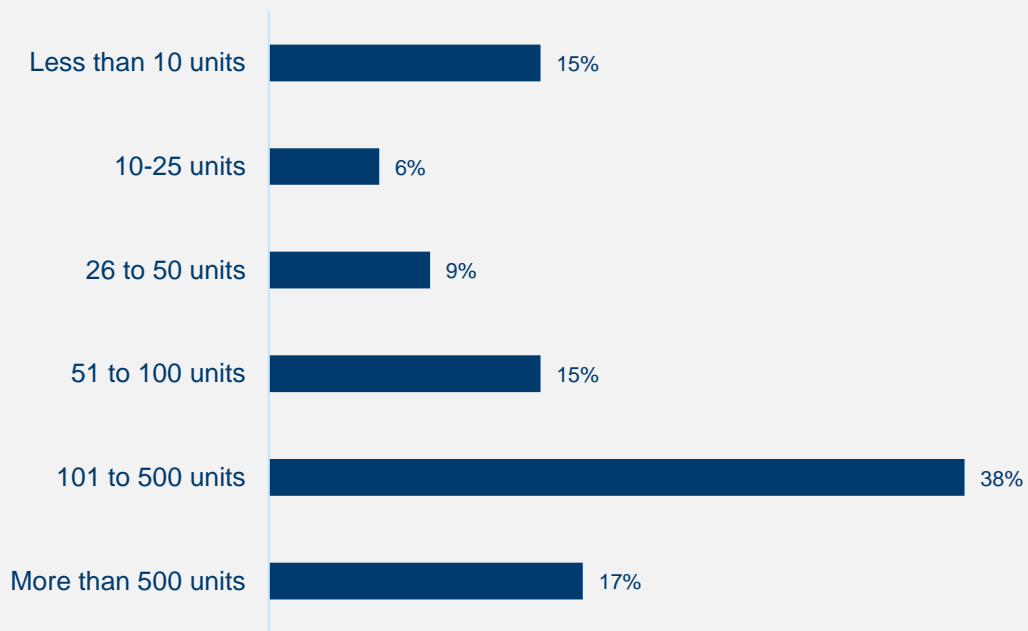
INDUSTRY PROFILE OF RESPONDENTS



Respondent's Profile

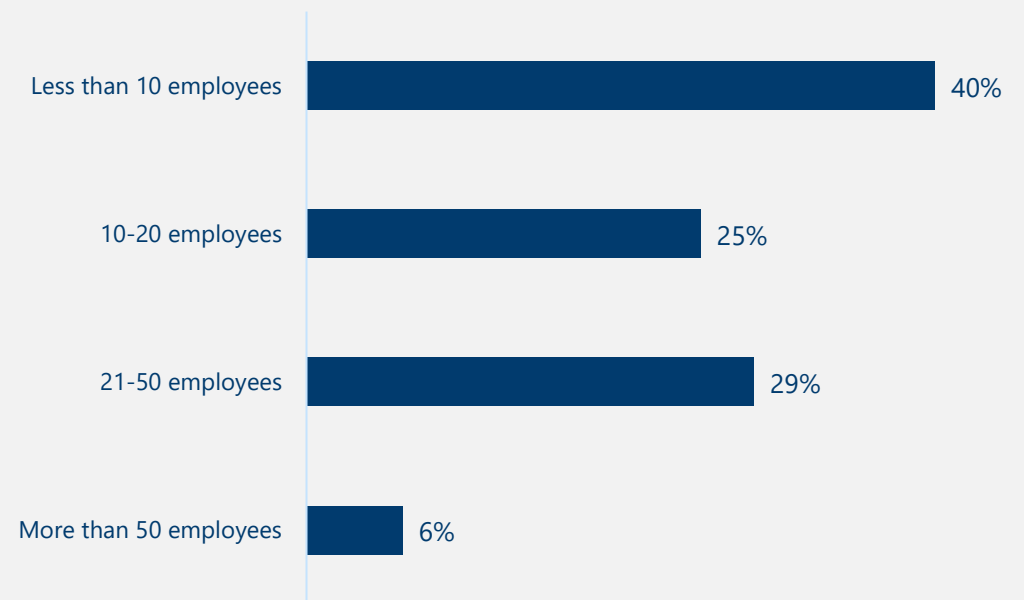
215 brands representing 26 industries and more than 112,700 franchise units responded to the survey and provided insights about their expectations in 2024.

BRANDS BY SYSTEM SIZE



40% of the respondents report their franchisees have an average staff (full-time and part-time employees) of less than 10 employees.

