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Ballot initiatives passed in the November midterm elections, including minimum wage provisions and requirements regarding furnishing certain personnel records, will affect employers in numerous states.

Ballot Initiatives Passed On Election Day Will Affect How Employers Do Business In Eight States

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Overview

On November 7, 2006, voters in several states passed controversial initiatives that will significantly affect the cost of doing business in those states. New laws passed in Arizona, California, Colorado, Michigan, Missouri, Montana, Nevada and Ohio will have a considerable impact on employers in those states.

Arizona, Colorado, Missouri, Montana, Nevada and Ohio have all passed laws increasing the minimum wage. The results of the midterm election raises to 28 the number of states whose minimum wage is higher than the federal minimum wage, currently \$5.15 per hour. The minimum wage in each of these six states will now be between \$6.15 and \$6.85 per hour and will be tied to inflation.

San Francisco became the first city to require employers to offer paid sick leave. This new law requires employers to pay both full and part-time employees one hour of paid sick leave for every thirty hours worked.

The Ohio constitutional amendment also requires Ohio employers to provide, free of charge, to an employee or to any "person acting on behalf of an employee" the name, address, occupation, pay rate and hours worked of its employees. Similarly, Arizona's new law provides that employers must allow an employee or his "designated representative" to inspect and copy payroll records pertaining to that employee.

Michigan became the third state in the past decade—joining California and Washington—to ban certain types of affirmative action programs. Michigan's

constitutional amendment limits affirmative action plans for public institutions, state and local government, public colleges and universities and school districts and has the potential to impact various government programs providing incentives to minority contractors and suppliers.

By Jurisdiction

- **Arizona: Proposition 202 (Ariz. Rev. Stat. Ann §23-362)**
 - Raises the minimum wage to \$6.75 an hour, effective January 1, 2007.
 - The minimum wage will be increased each year by the consumer price index rounded to the nearest \$.05
 - Employers may pay employees who receive tips up to \$3.00 less per hour, if the employer can establish, by its records of charged tips or the employee's declaration for FICA purposes, that the employee's wage combined with tips was equal to or greater than the minimum wage.
 - Employers are required to maintain payroll records showing the hours worked for each day worked and the wages paid to all employees for a period of four years.
 - Employers must allow an employee or his designated representative to inspect and copy payroll records pertaining to that employee.
- **San Francisco, California: Proposition F (San Fran. Adm. Code §12W)**
 - Requires employers to give at least one hour of paid sick leave to an employee

for every 30 hours worked.

- Employees begin accruing sick leave after 90 days of employment.
- Employees may accrue up to 40 hours of paid sick leave if they work for a small employer (fewer than 10 employees).
- Employees of larger employers may accrue up to 72 hours.
- Employees may take the paid sick leave for their own illness or to provide care for an ill child, parent, sibling, grandparent, grandchild, spouse, or domestic partner.
- This law becomes effective 90 days after certification of the election.
- **Colorado: Amendment 42 (C.O. Const. Art. XVIII, §15)**
 - Raises the minimum wage to \$6.85 an hour, effective January 1, 2007.
 - The minimum wage will be increased each year by the consumer price index used for Colorado.
 - No more than \$3.02 per hour in tip money can be used to offset the minimum wage.
- **Michigan: Proposition 2 (M.I. Const. Art. I, §26)**
 - Bans state and local government, public colleges and universities, community colleges and school districts from using affirmative action programs that give preferential treatment to groups or individuals based on race, gender, color, ethnicity or national origin for public employment, education or contracting purposes.
 - Prohibits state and local government, public colleges and universities, community colleges and school districts from discriminating against groups or individuals due to their gender, ethnicity, race, color, or national origin.
 - The amendment takes effect 45 days after the election.
- **Missouri: Proposition B (Mo. Rev. Stat. §290.500)**
 - Raises the minimum wage to \$6.50 an hour or the federal minimum wage, whichever is higher.
 - Additionally, the minimum wage will be increased each year by the consumer price index rounded to the nearest \$.05.
- **Montana: Initiative 151 (Mont. Code Ann. §39-3-409)**
 - Raises the minimum wage to either \$6.15 an hour or the federal minimum wage, whichever is higher.
 - The minimum wage will be increased each year by the consumer price index rounded to the nearest \$.05.
- **Nevada: Question 6 (NV. Const. Art. 15, §16)**
 - Effective November 28, 2006, the minimum wage will be \$6.15 per hour if the employer does not provide health benefits.
 - An employer may still pay the lower federal minimum wage of \$5.15 per hour if a qualified health insurance plan is available. Qualified health plans are those that provide for coverage of the employee and his/her dependents so long as the cost to the employee does not exceed 10% of the employee's gross taxable income.
 - For those employees who are paid less than one and one-half times the minimum wage, employers must pay overtime when the employee works more than eight hours in a workday.
 - The minimum wage will be adjusted by the cumulative increase in the cost of living or the amount of increases in the federal minimum wage over \$5.15 an hour.
- **Ohio: Issue 2 (OH. Const. Art. II, §34(a))**
 - Raises the minimum wage to \$6.85, effective January 1, 2007.
 - The minimum wage will be increased each year by the consumer price index rounded to the nearest \$.05.
- Employees who receive tips must be paid no less than one-half the minimum wage if the employer can demonstrate that the employee receives tips that, combined with their hourly wage, are equal to, or are greater than, the minimum wage.
- Employers must maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid to an employee for a period of not less than three years following the last date of employment
- Employers must provide the above information to an employee, or to a person acting on behalf of an employee, upon request, without charge.

What does this mean for employers?

In those states that have voted to increase the minimum wage, employers need to closely examine their state laws, because some of the new state laws provide for significant damages, including attorney's fees, for violations. Additionally, employers need for check to ensure that previous exemptions from the minimum wage for certain job classifications have not changed. For example, Nevada's constitutional amendment increases the number of employees now entitled to receive the minimum wage. Domestic service employees, outside salespersons, agricultural employees, taxicab and limousine drivers, and casual baby sitters are no longer exempt from the minimum wage. The only exemption now allowed is for employees under the age of eighteen who are employed as trainees by nonprofit organizations after school hours or during the summer, for up to 90 days.

Ohio and Arizona employers face an additional consequence from the midterm election. Included in the referenda to raise the minimum wage in those states was a provision requiring employers to maintain employee pay records during employment, plus three years in Ohio and four years in Arizona. Additionally, the Ohio law requires employers to provide certain employee information not only to employees, but to persons acting on behalf of employees,

free of charge. Written and backed by labor unions, this requirement to provide such information may make union organizing much easier and also raises serious privacy concerns. The information that the amendment makes public could be used in a variety of ways that the drafters may not have intended, such as intrusive marketing, harassing lawsuits, disclosure of police officers' and firefighters' home addresses, and identity theft. The new Arizona law imposes a similar requirement upon employers by obligating them to provide certain employee information to the employee or his designated representative. Both Arizona and Ohio employers must develop protocols to ensure not only compliance with the law, but that they are not divulging too much information, so as to avoid invasion of privacy claims.

In Michigan, employers who do business with the state or various municipalities under programs that provide incentives for using minority contractors and suppliers and for hiring and promoting minorities may need to reevaluate their contracts.

In San Francisco, employers need to review their leave policies to ensure compliance with the new city ordinance. Policies and practices may need to be rewritten in order to comply with the new law.

The success of the minimum wage initiatives in Arizona, Colorado, Missouri, Montana, Nevada and Ohio may provide a glimpse of what is to come on a national scale, with a new Democratically-controlled Congress, which is certain to address an increase to the federal minimum wage.

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