

IN THE SUPREME COURT OF OHIO

John Haight, et al.,	:	Supreme Court Case No. 2014-1241
	:	
Plaintiffs,	:	Appeal from the Montgomery County
v.	:	Court of Appeals, 2 nd District
	:	
The Cheap Escape Company, et al.,	:	Appeal No. CA 25983
	:	
Defendants.	:	Trial No. 2012 CV 00946

**PLAINTIFFS’/APPELLEES’ LIST OF ADDITIONAL AUTHORITIES PURSUANT TO
S.CT.PRAC.R. 17.08**

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**PLAINTIFFS’/APPELLEES’ LIST OF ADDITIONAL AUTHORITIES PURSUANT TO
S.CT.PRAC.R. 17.08**

Plaintiffs/Appellees hereby submit the following list of additional authorities pursuant to S.Ct.Prac.R. 17.08. For the Court’s convenience, the documents referenced by the below web citations are attached hereto in an appendix.

Table of Additional Authorities

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at 614.227.8850 or bswift@bricker.com, Faith M. Williams at 614.227.2374 or
fwilliams@bricker.com or Elizabeth C. Stock at 614.227.2323 or
estock@bricker.com. Article provided by Bricker & Eckler LLP.”2

Cathy Stickels, JDSupra Business Advisor, *Ohio Employers Face New Minimum Wage and Record
Keeping Requirements*, (Aug. 9, 2007) [http://www.jdsupra.com/legalnews/ohio-employers-
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¹ Page primarily cited for the scrolling text in the “Vote No on Issue 2!” box. For the Court’s convenience, a screen capture is attached.

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² Article accessed via the Ohio Library Council’s website because it is not currently available on Vorys, Sater, Seymour and Pease LLP’s website.

Certificate of Service

The undersigned hereby certifies that on the 21st day of August, 2015, a copy of the foregoing was served upon the following and by regular mail.

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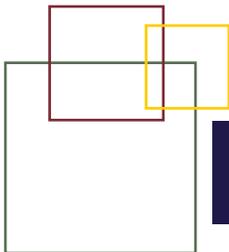
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Plaintiffs'/Appellees' Appendix of Additional Authorities
Pursuant to S.Ct.Prac.R. 17.08



Vorys, Sater, Seymour and Pease LLP

Labor & Employment Law E-Alert

OHIO PASSES SWEEPING CHANGES TO MINIMUM WAGE AND RECORD-KEEPING LAWS

On November 7, 2006, Ohio voters approved an amendment to the Ohio Constitution that increases the state's minimum wage and imposes significant related record-keeping and record-disclosure requirements on employers. Because the scope of the new law is both broad and complex, it is important for Ohio employers to begin working now to comply with the new requirements.

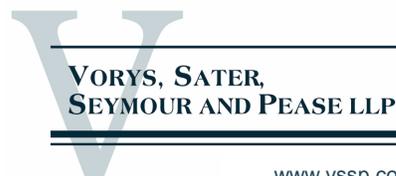
Currently, the Ohio minimum wage is \$5.15 per hour. **Beginning on January 1, 2007**, with only a few exceptions, every employer in Ohio must pay its employees at least \$6.85 per hour. Beginning on January 1, 2008, this amount will automatically increase annually by the rate of inflation. The constitutional amendment allows only certain specified exemptions to the minimum wage requirement to remain in effect. For example, employees under 16, certain small businesses and certain disabled employees will be exempt. However, many familiar exemptions to the minimum wage – including those for executives, administrative and professional employees and computer professionals – will no longer apply in Ohio.

The amendment also requires employers to maintain records of each employee's name, address, occupation, pay rate, hours worked and wages paid – meaning that records of hours worked must be kept on salaried and hourly employees alike. Significantly, employers also must provide “such information” upon request, and without charge, to an employee or “person” acting on behalf of an employee. The amendment further permits employees, a person acting on behalf of one or more employees and/or any other interested party to enforce the new law through either a complaint with the State or a civil law suit.

The many ambiguities of the new amendment likely need to be sorted out by the courts.

If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.

This alert contains information necessarily of such a general nature that it cannot be regarded as legal advice. Vorys, Sater, Seymour and Pease LLP is available to provide additional information and to discuss matters contained herein as they may apply to specific situations. ©2006, Vorys, Sater, Seymour and Pease LLP. For additional information, visit www.vssp.com.



