Florida Minimum Wage Rising to $7.79

Insights
10.22.12

On January 1, 2013, the minimum wage for employees working in Florida will rise to **$7.79** per hour. This represents an hourly increase of $0.12 over the current Florida minimum wage. The increase is tied to the rate of inflation over the prior year.

Also effective on January 1, 2013, 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 $4.77 per hour. This is an amount equal to the new Florida minimum of $7.79 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 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 remains unchanged at $7.25, an employee paid under this exemption must continue to earn more than $10.88 per hour in overtime weeks.

The Florida Department of Economic Opportunity has issued a new "Notice to Employees" poster that Florida employers will be required to post, as of January 1, 2013, 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 Department's webpage. It is important to note that this poster is in addition to (rather than substitution for) the federal minimum wage poster. The federal poster remains available from the U.S. Department of Labor website.

With the Florida rate rising in January, now is a good time to review your pay practices and ensure compliance with both state law and the federal Fair Labor Standards Act. In Florida, wage and hour lawsuits are frequent and ever-increasing. In recent years, more federal wage and hour lawsuits have been filed in Florida than in all other states combined. Over the last five years alone, Florida has accounted for 34% of all such cases.

An employer found liable can expect to pay employees all back wages due, plus an equal amount in liquidated damages, and all costs and attorneys' fees. As a result, the amount that is ultimately paid

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often bears no relationship to the actual damages suffered. 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 in the process.

Consequently, strict compliance is an important measure in preventing costly litigation. Fortunately, wage and hour lawsuits are, for the most part, avoidable. Employees have little incentive to seek legal counsel if they are paid properly. An audit of your payroll practices by a Fisher Phillips attorney or other professional knowledgeable in the wage and hour laws may reveal the existence of improper deductions or improperly classified employees. Once identified, these errors can often be corrected prior to the onset of litigation. With Florida leading the nation in this litigation, the employer's maxim has become "It's better to be safe than sued."

For more information on the new Florida minimum wage or to schedule a payroll audit, we would encourage you to contact your Fisher Phillips attorney, or to touch base with counsel in any of our Florida offices:

Ft. Lauderdale: (954) 525-4800
Orlando: (407) 541-0888
Tampa: (813) 769-7500

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