

## OHIO MINIMUM WAGE REQUIREMENTS

**MAAHS Compliance Assistance** - MAAHS provides the following information to assist private ag and hort employers in better understanding Ohio's new minimum wage requirements. This information is not to be considered legal advice and employers should consult legal counsel for legal advice. MAAHS will not be held responsible for actions taken by anyone reading this compliance assistance. MAAHS employer members are granted permission to distribute this document to additional managers and supervisors in their businesses. MAAHS Sponsor Members are granted permission to distribute to their members. Other recipients of this document are not permitted to distribute to additional parties.

**Issue Background** - Ohio voters passed Issue 2, the Ohio Fair Minimum Wage Constitutional Amendment on Nov. 7, 2006. The new minimum wage of \$6.85 per hour is effective Jan. 1, 2007. The Ohio General Assembly passed enabling legislation, Amended Substitute House Bill 690, on Dec. 20, 2006 that will become effective April 4, 2007, 90 days after being signed by the Governor Taft. The Ohio Department of Commerce may develop rules to clarify details.

### Information Sources Used in Developing this Compliance Assistance

Ohio Fair Minimum Wage Amendment

[HTTP://WWW.SOS.STATE.OH.US/SOS/ELECTIONSVOTER/RESULTS2006.ASPX?SECTION=1872](http://www.sos.state.oh.us/SOS/ELECTIONSVOTER/RESULTS2006.ASPX?SECTION=1872)

Amended Substitute House Bill 690

[HTTP://WWW.LEGISLATURE.STATE.OH.US/BILLS.CFM?ID=126\\_HB\\_0690](http://www.legislature.state.oh.us/BILLS.CFM?ID=126_HB_0690)

Fair Labor Standards Act

[HTTP://WWW.DOL.GOV/COMPLIANCE/LAWS/COMP-FLSA.HTM](http://www.dol.gov/compliance/laws/comp-flsa.htm)

### Basic Provisions of the New Minimum Wage Constitutional Amendment and Law

1. **New Wage and Annual Increases** - Covered employers (with limited exceptions) will pay \$6.85 per hour effective Jan. 1, 2007. Each Jan. 1 the wage rate will be increased according to the Consumer Prices (CPI) for all urban wage earners and clerical workers.
2. **Employer Information to Employees** - An employer shall at the time of hire provide an employee the employer's name, address, telephone number, and other contact information and update such information when it changes.
3. **Recordkeeping** - An employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid to an employee for a period of not less than three years following the last date the employee was employed.
4. **Payroll Information to Employees or Their Representatives** - Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request.
5. **Retaliation is disallowed.**

*A number of exceptions, details and definitions should be considered for employers to know how to apply the above provisions to their businesses. The following provides much of that detail that applies to agricultural and horticultural businesses. Keep in mind that some exceptions for agriculture may be open to interpretation so MAAHS is limiting the compliance assistance to exceptions that appear most clear.*

## 1) New Wage and Annual Increases

Covered employers (with limited exceptions) will pay \$6.85 per hour effective Jan. 1, 2007. Each Jan. 1 the wage rate will be increased according to the Consumer Prices (CPI) for all urban wage earners and clerical workers.

### Exceptions from the Ohio Minimum Wage relating to ag and hort employers

- Youth and Small Business Exception - Employees under 16 years of age and employees of businesses with annual gross receipts of \$250,000 or less (gross amount adjusted annually by the CPI) for the preceding calendar year will be paid a wage rate of not less than that established under the federal Fair Labor Standards Act.
- Tipped Employees Exception - An employer may pay an employee less than, but not less than half, the minimum wage rate required by this section if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the minimum wage rate for all hours worked.
- Family Exception - The provisions of this section do not apply to employees of a solely family owned and operated business who are family members of an owner.
  - "Family member" means a parent, spouse, child, stepchild, sibling, grandparent, grandchild, or other member of an owner's immediate family.
- Disability Exception - The state may issue licenses to employers authorizing payment of a wage rate below that required by this section to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment.
- Casual Labor Exception - "Employer" does not include an individual employed in or about the property of the employer or individual's residence on a casual basis.
  - "Casual basis" means employment that is irregular or intermittent and that is not performed by an individual whose vocation is to be employed in or about the property of the employer or individual's residence. In construing who is employed on a "casual basis," due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of the term "casual basis" under the Fair Labor Standards Act and its regulations.
  - "An individual employed in or about the property of an employer or individual's residence" means an individual employed on a casual basis or an individual employed in or about a residence on a casual basis, respectively.

