



NEW MINIMUM WAGE LAW AND OTHER LEGISLATION  
WILL KEEP HR PROFESSIONALS BUSY

By: Greg Grobe - Legislative/Legal Chair  
Society of Human Resources Management  
Liebmann, Conway, Olejniczak & Jerry, S.C.  
E-Mail: [grobe@lcojlaw.com](mailto:grobe@lcojlaw.com)

2007 is shaping up to be a year of significant changes for Wisconsin employers. For the first time in 10 years, the federal government has updated the minimum wage law, which, in turn, will impact other wage and hour provisions. Significant legislation has been passed or introduced covering a wide variety of employer topics, many of which will likely require HR professionals to modify existing practices this year.

Some of the recently enacted and proposed legislation include the following:

1. **New Minimum Wage Law:** On May 25, 2007, President Bush signed the Fair Minimum Wage Act of 2007. This law will raise the federal minimum wage to \$5.85 an hour beginning on July 24, 2007, \$6.55 an hour on July 24, 2008 and \$7.25 an hour on July 24, 2009. The new law also includes a three year extension of the Work Opportunity Tax Credit, which provides tax credits to employers for hiring individuals from nine targeted groups who are most in need of employment.

Wisconsin is also considering legislation to increase its minimum wage rate (currently \$6.50 per hour). The proposed bill would increase the rate to \$7.25 effective September 1, 2007 or publication of the bill, whichever is later. Thereafter, the DWD would be authorized to increase the minimum wage annually in relation to increases in the c consumer price increase. Republican legislators currently oppose the bill, so it's chances of success are unclear.

Employers will need to update their wage and hour posters on an annual basis to ensure that the correct minimum wage information is contained on their postings.

2. **Deferred Compensation Regulations:** On April 10, 2007, the Internal Revenue Service issued final regulations under Section 409A of the Internal Revenue Code which contain a variety of modifications to deferred compensation arrangements. The new rules will require HR professionals to revisit all deferred compensation arrangements (with the exception of qualified retirement policies such as 401(k) plans) to ensure that the deferred compensation arrangements comply with the new rules (the

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regulations are 397 pages in length). Employers have the balance of 2007 (the “good faith compliance period”) to make fixes to their current deferred compensation arrangements.

3. **New Focus on Independent Contractor Classifications:** The U.S. Department of Labor is conducting hearings in response to complaints over employers’ alleged misclassification of workers as independent contractors. Those who have testified at the hearings refer to the issue as a “worker misclassification crisis” and claim that companies are intentionally misclassifying employees as independent contractors in order to avoid various laws including, but not limited to, minimum wage laws, overtime laws, tax withholding laws, workers compensation laws, unemployment laws, collective bargaining agreements, state and federal discrimination laws, and other legal coverages. Proponents are requesting the Department of Labor and other agencies to either tighten existing laws or vigorously enforce current laws through audits, enhanced penalties and other actions.

Classification of workers as independent contractors, instead of employees, has grown dramatically in recent years. SHRM members are encouraged to scrutinize all independent contractor relationships entered into by their organizations and ensure that the relationships satisfy the independent contractor tests. Penalties can be severe for misclassified workers.

4. **Protection of Employees with Caregiving Responsibilities:** On May 23, 2007, the EEOC issued a new Enforcement Guidance relating to the protection of employees who have responsibilities for the care of others, such as children, elders or family members with disabilities. Although the EEOC noted that “caregiver” employees are not recognized as a “protected classification” under federal law (or most state laws), the EEOC indicated that discrimination against caregivers could be challenged under a “disparate impact” analysis, using current “protected characteristics” such as gender, race and association with a person who is disabled. The EEOC Guidance indicates that employers may be stereotyping employees who are parents or have other caregiving functions or placing these workers on different career paths than other workers.

Critics of the new Guidance suggest that the EEOC is improperly sidestepping Congress and creating a “de facto” new “protected classification”. Critics also argue that the Guidance might be used by employees to demand more time off than currently available under FMLA and will result in an increase in employee lawsuits.

HR professionals are encouraged to view the new Enforcement Guidance ([www.eeoc.gov](http://www.eeoc.gov)) to evaluate whether their current practices should be modified.

5. **Immigration Reform:** One of the most publicized legislative battles this summer will be the proposed immigration reform that is working its way through Congress. In May of 2007, bipartisan senators announced a compromise resolution that has the support of President Bush. This measure is likely to become the foundation for a comprehensive immigration law, if the upcoming presidential primaries do not impede the process. Regardless of what form the final legislation takes, the new law will have significant impact on employer practices, particularly on initial employment eligibility verification. Nearly all immigration proposals include provisions requiring employers to participate in the government's Employment Eligibility Verification program (EEV) which is still in the process of being developed. The EEV program would be an extension of an electronic Pilot program which a number of designated employers have been participating in for the past few years. However, the Pilot program has suffered from numerous glitches and inaccuracies (such as when the Swift Company discovered that 1,200 employees who had been "verified" through the electronic pilot program were actually ineligible for employment). Because the new immigration laws are also certain to increase penalties on employers for verification mistakes, employers are very concerned with the provisions of the new measures. The national SHRM chapter is encouraging its members to communicate with their congressmen expressing concerns over the measures. SHRM members should visit [www.shrm.org](http://www.shrm.org) for information on how to contact congressmen and the "script" that SHRM has prepared to express its views.

In addition to immigration legislation, the Department of Homeland Security (DHS) proposed a new rule on "no match" letters (which employers receive from the Social Security Administration or from DHS indicating that an employee's identification number may not be accurate). Once again, the new rule proposes significant penalties on employers, and shortens the deadlines and procedures which employers must take to resolve "no match" situations. Critics of the new rule indicate that, under current procedures, employers are unlikely to be able to meet the deadlines for resolving "no match" letters, and will likely end up terminating employees who are actually eligible to work in order to avoid penalties under the rule.

In addition, local legislators have been debating a local ordinance which would penalize employers, through licensure revocation or other measures, from employing illegal workers in our area.

6. **Miscellaneous Federal Legislation:** The federal government has also begun debating a variety of employment – related bills. One such measure would ban sexual orientation discrimination under federal law. Wisconsin already has a sexual orientation discrimination law, so the modification of federal law would primarily result in an enhancement of available remedies (and the availability of jury trials) to

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victims of sexual orientation discrimination. Another bill, the Emergency Worker Leave bill, would provide job-protected leave for employees who volunteer as firefighters or emergency medical personnel. The proposals is among a number of bills which would add mandatory leave obligations to the existing FMLA leave provisions.

7. **Miscellaneous State Legislation:** The Wisconsin Legislature is also reviewing a host of employment related legislation (in addition to the Minimum Wage proposal described above). Among these are provisions requiring employers to accommodate female employees who are pregnant or breastfeeding a child, bills prohibiting discrimination based on military service and requiring employers to provide paid leave to veterans on Veterans Day, a provision to modify the arrest and conviction record law to exclude protection for convictions of sex related or violent offenses, several provisions which would broaden the scope of establishments which must be smoke-free, and a provision which would provide for jury trials and punitive damages for violations of state discrimination laws. It remains to be seen whether any of these proposals will ultimately be passed into law.

Due to the extent and complexity of these new laws and proposed laws, HR professionals should pay close attention to these topics in the next few months. Additional information on any of the above laws or legislation can be obtained by contacting me at the above email address or by contacting your state or federal legislators.