

Client Alert

A report
for clients
and friends
of the firm December 2004

New York Raises Minimum Wage

Under the "Empire State Wage Act of 2004," New York's hourly minimum wage will increase from the current \$5.15 to \$7.15 in three phases. The minimum wage will rise to \$6.00 an hour on January 1, 2005; \$6.75 on January 1, 2006; and \$7.15 on January 1, 2007. The law also raises the hourly wage that food service workers who routinely receive tips must be paid ("tip wage"). The tip wage will increase from \$3.30 an hour to \$3.85 an hour on January 1, 2005; \$4.35 on January 1, 2006; and \$4.60 on January 1, 2007. As a result of these increases in the minimum wage, New York employers should anticipate a concomitant increase in related overtime costs.

Under federal law, since 1997, the minimum wage has been \$5.15 per hour. New York's minimum wage has not exceeded the federal minimum wage since early 1974, and the Empire State Wage Act was passed over Governor Pataki's veto. New York's move is not unprecedented, however, as twelve other states and the District of Columbia have state minimum wages above the federal level. In addition, Florida and Nevada recently passed ballot initiatives to raise their minimum wages. The New York increase is minimal in 2005 when compared to the other more "generous" states, but the aggregate increase could give New York one of the highest minimum wages in the nation in 2007.

Opponents of the law (including Governor Pataki) argued that raising the minimum wage would put New York businesses at a "distinct competitive disadvantage," resulting in employers moving jobs to cheaper wage states such as New Jersey and Pennsylvania (where the minimum wage is \$5.15). However, New York's other neighbors, Vermont (\$7.00 on 1/1/05), Connecticut (\$7.10) and Massachusetts (\$6.75), currently have minimum wages above the federal and New York minimum wage.

This new minimum wage in New York will result not only in increased "straight time" costs, but higher overtime costs, as overtime is generally calculated at 1.5 times an employee's hourly "regular rate." Consequently, employers should consider permissible alternatives which reduce overtime exposure, such as the adoption of a "fluctuating workweek" approach. If you would like further information about such planning options or have other wage and hour questions, please feel free to contact your Proskauer relationship attorney or any of the attorneys listed on the second page of this alert.

Jurisdictions With Minimum Wages Above The Federal Minimum Wage as of January 1, 2005*

State	Minimum Wage
Washington	\$7.35**
Oregon	\$7.25**
Alaska	\$7.15
Connecticut	\$7.10
Vermont	\$7.00
California	\$6.75
Massachusetts	\$6.75
Rhode Island	\$6.75
District of Columbia	\$6.60
Illinois	\$6.50
Maine	\$6.35***
Hawaii	\$6.25
Delaware	\$6.15
New York	\$6.00

* Florida's minimum wage will increase from \$5.15 to \$6.15 on 5/2/05 and will be adjusted according to inflation each January.

** Washington and Oregon index their minimum wages to account for annual increases in the cost of living.

*** Minimum wage increases to \$6.50 effective 10/1/05.

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Proskauer's Labor and Employment Department of nearly 200 lawyers is capable of addressing the most complex and challenging labor and employment law issues faced by employers. For further information, please contact the attorneys listed below, who would welcome any question you might have:

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