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Effective May 2, 2005 employers in Florida must pay hourly employees \$6.15 per hour and tipped employees \$3.13 per hour. The provisions of the Florida Minimum Wage dictate costly penalties for noncompliant employers.

Southern Edition

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Florida's Minimum Wage Takes Effect May 2, 2005

By Lori A. Brown and Linda Noel

In November 2004, the citizens of the State of Florida overwhelmingly passed the Florida Minimum Wage Amendment ("the Amendment"). The Amendment, which goes into effect May 2, 2005, mandates an hourly wage of \$6.15 per hour for all hourly employees. It also requires a direct obligation of \$3.13 per hour for tipped employees, while simultaneously maintaining the current Fair Labor Standards Act (FLSA) tip credit rate of \$3.02 per hour.

Annual Review of Minimum Wage

Pursuant to the terms of the Amendment, the new minimum wage is subject to annual review. The Agency for Workforce Innovation (AWI), the state agency which will administer the Amendment, is specifically charged with the responsibility of conducting an annual review and calculation of the minimum wage. Beginning September 30, 2005, and every September 30th thereafter, the AWI will calculate and adjust the minimum wage rate to reflect inflation from the previous year. An adjustment to the standard hourly rate will likewise include an increase of the employer's direct obligation to its tipped employees. Meanwhile, employer's tip credit towards satisfaction of the minimum wage will remain at the FLSA rate of \$3.02. The adjusted wage will take effect on the January 1st following the annual review.

Enforcement of Rights

In addition to the establishment of a new minimum wage, the Amendment also

provides for private causes of action. After May 2, 2005, employees who are not paid the minimum wage are guaranteed the right to file a civil action to enforce their rights under the Amendment. The Attorney General or other official designated by the Florida Legislature similarly has the right to bring an action for enforcement of the Amendment.

Moreover, employees may also bring actions against employers who discriminate against or take adverse actions against them in retaliation for exercising rights protected under the Amendment. The rights protected include the right to file a complaint and or inform any person about any party's noncompliance with the Amendment. The right to inform also encompasses the right to assist individuals in asserting their rights. Notably, this portion of the provision has been interpreted to establish the right to institute class action lawsuits similar to those found in FLSA causes of action.

Employer Liability

Employers who violate the provisions of the Amendment will be subject to liability for the actual amount of unpaid wages, plus an additional amount equal to the unpaid wages as liquidated damages. Employers will also be liable for reasonable attorney's fees, costs, and other equitable relief as ordered by the court. Equitable relief includes, without limitation, reinstatement and/or injunctive relief. Furthermore, each willful violation will subject an employer to a fine of \$1,000 per violation payable to the State of Florida. The statute of limitations for enforcement of

rights created under the Amendment is four (4) years. In the case of willful violations, the statute of limitations is five (5) years.

Implementing Legislation

There are several bills currently before the Florida Legislature which have the potential to blunt some of the sharp provisions in the Amendment. None of them, however, will affect the effective date of May 2, 2005. Generally, the bills mandate that an employee give an offending employer written notification of his or her claim prior to instituting a civil action. After notification, the employer would have a limited time period within which to pay the amount owed or otherwise resolve the claim. Pursuant to the provisions of the bill, employers would also be entitled to a “good faith” defense. The defense allows an employer to escape liability for liquidated damages if it proves that it acted in good faith. These bills, however, have yet to be passed. As such, Florida employers must be in full compliance with the Amendment on May 2, 2005. Employers should review their current pay practices and take definitive steps to ensure compliance with the new minimum wage, as the consequences for an employer’s violation of the Amendment can be costly.

Lori A. Brown is Office Managing Shareholder, and Linda Noel is an associate, in Littler Mendelson’s Miami office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Ms. Noel at lnoel@littler.com, or Ms. Brown at labrown@littler.com.

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