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More on the Proposed Ohio Fair Minimum Wage Amendment: A Closer Look at the Fine Print

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Archives

In an earlier bulletin, we briefly highlighted a proposed amendment to Ohio's Constitution that would not only raise Ohio's minimum wage to \$6.85 per hour but would also impose burdensome and costly record keeping and disclosure requirements on nearly all public and private employers. County election boards are in the process of reviewing signatures submitted by backers of this proposed amendment to determine whether they have gathered the required number to place the issue on the November 2006 ballot for consideration by Ohio voters. The purpose of this bulletin is to take a closer look at the provisions of that proposed amendment and the potential impact of those provisions on employers and employees.

Increased Minimum Wage

The most publicized aspect of the proposed amendment is the provision that would increase Ohio's state-mandated minimum wage from its current to \$4.25 an hour to \$6.85 an hour effective January 1, 2007, an increase that has been projected to impact approximately 14% of Ohio's workforce. After January 1, 2007, the minimum wage would be indexed to inflation and adjusted annually. For employers with annual gross receipts of \$250,000 or less, the minimum wage would only increase to \$5.15 an hour, which is the current federal minimum wage. Although certain to constitute an increased expense for some employers, the increase in the minimum wage is not the only change that should attract attention and concern.

New Record-Keeping Requirements

With only two limited and poorly defined exceptions set forth below, the proposed amendment would require employers to maintain the following records for a period of three years for all employees: name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee. Currently, the federal Fair Labor Standards Act (FLSA) and Ohio's minimum wage statute do not require employers to track the hours worked each day for employees employed in executive, administrative, or professional capacities or in outside sales. For example, employers are not currently required to, and generally do not track total hours worked each workday for CEOs, other high level executive and/or administrative personnel (such as overtime exempt supervisory or professional level employees). The proposed amendment would add such a requirement, which is certain to be burdensome for many employers.

"Employees" and "Employers" Defined Broadly

This Amendment, which does not incorporate exemptions found under the FLSA and current Ohio law, appears to apply to numerous employees previously exempt from minimum wage requirements. Some examples include: domestic service/companionship employees; hospital volunteers (e.g., "candy strippers"); volunteers performing services for the state; individuals working on their family farm (unless they are family members of the owner and it is a solely family owned and operated farm); the newspaper delivery boy or girl; employees currently exempted by regulation, order or certificate of the Secretary of Labor (including certain apprentices, students, and disabled workers); and many more.

[Appellees' Appx002](#)

Likewise, nearly all public and private employers in Ohio, regardless of size, are subject to the proposed amendment. Under current Ohio law, employers whose annual gross volume of sales is less than \$150,000 are exempt from minimum wage requirements. Under the proposed amendment, employers with annual gross receipts of \$250,000 or less are exempt from paying the \$6.85 per hour minimum, but they would be required to pay the federal minimum wage (currently \$5.15 an hour) and to comply with the proposed amendment's record-keeping and disclosure requirements.

There are only two limited and poorly defined exemptions from the proposed amendment's minimum wage and record-keeping requirements:

1. Employees of a solely family owned and operated business, who are family members of an owner; and
2. Employees employed in or about the property of the employer or individual's residence on a "casual basis," a term which is undefined in the proposed amendment and, like other language in the proposed amendment, may only be understood with time and following significant litigation.

Public Disclosure—Confidentiality and Privacy Concerns

The proposed amendment would make the records of pay and personnel information (i.e., employee name, address, hours worked each day, pay rate, etc.) available for any employee—not just a minimum wage paid employee—upon request and without charge to any employee or person acting on behalf of an employee. There is currently no such requirement under the FLSA or Ohio law. Thus, for both business reasons and employee privacy reasons, private employers generally keep confidential the "name, address, occupation, pay rate, hours worked and each amount paid for each employee." With respect to public employees, the disclosure of such information is currently regulated primarily by Ohio Public Records Law.

