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Labor and Employment Alert: New Ohio Law Will Preempt Local Wage-Hour Ordinances Aimed at Private Employers

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On December 7, 2016, amidst a whirlwind lame duck session, the Ohio General Assembly passed Senate Bill 331. The legislation is aimed, in part, at restricting local jurisdictions from enacting laws regulating minimum wage, employee schedules, and employee benefits with respect to private employers. It was passed against the backdrop of recent events in Cleveland to raise the minimum wage to \$15 per hour, in Youngstown to impose predictive scheduling and mandate that part-time employees receive the same proportionate benefits as full-time employees, and the possibility of cities imposing paid sick leave requirements on private employers. Senate Bill 331 is designed to prevent this balkanization of wage-hour laws in Ohio.

Senate Bill 331 expressly prohibits political subdivisions from establishing minimum wage rates that are different from the minimum wage rate specified in the Ohio Constitution. This is probably a belt-and-suspenders approach as the Ohio Constitution already provides the General Assembly with the exclusive authority to establish a minimum wage. And Ohio courts (as well as the Ohio Attorney General) have determined that local ordinances that conflict with the state minimum wage law are preempted.

Senate Bill 331 also prohibits political subdivisions from enacting laws that regulate the scheduling practices or benefits offerings of private employers. As with minimum wage, the General Assembly has express constitutional authority to fix and regulate the hours of labor and provide for the comfort, health, safety, and general welfare of employees. The bill provides that, unless another state or federal law expressly says otherwise, the following matters are exclusively the result of an employer's policy, an agreement between an employer and its employees, a contract between an employer and its employees, or a collective bargaining agreement between an employer and its employees:

1. The number of hours the employee is required to work or be on call for work;

2. The times when the employee is required to work or be on call for work;
3. The location where the employee is required to work;
4. The amount of notification the employee receives of work schedule assignments or changes to work schedule assignments, including any addition or reduction of hours, cancellation of a shift, or a change in the date or time of a work shift;
5. Fluctuations in the number of hours the employee is scheduled to work on a daily, weekly, or monthly basis;
6. Additional payment for reporting time when work is or becomes unavailable, for being on call for work, or for working a split shift. "Reporting time," "on call," and "split shift" are not specifically defined. Instead, Senate Bill 331 directs courts to look to the United States Department of Labor and federal courts interpretations of those terms under the Fair Labor Standards Act;
7. 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;
8. Whether an employer will provide additional hours of work to employees it currently employs before employing additional workers; and
9. Whether an employer will provide employees with fringe benefits and the type and amount of any such benefits. "Fringe benefit" is broadly defined to include specific fringe benefits and any other benefit for which the employer would incur an expense, including health, welfare, or retirement benefits; leaves of absence; or vacation, separation, sick, or holiday pay.

Senate Bill 331 also includes legislative findings that regulating the employment relationship between a private employer and its employees as to the hours of labor and fringe benefits requires uniform statewide regulation. This is because many Ohio employers operate in multiple political subdivisions. And so permitting political subdivisions to enact their own requirements for private employers creates additional and unnecessary costs on employers, diminishes employers' flexibility to respond to changing economic conditions, adversely affects employees' job flexibility, impairs economic growth, and impedes employers' ability to operate competitively both in Ohio and elsewhere.

Governor Kasich signed the legislation on December 19 and it goes into effect in March 2017. Contact your Vorys lawyer if you have questions about Ohio's wage-hour laws.