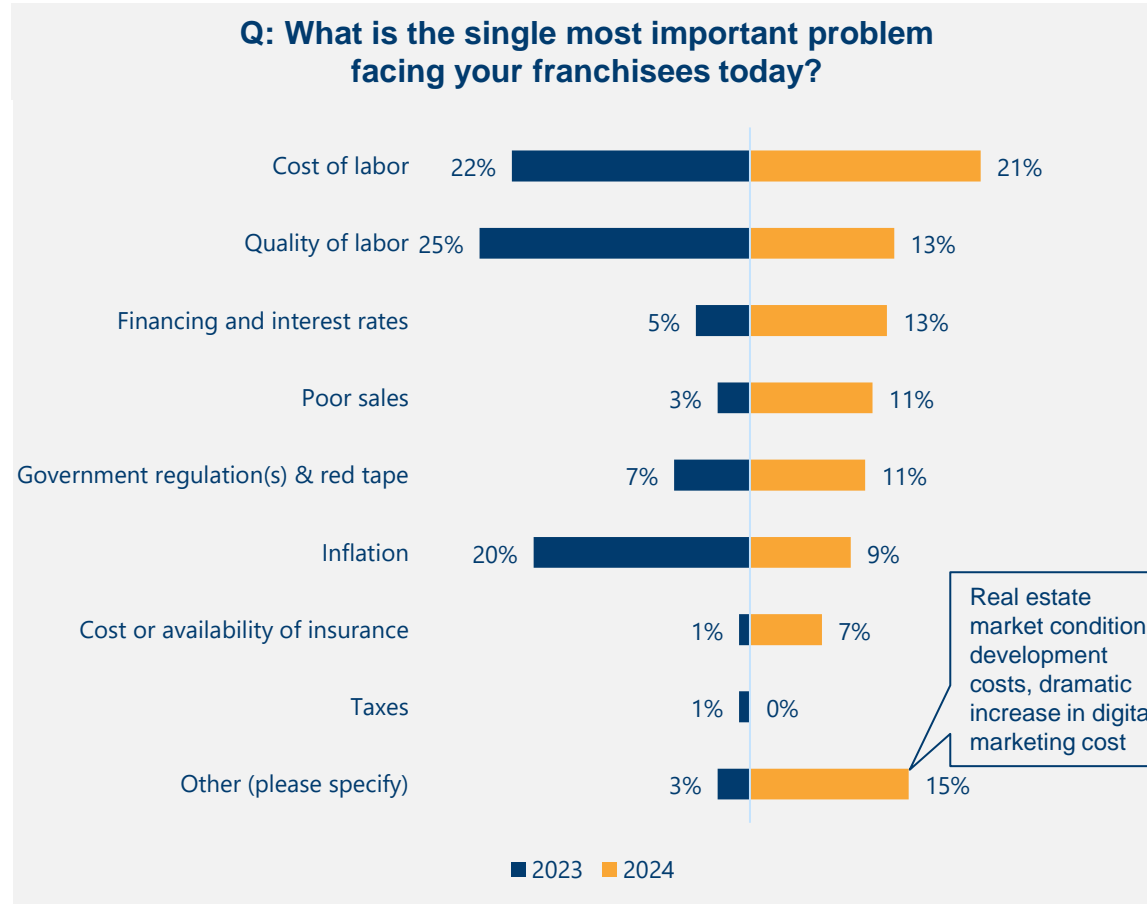
Q: How many combined full and part-time employees does the average unit in your system have?



SURVEY RESULTS

Franchise businesses continue to struggle with labor challenges

Labor remains a key hurdle, high interest rates and sales slowdowns emerge as key challenges in 2024. Inflation, the third major concern in 2023, dropped in ranking.



Apart from cost and quality of labor, the availability of labor and high turnover were major labor issues.

34%



QSRs, retail stores, sit-down restaurants, and automotive are the industries that witnessed negative effect of high interest rates.

13%



Despite buoyant consumer spending in 2023, certain franchises are now witnessing signs of a demand slowdown, pointing to sales as a predominant challenge for 2024. Demand slowdown is more prominent in non-food industry such as building & construction (38%), business related (25%), real estate (25%), health & fitness (25%).

11%

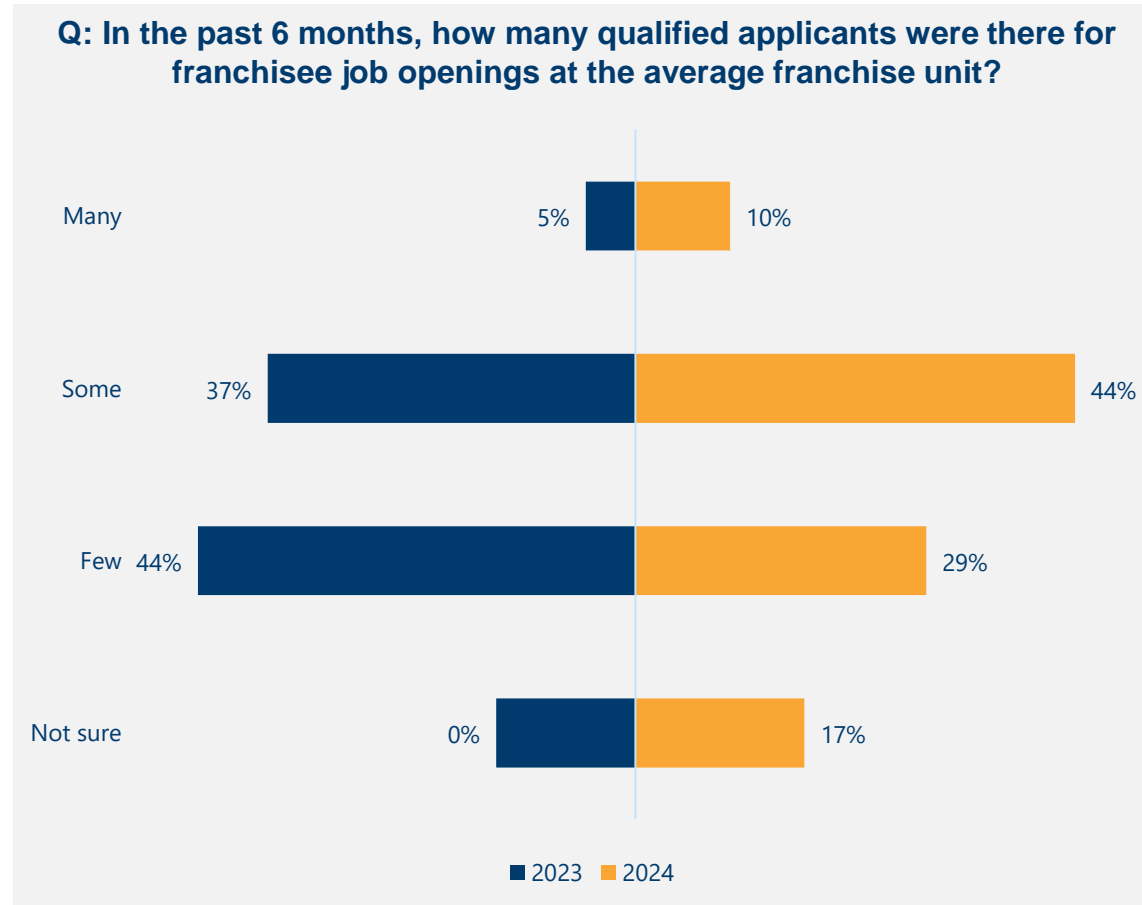


Inflation dropped from 6.5% in 2022 to 3.3% in 2023, moving from the third biggest challenge last year to the third-from-last this year.

