

**MAY 2005**

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## **MINIMUM WAGE INCREASE EFFECTIVE MAY 2, 2005**

After months and months of discussion, the new Florida minimum wage is finally here. As of May 2, 2005, Florida employers must pay their employees a minimum of \$6.15 per hour, as a result of an amendment to the state constitution that was approved this past November.

Florida has never had a state minimum wage; in the past, we were subject to the federal minimum wage, which is currently \$5.15 an hour.

**The new Florida minimum wage starts out at \$6.15 an hour, and it will go up every year in January according to the inflation rate.**

The Florida legislature is currently debating a proposed bill that would help implement the new minimum wage. However, at press time, we were in the last week of the legislative session, and this bill was still up in the air. [Please read next month's newsletter to see if this bill passed, as well as a full wrap-up of the 2005 legislative session.]

Here is a re-cap of the most important points on Florida's new minimum wage:

- **What is the new Florida minimum wage and when do I have to start paying it?** Effective May 2, 2005, Florida's minimum wage is \$6.15 per hour. Employers must pay employees a wage of at least \$6.15 per hour for all hours worked in Florida.
- **Who is entitled to receive the new Florida minimum wage?** The definitions of "employer," "employee," and "wage" with respect to Florida's new minimum wage law are those established under the federal Fair Labor Standards Act (FLSA). Florida's constitutional provision creating the minimum wage indicates that the case law, administrative interpretations, and other guiding standards under the FLSA should be the guide regarding Florida's minimum wage. In a nutshell, Florida's minimum wage law applies to anyone who is already covered by the federal minimum wage law. Any employee who is currently entitled to receive the federal minimum wage of \$5.15 per hour must be paid the new Florida minimum wage for all hours worked in the state of Florida.
- **Where can I get information about the coverage of the minimum wage?** Information on the federal minimum wage and who it applies to can be found at [www.dol.gov/dol/compliance/comp-flsa.htm](http://www.dol.gov/dol/compliance/comp-flsa.htm). This is the federal minimum wage website; however, the information at this website about the minimum wage will also apply to Florida's minimum wage. The only difference is that the amount of the minimum wage you have to pay is different because Florida's minimum wage is a dollar higher than the federal wage.
- **How will the new Florida minimum wage change from year to year?** The new minimum wage will increase on January 1<sup>st</sup> of each year to reflect an adjustment for inflation. We cannot predict how much it will go up year to year, but we expect the Florida Agency for Workforce Innovation to publish the new rate each fall, which will then take effect the next January.
- **How will the new Florida minimum wage apply to tipped employees (like restaurant servers)?** Since tips make up part of the wages of a tipped employee, employers can deduct from the new Florida minimum wage a "tip credit" for each employee, which is capped at \$3.02 an hour. This credit is generally available if the tipped employee regularly receives tips in excess of \$30

a month and retains all his or her tips. Thus, you will have to pay your tipped employees a direct cash wage of \$3.13 an hour [\$6.15 required minimum wage minus the \$3.02 tip credit]. In later years, as the Florida minimum wage increases with inflation, the same \$3.02 per hour tip credit will apply, so the direct cash wage you will have to pay will go up from year to year. You should also note that if a tipped employee does not receive at least \$3.02 per hour in tips, the direct cash wage you pay that employee will have to be higher in order to make up the difference between the tips the employee actually received and the Florida minimum wage they are required to be receive.

- **What if I don't pay the new Florida minimum wage?** First, an employee who claims that he or she was not paid the required minimum wage can file a court action seeking double the amount of the unpaid wages, plus attorneys' fees and costs. Second, the state can impose a civil fine of \$1,000 for each willful violation of the minimum wage amendment. Third, it is illegal for an employer to retaliate against or fire an employee who asserts his or her rights under the amendment or who informs other employees of their rights.
- **Will a new poster be required?** NO! There is no new Florida minimum wage poster required. If you get something in the mail from a poster company trying to scare you into believing a new poster is required, do not believe it. Again, there is no new poster required.
- **How does this new Florida minimum wage affect businesses (such as agriculture) that are currently exempt from the federal Wage and Hour law?** All businesses currently exempt from the federal minimum wage are still exempt from paying the new Florida minimum wage. The new Florida minimum wage applies only to those employees who are **presently** entitled to receive the federal minimum wage. So, those businesses (like agriculture) that are currently exempt from paying the minimum wage do not have to pay the new Florida minimum wage.

### **NEW USERRA POSTER**

In last month's newsletter, we enclosed a copy of a notice employers should post in their

workplaces. It deals with USERRA – otherwise known as the Uniformed Services Employment and Reemployment Rights Act. USERRA is designed to protect the job rights of employees who voluntarily or involuntarily leave their jobs to serve in the military. This poster explains their rights and your responsibilities as their employer.

This poster is not new, and there are no penalties for not having one, but as military service affects more and more of our members, we wanted you to have a copy of this poster. You should place this poster along with your "all-in-one" poster that you received when you first joined FUBA. The "all-in-one" poster contains all required state and federal employment posters you are required by law to post in your business.

USERRA guarantees the rights of military service members to take a leave of absence from their civilian jobs for active military service and to return to their jobs with accrued seniority and other employment benefits. Employees cannot be required to use their personal vacation time during the period of their military service. Upon returning from active duty, employees are entitled to reinstatement to the position they would have had if their employment had not been interrupted. Also, employees must be given all rights and benefits as if they had been continuously employed.

To qualify for these benefits, employees must give timely notice of their need to perform military service and apply for reemployment within a set time after being released from military service. They also must be released from active military service under honorable conditions.

### **DID YOU RENEW YOUR CORPORATION FOR 2005?**

If your business is a corporation, you should have filed your Annual Report with the Florida Department of State before May 1<sup>st</sup>. If you did not get this paperwork to the state by May 1<sup>st</sup>, you will now be charged a \$400 late fee unless you did not get the original paperwork from the state. And, if you wait too long to file your Annual Report, the state will dissolve your corporation and you will lose your workers' compensation exemption.

Please call our offices if you need help getting your Annual Report filed.