



Good News for Ohio Employers as Overtime Laws Will Soon Align with Federal Statute

Insights

4.22.22

When Ohio Governor DeWine signed Senate Bill 47 into effect on April 6, he handed employers a big win by not only exempting overtime pay for commuting and other off-hours work but also requiring workers to affirmatively “opt in” to join costly class and collective actions for overtime pay. The new law, which explicitly adopts sections 2 and 4 of the Portal-to-Portal Act amendments to the federal Fair Labor Standards Act (FLSA), will take effect on July 6, 2022. What do you need to know about these welcome changes and what should you do to prepare?

Portal to Portal Act

SB 47’s adoption of the Portal-to-Portal Act clarifies the compensability of certain activities under Ohio state law. In that regard, Ohio employers will now be off the hook when it comes to paying overtime wages to an employee for any time spent:

- Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform;
- Performing activities that are preliminary to or postliminary to the principal activity or activities; or
- Performing activities requiring insubstantial or insignificant periods of time beyond the employee’s scheduled working hours (i.e., *de minimis* time).

The law applies where any of these activities occur on any workday before the employee begins, or after the employee ends, the principal activity. However, preliminary or postliminary activities that are not exempt from overtime wages – meaning, Ohio employers must still pay the employee – include activities performed by the employee:

- During the regular workday or during prescribed hours;
- At the specific direction of the employer;
- Pursuant to an express provision of a written or unwritten contract or collective bargaining agreement; or
- Based on an applicable custom or practice to the activity that is not inconsistent with a written or unwritten contract or collective bargaining agreement

Class and Collective Actions

The real game-changing aspect of SB 47 is that it requires an employee to “opt in” to a lawsuit for overtime wages. To do so, the employee must first give written consent to become a party plaintiff to the action and then file such consent with the court in which the lawsuit is brought. This requirement also aligns Ohio state law with the FLSA.

The elimination of the “opt out” process for overtime wage claims under Ohio state law is good news for Ohio employers. That is because, under the current opt-out process that will soon be scrapped, employees are automatically included in the lawsuit unless they formally opt out of it. This often substantially increases the size of the class and scope of potential financial exposure.

What Should Ohio Employers Do?

Although SB 47 aligns Ohio’s overtime laws with the FLSA, it remains critical that you conduct periodic internal audits of your wage and hour practices, including any policies and practices concerning preliminary and postliminary work activities as well as *de minimis* time. Beyond SB 47, these audits should also include a review of pay practices, exempt/non-exempt classifications, employee/independent contractor classifications, overtime compensation, and meal and rest break compliance, among other things. It is best practice to have your internal audits conducted by, or under the supervision of, your attorney in order to preserve the attorney-client privilege.

With the new Portal-to-Portal amendments soon in place, you will now be handed a reprieve when it comes to compensating employees for activities they perform before or after work. However, in order to ensure you are putting yourself in the best position here – and to clearly define expectations with your workforce so they don’t believe they are being paid for activities that will soon be no longer compensable – you should clearly define and articulate your policies and practices. Being as clear as possible will aid your efforts and create a professional working environment that will minimize the chances of bad blood – and reduce the chances of legal claims.

Conclusion

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Ohio employers, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Cleveland](#) or [Columbus](#) offices or in our [Wage and Hour Practice Group](#).

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