9%

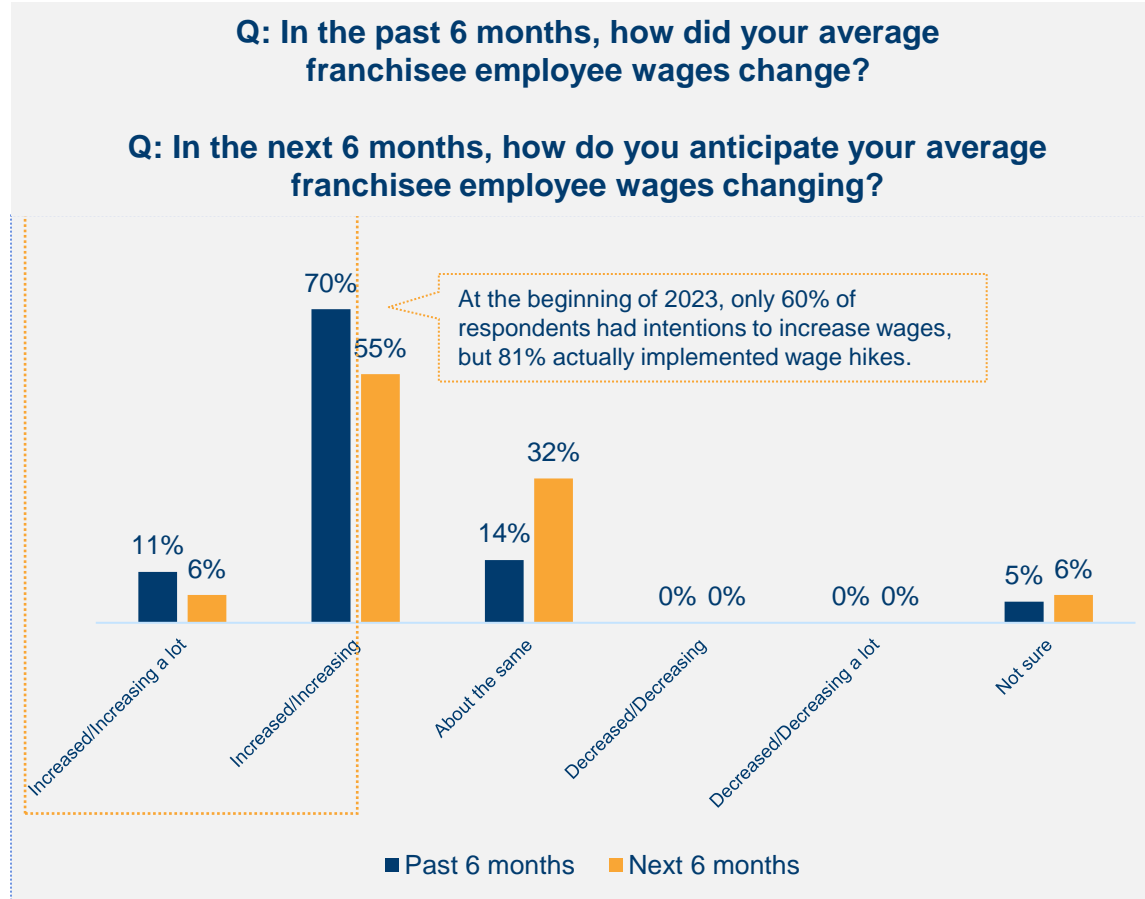
Qualified applicants increased in 2023 indicating easing labor market

Despite a tight labor market, qualified applicants for job vacancies increased slightly in 2023, indicating hiring challenges beyond simple supply and demand dynamics.



Wage growth in 2023 was higher than anticipated by franchises

81% of surveyed franchise businesses increased wages in the past 6 months and 61% of the businesses are planning wage increases in 2024 indicating a cooling labor market.



Over the past 6 months, 27% of sit-down restaurants have significantly increased their wages, marking the highest percentage compared to any other industry.

