



Florida EMPLOYMENT

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Law Letter

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WAGE AND HOUR LAW

Florida Legislature passes minimum wage law as rate rises to \$6.40 an hour

On December 12, after a special session of the Florida Legislature, Governor Jeb Bush signed new legislation that creates the Florida Minimum Wage Act, Florida Statutes, Section 448.110. At the same time, the state's minimum wage rate is rising to \$6.40 an hour effective January 1, 2006. Read on to learn about other key provisions of the new law.

How state minimum wage is calculated

On September 30 of each year, Florida's Agency for Workforce Innovation (AWI) is required to calculate a new minimum wage rate for the state. The agency completed that process in 2005, and the rate was increased to \$6.40 an hour effective January 1, 2006. That makes Florida's new minimum wage \$1.25 an hour more than the current \$5.15 federal minimum wage!

In October of each year, Florida employers can check the AWI's website (www.floridajobs.org) to determine what the new minimum wage will be effective January 1 of the following year. The agency is supposed to publish the minimum wage rate for the following year on its Internet home page by October 15 of each year. If your organization is registered in the unemployment compensation database, you'll also receive written notice of the new wage rate. You're responsible for maintaining your current address information in that database.

What the new law says

The new law makes it unlawful for any Florida employer to discriminate in any manner or take adverse action against any persons in retaliation for exercising their rights under the minimum wage provisions of the Florida

Constitution. In 2004, state voters approved and added Article 10, Section 24, to the constitution, establishing the state's minimum wage. The amendment provided that the legislature could adopt measures to implement a state minimum wage.

Only those who are entitled to receive the federal minimum wage under the federal Fair Labor Standards Act (FLSA) are eligible to receive the state minimum wage.

New law versus the FLSA

The new Florida law is broader than the FLSA in several areas. First, the federal law allows employees to seek damages only within three years of an alleged willful

What's Inside . . .

Employer Retaliation	
Florida court makes it easier for employees to sue for retaliation after bias complaints	2
Wage and Hour Laws	
DOL clarifies when you must pay employees who miss work for storms, other emergencies	3
Negligent Supervision	
Rape victim unable to hold Florida employer liable for van driver's assault	4
Agency Action	
President Bush's nominee to the NLRB may return Board to full status	5
Taxes	
With earned income tax credit, some employees can add \$2 an hour to their paychecks	6
Sex Discrimination	
Eleventh Circuit backs off earlier ruling on use of after-acquired evidence	7

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violation and two years of a nonwillful violation. Under the new Florida law, employees may file an action within five years of an alleged willful violation and four years of a nonwillful violation.

Second, the new Florida law authorizes broader class-action relief than the FLSA allows. The federal law provides for *collective actions* on behalf of groups of employees. Under a collective action, however, no employee can be included in the lawsuit unless she gives her consent in writing.

Florida's new law also provides for *class actions* under the state's civil procedures. Those rules allow a group of current or former employees to send out a notice to everyone in a potential class. Those who don't want to be included in the class suit must file a statement with the court asking to be excluded. Otherwise, all class members can be included in the suit.

Other key points

Employer retaliation. It's unlawful for an employer or any other party to discriminate or take adverse action against any person in retaliation for exercising rights protected under the state minimum wage law.

Employee notice. Before filing a suit, an individual must notify the employer in writing of his intent to sue. The notice must identify the minimum wage to which the person claims he was entitled, the actual or estimated work dates and hours for which payment is sought, and the total amount of the unpaid wages. The employer will then have 15 calendar days to pay the wages or otherwise resolve the claim to the individual's satisfaction. If the claim isn't resolved, the lawsuit must be consistent with the notice given to the employer.

Potential remedies. Any person who prevails in a lawsuit filed under the minimum wage law will be allowed to recover (1) the full amount of any unpaid back wages, (2) an amount equal to the unpaid back wages as liquidated damages, (3) reasonable attorneys' fees and costs for filing the suit, (4) if appropriate, reinstatement to the person's former job, and (5) injunctive relief. Punitive damages aren't allowed.

Suits under the minimum wage law are subject to Florida's offer-of-judgment law, part of the tort reform legislation passed in recent years. Under this procedure, an employer that files an offer of judgment *that isn't accepted by the employee within 30 days* can be entitled to recover its attorneys' fees and costs. The entitlement is triggered if the court's decision in the case is either for the employer or within 25 percent of the employer's offer of judgment. Florida Statutes § 768.79.

Effective date. The new law went into effect when the governor signed it on December 12, 2005.

For a copy of Florida's new minimum wage law or the recent wage and hour opinion letter (discussed in the sidebar article), send an e-mail to Florida Employment Law Letter editor Tom Harper at gth@HarperGerlach.com

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