

December 15, 2006

Vol. 22 No. 1

Ohio Jumps on the Minimum Wage Bandwagon

Ohio will become a higher minimum wage state effective January 1, 2007. Subject to some exceptions explained in this article, all employers must pay a wage of \$6.85 per hour. The amount will be adjusted on September 30th of each year (beginning in 2007) according to the consumer price index for urban wage earners and clerical workers.

The new Ohio wage law has some exceptions. Employees under the age of 16 and those working for a business with annual gross receipts of \$250,000.00 or less shall be paid at an hourly rate not less than that established by the Federal Fair Labor Standards Act (\$5.15). The provisions of the new law also do not apply to employees of a solely family owned and operated business or to employees receiving tips that combined with wages paid by the employer are equal to or greater than the minimum wage for all hours worked (the burden of proof is on the employer to prove the compensation received).

The new Ohio minimum wage law contains additional administrative obligations. Every employer shall keep all records relating to compensation for three years. It also contains an anti-discriminatory or retaliatory provision. Employers found liable in a suit commenced by the affected employee or the Attorney General may be liable for damages equal to two times the amount of back wages.

Please call our Firm with any specific questions you may have with respect to Ohio's new minimum wage requirements.

SmokeFree Ohio

The "SmokeFree Ohio" proposal, passed as Issue 5 in the November 2006 election, bans virtually all smoking in public places and places of employment within the State of Ohio. Many employers who have already prohibited smoking in the workplace may need to make further provisions for smokers on the premises.

"Place of employment" under the new law means an enclosed area under the direct or indirect control of any employer. It includes offices, meeting rooms, storage areas, restrooms, hallways, garages **and vehicles**. "Enclosed area" refers to an area with a roof or other overhead covering, without regard to the time of the day or the presence of employees.

The new law imposes a duty upon the employer to ensure that tobacco smoke does not enter any area in which smoking is prohibited, including entrances, windows, and ventilation systems. The law also contains an anti-retaliatory provision designed to protect employees who provide information on smoking by other employees.

The statutory scheme specifically exempts the following areas from the SmokeFree Ohio law: private residences, hotel rooms, family-owned and operated places of employment in which all employees are related to the owner, nursing homes under some exceptions, retail tobacco stores, outdoor patios under some circumstances, and private clubs under some circumstances.

This legislation is far reaching and imposes additional duties on the employer. Consult legal counsel should you have other questions concerning its applicability.

Ohio Trust Code

Effective January 1, 2007, the Ohio Trust Code ("OTC") becomes law in Ohio. The OTC establishes several mandatory rules applicable to all trusts; otherwise, the OTC's default rules will apply only if the settlor has not made express provisions in the trust instrument. Examples of the OTC's default rules include:

1. *Beneficiary information and notices.* The OTC has several notice requirements of the trustee. The OTC also addresses required annual reports and the trustee's duty to provide certain information upon request.
2. *Creation, modification, and termination of trusts.* The OTC defines the requirements for a validly created and funded trust, as well as outlines the steps for modifying or terminating a trust through judicial proceedings.
3. *Creditor issues.* The OTC identifies which beneficiaries qualify for protection from creditors through the use of spendthrift provisions, and approves a new type of trust – the wholly discretionary trust.
4. *Revocable Trusts.* A trust created after January 1, 2007, will be presumed to be revocable unless the terms of the trust expressly make it irrevocable.
5. *Trust administration.* The OTC provides default procedures for majority action by trustees, appointment of successor trustees, and removal of trustees. The OTC also provides a statutory list of general and specific trustee powers.
6. *Private settlement agreements.* The OTC authorizes trustees and interested parties to create private settlement agreements regarding trust administration and investment management.
7. *Trustee liability.* The OTC clearly defines trustee liability, the ability of beneficiaries to bring a court action challenging trustee activities, and remedies for a breach of trust.