

Vorys, Sater, Seymour and Pease LLP

Labor & Employment Law E-Alert

NEW MINIMUM WAGE AND WAGE-HOUR RECORDKEEPING OBLIGATIONS IN OHIO

On January 2, 2007, Ohio Governor Taft signed legislation implementing the voter-approved amendment to the Ohio Constitution that increases the state's minimum wage and imposes related record-keeping and record-disclosure requirements on employers.

The New Minimum Wage

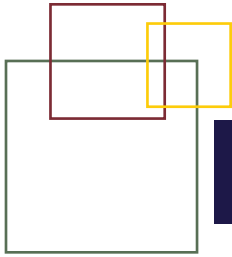
Ohio's minimum wage was \$5.15 per hour. As of January 1, 2007, with few exceptions, every Ohio employer must pay its employees at least \$6.85 per hour. This amount will automatically increase annually by the rate of inflation beginning on January 1, 2008, and rounded to the nearest five cents. The legislation provides the following exceptions to the minimum wage:

- Employees of businesses with annual gross receipts of \$250,000 or less must be paid at least the federal minimum wage. The \$250,000 gross revenue figure will automatically increase annually by the rate of inflation beginning on January 1, 2008, and rounded to the nearest one thousand dollars.
- Employees under the age of 16 must be paid at least the federal minimum wage, which is currently \$5.15 per hour.
- Tipped employees may be paid at least half the applicable minimum wage (either \$3.43/hour or \$2.58/hour for businesses grossing \$250,000 or less) so long as the combination of tips and paid wages equal or exceed the applicable minimum wage (either \$6.85 or \$5.15 per hour).
- Employees of a solely family owned and operated business who are family members of an owner do not have to be paid the minimum wage. The legislation defines a "family member" as a parent, child, stepchild, sibling, grandparent, grandchild, spouse, or other member of the owner's immediate family.
- The state may permit employers to pay less than the minimum wage to certain employees with mental or physical disabilities that may otherwise adversely affect their opportunity for employment.
- The legislation also retains the existing exemptions from the minimum wage under Ohio law and Fair Labor Standards Act.

The Record-Keeping Requirements

The legislation also requires employers to:

- Provide employees at the time they are hired with the employer's name, address, telephone number, and other contact information and then update that information within 60 days of when it changes;
- Maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee. The legislation specifies that employers do not have to record the "hours worked for each day worked" for employees for whom they do not currently keep such records under Ohio and federal law (typically this includes executive, administrative, and professional employees and outside salespersons); and
- Maintain such records for a rolling three-year period from the date the hours were worked by the employee and for three years after the employee's last day of employment.



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The Record Disclosure Requirements

Finally, employers must provide those records without charge to an employee or person acting on behalf of an employee upon request, generally within 30 days after the request is made. The legislation specifies that a person “acting on an employee’s behalf” is limited to the employee’s:

- Certified collective bargaining representative under federal or Ohio law;
- Attorney; or
- Parent, guardian, or legal custodian.

The legislation makes it clear that an employee may only request his or her own payroll information, and that a person “acting on the employee’s behalf” may only request the information for that particular employee. The legislation further permits employers to require that any requests for information by an employee or by a person acting on an employee’s behalf be in writing and notarized.

Anti-Discrimination and Retaliation

The legislation specifically prohibits employers from discharging, discriminating against, or retaliating against an employee for exercising the employee’s rights with respect to the minimum wage and record provisions as well as against any person for providing assistance to an employee or information regarding the employee’s rights.

Effective Date

The legislation is technically effective 90 days after the Governor’s signature, or April 2, 2007. However, because that legislation is meant to clarify and define employers’ obligations under the constitutional amendment, Ohio employers should comply with its provisions beginning January 1, 2007.

Our attorneys have been involved in drafting and supporting this legislation throughout the legislative process. Please contact your Vorys lawyer for assistance in understanding the law’s new obligations and the best means to prepare for and implement the new constitutional requirements.

To obtain more information about wage-hour or other employment-related issues, contact your Vorys lawyer.

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