



Florida Employers Face Two Increases in Minimum Wage in 2009

Insights

11.24.08

On January 1, 2009, the minimum wage in Florida will be rising to **\$7.21** per hour. This represents an hourly increase of \$0.42 over the current Florida minimum wage of \$6.79. The rise in the Florida minimum wage is a result of the Florida Minimum Wage Amendment passed by Florida voters in November 2004 which initially set the minimum wage at \$6.15 per hour and calls for annual increases tied to the rate of inflation. This minimum wage applies to all employees eligible to receive the federal minimum wage.

But wait! There's More . . .

Employers must comply with the higher of the federal minimum wage or the state minimum wage. The federal minimum wage is currently \$6.55 per hour. Because the Florida minimum wage in 2009 will be higher than its current federal counterpart, employers in Florida must comply with the higher Florida minimum wage. But the federal minimum wage will be rising to \$7.25 per hour on July 24, 2009. At that point, it will be higher than the Florida minimum wage and employers will need to raise wages again to comply with the higher federal minimum wage of \$7.25 per hour.

Also effective on January 1, 2009, "tipped employees" in Florida meeting eligibility requirements for the tip credit under the federal Fair Labor Standards Act (FLSA) will have to be paid a direct cash wage of at least \$4.19 per hour. This is an amount equal to the new Florida minimum wage, \$7.21, minus the tip credit allowable under Florida law, \$3.02 (assuming that these employees receive enough in tips to generate this credit).

Employers taking advantage of the FLSA's overtime exception for commission-paid employees of retail or service establishments should note that the FLSA defines the exception with reference to the FLSA's minimum-wage rate rather than state law. An employer relying upon this exception must ensure that an affected employee's average or "regular" rate in an overtime workweek is more than 1.5 times the **federal** minimum wage. Currently, this means that such an employee must earn more than \$9.83 per hour (1.5 times \$6.55) in overtime weeks. When the federal minimum wage rises to \$7.25 on July 24, 2009, it will mean that such an employee must earn more than \$10.88 per hour in overtime weeks.

And a new Posting Requirement

The State of Florida Agency for Workforce Innovation has issued a new 2009 "Notice to Employees" poster that Florida employers will be required to post as of January 1, 2009, in a conspicuous and

poster that Florida employers will be required to post, as of January 1, 2007, in a conspicuous and accessible place in each establishment where employees are employed. This poster is available for downloading in English and Spanish from the Agency for Workforce Innovation's webpage. This Florida poster is in addition to the federal minimum wage poster, not a substitute for it. The federal poster can be downloaded from the [U.S. Department of Labor website](#).

If you are an employer with employees working in Florida, now is a good time to review your pay practices and ensure compliance with the Florida minimum wage and the federal Fair Labor Standards Act. In Florida, lawsuits alleging wage and hour violations are frequent and ever-increasing in popularity. This will be even more true with rates rising on January 1 and again on July 24. Compliance is an important measure in preventing probable and expensive litigation.

Avoiding Problems

Wage and hour cases can be very costly due to the remedies available. An employer found liable can expect to pay employees all of the back wages calculated to be due, liquidated damages in an amount equal to the back wages, plus costs and attorneys' fees to the employees' attorneys. And you will have to pay your own attorney as well.

Keep in mind that the amount you may end up paying to the employee's attorney will likely have no relationship to the amount paid to the employee. For example, an employee may only recover a few hundred dollars in back wages while his or her attorney collects several thousand in attorneys' fees.

Fortunately, wage and hour lawsuits are, for the most part, avoidable. Employees have little incentive to seek legal counsel if they are being paid properly. An audit of your payroll practices by a professional knowledgeable in the wage and hour laws may reveal the existence of improper deductions or improperly categorized employees. Once identified, these errors can be corrected and litigation avoided. With Florida leading the nation in this type of litigation, the employer's maxim has become "It's better to be safe than sued."

For more information contact any attorney in one of our Florida offices:

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