The proposed amendment would preempt both the FLSA and Ohio law to the extent it is in conflict with those laws, requiring employers to turn over the above pay and personnel information to any employee or person acting on behalf of an employee upon request. Additionally, where Ohio's Public Records Law now exempts from public disclosure the home addresses of police officers, firefighters and emergency medical technicians, the amendment would wipe out such exemption. At least the following problems are likely to arise as a result of these public disclosure requirements:

- **Identity Theft and Other Privacy Concerns:** The above-listed records often include an employee's social security number, the disclosure of which creates the threat of identity theft. And, even without a social security number, disclosing employees' name, address and pay records (which could include information regarding that employee's benefits and other pay deductions or garnishments) to essentially anyone requesting it raises concerns regarding the employees' privacy.
- **Disruption and Costs:** Not only would employers be subject to complying with record requests from any of their employees (without limitation on the number of times any employee could make such a request, whose records may be requested or how many employees may request such information at one time), employers would also have to respond to any "person acting on behalf of an employee." The term "person" includes, among others, any individual, legal representative, corporation, labor union, or any other organized group of persons. In effect, therefore, private employers' business records of their employees' name, address, occupation, pay rate, hours worked, and amount paid would become public. Moreover, the costs of complying with such requests are to be borne by the employer. Logically, therefore, compliance with such requests is likely to be both expensive and disruptive to an employer's business operations.

- **Internal Dissension:** Under the proposed amendment, private employees and/or union organizers could easily ascertain other employees' rate of pay, which may very well lead to internal dissension and morale issues.
- **Outside Competition:** The public disclosure requirements could easily place employee pay records in the hands of a competitor (i.e., through an employee who requests the records, resigns and begins working for a competitor or who otherwise provides the information to a competitor). Such information is currently considered by most private employers to be confidential, proprietary business information.

State Investigation

Under the proposed amendment, the state would be authorized to investigate alleged violations of any of the provisions of the amendment on its own initiative or upon the filing of a complaint by an employee, any person acting on behalf of an employee, and/or any interested party. The proposed amendment does not define an "interested party," but it does provide that it should be liberally construed. As such, the scope of individuals who might be entitled to file such a complaint appears limitless.

With no apparent costs associated with filing such complaints, disgruntled former employees and labor organizations are certain to be among the "interested parties" filing complaints. The proposed amendment also does not specify to which state agency or official such complaints are to be made, nor does it delineate any procedures for such state investigations. Inevitably, costly and time-consuming litigation will be required to resolve such uncertainties.

Also of concern is the proposed amendment's provision that the name of the employee associated with a complaint is to remain confidential unless disclosure is necessary to resolve the complaint and the employee consents to disclosure. As a practical matter, employees are not likely to consent to the disclosure of their name. Therefore, employers will often find themselves responding to a complaint for failure to pay the minimum wage where the employer does not know which employee is at issue. This could result in a situation where the employer must provide records regarding multiple employees in order to defend itself.

Employers would also have to make available any records related to the state investigation and other information required for enforcement of the proposed amendment. Such vague language is yet another subject for future litigation. Liberally construed, however, this requirement could force employers to produce a countless number of records associated with such investigations. This is certain to be very costly and disruptive for employers.

Civil Lawsuits Against Employers

Under the proposed amendment, any employee or person acting on behalf of an employee is entitled to file a civil lawsuit (instead of or in addition to filing a complaint with the state) against an employer who fails to comply with the proposed amendment's provisions, which include a prohibition against discriminating or retaliating against employees who exercise their rights under the proposed amendment. The proposed amendment includes a three-year statute of limitations, which is longer than the current two-year statute of limitations under the FLSA. Again, "person acting on behalf of an employee" may include any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons (including labor organizations).

Employer Liability

Employers found to have violated the proposed amendment's minimum wage and non-discrimination/retaliation provisions would face treble damages, costs and attorney's fees. The proposed amendment does not appear to provide a penalty for refusal to maintain or disclose the above records. It does, however, provide that payment of damages shall not be stayed pending any appeal (which is contrary to the general rule in civil actions). Practically speaking, then, employers who successfully appeal adverse decisions will have already been required to pay damages and will likely face significant obstacles in recovering any money from the complaining employee.

Litigation Costs

If this proposed amendment is placed on the November 2006 ballot and adopted by voters, there is certain to be not only cost increases related to the minimum wage itself but also cost associated with substantial litigation as both employers and employees seek guidance on its vague language and many undefined terms. Such litigation costs, of course, will be borne by employers seeking to defend their actions under the proposed amendment.

