



Bailey Cavalieri LLC  
ATTORNEYS AT LAW

# CLIENT ALERT

## EMPLOYMENT CONSEQUENCES OF OHIO BALLOT ISSUES 2 AND 5

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On November 7, 2006, Ohio voters approved two statewide ballot issues having consequences for Ohio employers. Issue 5 imposed a smoking ban on virtually all workplaces. More importantly, Issue 2 made significant changes to Ohio's minimum wage laws. Employers must take immediate note as to how these issues affect their businesses.

### **Smoking Ban**

By approving Issue 5, Ohio voters adopted a new law, Ohio Revised Code §3794.01, *et seq.*, which will take effect on December 7, 2006. The law bans smoking in all public places and places of employment. Employers are required to enforce the ban in any enclosed workplace area under their control, including vehicles, and also in any area adjacent to any door or window. Employers are required to remove all ashtrays and to post "No Smoking" signs in their places of employment. The signs must contain a telephone number for reporting violations. An example of such a sign and additional information may be found at the Ohio Department of Health website at [www.odh.ohio.gov/alerts/ohiosmokingban.aspx](http://www.odh.ohio.gov/alerts/ohiosmokingban.aspx).

Exceptions to the law are limited to private residences, hotel or motel sleeping rooms, family owned and operated businesses, nursing homes, retail tobacco stores, outdoor patios and private clubs.

Employers who violate the law will be subject to a warning letter from the Ohio Department of Health for a first violation and civil fines thereafter. Employees who exercise their rights under the statute are protected from discharge and retaliation.

### **Minimum Wage Amendment**

By passing Issue 2, Ohio voters approved an amendment to Ohio's Constitution increasing the minimum hourly wage to \$6.85 beginning on January 1, 2007. The amendment supersedes the federal minimum wage and conflicting Ohio law, and applies to all Ohio employees, except those under the age of 16, family members working at a family-owned business, and employees of businesses with annual gross receipts of less than \$250,000. Employees who regularly receive tips may be paid as little as one-half the new minimum wage, provided the employer can demonstrate the receipt of tips which would increase the hourly rate above the required minimum. Beginning on January 1, 2008, the amendment allows for the minimum wage to increase with the rate of inflation.

Significantly, the minimum wage amendment includes potentially burdensome provisions which require the maintenance and retention of records for every employee including name, address, occupation, pay rate, daily hours worked, and amounts paid. Such recordkeeping requirements appear to apply to otherwise exempt employees under existing Ohio and federal laws. The records must be retained for the duration of all employment and for three (3) years after the employment ends. The amendment also provides that, upon request and at no charge, employee records must be provided to an employee or to any person acting on an employee's behalf. The amendment does not include a time frame in which an employer must respond to such a request.

The amendment includes a prohibition against discrimination or retaliation against any employee who exercises his or her rights under the amendment. Possible remedies include back wages, liquidated damages, costs, and reasonable attorney's fees. Additional damages are also recoverable for violations of the anti-retaliation provisions. Aggrieved employees can file a confidential complaint with the state, or, alternatively, employees can file a civil action, including a class action, seeking monetary and equitable relief. For more information regarding the amendment, see, [www.smartvoter.org/2006/11/07/oh/state/issue/2/](http://www.smartvoter.org/2006/11/07/oh/state/issue/2/).

Unfortunately, the minimum wage amendment is not a statute, and, as a result, numerous ambiguities within the amendment and with existing law cannot be easily resolved by the General Assembly. While it is hoped the Ohio Department of Commerce will provide some prompt guidance in the form of administrative rules, some of the issues arising out of the amendment will likely be resolved only through litigation.

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