



## Focus on Human Resources

### MINIMUM WAGES INCREASES

By Ronald Rice

***“Many states have raised the minimum hourly wage. Now the federal minimum wage is about to increase. Read to see how the changes might effect your business.”***

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**Diamond Corporate Services, Inc.**  
P.O. Box 1587  
Manchaca, Texas 78652

**Phone:**  
(512) 431-7620

**Fax:**  
(512) 291-9830

**We're on the Web!**  
<http://www.peosales.com>

Most of you have probably heard about increases in the federal minimum wages or your state's minimum wage.

On the federal level in the House of Representatives, a minimum wage increase was recently passed which would mandate a raise from \$5.15 to \$7.25 an hour taking place over a 2-year period. The Senate has passed an identical bill but with a provision of attaching small-business tax breaks to help offset the impact of the wage increases. Under the bill proposal the minimum wage increase would take place in three steps. It would go to \$5.85 an hour upon taking effect 60 days after the president signs it into law. A year later the minimum wage would be \$6.55 an hour and then to \$7.25 an hour a year after that.

Generally, when the House and Senate pass differing versions of legislation, they create a committee of members from each chamber to develop a compromise. However, this situation is more complicated because, in the Constitution, tax bills must originate in the House of Representative. If the House-Senate committee can't resolve the two bills, then the house has the right to send back the Senate bill. In this event, the Senate would have to take out the provisions that contain the tax advantages for business.

In addition to increasing the minimum wage, the bill would extend for five years a tax credit for businesses that hire the disadvantaged and would provide expensing and depreciation advantages to small firms. The tax breaks would be paid for by closing loopholes on offshore tax shelters, capping deferred compensation payments to corporate executives and removing the deductibility of punitive damage payments and fines.

President Bush praised the Senate bill and encouraged the

***“A partial list of state changes recently enacted.”***

House to accept the Senate version. He did not say whether he would veto a bill without tax breaks.

### State Increases in Minimum Wage

Many states have raised the minimum wage above the current federal minimum wage. When this has occurred the prevailing minimum wage would be the state rate. A number of states have increased their state's minimum wage as of January 2007. Here are some examples of those state increases:

- **Arizona** ~ Increase to \$6.75 effective January 1, 2007
- **California** ~ Increase to \$7.50 on January 1, 2007 and to \$8.00 on January 1, 2008
- **Colorado** ~ Increase to \$6.85 on January 1, 2007
- **Michigan** ~ Increase to \$7.15 July 1, 2007 and to \$7.40 July 1, 2008
- **Missouri** ~ Increase to \$6.50 on January 1, 2007
- **Nevada** ~ Increase to \$6.15 on January 1, 2007
- **New York** ~ Increase to \$7.15 on January 1, 2007
- **North Carolina** ~ Increase to \$6.15 on January 1, 2007
- **Ohio** ~ Increase to \$6.85 on January 1, 2007 and other provisions. This rate will be automatically adjusted annually based on the U.S. Consumer Price Index. See details below.
- **Pennsylvania** ~ Increase to \$6.25 on January 1, 2007 and will increase to \$7.15 on July 1, 2007. For companies with ten or fewer employees: \$5.65 by January 1, 2007, and \$7.15 by July 1, 2008. The current tipped wage, \$2.83, will not increase with this Act.
- **Washington** ~ Increasing to \$7.93 effective January 1, 2007 with future increases linked to inflation.

In Ohio the increase of the state minimum wage was accompanied by new requirements for employer documentation. In response to concerns in the business community the Ohio legislature drafted House Bill 690; which was signed by Governor Taft. Exemptions to the \$6.85 minimum wage are individuals under the age of 16, tipped employees and family members working in solely family owned and operated businesses.

