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## ***HUMAN RESOURCE CONSULTING, EMPLOYMENT LAW & TRAINING SERVICES***

***“Solving Employee Problems Before They Happen”***

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### **Ohio's Minimum Wage Law**

**Q. What is Ohio's new minimum wage rate?**

A. On November 7, 2006 Ohio voters passed Issue 2, which amended Ohio's Constitution. It requires employers to pay a minimum wage of \$6.85 per hour.

**Q. When does the new Ohio minimum wage take effect?**

A. Ohio's new minimum wage must be paid beginning January 1, 2007.

**Q. Will the new minimum wage go up in the future?**

A. Yes. Each year the minimum wage will increase by the rate of inflation according to the Consumer Price Index for the prior 12 months. If the rate of inflation is 6% in 2007, for example, the minimum wage will increase to \$7.26 in 2008. Tipped employees must be paid at least half of the minimum wage rate.

**Q. Are there any exceptions to the new, inflation increased minimum wage?**

A. Yes. Employees under the age of 16 and employees of small businesses (less than \$250,000 in annual gross revenues) are not entitled to pay their employees the new minimum wage.

However, it is important to remember that such employers may still be subject to the federal minimum wage law.

**Q. Are there any other exceptions to this law?**

A. There are several more exceptions. They include:

1. Employers can pay “tipped” employees (i.e., employees who receive tips as part of their pay) as little as one half of the new minimum wage, so long as tips make up the other half,
2. Employees working in outside sales positions who are paid by commissions;
3. Employees who work in services of a charitable nature;
4. Employees who work at a camp or recreational area for minors, if operated by a nonprofit organization;
5. Family owned businesses do not have to pay the new Ohio minimum wage to their own family members,
6. Employees who work “in or about the property of the employer or an individual’s residence on a casual basis” are not covered by the new minimum wage law and
7. Employees of the federal government.

In addition, the state of Ohio can permit employers to pay individuals who have a disability that affects their opportunity for employment a wage rate below the new minimum.

**Q. Are there new record keeping requirements?**

A. Oh, yes! The new minimum wage law requires employers to keep a record of the following information for three years after the employee’s last day of employment:

1. Name;
2. Address;
3. Occupation;
4. Pay rate;
5. Hours worked for each day worked and
6. Each amount paid an employee.

These records must be kept for 3 years past the employee’s last date of employment. This requirement only applies to nonexempt employees.

- Q. What about a long service employee? Must an employer keep records of the number of hours worked for each day for 33 years for an employee who retires after 30 years?**
- A. That is the language of the law. The Ohio General Assembly will probably pass a law implementing this constitutional amendment, which might clarify how long employers must keep wage records.
- Q. Who is entitled to see the records kept by employers?**
- A. The employer must provide the information without charge to the employee or a person “**acting on behalf of the employee**” upon request. In other words, if an employee’s lawyer or union representative asks for the information, the employer must provide it.
- Q. What information must employers provide to its employees at the time of hire?**
- A. At the time of hire, employers must provide “an employee the employer’s name, address, telephone number and other contact information and update such information when it changes.” If this information is not included in the new hire’s paperwork, then it must be provided on a separate form.
- Q. What are the enforcement rules for Ohio’s new minimum wage law?**
- A. Employers who fail to comply with the new minimum wage law face:
1. Complaints by employees, persons acting on their behalf and/or any other interested party to the State of Ohio. Under the new minimum wage law, Ohio must promptly investigate and resolve the complaint.
  2. Investigations by the State of Ohio on its own initiative. Employers must provide the State of Ohio with any records related to the investigation and other information requested by Ohio.
  3. Lawsuits by the State of Ohio, an employee or persons acting on behalf of an employee or all similarly situated employees. In other words, a class action lawsuit.
- Q. Who is an “interested party” that can make a complaint to the State of Ohio?**
- A. That is not entirely clear at this point. “Interested parties” probably include unions, including those that do not yet represent the employer’s employees. However, the term “interested parties” could also include a competitor who makes a complaint to the State of Ohio.

**Q. Recently, Congress passed a law limiting class action lawsuits. Is an Ohio minimum wage class action suit a real threat to employers?**

A. Yes! This is a right created by Ohio's Constitution. Federal lawmakers cannot limit this right, including the right to file a class action suit.

The new minimum wage law allows a lawsuit to be filed:

1. Within three years of the violation or when the violation ceased, if it was a continuing violation. Federal and existing Ohio law usually required suit to be filed within two years. In addition, the "continuing violation" rule might permit suit for violations that stretch back more than three years, if the employee can prove that the violation continued during the entire time period.
2. In the county where the employee resides. In a class action, that could let the class members pick the county they consider friendliest, so long as at least one class member lives there.
3. Without waiting for an investigation by the State of Ohio or other process to finish first and without any proof requirements beyond those that apply to normal civil suits.

**Q. What happens if the employee wins?**

A. When an employer is found by the State of Ohio or a court to have violated Ohio's new minimum wage law, it must, within 30 days of the finding:

1. Pay the employee's back wages,
2. Pay damages equal to an additional two times the back wages and
3. Pay the employee's costs and reasonable attorneys' fees.

In other words, an employer will have to pay three times the unpaid minimum wages, plus the employees' attorneys' fees. In a class action suit, attorneys' fees can become very expensive.

**Q. Does the new minimum wage law prohibit retaliation against employees who assert their rights?**

A. Yes. It also prohibits employer retaliation against people who provide assistance to employees asserting their rights. Employers who retaliate must pay an amount "sufficient to compensate the employee and deter future violations," which amount is not less than **\$150 for each day** that the violation continued, presumably after the employee or other person asserted their rights. The requirement to compensate retaliation victims in an amount sufficient to deter future violations is basically an automatic punitive damages requirement.