



JONES DAY COMMENTARY

NEW OHIO STATUTES REGARDING THE MINIMUM-WAGE AMENDMENT AND INSURANCE PARITY FOR MENTAL ILLNESSES

In our December 1, 2006, *Commentary* entitled “[Ohio Voters Approve Smoking Ban and an Increase in Minimum Wage](#),” we discussed Ohio’s new minimum-wage amendment and smoking ban approved by voters in the November election. This *Commentary* provides an update and further clarification regarding those issues, as well as a discussion of another new Ohio statute generally requiring health-insuring corporations to offer and provide the same coverage for certain mental illnesses that they provide for physical illnesses.

NEW OHIO STATUTE CLARIFIES EMPLOYERS’ OBLIGATIONS UNDER MINIMUM-WAGE AMENDMENT

As we previously reported, on November 7, 2006, Ohio voters approved a new constitutional amendment that increased the minimum wage to \$6.85 per hour

beginning January 1, 2007 (with additional future increases), and imposed new record-keeping requirements on Ohio employers. This amendment, however, left many unanswered questions. On January 2, 2007, outgoing Ohio Governor Bob Taft signed Ohio House Bill No. 690, creating a new statute, Ohio R.C. 4111.14, which attempts to clarify the specific requirements of the minimum-wage amendment. Following is a summary of the statute’s explanation of the record-keeping requirements for Ohio employers. (Please refer any specific questions to legal counsel.)

First, the constitutional amendment requires that at the time an employee is hired, the employer must provide the employee with the employer’s name, address, telephone number, and “other contact information” and must update any changes. Ohio R.C. 4111.14 explains that “other contact information” may include the employer’s internet site; an electronic-mail address; a fax number; and the name, address, and

telephone number of the employer's statutory agent. "Other contact information" does not include the name, address, telephone number, fax number, internet-site address, or e-mail address of any individual employed by or associated with the employer. Ohio R.C. 4111.14 further explains that an employer must notify an employee of any changes to this information within 60 business days after the change occurs. An employer can use regular methods of notice, such as posting on the internet, intranet, or bulletin board, or including a notice in the employees' paychecks or pay stubs.

Second, the constitutional amendment requires that the employer maintain a record for each employee that includes his or her name, address, occupation, pay rate, and hours worked each day, as well as the amount paid to the employee. Ohio R.C. 4111.14 clarifies this requirement:

- While the amendment was passed on November 7, 2006, the record-keeping requirements for employers did not take effect until January 1, 2007. From that point forward, an employer must maintain these records for three years from the last date the employee was employed by the employer.
- No particular form of record is required. An employer does not need to maintain a single record with this information for each employee. "Record" can mean one or more documents, databases, or other paper or electronic forms, but they must be maintained in such a manner that the employee (or person acting on his or her behalf) can reasonably review the information requested.
- The definition of an employee's "pay rate" depends on his or her status as an exempt or nonexempt employee. For nonexempt employees, "pay rate" means an employee's base rate of pay. For exempt employees, "pay rate" means the employee's annual base salary. It does not include bonuses, stock options, incentives, or deferred compensation.
- The "amount paid to the employee" means the employee's total gross wages for each pay period.
- An employer does not have to keep records of hours worked each day for exempt employees. For nonexempt employees, the employer must record the total amount of time worked by that employee during a day in whichever time increments the employer uses for its payroll purposes. The employer does not have to keep a record of the time the employee begins or ends work on any particular day.

These Ohio record-keeping requirements associated with the new constitutional amendment do not alter an employer's record-keeping requirements under the Fair Labor Standards Act.

Finally, in regard to disclosure of these records, the constitutional amendment provides that, upon request and at no charge, these employee records must be given to an employee or a person acting on the employee's behalf. According to the new statute:

- An employer has to disclose this information only in regard to the specific employee requesting it. The employer may require a written request signed by that employee. The employer does not have to disclose information about other employees.
- An employer does not have to disclose records of hours worked each day by exempt employees.
- A person acting on behalf of an employee in making a request must be specifically authorized to do so. Such a person can include a certified or legally recognized union; the employee's attorney; or the employee's parent, guardian, or legal custodian.
- Upon request, the employer must provide this information within 30 business days unless the employer and employee agree to an alternative period or the 30-day requirement would cause a hardship for the employer.

NEW OHIO STATUTE MANDATES INSURANCE "PARITY" FOR MENTAL ILLNESSES

On December 29, 2006, Ohio Governor Bob Taft signed Senate Bill 116, a "mental health parity" bill, which generally requires that health-insuring corporations in the State of Ohio offer and provide the same coverage for certain mental illnesses that they provide for physical illnesses. Under this law, insurers are prohibited from offering coverage for covered mental illnesses at lower levels than that offered for physical illnesses. It is estimated that the new law, which will become effective on March 30, 2007, will impact the insurance plans of many workers in Ohio. The following is a general summary of the statute's requirements. (Please refer any specific questions to legal counsel.)

The law generally prohibits discrimination in group health-care policies with respect to coverage provided for the diagnosis, care, and treatment of “biologically based mental illnesses.” These illnesses include schizophrenia, bipolar disorder, panic disorder, obsessive-compulsive disorder, paranoia and other psychotic disorders, schizoaffective disorder, and major depressive disorder, as defined by the American Psychiatric Association. Diagnostic and treatment services for such illnesses are now considered “basic health care services,” a term that was previously limited to traditional medical treatments for physical illnesses. It must be noted that these new requirements do not apply to currently existing policies. However, the law will be applicable to health-insurance policies delivered, issued, renewed, or modified after September 29, 2007.

There is an exemption written into the statute that apparently is aimed at preventing escalating health-care costs. Under this provision, employers can obtain an exemption from the law's coverage if they are able to demonstrate that, over a period of at least six months, incurred claims for the required mental-illness coverage caused an increase (or are expected to cause an increase) of more than 1 percent per year in the cost of coverage. To obtain such an exemption, the employer must proffer documentation that is endorsed by an actuary. The Ohio Superintendent of Insurance will then decide whether to approve the exemption. The statute does not apply to where the application of state health-insurance law is superseded or preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA). Thus, although the law purports to cover self-insured employers, the ERISA exemption will generally remove private self-insured employers from this mandate. Employers are advised to review their own situations, and the terms of the health-insurance plans that they offer to their employees, to determine whether they are subject to and in compliance with the new law.

The new statute will impact all employers that purchase insurance from third-party providers. The law states that it also applies to multi-employer insurance plans, such as those provided by unions to their members.

SMOKING BAN IN EFFECT, BUT ENFORCEMENT DELAYED

Ohio's new smoking ban, Ohio Rev. Code § 3794.01 *et seq.*, took effect on December 7, 2006. Among other things, this new law prohibits smoking in public places and places of employment. The Ohio Department of Health must establish rules and regulations for implementing this new law on or before June 7, 2007. In response to litigation, the State of Ohio has agreed not to enforce the smoking ban until the rules and regulations are established. Rules have been posted for comment so that they may be implemented well before June 7, 2007.

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