27%

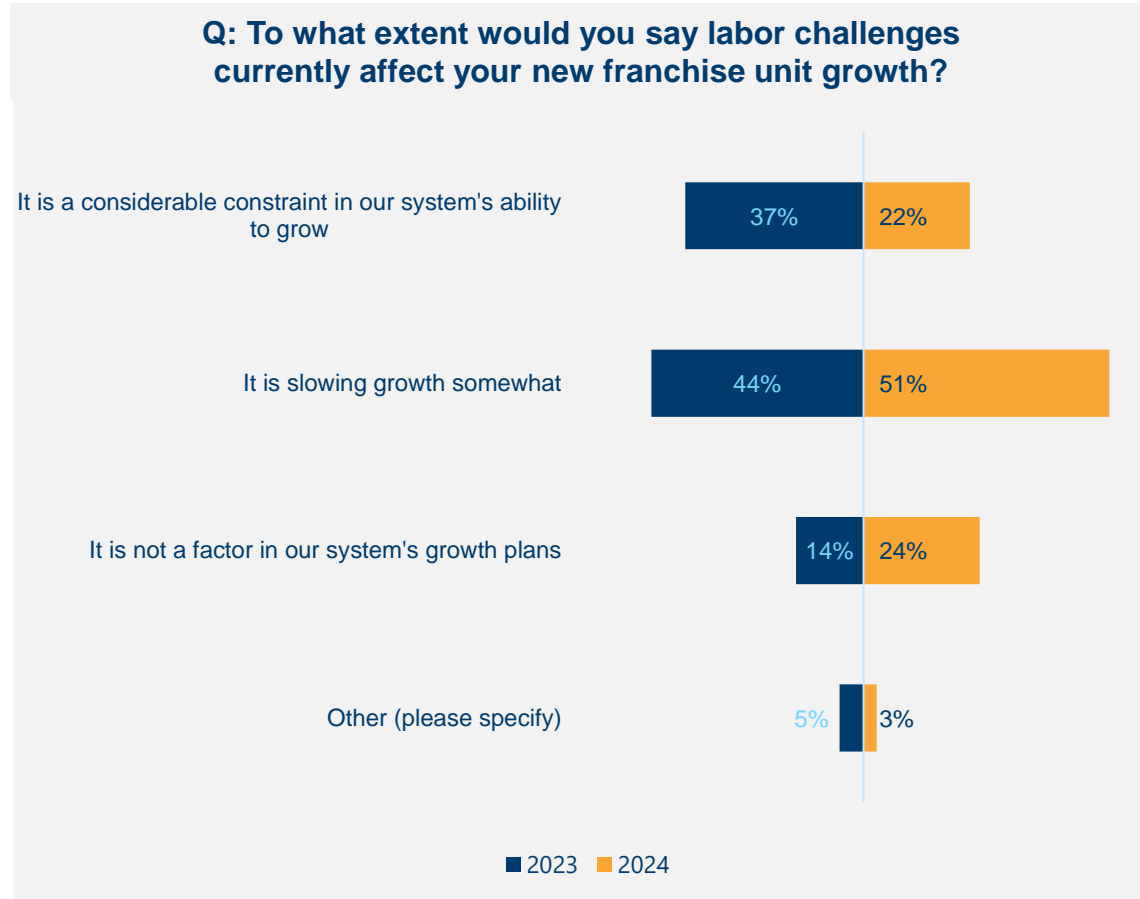


The majority (67%) of respondents intending to significantly (SR) sector raise wages belong to the Quick Service Restaurant

67%

Although easing, labor continues to challenge growth of franchises

In 2023, the labor market started strong but later showed signs of a slowdown. The impact on growth shifted, reflecting market trends and a toned-down influence.



39% of respondents from the Health & Fitness industry reported considerable constraint in their ability to grow.

39%



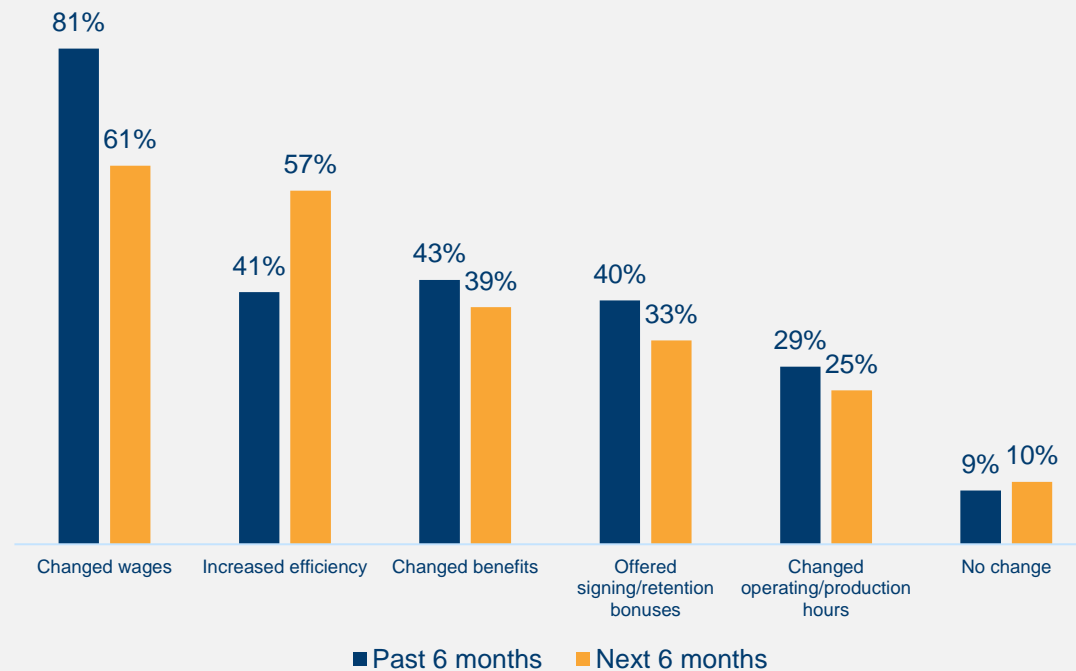
The other top two industries that reported to have considerable impact of labor challenge on growth are Maintenance Services (38%) and Beauty-Related (33%).

38%

Operational efficiencies will be the key focus for franchisees in 2024

In 2024, franchise businesses aim to address labor challenges by prioritizing efficiency through technology, rather than relying on increased wages and benefits

Q: In what ways have your franchisees attempted to address their labor challenges in the past 6 months? Please select all that apply.
Q: In the next 6 months, in what ways do you expect your franchisees to address their labor challenges? Please select all that apply.