For more information, please contact Betsy A. Swift at 614.227.8850 or bswift@bricker.com, Faith M. Williams at 614.227.2374 or fwilliams@bricker.com or Elizabeth C. Stock at 614.227.2323 or estock@bricker.com. Article provided by Bricker & Eckler LLP. *From Bricker & Eckler LLP*

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OHIOANS TO PROTECT PERSONAL PRIVACY

Vote No on Issue 2!
Did you know..
Employers would have to track daily hours worked for employees employed in executive, administrative or professional capacities and outside sales?

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Learn the **TOP 5 REASONS TO VOTE NO ON ISSUE 2**

Issue 2 Fine Print Essential Facts

Aside from the minimum wage provisions themselves, Issue 2 contains nearly two pages of fine print with significant potential to harm Ohioans. It's a massive intrusion into your personal privacy. Issue 2 includes record-keeping requirements that will cost Ohio businesses, including state and local government, millions of dollars. Nearly 12,000 Ohioans would lose their jobs and in total, the Ohio economy would take a \$308 million hit if Issue 2 passes. As part of the Ohio Constitution, problems that result from this misguided amendment will be extremely difficult to fix.

A proposal of this complexity and ambiguity does not belong in the Ohio Constitution. Learn the facts about Issue 2.

- Fact Sheet
- EPI Study
- Issue 2 Ballot Language
- Buckeye Institute Viewpoint



Bailey Cavalieri LLC
ATTORNEYS AT LAW

CLIENT ALERT

EMPLOYMENT CONSEQUENCES OF OHIO BALLOT ISSUES 2 AND 5

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On November 7, 2006, Ohio voters approved two statewide ballot issues having consequences for Ohio employers. Issue 5 imposed a smoking ban on virtually all workplaces. More importantly, Issue 2 made significant changes to Ohio's minimum wage laws. Employers must take immediate note as to how these issues affect their businesses.

Smoking Ban

By approving Issue 5, Ohio voters adopted a new law, Ohio Revised Code §3794.01, *et seq.*, which will take effect on December 7, 2006. The law bans smoking in all public places and places of employment. Employers are required to enforce the ban in any enclosed workplace area under their control, including vehicles, and also in any area adjacent to any door or window. Employers are required to remove all ashtrays and to post "No Smoking" signs in their places of employment. The signs must contain a telephone number for reporting violations. An example of such a sign and additional information may be found at the Ohio Department of Health website at www.odh.ohio.gov/alerts/ohiosmokingban.aspx.

Exceptions to the law are limited to private residences, hotel or motel sleeping rooms, family owned and operated businesses, nursing homes, retail tobacco stores, outdoor patios and private clubs.

Employers who violate the law will be subject to a warning letter from the Ohio Department of Health for a first violation and civil fines thereafter. Employees who exercise their rights under the statute are protected from discharge and retaliation.

Minimum Wage Amendment

By passing Issue 2, Ohio voters approved an amendment to Ohio's Constitution increasing the minimum hourly wage to \$6.85 beginning on January 1, 2007. The amendment supersedes the federal minimum wage and conflicting Ohio law, and applies to all Ohio employees, except those under the age of 16, family members working at a family-owned business, and employees of businesses with annual gross receipts of less than \$250,000. Employees who regularly receive tips may be paid as little as one-half the new minimum wage, provided the employer can demonstrate the receipt of tips which would increase the hourly rate above the required minimum. Beginning on January 1, 2008, the amendment allows for the minimum wage to increase with the rate of inflation.

Significantly, the minimum wage amendment includes potentially burdensome provisions which require the maintenance and retention of records for every employee including name, address, occupation, pay rate, daily hours worked, and amounts paid. Such recordkeeping requirements appear to apply to otherwise exempt employees under existing Ohio and federal laws. The records must be retained for the duration of all employment and for three (3) years after the employment ends. The amendment also provides that, upon request and at no charge, employee records must be provided to an employee or to any person acting on an employee's behalf. The amendment does not include a time frame in which an employer must respond to such a request.