## 2) Employer Information to Employees

An employer shall at the time of hire provide an employee the employer's name, address, telephone number, and other "contact information" and update such information when it changes.

"Other contact information" may include, where applicable, the address of the employer's internet site on the world wide web, the employer's electronic mail address, fax number, or the name, address, and telephone number of the employer's statutory agent. "Other contact information" does not include the name, address, telephone number, fax number, internet site address, or electronic mail address of any employee, shareholder, officer, director, supervisor, manager, or other individual employed by or associated with an employer.

"When it changes" means that the employer shall provide its employees with the change in its name, address, telephone number, or other contact information within sixty business days after the change occurs. The employer shall provide the changed information by using any of its

usual methods of communicating with its employees, including, but not limited to, listing the change on the employer's internet site on the world wide web, internal computer network, or a bulletin board where it commonly posts employee communications or by insertion or inclusion with employees' paychecks or pay stubs.

### **3) Recordkeeping**

An employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid to an employee for a period of not less than three years following the last date the employee was employed.

#### **Old Recordkeeping Requirements**

Ohio Revised Code Sec. 4111.08. Every employer subject to sections 4111.01 to 4111.17 of the Revised Code, or to any rule adopted thereunder, shall make and keep for a period of not less than three years a record of the name, address, and occupation of each of the employer's employees, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee, and other information as the director of commerce prescribes by rule as necessary or appropriate for the enforcement of sections 4111.01 to 4111.17 of the Revised Code, or of the rules thereunder. Records may be opened for inspection or copying by the director at any reasonable time. ***Any records an employer creates on or before December 31, 2006, shall be created and maintained in accordance with this section.***

#### **New Recordkeeping Requirements**

Ohio Revised Code Section 4111.14 (F) In accordance with Section 34a of Article II, Ohio Constitution, an employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee for a period of not less than three years following the last date the employee was employed by that employer. As used in division (F) of this section:

(1) "Address" means an employee's home address as maintained in the employer's personnel file or personnel database for that employee.

(2)(a) With respect to employees who are not exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter, "pay rate" means an employee's base rate of pay.

(b) With respect to employees who are exempt from the overtime pay requirements of the Fair Labor Standards Act or this chapter, "pay rate" means an employee's annual base salary or other rate of pay by which the particular employee qualifies for that exemption under the Fair Labor Standards Act or this chapter, but does not include bonuses, stock options, incentives, deferred compensation, or any other similar form of compensation. ***(Other rate of pay may include piece rates.)***

(3) "Record" means the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee in one or more documents, databases, or other paper or electronic forms of record-keeping maintained by an employer. No one particular method or form of maintaining such a record or records is required under this division. An employer is not required to create or maintain a single record containing only the employee's name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee. An employer shall maintain a record or records from which the employee or person acting on behalf of that employee could reasonably review the information requested by the employee or person.

An employer is not required to maintain the records specified in division (F)(3) of this section for any period before January 1, 2007. On and after January 1, 2007, the employer shall maintain the records required by division (F)(3) of this section for three years from the date the hours were worked by the employee and for three years after the date the employee's employment ends.

(4)(a) Except for individuals specified in division (F)(4)(b) of this section, "hours worked for each day worked" means the total amount of time worked by an employee in whatever increments the employer uses for its payroll purposes during a day worked by the employee. An employer is not required to keep a record of the time of day an employee begins and ends work on any given day. As used in division (F)(4) of this section, "day" means a fixed period of twenty-four consecutive hours during which an employee performs work for an employer.

(b) An employer is not required to keep records of "hours worked for each day worked" for individuals for whom the employer is not required to keep those records under the Fair Labor Standards Act and its regulations or individuals who are not subject to the overtime pay requirements specified in section 4111.03 of the Revised Code. ***(This exempts agricultural employers from maintaining hours worked for each day worked.)***

(5) "Each amount paid an employee" means the total gross wages paid to an employee for each pay period. As used in division (F)(5) of this section, "pay period" means the period of time designated by an employer to pay an employee the employee's gross wages in accordance with the employer's payroll practices under section 4113.15 of the Revised Code.

