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What Employers Should Know about Ohio's New Minimum Wage

By Neil E. Klingshirn

On November 7, 2006, Ohio voters passed Issue 2 to include a minimum wage in Ohio's constitution. As of January 1, 2007, Ohio's constitution requires most employers to pay at least \$6.85 per hour.

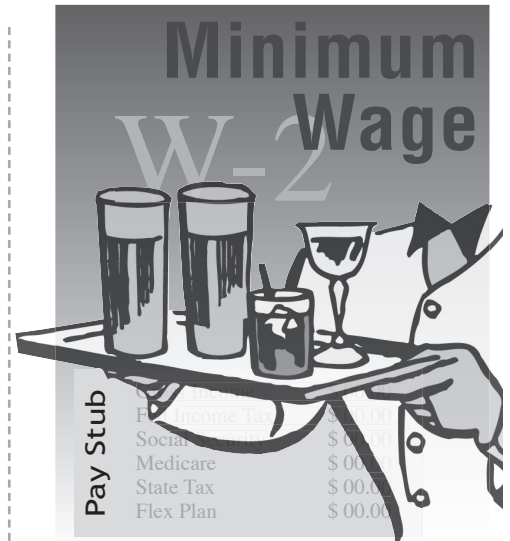
The minimum wage will increase each year by the amount of inflation. If the rate of inflation is three percent in 2007, for example, the minimum wage will increase to \$7.06 in 2008. Importantly, since the minimum wage was raised through constitutional amendment, the Ohio General Assembly cannot reduce it.

The minimum wage amendment covers the employees of the state and every county, city, township, school

district and governmental authority, as well as most, but not all, private employees. Examples of those who are not entitled to the new minimum wage include employees under the age of 16 and employees of a small business (less than \$250,000 in annual gross revenues). These employees, however, are entitled to receive the federal minimum wage.

Other exceptions include the following:

- Employers can pay "tipped" employees (i.e., employees who receive tips as part of their pay) as little as one half of the minimum wage, so long as tips make up the other half.
- Family-owned businesses do not



have to pay the new Ohio minimum wage to their own family members.

■ 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.

In addition, the state can permit employers to pay wage rates below the new minimum to individuals who have a disability that affects their employment opportunities.

The new minimum wage law incorporated many existing federal minimum wage definitions. The amount of the minimum wage, the fact that it will increase with inflation, new record-keeping requirements and many of the tough enforcement rules are new.

Understand Implications of Ohio's New CDL Disqualification Law

By Jon J. Saia

Ohio's new CDL disqualification law was passed to comply with a federal government mandate requiring all states to impose more severe sanctions upon commercial drivers for Operating a Vehicle Under the Influence of Alcohol or Drugs (OVI) whether or not a commercial vehicle was being driven at the time of arrest. Businesses that employ people to drive commercial vehicles should be aware of these potential penalties and increased insurance costs.

If an commercial driver is arrested for OVI while driving a non-commercial vehicle, and a breath, blood or urine test reveals a blood alcohol content (BAC) at or above the legal limit, the CDL will be suspended under an Administrative License Suspension (ALS) for a minimum of 90 days. A refusal to submit to a breath, blood or urine test will result in a minimum one-year disqualification of the CDL.

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Employers must immediately make sure that they keep a record of each employee's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to an employee.

Employers must keep these records for three years after each employee's last day of work.

Also, employers must provide these records within 60 days

of a request and without charge to the employee or a person acting on behalf of the employee (for example, the employee's lawyer or union representative).

Minimum wage lawsuits can be filed within three years of the violation or (if it was a continuing violation) when the violation ceased. The lawsuit can be a simplified class action, where one employee can sue on his or her own behalf and that of all "similarly situated" employees. The suit can be

...New record-keeping requirements (of the minimum wage) and many of the tough enforcement rules are new.

filed in a county where any one of the employees resides.

If an employer violates Ohio's minimum wage law, the employer must, within 30 days of a finding of the violation:

- pay the employee's back wages;
- pay damages equal to an additional two times the back wages; and
- pay the employee's costs and reasonable attorneys' fees.

Finally, the minimum wage law 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," or at least \$150 for each day that the violation continued.

Legislation implementing Issue 2, signed into law by Governor Taft on January 3, 2007, provides privacy protections for employees requesting

wage information, and regulates how minimum wage lawsuits can proceed. That legislation also 1) exempts employees who do not receive the federal minimum wage from receiving Ohio's minimum wage, and 2) exempts employees who do not receive overtime from the record-keeping requirement. Since Issue 2 says that implementing legislation cannot restrict the rights created by Issue 2, the exemptions from the minimum wage and record-keeping requirements might be challenged. Consequently, before relying on any exemption contained in the implementing legislation, the employer should obtain an opinion from an employment law attorney that such exemption is valid.

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Lifetime disqualifications may be imposed due to previous convictions for OVI. Although the law provides for limited privileges to drive a non-commercial vehicle, there is no provision in the law that allows for limited privileges to operate a commercial vehicle.

An ALS must be appealed within 30 days of the date of the initial court appearance. If the appeal is successful, driving privileges, both commercial and non-commercial, may be restored. If unsuccessful, the individual cannot drive a commercial vehicle during the period of the suspension. The court may grant limited privileges to drive a non-commercial vehicle after a mandatory period of time (commonly referred to as a "hard suspension") within which no privileges can be granted.

If an individual is subsequently convicted of OVI, regardless of the outcome of the ALS appeal, the BMV must impose a one-year disqualifica-

tion of a CDL. A previous OVI conviction may result in a lifetime CDL disqualification.

If an individual is arrested for OVI while operating a commercial vehicle and a blood, breath or urine test reveal a BAC at or above the legal limit for commercial operators (approximately one-half of the legal limit for non-commercial operators), the CDL must be immediately surrendered to the peace officer. A one-year disqualification of the CDL is mandatory on the first offense. A lifetime disqualification is mandatory for a second offense.

A refusal to submit to a breath, blood or urine test upon arrest for OVI has harsh consequences for individuals holding a CDL. The law provides that, in addition to a one-year disqualification for first-time refusals and a lifetime disqualification for a second refusal, the refusal, in and of itself, is a

separate criminal offense.

Operating a commercial vehicle with any discernable amount of alcohol will result in the driver being placed "out of service" for a 24-hour period whether or not OVI charges are filed.

The new law imposes grave consequences upon CDL holders. Just being arrested for OVI, regardless of whether or not a conviction results, can foreclose the ability to return to commercial driving. Business owners will suffer from increased insurance premiums and the costs associated with hiring and training replacement drivers.

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