The amendment includes a prohibition against discrimination or retaliation against any employee who exercises his or her rights under the amendment. Possible remedies include back wages, liquidated damages, costs, and reasonable attorney's fees. Additional damages are also recoverable for violations of the anti-retaliation provisions. Aggrieved employees can file a confidential complaint with the state, or, alternatively, employees can file a civil action, including a class action, seeking monetary and equitable relief. For more information regarding the amendment, see, www.smartvoter.org/2006/11/07/oh/state/issue/2/.

Unfortunately, the minimum wage amendment is not a statute, and, as a result, numerous ambiguities within the amendment and with existing law cannot be easily resolved by the General Assembly. While it is hoped the Ohio Department of Commerce will provide some prompt guidance in the form of administrative rules, some of the issues arising out of the amendment will likely be resolved only through litigation.

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LEGAL ALERT: OHIO VOTERS PASS NEW MINIMUM WAGE LAW AND SMOKE FREE WORKPLACE LAW

Paul D. Dorger
November 15, 2006

On Tuesday, November 7, 2006, Ohio voters passed two new laws that will affect employers operating in Ohio: the Ohio Minimum Wage Law and the Ohio Smoke-Free Workplace Act.

Ohio Minimum Wage Law

Ohio voters have passed a Constitutional Amendment that raises the minimum wage and imposes significant new record-keeping requirements on many Ohio employers and out-of-state employers with employees in Ohio. The Ohio legislature is expected to implement laws clarifying employer's obligations in response to this Amendment. In the interim, however, most employers must increase the minimum wage to \$6.85 per hour by January 1, 2007. This new rate will then increase each year and is tied to the rate of inflation based on the Consumer Price Index.

The new record-keeping requirements will become effective when the Secretary of State certifies the Amendment, likely as soon as early December 2006. The following is a brief summary of key provisions of the Amendment that impact Ohio employers.

Record-keeping Requirements

- ▶ In a departure from the law in a majority of states, the Amendment grants certain Ohio employees access to payroll records, including their names, addresses, occupation, pay rate, hours worked for each day, and the amounts paid.
- ▶ Employers also must maintain these records for salaried employees, including upper management, who are presently exempt from federal minimum wage and record-keeping requirements.
- ▶ The above information must be provided to covered employees without charge.
- ▶ Covered employees may also designate an authorized representative to review his or her pay records.
- ▶ Covered employers must maintain the above records for at least three years following the employee's separation from employment.

Exceptions to Record-keeping Requirements

- ▶ Employers do not have to maintain the above records for individuals employed "in or about the property of the employer or individual's residence on a casual basis."
- ▶ Also, employees who are family members of a solely family-owned and operated business are exempt from the new record-keeping requirements.

Exceptions to Minimum-Wage Requirement

- ▶ Employers with annual gross receipts of \$250,000 or less are not required to pay employees \$6.85 per hour, but must continue to pay the federal minimum wage of \$5.15 per hour.
- ▶ Employees employed "in or about the property of the employer or individual's residence on a casual basis" are exempt.
- ▶ Employees of a "solely family-owned and operated business who are family members of an owner" are exempt.

[Print PDF](#)

- ▶ Certain tipped employees are exempt, provided aggregate tips and wages equal or exceed the new minimum wage for all hours worked.
- ▶ Certain physically or mentally challenged employees licensed by the state as exempt.

Remedies for Employees

- ▶ The aggrieved employee, his or her authorized representative, and/or the Ohio Attorney General may initiate a lawsuit against the employer for violating the new law.
- ▶ Employees may be awarded back wages, damages (defined as two times the amount of back wages), costs, and reasonable attorney's fees.

The Amendment is written in general terms and raises significant questions regarding its scope and application. For example, the record-keeping requirement for exempt employees is a significant departure from current law and likely will be clarified. It remains to be seen whether subsequent interpretations of the new law will follow the federal pattern.

Ohio Smoke Free Workplace Act

The new statute applies both to employers and proprietors of public places.

Employers/Proprietors must take the following steps to abide by the new statute:

1. Prohibit smoking in prohibited areas;
2. Post no smoking signs in those areas; and
3. Remove smoking receptacles, such as ashtrays, from prohibited areas.

Prohibited smoking areas include all enclosed areas at places of employment and areas adjacent to areas of ingress or egress to the place of employment. An enclosed area is any space with a roof (or other overhead covering) and walls (or other side coverings) on all sides or all but one side. Thus, smoking is prohibited in all inside areas at the workplace.