70% of the respondents from food sectors led by sit-down restaurants and QSRs indicated their focus in increasing efficiency in next 6 months

70%



91% of child-related respondents increased wages to tackle labor challenges, and all respondents in automotive and baked goods sectors also raised wages

91%



Technology is the top priority for franchisors in 2024

From digital marketing to Generative AI, franchisors are leveraging technology to grow revenues and cut costs.

“AI labor analysis and scheduling tools.”

—COO of QSR franchise

“Developing tools enabling less skilled workers to take on additional responsibilities”

—CEO of Child-related franchise

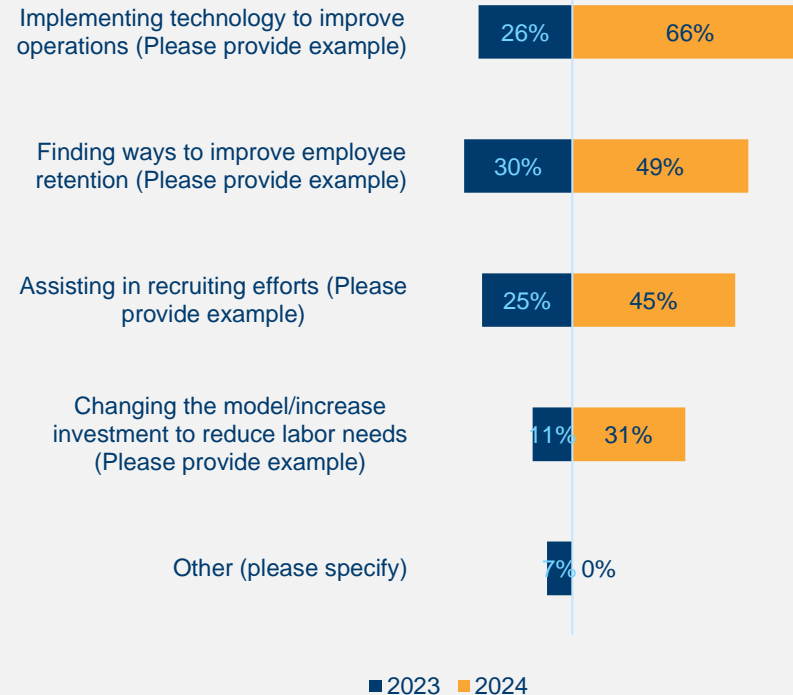
“Use of software for repetitive admin tasks to eliminate need for a staff position”

—CEO & President of Maintenance service franchise

“Automated Marketing Tools & Revamping Dispatch software”

—Senior Manager, Business Development of Service industry franchise

Q: Which of the following are you undertaking in order to address your franchisee's labor challenges? Please select all that apply and please give some specific examples when possible.



80% of the respondents from Baked Goods and Business-Related industries are implementing technology to improve operations.

80%



73% of respondents from sit-down restaurants and 61% of respondents from Health & Fitness also indicated their plans to implement technology to improve operations.

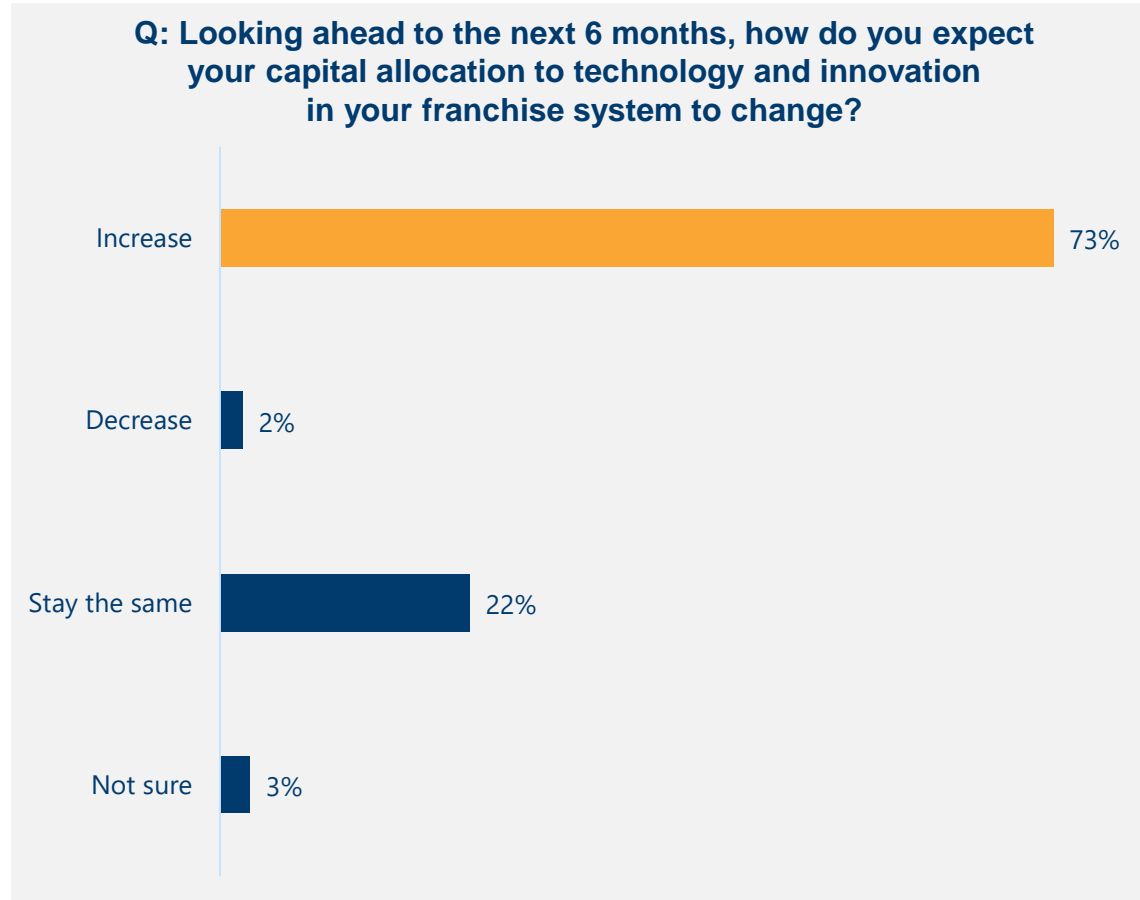
73%



Technology priorities for franchisors will be geared more towards improving operations and reducing costs such as AI to automate repetitive tasks. Use of technology that enhances revenue, such as digital marketing to acquire new customers, will also play a pivotal role.

