

Law Trends

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New Federal and State Minimum Wage Laws: How Much Do I Pay?

By James B. Yates and Nicole A. Flynn



On November 7, 2006, Ohioans adopted a new amendment to the State's Constitution. The Ohio Fair Minimum Wage Amendment, advanced by labor organizations, raises the minimum wage and imposes new record keeping and disclosure requirements upon Ohio employers. The Amendment sparked such confusion among lawmakers and employers that the Ohio General Assembly quickly developed and passed enacting legislation in an effort to clarify the Amendment's murky mandates. House Bill 690 was signed by Governor Taft on January 2, 2007 and became effective the first full week of April 2007.



On the heels of Ohio's minimum wage increase, Congress approved a federal minimum wage increase which was attached to the supplemental spending package for the war in Iraq. The spending package and minimum wage increase were passed by Congress and signed by President Bush on May 25, 2007. The federal minimum wage increases from \$5.15 per hour to \$5.85 per hour, effective 60 days after the president signed the legislation. Subsequent increases of 70 cents per hour come every 12 months: \$6.55 per hour by mid-2008 and \$7.25 per hour by mid-2009.

While the new minimum wage received much national attention, in Ohio, this change is really without effect if Ohio's new minimum wage continues to be higher than the federal minimum wage. Ohio's new minimum wage of \$6.85 per hour is set to increase every January 1st by the consumer price index and it does not appear that even by 2009 that Ohio's minimum wage will be lower than the federal minimum wage. Therefore, this article concentrates mostly on the changes that have taken place as a result of Ohio's Constitutional Amendment and the enacting legislation.

Increased Minimum Wage Rates

Effective January 1, 2007, Ohio's mandatory minimum wage will increase from \$5.15 per hour to \$6.85 per hour. The rate will increase annually by the rate of inflation according to the Consumer Price Index.

Employer Defined

The Fair Minimum Wage Amendment changes the spectrum of covered employers. Under the Amendment, as implemented by HB 690, the new minimum wage rate applies to employers with annual gross receipts of more than \$250,000. However, the record-keeping and disclosure requirements apply to nearly all Ohio employers.

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Employee Defined

House Bill 690 provides that those Ohio employees who are exempted from the minimum wage requirements under the Fair Labor Standards Act (i.e., those employed in a bona fide executive, administrative or professional capacity; certain individuals employed in agriculture, babysitters, etc...) will also be exempted from Ohio's minimum wage requirements.

The Amendment provides that, under certain circumstances, employers are not required to pay the increased wage rate to employees who earn tips. Rather, employers may pay an employee less than, but not less than half, the new minimum wage rate if the employee receives tips that, combined with the wages, are equal to or greater than the minimum wage rate. The burden is on the employer to prove compliance.

The Amendment also provides an exception to employers who employ individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment. Under those circumstances, the State may issue a license authorizing payment of a wage rate below the new minimum wage.

Record Keeping Requirements

The Fair Minimum Wage Amendment requires that employers maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and amount paid an employee. House Bill 690 clarifies that this requirement has different meanings with respect to exempt and non-exempt employees, as those terms are defined under the Fair Labor Standards Act.

Records of name, address, and occupation must be kept for all employees.

For exempt employees, employers are not required to keep records of "hours worked for each day worked." Although employers are required to keep records regarding an exempt employee's pay rate, "pay rate" means annual base salary or other rate of pay by which the employee qualifies for exempt status, but does not include bonuses, stock options, incentives or other similar forms of compensation.

For non-exempt employees, employers are required to keep records of "hours worked for each day worked." However, employers are not required to record the time of day an employee begins and ends work. Rather, employers can record an employee's time by whatever increments the employer normally uses for payroll purposes. For non-exempt employees, pay rate means base rate of pay.

The records must be maintained for three years from the date the hours were worked and for three years after the date the employee's employment ends.

Disclosure Requirements

The Fair Minimum Wage Amendment requires that employers disclose individuals' pay and personnel information (all of the data maintained pursuant to the record-keeping requirement) upon the request of any employee or "person acting on behalf of an employee." House Bill 690 clarifies some ambiguities contained in the Amendment and specifies who may seek disclosure of an employee's records. For example:

- An employee is only permitted to request his or her own personnel information;
- A person "acting on behalf of an employee" must have authorization from the employee to act on his or her behalf. An individual "acting on behalf of an employee" means the employee's union representative, the employee's attorney or the employee's parent, guardian or legal custodian;
- Employers may require that any record requests be made in writing, signed by the employee and notarized, and be reasonably specific as to the information being requested;
- Employers have thirty days to provide the requested information unless such period is a substantial hardship for the employer.

Non-Discrimination/Retaliation

Employers are prohibited from discharging, discriminating or retaliating against an employee for exercising his or her rights under the new laws.

State is Responsible for Overseeing

The Fair Minimum Wage Amendment specifies that the State is responsible for overseeing the administration of the Amendment and related laws. The Amendment provides that, upon the filing of a complaint with the Department of Commerce, the State will investigate and remedy alleged minimum wage violations.

House Bill 690 clarifies who may file a complaint and the process the State may use to resolve any violations. According to the enacting legislation, a complaint may only be filed by an employee, an individual acting on behalf of an employee or someone who has been injured by the alleged violations and has standing to sue under common law principles of standing. The State has authority to resolve the complaint in any manner it deems appropriate.

Civil Lawsuits and Employer Liability

The Amendment, as implemented by HB 690, authorizes a civil suit by an employee or any person acting on behalf of an employee for any alleged violations of the minimum wage laws. The Amendment contains a three year statute of limitations, an increase from the previous two year statute of limitations. It also provides for increased penalties – if an employer is found guilty of violating the new laws, it may be forced to pay the affected employee back wages, damages and costs associated with the litigation, including attorney’s fees. Damages are automatically calculated at a rate of two times the amount of the back wages. In the event an employer violates the anti-retaliation provision of the Amendment, the amount of damages will be punitive in nature, but not less than \$150 for each day that a violation occurred.

Employers Must Provide Their Contact Information to Employees

The Amendment requires that an employer provide all of its employees with its contact information, including name, address and telephone number, and that it update this information when it changes. House Bill 690 clarifies these requirements by explaining that “contact information” may include the employer’s internet address, email address and fax number or the name, address and fax number of the employer’s statutory agent. An employer may notify employees of changes in its contact information by its usual methods of communicating with its employees. Such notification must take place within 60 days after the changes occur.

What Happens Next

Many proponents of the Fair Minimum Wage Amendment have criticized HB 690, claiming that it limits the intent and scope of the Amendment. These same proponents have expressed an intent to challenge the constitutionality of the Bill. As a result, it is likely that employers will spend much of 2007 trying to fend off labor organizations and other interested groups who want to “test” the new law.

In the meantime, employers should be aware that ambiguities and possible inconsistencies remain regarding the applications of Ohio and federal exemptions. Accordingly, employers should consult with experienced labor counsel regarding specific questions.

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