Employers have the discretion to prohibit or to allow smoking in outside areas.

The following exemptions apply.

- ▶ Family owned businesses, where all employees are family members.
- ▶ Private clubs, if there are no employees and other requirements are met.
- ▶ Nursing homes – in designated resident-use smoking areas (employees cannot be required to enter these rooms).
- ▶ Outdoor patios.

The Department of Health Fines will enforce the statute. Penalties start with a warning and then increase to monetary penalties of \$100 per day.

The statute also is scheduled to take effect in early December, 2006.

For additional information regarding compliance with these new laws, please feel free to contact us.

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Implementation of the Ohio Fair Minimum Wage Amendment

January 19, 2007

NEW RECORD KEEPING REQUIREMENTS UNDER THE OHIO FAIR MINIMUM WAGE AMENDMENT

On November 7, 2006, voters of Ohio passed the Ohio Fair Minimum Wage Amendment, to enact a constitutional provision regarding Ohio's minimum wage. The Amendment, which placed increased recordkeeping requirements on Ohio employers, went into effect on January 1, 2007. Under the Amendment, Ohio employers are required to maintain records regarding the hours worked by all employees, creating an accurate record showing each employee's name, address, occupation, pay rate, hours worked each day, and amounts paid to employees. Originally, record-keeping requirements applied to exempt and salaried employees, as well as non-exempt and hourly employees. The obligation to maintain such records began on January 1, 2007, and it requires that record-keeping must continue for three years past the date the hours were last worked by the employee, which in most cases is the employee's termination date. In addition, employers are required to provide the wage and hour records at no cost to any employee upon request, or to any person acting on the employee's behalf, without limitation as to how many times an employee can request this information.

Further, at the time of hire, an employer is required to provide an employee with the employer's name, address, phone number, and other contact information, and must provide updates of changes to employees within 60 days of any change.

Ohio Legislature Clarified Employer Obligations

On November 28, 2006, Representative Bill Seitz introduced HB 690 into the Ohio legislature. It was passed by both the House and Senate and signed into law on January 3, 2007. However, HB 690 was not passed with an emergency clause, which means that it does not take effect until April 2, 2007. HB 690 clarified the recordkeeping requirements and privacy concerns of the Ohio Fair Minimum Wage Act, and provides that:

- Record-keeping requirements apply only to persons who work in Ohio, and not to employees of Ohio companies who work in other states;
- Record-keeping of hours actually worked by exempt employees, as defined under the Fair Labor Standards Act, is not be required. Employers must only keep track of the total gross wages paid to those employees each pay period, and do not have to include records of an exempt employee's bonuses, stock options, incentives, deferred compensation, or

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any other similar form of compensation;

- Employers will have 30 days to respond to requests for information regarding employees, unless an alternative time is agreed to by employer and employee, or the 30-day period would cause a hardship on the employer;
- Employees cannot demand information on any employee other than themselves unless they can show that they are acting on behalf of the other employee;
- Persons who qualify as “acting on behalf of” an employee include a certified union representative, an attorney, or a parent, guardian, or legal custodian;
- Employers may require certain requests for information be made in writing and signed by the employees and/or persons acting on behalf of employees, including a notarized authorization that the person may act on the employee’s behalf;
- employer who provides such information requested will be immune from any civil liability for injury, death, or loss to that person or property that otherwise might be incurred or imposed as a result of providing that information to an employee or person acting on behalf of an employee;
- Other contact information” required to be provided to an employee by the employer upon hire includes employer’s Web site address, e-mail address, fax number or name, address and telephone number of employer’s statutory agent. It does not include contact information of an employee, shareholder, officer, director, supervisor, manager or individual associated with an employee.

If you have any questions regarding this law, please contact attorneys Jeffrey M. Embleton , John F. Burke, III or Amy L. Phillips.

