Florida Employers Face Mid-Year Minimum Wage Increase

Insights
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In response to a recent Circuit Court decision, the State of Florida Agency for Workforce Innovation (AWI) has announced that, effective June 1, 2011, the Florida minimum wage will increase to **$7.31** per hour. With this increase, Florida will once again exceed the federal minimum wage, and employers operating within the State will be required to comply with the higher standard.

Also effective on June 1, 2011, those "tipped employees" in Florida who otherwise meet 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 $4.29 per hour. This is an amount equal to the new Florida minimum of $7.31 per hour, minus the $3.02 hourly tip credit permitted under Florida law (assuming that these employees receive enough in tips to generate this credit).

Employers taking advantage of the FLSA's "Section 7(i)" overtime exception for commission-paid employees of retail or service establishments should note that the FLSA defines the exception with reference to *the federal* minimum-wage rate rather than state law. Consequently, an employer relying upon this exception need only ensure that an affected employee's average or "regular" rate in an overtime workweek is more than 1.5 times the *federal* minimum wage. Because the federal minimum wage currently remains unchanged, an employee paid under this exemption must continue to earn more than $10.88 per hour in overtime weeks.

While increases in the Florida minimum wage typically occur at the beginning of a calendar year, this particular increase is the result of a successful legal challenge to the formula used by AWI in calculating the Florida minimum wage for 2010 and 2011. AWI has since issued a revised 2011 "Notice to Employees" poster that Florida employers will be required to post, as of June 1, 2011, in a conspicuous and accessible place within each establishment where employees are employed. The poster is now available for downloading in English and Spanish from the Agency for Workforce Innovation's webpage. It is important to note that this poster is in addition to the federal minimum wage poster, rather than serving as a substitute for it. The federal poster remains available from the U.S. Department of Labor website.

It remains to be seen whether AWI or any other organization will mount a successful challenge to the court ruling resulting in this mid-year increase, and we will continue monitoring this situation as it develops. In the meantime, Florida employers are advised to begin taking steps to comply with the new minimum wage standard.

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For more information on this ruling and what it could mean for your business, we would encourage you to contact your Fisher Phillips attorney, or to touch base with counsel in any of our Florida offices:

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