

January 2007

**Missouri's minimum
hourly wage rose from
\$5.15 to \$6.50
on January 1, 2007**

While that sounds simple enough, the law also affects who is entitled to overtime pay, how employers must pay their employees overtime, when and how overtime pay must be paid, and raises many practical questions for employers in Missouri.

**This Update is brought to you
by the SPvG Business
Litigation Practice Group.**

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Missouri's New Overtime and Minimum Wage Law

Here are some things to keep in mind with this new law –

- **Police Officers and Firefighters:** State and local governments with at least five police officers or firefighters must now pay each officer or firefighter at least one and a half times that employee's wage for all hours worked over 40 during a standard seven-day work week. Most importantly, Missouri law currently has not adopted the Section 7(k) exemption under the FLSA, which permits a public employer to select a work period of more than seven days for overtime calculations. Now, governments will have to look at each seven-day work week separately to determine if overtime must be paid to police officers and firefighters.
- **Amusement Parks:** The only FLSA exemption to the 40 hour per week standard that Missouri currently has adopted is for employees of an amusement or recreation business, who are entitled to overtime pay for all time worked over 52 hours in a one-week period.
- **Commission-based sales people and independent nurses:** Missouri's new minimum wage law does not apply to salespeople and nurses whose hours and places of employment are not substantially controlled by the employer. If a salesperson or nurse is free to come and go as he or she pleases and is not required to be at the place of business at any certain time or for any established period of time, then he or she is not covered by the new law and the \$6.50 per hour rate does not apply. Any salesperson or nurse whose hours and place of employment are established and controlled by the employer is covered by the new law. Registered nurses (RN's), based on their advanced knowledge, are currently considered professionals and are not subject to this new law. Other nurses, such as licensed practical nurses (LPN's) are subject to Missouri's new law. Missouri's new law no longer allows Missouri hospitals and long term care facilities to use an 80-hour period to measure overtime.
- **Small businesses:** A retail or service business, whose annual gross sales are less than \$500,000, is exempt from the new law.

- **Minimum wage employees:** Employees who were making \$6.50 per hour before January 1, 2007 are not entitled to raises. An employer should consider, however, how morale might be improved by raising all hourly rates. For instance, if an employee was making \$6.75 per hour, and other employees' hourly rates were raised to \$6.50 per hour on January 1, 2007, the employee making \$6.75 per hour is not entitled to an increase.
- **Salaried employees:** Missouri's new minimum wage law applies to a salaried employee who does not fall into any exception and whose salary is not equivalent to \$6.50 per hour for all hours worked in the work week.
- **Enforcement:** An employer who pays an employee wages less than required under Missouri's new minimum wage law shall be liable for double the amount it owes the employee and for the employee's attorney's fees to obtain that amount due.

While this law seems simple on its face, there are a number of detailed exceptions and requirements. A company should ensure it is fully complying with this new law, since it risks a state investigation and penalties for non-compliance.

New FMLA Regulations in Process

The U.S. Department of Labor will be accepting public comments until February 2, 2007 for consideration as it drafts new regulations to the Family and Medical Leave Act (FMLA). We expect these regulations to refine procedures for an employee's requesting FMLA leave, to revise obligations of the employer in handling FMLA leave requests, and to clarify what constitutes a "serious health condition." These new regulations should help guide an employer's decisions about whether an employee's medical condition is a "serious health condition," which would entitle the employee to leave, or an ordinary condition (such as a cold, earache, or headache), which would not entitle the employee to FMLA leave.

We will advise you on the final regulations, their subject matter, and their probable impact on employers.

SPvG News . . .

Sandberg, Phoenix & von Gontard, P.C. is pleased to announce that the following members have become shareholders at the firm: **Jonathan T. Barton, Timothy P. Dugan, Jeffrey L. Dunn, Russell L. Makepeace, Sara J. McAvoy, Mark A. Prost, and Todd C. Stanton.**

Jonathan Barton will be making presentations at two events sponsored by the National Business Institute: "Litigating to Win Through Advanced Trial Advocacy" and "How to Get Evidence & Expert Testimony Admitted into Evidence."

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