Franchisors increase investment in technology for long-term advantage

As pandemic, inflation, and labor challenges diminish, franchisors are strategically shifting their focus to create a competitive advantage through technology.



83% of the respondents from the beauty-related industry and pet-related industry are planning to increase capital allocation in technology and innovation.

83%



82% of respondents from sit-down restaurants and 81% of respondents from maintenance services are increasing capital allocation to technology and innovation.

82%

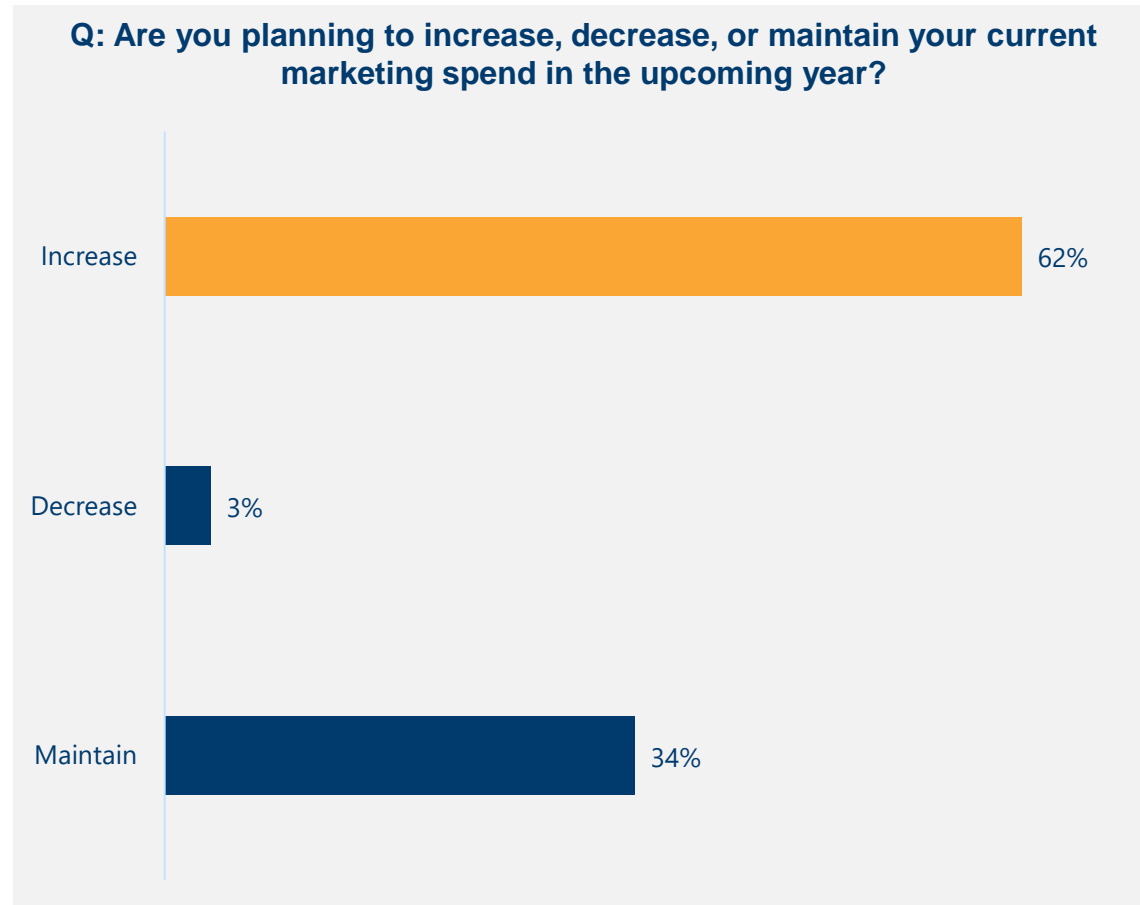


Other industries that plan to boost their capital allocation to technology and innovation include QSR (81%) and health and fitness (78%).

67%

Franchise businesses are expected to increase their marketing spend

Amidst the expectation of slowdown in consumer spending in 2024, franchises are increasing their marketing spend for better customer acquisition and market share



82% of respondents, grappling with the significant challenge of poor sales, are planning an increase in their marketing budget for the year 2024.

82%



83% of the respondents from the beauty-related industry, the highest percentage among all industries, are planning an increase in their marketing budget in 2024.

