

Akerman Practice Update

LABOR & EMPLOYMENT

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Minimum Wage Increase to Take Effect on June 1, 2011

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Effective June 1, 2011, the Florida minimum wage will be increased to \$7.31 per hour, surpassing the federal minimum wage. This rate increase follows a Florida Circuit Court decision from the Second Circuit in Tallahassee issued May 3, 2011, finding that the Agency for Workforce Innovation's earlier decision to decrease the Florida minimum wage due to deflation was unconstitutional.

Pursuant to the Minimum Wage Amendment to the Florida Constitution which took effect in 2005, every September the Agency for Workforce Innovation is required to calculate an adjusted minimum wage rate by increasing the current minimum wage rate by the rate of inflation during the preceding twelve month period. The adjusted minimum wage rate calculated is to take effect the following January 1st.

In July 2009 Florida's minimum wage, \$7.21 per hour, was surpassed by the new federal minimum wage, \$7.25 per hour. Consistent with federal law, providing that the higher of the state or federal minimum wage prevail, the federal minimum wage became the standard in Florida. The federal minimum wage has remained the standard in Florida since that time. The Agency for Workforce Innovation's announcement in September 2010 that the federal minimum wage, still surpassing the Florida minimum wage, would remain the standard in Florida for 2011 prompted a lawsuit by worker advocates and low-wage earners. This lawsuit resulted in a judicial decision Tuesday, finding that the minimum wage rate in Florida must be held steady during deflationary periods and that the current minimum wage rate in Florida must be adjusted to account



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for an unconstitutional reduction to the Florida minimum wage for 2010 (which decreased Florida’s minimum wage from \$7.21 to \$7.06 per hour).

While the state can still appeal this decision, until there is an appellate ruling modifying the decision, employers should prepare to comply with the new minimum wage requirement. Absent an appellate decision to the contrary, as of June 1, 2011, employees paid a minimum wage will see a six cent an hour increase in their paychecks. Tipped employees who meet the eligibility requirements for the tip credit under the Fair Labor Standards Act (“FLSA”), will also see an increase, as they must now be paid a direct wage of at least \$4.29 per hour in addition to tips.

Florida’s new minimum wage poster announcing the increase can be downloaded in English and Spanish from the Agency for Workforce Innovation’s website and should be posted by employers as soon as possible.

For more information, please contact a member of our Labor & Employment practice.

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