



The Guardian

Helping to Protect You from Employment Law Claims

BOYLE, PECHARICH, CLINE, WHITTINGTON & STALLINGS, PLLC

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ARIZONA'S MINIMUM WAGE ACT

By

Donald C. Zavala, Jr.

WE ALL KNOW THAT Arizona voters approved the Arizona Minimum Wage Act ("Act") in 2006. The current state minimum wage is \$6.90 per hour and increases January 1st of each year based on the cost of living. By comparison, the

Federal minimum wage is currently at \$6.55 per hour. **Employer's must pay the higher of those two wages, so \$6.90 per hour is the current minimum wage in Arizona.**

The new Act (and subsequent regulations) also imposes many new requirements and potential liabilities on Arizona employers. First, every employer must post a Notice informing its employees of their rights under the Act. This requirement is met by displaying an Arizona Minimum Wage Act poster in a location of your workplace that is accessible to all employees, such as a break room or other common area. The poster is available online at www.ica.state.az.us.

Second, the Act provides that *any person* (employees or non-employee) can file a complaint with the Industrial Commission of Arizona alleging that an employer has violated the Act. Once the Industrial Commission receives a complaint, either it – or a state agency acting on its behalf – can review all of your payroll records and interview any of your employees *away from the worksite*. Depending on the size of your company, the payroll records review could be an onerous obligation.

BUT DID YOU KNOW? In Arizona, sexual harassment claims can be brought against an employer with as little as 1 employee. Having a sexual harassment policy and providing sexual harassment training are two important defenses to a sexual harassment claim. We have a 1 hour sexual harassment prevention program that we can present to your managers and employees. For information, contact Don Zavala at (928) 445-0122.

Third, the retaliation provision prohibits every employer from taking any adverse action against an employee for asserting a claim, helping another person to assert a claim or informing another person of his or her rights under the Act. Many of you are familiar with retaliation claims that can arise in the workplace. However, this retaliation provision has an extra strong bite: It creates a presumption that any adverse action taken against an employee for asserting the above rights within 90 days of the event is presumed to be

retaliation. The employer can only overcome that presumption by presenting "clear and convincing" evidence that the adverse employment action was not retaliatory. The "clear and convincing" evidence standard is a very high hurdle to overcome.

Fourth, every employer must keep payroll records (i.e., the number of hours worked and the amount of wages paid) for each employee for *four* years. If the employer fails to properly maintain its records for that time, the Act creates a presumption that the employer did not pay its employees the required minimum wage. In addition, the Industrial Commission can fine employers who violate the recordkeeping provision a minimum of \$250.00 for the first violation and \$1,000 or more for each additional violation.

Fifth, you must now provide your business name, address and telephone number to all new employees in writing when they are hired. Sixth, if an employee asks to see his or her payroll records, the employer must allow the employee to review those records.

As you can see, the new Act imposes much more than just an increase in the minimum wage. If you have any questions, please feel free to contact the attorney of your choice at Boyle, Pecharich, Cline, Whittington & Stallings, PLLC.

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If you would like to have someone added to our mailing list or want your name removed, please contact Bridget at 928-445-0122