83%



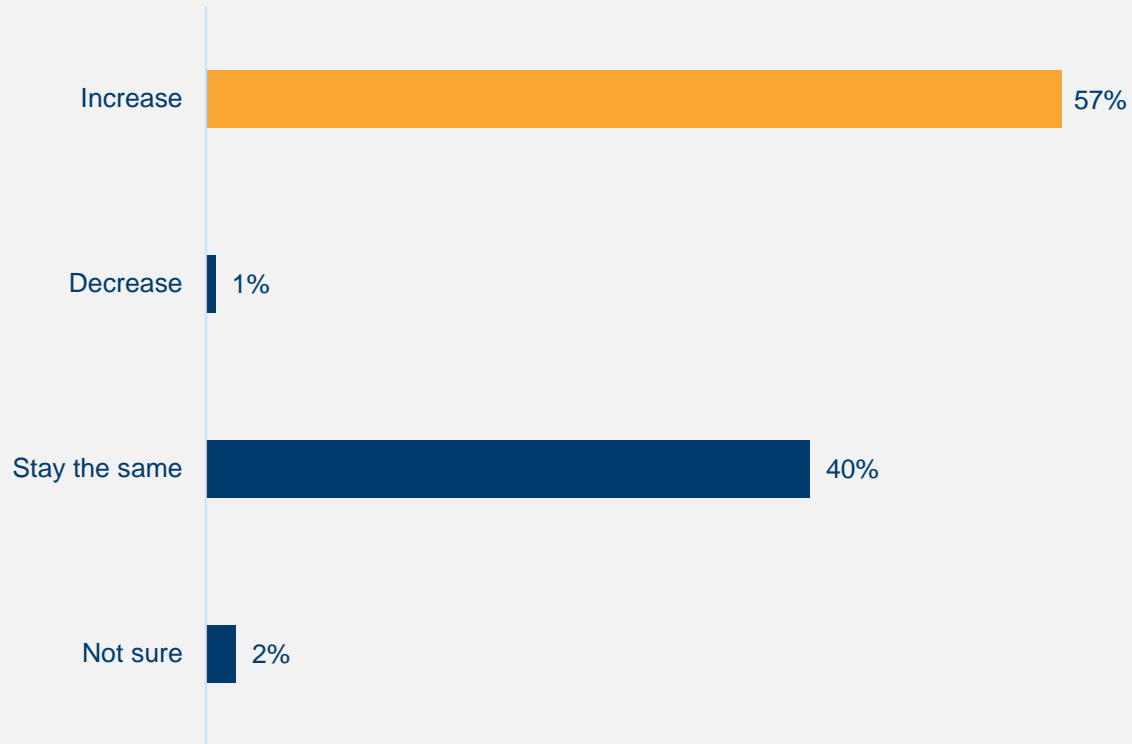
Other industries that are increasing their marketing spend are business-related (80%), sit-down restaurants (73%) and maintenance services (69%).

100%

Training and development remains a key priority for franchise businesses

57% of franchises plan to increase investment in training, highlighting their commitment to operational efficiency and adapting to new technologies.

Q: Looking ahead to the next 6 months, how do you expect your capital allocation to training and development change?



82% of respondents from the sit-down restaurants sector are planning to increase capital allocation in training and development.

82%



69% of respondents from maintenance services and 67% of respondents from health & fitness are increasing capital allocation to training and development.

69%

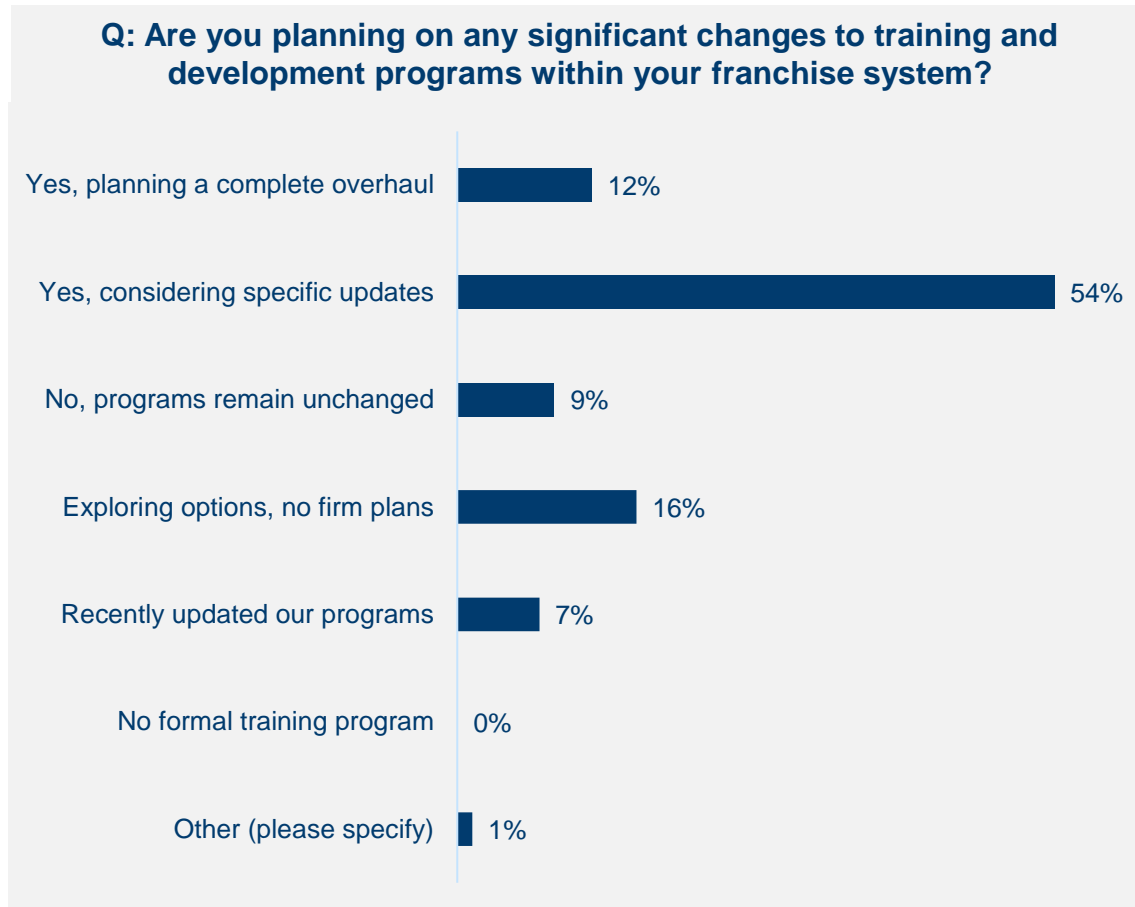


Other industries that plan to boost their capital allocation to training and development include pet-related (67%) and child-related (64%).

