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OVERTIME OBLIGATIONS: WHY YOU SHOULD PAY ATTENTION TO S.B. 47

On July 6, Ohio's overtime laws are changing as Senate Bill 47 takes effect. Signed into law earlier this year, S.B. 47 attempts to better define employers' overtime obligations. The largest changes are familiar, as S.B. 47 expressly incorporates several provisions of the federal Fair Labor Standards Act into Ohio law. However, the text goes beyond what is provided by federal law, leaving some ambiguities. Below is a brief breakdown of the significant changes.



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not required to pay overtime for normal to-and-from work commutes. Assuming this law is interpreted as its federal counterpart has been, this would make routine commutes, however long, non-compensable.

Additionally, the new Ohio code section also incorporates the de minimis exemption, making "activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours" non-compensable. (e.g., reading an email at home between shifts).

Further, R.C. § 4111.031 codifies additional exemptions, clarifying that employers do not need to pay overtime for "[p]erforming activities that are preliminary to or postliminary to the principal activity or activities" (e.g., waiting in line to check in, changing out of a uniform and showering before coming home, etc.).

Limitations on the Exemptions:

R.C. § 411.031 builds in some express limitations to these exemptions, the language deviating from its federal counterpart. First, the "preliminary and postliminary" exemption does not apply if the task is done during the course of the normal workday, or at the specific direction of the employer. Initially, it is unclear what the scope of "specific direction" actually is here. Again, this is a deviation from the FLSA, whose version of the same exemption was recently determined to apply even if the act is something required by the employer, depending on circumstances.

Further, none of the exemptions described above apply if (1) the activity is performed "pursuant to an express provision of a written or unwritten contract..." or (2) the activity is performed pursuant to an established "custom or practice." While the first contractual provision is fairly

straightforward, the latter provision relating to customs and practices leaves significant room for ambiguity.

Procedural Changes to Class Actions:

In addition to the substantive changes, S.B. 47 introduces R.C. § 4111.10(C) to reform class procedures. This section mirrors the federal procedure established in FLSA § 216(b). Prior to the bill, class suits seeking unpaid wages could proceed under Civil Rule 23, where members would be required to affirmatively "opt-out" of the lawsuit. Now, under the new provision, prospective plaintiffs must affirmatively "opt-in" to the lawsuit.

Advice for Incorporating the Changes:

Although many of the changes are familiar and well-interpreted by federal case law, others present uncharted territory. Employers and employees should seek the advice of professional legal counsel before acting on any of the changes described in this article. ■

Incorporating the Portal-to-Portal Exemptions:

S.B. 47 enacts the new R.C. § 4111.031, which largely echoes Sections 2 and 4 of the Portal-to-Portal Act, a 1947 amendment to the FLSA. This clarifies that under state law, employers are

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PAY TRANSPARENCY CAN BE GOOD FOR BUSINESS

The National Labor Relations Act covers most employers and guarantees that employees have a right to talk with others in the workplace about their wages. A recent study by Visier indicated that 79% of respondents want pay transparency. Like it or not, employees are going to talk about wages.



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and advancement opportunities along with their pay ranges; failure to do so can result in fines up to \$10,000 per violation.

Employers may be resistant to posting pay ranges. They may feel that compensation is their biggest bargaining tool when it comes to their recruiting. Why should employers embrace pay transparency?

Cities and states around the country are passing "pay transparency" laws that require companies to disclose salary ranges. NYC requires posted positions to include the minimum and maximum salary offered, and failure to do so is an unlawful discriminatory practice. Colorado took it one step further and noted that an employer is required to announce all job openings

- Researching and developing competitive pay ranges provides insight into the labor market and ensures employees are provided with livable wages.
- Transparent pay ranges keep employees focused on their jobs, not on speculation.

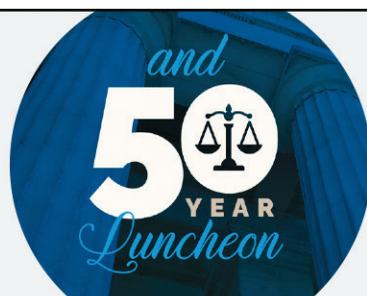
- Equally applied pay ranges can provide protection to the employer against potential discriminatory claims.
- Posted pay ranges means that employers and candidates can avoid wasting time and eliminate surprises when it comes to recruiting.
- Pay ranges are one part of an overall career path. Once an employee hits the top of a pay range, it drives discussion of expanded or new roles.
- Posted pay ranges can actually attract candidates and subsequently focus the interview on skills, not distractions.
- Pay ranges that may not be viewed as competitive force the employer to focus on the rest of its total compensation and benefits package, which may ultimately be more attractive to candidates than only money.

- Pay transparency can create a loyal and engaged workforce from the top down. Employees do not begrudge executive pay, but pay transparency can generate healthy and educational discussions on the "why" behind defined ranges.
- Refusing to disclose pay ranges may make employees wonder why, and question what else the employer might be hiding.

Pay transparency can also reduce the impact of the Great Resignation. A PayScale study found that 50% of respondents said they would leave in the next six months if employers are not transparent about pay. When 57% of employees believe they are paid below market, pay transparency can go a long way toward reducing that belief. ■

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