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Labor and Employment Alert: A New Ohio General Assembly = Potential Challenges Ahead for Ohio Employers

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Groucho Marx once said that “politics is the art of looking for trouble, finding it everywhere, diagnosing it incorrectly, and applying the wrong remedies.” So as we welcome the 131st Ohio General Assembly, we already have the introduction of pro-employee wage-and-hour legislation. On February 2, 2015, Senator Kenny Yuko (D-Richmond Heights) introduced Senate Bill 25 which would make significant changes to Ohio’s employment laws.

First, with respect to the Ohio Minimum Wage Act, Senate Bill 25 would raise the minimum wage to \$10.10 per hour or the wage rate specified in the Ohio Constitution, whichever is greater. Ohio’s minimum wage is currently \$8.10 per hour, and this amount is adjusted annually. The bill would also raise the salary threshold above which certain employees are exempt from the overtime law. Currently, to be classified as an exempt executive, administrative, or professional employee, an employee must meet the requisite duties test and be paid a salary of at least \$23,660 annually. Under Senate Bill 25, the threshold would rise to \$50,000 annually in 2016 and to \$69,000 in 2017.

Second, Senate Bill 25 takes aim at “independent contractors.” The bill would create a uniform standard to determine whether an individual performing services for an employer is an employee of that employer for purposes of the Minimum Wage Act (including the semimonthly payment of wages), Workers’ Compensation Law, Unemployment Compensation Law, Prevailing Wage Law and the Income Tax Law. An individual would be considered an independent contractor only if **all** of the following apply: (1) the individual is free from direction and control in performing his services; (2) the individual is customarily engaged in an independently established trade, occupation, profession, or business; (3) the individual is a separate and distinct business entity from the person for whom he is providing the services; (4) the individual incurs the main expenses and liabilities for the service; (5) the individual is liable for breach of contract for failing to perform the services; (6) there is an agreement (oral or written, express or implied) setting forth the service, payment, and timeframe for performance; and (7) the service performed is outside the usual course of business of the

employer. The bill would also establish special provisions for determining whether a sole proprietorship or partnership that performs construction services for an employer is an employee or independent contractor. The bill would create a private right of action as well as authorize enforcement actions by the Director of Commerce.

Given the current governor and makeup of the General Assembly, it appears unlikely that Senate Bill 25 will be enacted in its current form. But the legislative session has just begun and it's often difficult to predict what will ultimately happen as a bill winds its way through the legislative process.

We will continue to monitor this bill and other legislative developments that may affect your business. If you have any questions about pending legislation – or have an idea for legislation that you would like to see introduced – contact your Vorys lawyer.