

LABOR AND EMPLOYMENT

OHIO ADOPTS PREEMPTION LEGISLATION, BLOCKING LOCAL MINIMUM WAGE HIKES AND OTHER LOCAL EMPLOYER RESTRICTION PROPOSALS

by Sara H. Jodka and William V. Vorys

On Monday, December 19, 2016, Ohio Governor John Kasich signed [Senate Bill 331](#), which prohibits municipalities and other political subdivisions from raising the minimum wage beyond Ohio's state minimum wage rate, currently set at \$8.10 an hour (for non-tipped employees).

The bill appears to be a direct reaction to two separate labor union-backed local initiatives: Cleveland's "Fight for 15" movement, which was a failed effort to aggressively increase Cleveland's minimum wage to \$15 an hour; and Youngstown's "Part-Time Bill of Rights" proposal, which was a separate attempt to provide part-time workers with certain employment benefits, including paid time off and advanced notice of work schedules. If these efforts succeeded, Cleveland would have the highest minimum wage of any city in the United States, and Youngstown would join only a handful of U.S. cities with specific part-time worker restrictions (and the first in Ohio).

The Ohio business community strongly supported SB 331, concerned with the prospect of separate wage and HR rules across hundreds of Ohio cities and potentially compelling many businesses to move operations outside city limits. For example, the minimum wage in suburbs adjacent to Cleveland could have been \$6.90 less per hour for a non-tipped employee. The business community also argued the local measures would have significantly stifled business growth as companies would have been hesitant to expand in Cleveland and Youngstown due to the significant strain on their labor budgets.

The legislature passed SB 331 due to a perceived ambiguity in Ohio law as to whether municipalities and other political subdivisions retained authority to pass their own employment-related regulations, including minimum wage requirements that exceed those set by the Ohio General Assembly. Earlier this year, Ohio Attorney General Mike DeWine issued an [Advisory Opinion](#) stating that Ohio law prohibits municipalities from requiring employers to pay employees an hourly minimum wage rate in excess of the statewide hourly minimum wage rate (which is fixed by Ohio's Constitution). Nonetheless, these local initiatives persisted. If passed, litigation appeared likely.

SB 331 takes effect March 20, 2017. Below is a summary of the preemption portions of the bill:

Minimum Wage

The bill provides: "No political subdivision shall establish a minimum wage rate different from the wage rate required under this section." This means that, unless determined to be unconstitutional, all municipalities and political subdivisions within Ohio are prohibited

from requiring employers within those municipalities and political subdivisions from paying workers a minimum wage above that set by the General Assembly.

Other Employer Restrictions

SB 331 also grants Ohio's private employers the exclusive right to govern matters concerning work hours, location of work, scheduling, and fringe benefits, including:

- The number of hours an employee is required to work or be on call;
- The time when an employee is required to work or be on call;
- The location where an employee is required to work;
- The amount of notification an employee receives of work schedule assignments or changes to work schedule assignments, including any addition or reduction of hours, cancellation of a shift, or change in the date or time of a work shift;
- Minimizing fluctuations in the number of hours an employee is scheduled to work on a daily, weekly, or monthly basis;
- Additional payment for reporting time when work is or becomes unavailable, for being on call for work, or for working a split shift;
- Whether an employer will provide advance notice of an employee's initial work or shift schedule, notice of new schedules, or notice of changed schedules, including whether an employer will provide employees with predictive schedules;
- Whether an employer will provide additional hours of work to employees the employer currently employs before employing additional workers;
- Whether an employer will provide employees with fringe benefits, and the type and amount of those benefits.

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FOR MORE INFORMATION CONTACT:



Sara H. Jodka is Of Counsel in Dickinson Wright's Columbus office. She can be reached at 614.744.2943 or sjodka@dickinsonwright.com.



William V. Vorys is an Associate in Dickinson Wright's Columbus office. He can be reached at 614.744.2936 or wvorys@dickinsonwright.com.