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Ohio Employers Face New Minimum Wage and Record Keeping Requirements

8/9/2007 by Cathy Stickels

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As a result of the November, 2006, general election, Ohio employers must comply with the new minimum wage and record keeping changes created by the Ohio Fair Minimum Wage Amendment. The primary purpose of the Amendment, otherwise known as State Issue 2, is to provide for an increase in the State minimum wage. As of January 1, 2007, all Ohio employers will be required to pay employees a minimum wage of \$6.85 per hour. Currently, very few exceptions to this requirement exist. Ohio employers with annual gross receipts of less than \$250,000.00 per year are exempt and may continue to pay employees only the Federal minimum wage of \$5.15 per hour. Tipped employees may now be paid half of the new minimum wage as long as the combined wages and tips total at least the new minimum wage of \$6.85 per hour for all hours worked.

Of equal importance to the minimum wage hike are the record keeping requirements the Amendment creates for employers. Employers must maintain a record for each employee containing the employee's name, address, occupation, pay rate, hours worked for each day and the amount paid to each employee. Employers must keep this information on file for a minimum of three years following the end of an employee's employment.

In addition to maintaining all of this information, employers must now

[Appellees' Appx015](#)

provide the information without charge to the employee or any person acting on behalf of the employee upon request. There is no limit to the number of requests that can be made of the employer and at present no exemption exists for an employer to deny a request. The Amendment also provides that an employee can designate a representative to request records on the employee's behalf. This representative can be anyone designated by the employee, including a union representative.

Employers have voiced concerns over establishing processes to use for documenting employees' requests, and employers have concerns regarding privacy issues. One issue that arose early in the debate over the Amendment was whether or not under the language of the Amendment an employee could request the payroll records of fellow employees.

Opponents of the Amendment argued that the language of the Amendment was so vague as to allow the distribution of all employee payroll records to any employee who requested them. Proponents, on the other hand, looked to the intent of the Amendment and argued that an employee is only able to access his or her own records. At present, this particular issues has not bee resolved. It is clear, however, that the Amendment proposes significant new burdens on Ohio employers.

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Ohio's Minimum Wage Amendment Also Imposes Recordkeeping Requirements

Date: November 09, 2006

Overview

On November 7, the voters of Ohio passed an amendment to Ohio's Constitution that raises the state minimum wage rate beginning January 1, 2007. In addition to the impact on wages, the amendment also imposes significant new recordkeeping requirements on most Ohio employers.

The current Ohio minimum wage rate of \$4.25 per hour has been in effect since 1991, and has been rendered largely inconsequential by the higher federal minimum wage rate of \$5.15 per hour. The amendment raises the minimum wage rate in Ohio to \$6.85 per hour effective January 1, 2007. The amendment also increases the minimum wage every January, pegged to the rate of inflation.

The increased minimum wage rate will apply to most Ohio employees and employers. However, employees under the age of sixteen, employees of small businesses (\$250,000 or less in gross revenue), employees employed "in or about the property of the employer or individual's residence on a casual basis," and family member employees of a family owned and operated business are not subject to the state minimum wage.

Employers are permitted to pay a tipped employee half the state minimum wage rate if the employee's tips cover the difference paid below the state minimum wage rate. Also, the amendment authorizes the state to issue permits allowing payment of a lesser wage rate to individuals with mental and physical disabilities whose employment opportunities may be adversely affected by the increased minimum wage rate.

Equally important is the fact that the amendment imposes new recordkeeping requirements on Ohio employers:

- Since the amendment makes no distinction between exempt and non-exempt employees, it appears that Ohio employers, both public and private, will be required to keep payroll records for both hourly and salaried employees. These records include employee names, home addresses, occupations, pay rates and daily hours worked. Previously there was no requirement that hours be recorded for salaried employees.
- Employers will be required to keep payroll records for three years after an employee's last day of work. Thus, it appears that employers will have to keep payroll records during the employee's entire employment and for three years after. This is a significant change since previously Ohio employers were only required to keep records for three years total.
- Employers will be required to provide payroll information to an employee or a person acting on behalf of the employee upon request and free of charge.

The amendment also contains penalties for violating its provisions. The amendment provides an employee with two avenues to file a complaint: the state and/or the courts. If a violation is found by the state or the court, the employee will be entitled to damages (two times the amount of back wages), reasonable costs and reasonable attorney's fees. The amendment provides new provisions against retaliation for filing or assisting in a wage/hour complaint. Additional punitive damages may be awarded for violation of the amendment's anti-retaliation provision. The amount of these damages will be at least \$150 per day of violation.

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