#### **4) Payroll Information to Employees or Their Representatives**

Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request.

Ohio Revised Code Section 4111.14 (G) In accordance with Section 34a of Article II, Ohio Constitution, an employer must provide such information without charge to an employee or person acting on behalf of an employee upon request. As used in division (G) of this section:

(1) "Such information" means the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid for the specific employee who has requested that specific employee's own information and does not include the name, address, occupation, pay rate, hours worked for each day worked, or each amount paid of any other employee of the employer. "Such information" does not include hours worked for each day worked by individuals for whom an employer is not required to keep that information under the Fair Labor Standards Act and its regulations or individuals who are not subject to the overtime pay requirements specified in section 4111.03 of the Revised Code.

(2) "Acting on behalf of an employee" means a person acting on behalf of an employee as any of the following:

(a) The certified or legally recognized collective bargaining representative for that employee under the applicable federal law or Chapter 4117. of the Revised Code;

(b) The employee's attorney;

(c) The employee's parent, guardian, or legal custodian.

A person "acting on behalf of an employee" must be specifically authorized by an employee in order to make a request for that employee's own name, address, occupation, pay rate, hours worked for each day worked, and each amount paid to that employee.

(3) "Provide" means that an employer shall provide the requested information within thirty business days after the date the employer receives the request, unless either of the following occurs:

(a) The employer and the employee or person acting on behalf of the employee agree to some alternative time period for providing the information.

(b) The thirty-day period would cause a hardship on the employer under the circumstances, in which case the employer must provide the requested information as soon as practicable.

(4) A "request" made by an employee or a person acting on behalf of an employee means a request by an employee or a person acting on behalf of an employee for the employee's own information. The employer may require that the employee provide the employer with a written request that has been signed by the employee and notarized and that reasonably specifies the particular information being requested. The employer may require that the person acting on behalf of an employee provide the employer with a written request that has been signed by the employee whose information is being requested and notarized and that reasonably specifies the particular information being requested.

## **5) Retaliation is disallowed.**

No employer shall discharge or in any other manner discriminate or retaliate against an employee for exercising any right under this section (of the Constitution) or any law or regulation implementing its provisions or against any person for providing assistance to an employee or information regarding the same.

## **6) Additional Issues**

**Ohio Minimum Wage Poster** - The current version of the Ohio minimum wage poster is dated 4/03/07 and it will need to be updated annually from now on. MAAHS provide a link to free downloadable labor law posters from the home page of its web site. You may also call the Ohio Department of Commerce at 614-644-2703 to have a free poster sent to you. Employers wanting to purchase laminated posters are welcome to click through the [Gov.Docs.com](http://Gov.Docs.com) link at [www.midamservices.org](http://www.midamservices.org) to obtain the MAAHS 10% discount. GovDocs.com will have the poster available after the Ohio Department of Commerce develops it.

**Federal Minimum Wage Increase** - President Bush signed into law an increase in the federal minimum wage on May 25, 2007. This law increases the federal minimum wage in three steps as follows:

- \$5.85 an hour, beginning July 24, 2007
- \$6.55 an hour, beginning July 24, 2008
- \$7.25 an hour, beginning July 24, 2009

**Unemployment Insurance Threshold for Agricultural Employers** - A number of small agricultural employers are not liable to pay unemployment Insurance Taxes since they do not reach a calendar quarter payroll of \$20,000 or more. Such employers are encouraged to determine if wage rate increases due to this increased minimum wage may cause them to be subject to the tax.

**Piece Rate Pay** - Employers who pay by piece rate may benefit from evaluating their piece schedules to assure proper productivity standards are in place.

**Recordkeeping for Workers' Compensation** - Some employers are exempt from keeping record of the "hours worked for each day worked". These same employers may have employees performing work in multiple manual classifications with significantly differently workers' compensation premium rates. In such cases, tracking hours daily by the type of work may allow premium savings. Sometimes there are management reasons to perform certain practices even when not required by laws and regulations.

**Future Updates** - It is quite likely that new details and issues will surface. MAAHS will keep its members informed of these issues. Membership in MAAHS helps employers stay informed of such changes in laws and regulations. Employers are welcome to contact MAAHS to learn more about joining.