67%

Most franchises are changing training programs in 2024

Franchisors continue to invest in better training programs to equip their franchisees to maintain a competitive edge, operational efficiency and a proven system of success



83% of respondents from beauty-related, 80% from baked goods, 76% from QSR, and 75% of maintenance services are planning complete overhaul or specific updates.

83%



Franchisors continue to update their training and development programs to ensure their franchise business model is in line with the current market and gain competitive advantage.

“

We consistently develop new training and refine what we have.”

President & CEO of Retail stores franchise

“

We already have a significant platform and plan is to continue to stay ahead and offer more development to our team members in addition to what they can gain from our L and D system”

President of Maintenance services franchise

Joint Employer: Significant concerns for franchisor/franchisee relationship

Franchisors are highly concerned if the relationship with franchisees will change due to joint employer standard

Q: How concerned would you be if the new joint employer standard compels you to take the following action?				
Level of concern	Minimal concern	Some concern	High level of concern	Not applicable
Take more control of franchisees' day-to-day operations	6%	12%	74%	8%
Reduce operations and compliance support (via the provision of services such as training and development, HR services, technical guidance, etc.)	8%	19%	67%	5%

See survey results by scanning the QR code below:



<https://www.franchise.org/franchise-information/franchise-economy/2024-ifa-franchisor-survey>





Brian Schnell

Chair of Franchise Practice
Faegre Drinker

brian.schnell@faegredrinker.com



HR | Payroll | Benefits | Insurance

DOL's Final Rule-Independent Contractor Status (March 11, 2024)

- Replaces Trump Administration's streamlined worker classification rule from 2021
- Return to the "totality of the circumstances" standard with a pro-employee/worker focus
- Classification matters as employees have protections under the FLSA that independent contractors do not
- Misclassification can expose employers to significant potential liability

What Has Changed – The Six Factor Test with a Twist

1. Opportunity for profit or loss depending on managerial skill
2. Investments by the worker and the potential employer
3. Degree of permanence of the work relationship
4. Nature and degree of control
5. Extent to which the work performed is an integral part of the potential employer's business
6. Skill and initiative

The Twist

- Six factors are not exhaustive.
- Additional Factors – Analysis will include a totality-of-the-circumstances economic reality approach, which allows consideration of other relevant, **but not named**, factors, which in some way indicate whether the worker is “in business for themselves”.
- The most significant developments in the rule relate to how the DOL proposes interpreting certain factors

What the Rule Means for Us (Franchisors and Franchisees)

- Many of the factors are core to the franchise business model, especially the nature and degree of control
- Understand and reinforce the Fundamentals of Franchising
- Franchisees must not shirk their responsibility to be the employer of choice in their market
- Be deliberate in requirements and recommendations
- Employers (whether franchisor or franchisee) should consider a worker classification audit



Alison Stevens

Senior Director
Paychex

avstevens@paychex.com



PAYCHEX[®]

HR | Payroll | Benefits | Insurance

Classification “Checkup” for Independent Contractor Rule

- Employers bringing in an independent contractor to perform some of the basic, core work of a business.
- In addition to the Fair Labor Standards Act (FLSA) rules, some states have their own, different rules on independent contractor classifications, and the IRS has a worker classification rule for determining whether a worker is an employee for federal tax purposes.
- Recommend that employers do their own “classification checkup,” including reviewing any independent contractor classifications, and making sure that employees are properly classified as exempt or non-exempt from minimum wage and overtime requirements.



Hiring a former employee as an independent contractor, and the former employee then does the same or similar work, but now as a “contractor.”



A contractor is performing the same work as current employees.



Contractors that must meet the same requirements as employees. Like wearing a uniform, clocking in an out, having the same access to facilities and systems as employees, or supervising or directing the work of the company’s employees.

Classification “Checkup” for Fair Labor Standards Act

To qualify for the FLSA executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis at not less than \$684 per week
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight



Salary vs. hourly, does not necessarily mean that the position is exempt from overtime requirements.



Managers can work side-by-side with employees, but if too much time is spent performing non-managerial tasks, or if they are too closely supervised, then they might be misclassified.



Must have the ability to hire or fire, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.



Some states have requirements that are more onerous. This can include a higher salary threshold, or a regulatory environment that creates higher risks for employers in general.

Fair Labor Standards Act Proposed Rulemaking

Key areas of the proposed rulemaking include:

- Salary threshold for the executive, administrative, and professional exemptions would increase from \$684 to \$1,059 a week
- Compensation requirement for the highly compensated employee exemption would increase from \$107,432 to \$143,988
- Earnings thresholds would automatically update every three years



Notice of proposed rulemaking issued on August 30, 2023. DOL previously identified April 2024 as the target date for issuing the final rule.



Proposed change to the salary threshold will have a significant impact on employers.



When issued, rule is likely to be challenged.



Employers can prepare by reviewing the duties of any exempt positions now and ensuring that these positions are properly classified.

**Want help with your classification "checkup"?
Scan the QR code or visit the website.**



payx.me/ifa-checkup



Q & A



Michael Layman

*Sr. VP Government and
Public Affairs*

International Franchise
Association

mLAYMAN@Franchise.org



Brian Schnell

*Chair of Franchise Practice
Faegre Drinker*

brian.schnell@faegredrinker.com



Alison Stevens

*Senior Director
Paychex*

avstevens@paychex.com



HR | Payroll | Benefits | Insurance

Thank you!