In addition, employers in Ohio must provide all new hires with the following information: the employer's name, address, telephone number, website address, email address, fax number and the name, address, and telephone number of the employer's statutory agent. This information should be provided on the first day of hire along with other new hire

information. If any of the information changes the employer must provide updated information to all workers within sixty business days of the change. Notification can be made in a variety of ways such as inserts in the workers' pay stubs, by posting on the employer's website, intranet, or on a bulletin board. Finally, employers must also keep a summary of these wage and hour provisions in a conspicuous and accessible place for employees and other to review.

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## **I-9 Form Compliance**

By Ronald Rice

Most employers are aware of the Federal I-9 form. It was established in 1986 and it is the employer's duty to have it completed by any and all newly hired employees. Its purpose is for the employee to provide proof of their identity and proof of their eligibility to work under the employment laws of the United States.

Compliance of this form now falls under the authority of the Department of Homeland Security. The need for maintaining proper records in this area is increasing, because the form is potentially a key piece of information for the U.S. Government with regard to illegal immigration, identity theft, misuse of social security numbers, and other federal crimes. It is the law that an employer must make a good faith effort to verify each employee's identity and work authorization within 3 days of the employee's starting work. Properly completing the I-9 form and keeping it on file fulfills that employer requirement. Failure to comply carries the risk of hefty fines, anywhere from \$250 per worker to over \$5,000 per undocumented worker. Fines for incomplete forms could be as high as \$1000 per form, or \$100 per missing item on a form. It is interesting to note that some PEO companies are no longer maintaining the I-9's for their client companies. These PEO's have removed the I-9 compliance function from their list of duties, instead leaving this legal duty with the client company owner. Obviously this is an attempt by PEO's to avoid liability in this area. An owner using a PEO should check to ensure that the PEO is accepting liability for I-9 compliance. That way the PEO will verify proper completion of the I-9 forms, and will maintain the records in the event of an audit. It is unclear whether a PEO would be the party that would be fined in the event of an audit. Although the PEO is usually the primary employer and record keeper for the I-9's, the client company management team at the work site

*“I-9 Form compliance is an area getting more attention. Have a good procedure and consistently follow it.”*

usually hands out the form and often witnesses the ID's provided by employees. The government would probably take into consideration the PEO's contractual obligations with the client company, as well as how the I-9 completion process was done in the workplace, to determine which party would be subject to a fine, if any.

**Case Studies:** I have heard stories from several small business owners who have been audited for I-9 compliance. One owner with 7 employees was asked to provide I-9's from the past 3 years. Seven employees does not seem like many. However, with turnover from part time help, the owner had paid over 40 different employees over the 3 years. She had very few of the I-9's on file, because she used high school students on a part-time short-term basis during the summer months during peak season. She never realized the importance of having every employee fill out the form. After being threatened with a fine over \$10,000, she made calls to the homes of many ex-employees and in many cases spoke with the parents of the students. She asked the ex-employees to come in and sign I-9 forms and shows their ID's. It was an incredibly tedious and stressful process for her, as you could imagine. I believe she complied well enough to avoid a fine in this instance.

In another case, the employer was a janitorial company and a worksite was visited by the INS. After some employees scattered, the INS visited the employer's office for an audit of the I-9's. This employer was on top of things and had most of the I-9's readily available. They also had gone to the trouble of attaching photocopies of the ID's provided by the employees. The owner was shocked when the INS agent identified numerous fake ID's and social security cards. The INS rep was well schooled in knowing the print fonts and background shading of proper ID's, and could spot the fakes. He reportedly said to this business owner they she should have known these ID's were fakes, and could be subject to a large fine for witnessing ID's that were obviously false. The troubled business owner negotiated and avoided a fine. One good lesson is that attaching copies to the I-9's is not a requirement, and could put the employer at risk. I know very few people who can tell a fake social security card from a valid one, for instance. So it is a safer strategy to fill in the names, numbers and expiration dates of the documents you see, but not keep a copy of them. You only keep a copy of the complete I-9. The law only requires a good faith effort that the employer saw the ID, and the ID appeared to be authentic. The witness signs the certification section of the I-9. Keeping copies of some ID's and

not others is a poor practice, as it raises questions and suspicions in the event of an audit.

