

Ohio Minimum Wage Law

The Voters of the State of Ohio passed an minimum wage law in November of 2006. Under the prior law, each employer, including those with less than 150k in gross annual sales, who was subject to the Ohio minimum wage law, was required to pay each employee at a rate not less than the wage rate specified in the FLSA (generally \$5.15/hr).

The enactment by the General Assembly did away with the three-tiered structure that existed prior to June 2006 with the following exceptions:

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Certain Agricultural Workers

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any individual employed as an outside salesperson compensated by commissions or in a bona fide executive, administrative, or professional capacity, and

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any individual who worked for the United States.

Under the prior minimum wage law, every employer that was subject to the Ohio minimum wage law was required to make and keep for a period of not less than three years a record of the name address, occupation, rate of pay, and hours worked for each employee. "Employee," as it was used in this version of the ORC Section 4111.01(D) did not include exempt administrative, professionals or executives.

The New Minimum Wage Law

For the new minimum wage law to apply, the employer or employee must fit within the description of "employer" or "employee" as such appears under Section 34a of the Bill. The act primarily adopted the FLSA definitions of "employer" and "employee" excluding:

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Individuals exempt from overtime under Section 213 of the FLSA, including outside salespersons, bona fide executives, administrative employees, or professional employees, as determined by

federal law;

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Volunteers;

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Employees of sole family-owned businesses who is a family member of an owner

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"Family member" shall mean: a parent, spouse, child, stepchild, sibling, grandparent, grandchild, or other member of an owner's immediate family;

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Individuals employed on a casual basis in or around an employer's property or an individual's residence

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"Casual basis" shall mean employment that is irregular or intermittent and that is not performed by an individual whose vocation is to be employed in or about the property of the employer or individual's residence, as determined by federal law;

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Any other individuals who are excluded from the definition of "employee" under Section 203(e) of the FLSA.

Every employer is required to pay its employees a wage rate of not less than \$6.85/hr beginning on January 1, 2007. Beginning in 2007, this rate will increase on September 20th of each year. The rate will be adjusted by the rate of inflation for the 12 month period prior to that September, according to the Consumer Price Index for all Urban Wage Earners and Clerical Workers, or its successor index, for all items as calculated by the federal government rounded to the earliest five cents. This adjusted rate will then become effective the following January. The exceptions are the Sub Minimum Rates:

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Employees under 16 years of age must be paid the FLSA wage;

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Employees of businesses with gross annual receipts of \$250,000.00 or less must be paid the FLSA wage;

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Tipped employees must be paid 50% of the state minimum wage, or \$3.43/hr, provided they are guaranteed at least \$6.85/hr in total earnings;

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The State may issue licenses to employers allowing them to pay less than the minimum where they employ those with

physical or mental disabilities that would otherwise have adversely affected their opportunity for employment. This procedure has not yet been identified, but likely will be dealt with by the Ohio Department of Commerce this year.

The New Ohio Minimum Wage Law - Record Keeping Requirements

All records created prior to December 31, 2006 are to be kept and maintained under the prior law. All records created on or after January 1, 2007 must be created and maintained in accordance with the new law. Under the new law every Employer must keep records of the following for every employee:

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Names

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Addresses - Employee's home address as maintained in the employer's personnel file or other database

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Occupation(s)

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Pay Rates

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Exempt Employees - Employer is required to keep an employee's annual base salary or other rate of pay, but that does not include bonuses, stock options, incentives, deferred compensation, or other compensation.

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Non-Exempt Employees - Employer is required to keep an employee's base rate of pay.

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Each amount paid to an employee means the total gross wages paid to the employee for each pay period.

Non-Exempt Employees have special requirements. In addition to the requirements above, an employer must also keep records of the hours worked each day and week for all non-exempt employees. Hours worked each day means the total amount of time worked by an employee in whatever increments the employer uses for its payroll purposes during a day worked by the employee. However, there is no requirement that the employer keep a record of the time of day an employee begins/ends work for the employer each day. An employer is not required to keep records of "hours worked each day" for employees who are exempt from overtime, employees covered by the exceptions above, employees of the

U.S., babysitters, in-home caretakers, newspaper deliverers, volunteers at hospital or health care institutions, police or firefighters, students employed seasonally or part-time by the state, employees of a camp or recreational area for children under 18, and employees of the House or Senate.

All records must be kept for three years after the date the hours were worked AND for three years after the employee leaves his or her employment. This record retention requirement is one of the major changes in the new law. In the prior law required records to be kept for three years from the date the record was created.

Fortunately, at this time, there is no set method on how the records are to be kept. The Employer is not required to create or maintain a single record containing only the employee's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid the employee. Rather the standard is that the employer shall maintain a record or records whereby the employee or person acting on his or her behalf could reasonably review the information requested.

The New Ohio Minimum Wage Law - Record Disclosures

Under the new law, employers are required to provide all employees with the employer's name, address, telephone number, and other contact information (this may include the employer's internet address, e-mail address, fax number, or the name, address, and telephone number of the employer's statutory agent). This information MUST be provided to all employees at the time of their hiring. Additionally, it must be updated within 60 days following the change in the information.

The new law also requires an employer to "provide" the requested information to the employee or person acting on the employee's behalf within 30 business days without cost to the employee. The only exceptions to this rule are when the employer and employee or person acting on the employee's behalf come to an agreement on an alternative time for production or the 30-day production requirement would cause a hardship on the employer under the circumstances.

The term "acting on behalf of the employee" can mean any of the following:

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The certified or legally recognized collective bargaining representative for that employee;

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The employee's attorney;

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The employee's parent, guardian, or legal custodian.

The person acting on behalf of the employee must be specifically authorized by an employee in order to make a request for that employee's information. Employers may require that the request be in writing, be signed by the employee, and be notarized.

The New Ohio Minimum Wage Law - Enforcement and Damages

An employee, a person acting on behalf of one or more employees, and/or any other interested party may file a complaint with the state for a violation of Ohio Constitution, Article II, Section 34a or of the implementing statutes. The complaint shall be promptly investigated and resolved by the state. Interested persons must allege injury by the alleged violations to have standing under the law.

The state, may, on its own initiative, investigate a complaint and determine if the employer is in compliance with the new minimum wage law. The employer shall make available to the state any records related to such investigation and other information required for enforcement of the new minimum wage law.

If a violation is found to have occurred, potential damages shall be calculated as an additional two times the amount of back wages owed. If the employer has also been found to engage in retaliation against the employee for bringing or threatening suit under the new minimum wage law, the employer could be subject to additional damages of at least \$150.00 per day for each violation.