**Completion Tips:** When completing the I-9 form, many employees will readily show their state drivers license and social security card. The back of the I-9 form shows the all options for ID's that are allowed for the I-9. The employee must show one List A document, or one document each from List B and List C. When completing the form, the drivers license information is listed under List B and the social security card information listed under List C. The supervisor viewing the ID's should sign the certification as the witness.

**Discrimination:** Discrimination laws add another layer of complexity. If you ask an employee to complete an I-9 on a day before the day they start work, the employee would have to supply their ID's and their date of birth prior to the official hire date. An employee could potentially argue that the employer was attempting to determine their citizenship status and age before making a final decision to start employment. That could be grounds for an EEOC claim or discrimination lawsuit.

**Errors:** It is important that the exact name on the social security card is identical to the name that will appear on the employee's paycheck. Any discrepancy between the two will result in problems where the employee's social security tax cannot be properly applied to the employee's retirement account by the Social Security Administration. The SSA periodically audits taxpaying employers and provides a list of non-matching numbers. The discrepancy could be as simple as a typo (If "Gonzalez" is spelled "Gonzales", for example). The error could also be evidence of a fake social security card. One common problem occurs when a female employee wishes to receive paychecks under her current name, but her social security card shows a previous last name due to a change in marital status. This employee should either be paid under her previous name, or should update her social security card. Updating the SS card is a simple procedure. There are SSA offices in almost every city. Using a photo ID and wedding certificate (or other proof of a marital status change), she can go and order an updated card, which will arrive by mail in a couple of weeks. In the meantime, the SSA office will provide a receipt showing the new ID was approved and ordered.

**Recordkeeping:** Employers must keep I-9 forms for all current employees. For terminated employees, the form must be retained for at least 3 years from the date of hire or for at

*“Refresh your memory on the rules for paid breaks and paid time off for jury duty.”*

least one year after the termination date, whichever comes later. A consistent procedure should be maintained, with respect to I-9 completion. Employers and PEO's should work together to understand and communicate the laws relating to the I-9 process. HR managers and supervisors can complete the I-9 forms, and can help the business owner avoid time-consuming audits or costly fines.

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## **EMPLOYEE REST BREAKS & MEAL BREAKS**

Breaks are a common source of confusion for employers. The Federal Fair Labor Standards Act does not require employers to give rest or lunch breaks during the workday; however, if they are given, certain rules apply. Rest or coffee breaks, defined as 20 minutes or less, are compensable hours worked.

Meal breaks, on the other hand, are not compensable if they are at least 30 minutes in length and the employee is “completely relieved from duty for the purpose of eating a regular meal.” A few states, such as California, have their own laws regarding breaks.

## **JURY DUTY: IS THIS PAID TIME OFF?**

That depends on the type of employee we're talking about.

1) Hourly employees: whether the employees are classified as part-time or full-time, the law requires payment only for the time an hourly employee actually works. If an hourly employee is on jury duty, they're not working and are not required to be paid by law. However, time not worked can be covered by available paid leave according to the company's own written policy.

2) Exempt salaried employees (employees paid a weekly, biweekly, semi-monthly, or monthly salary, whose duties qualify them for an overtime exemption):

- a) If less than a full workweek is missed due to jury duty, federal law (the FLSA) would not allow a pro rata docking of the salary for time not worked; the employee would have to receive the agreed-upon salary for the entire workweek. Available paid leave may not be used to cover such an absence.
- b) If a full workweek was missed due to jury duty, federal

law (the FLSA) would allow a pro rata docking of the salary for time not worked. And, since that would involve a pay deduction, it would need to be authorized by the employee in writing for purposes of the Texas Payday Law. Available paid leave can be applied to the extent provided by the company's own policy.

This material is provided by the Texas Workforce Commission. Some states, other than Texas, may have additional laws that apply to breaks and jury duty.

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