

Fact Sheet on Ohio Minimum Wage Proposal (House Bill 153)
June 2011

Summary

In November 2006, Ohio voters amended the State Constitution to enact a higher state minimum wage that would be annually adjusted to match increases in the cost of living. Under the constitutional amendment, all workers who are “employees” under the federal minimum wage law are entitled to Ohio’s minimum wage. The amendment contained very narrow exemptions to this state minimum wage requirement. Importantly, the amendment did *not* exempt from state minimum wage coverage the categories of employees exempted from the federal minimum wage law.

After Ohio voters approved the constitutional amendment in 2006, the Ohio legislature rushed through an implementation bill that, in reality, attempted to water down the new minimum wage amendment during the final days before Governor Ted Strickland, a minimum wage supporter, took office in January 2007. But while the 2006 implementation bill attempted to create some limited exemptions that went beyond what the constitution allows, as a practical matter they were very small.

Now, however, a Senate budget revision contained in House Bill 153 attempts to remove minimum wage protections for more significant categories of workers, rolling back protections for thousands of working Ohioans. Specifically, the bill purports to expand the minimum wage exemption to all workers who are excluded **either** from the federal minimum wage or who were excluded under Ohio’s pre-2006 definition of “employee.” This legislation – like the 2006 implementation bill preceding it – is clearly unconstitutional, and would result in thousands of workers losing coverage under Ohio’s state minimum wage law.

The Constitutional Amendment (2006)

- In 2006, Ohio voters approved an amendment to the State Constitution that raised the state minimum wage from \$5.15 to \$6.85 per hour, and provided that it would be annually adjusted each January to match increases in the cost of living. Ohio Const. Art. II, § 34a. As of January 1, 2011, Ohio’s minimum wage is \$7.40 per hour.
- In explaining who was covered by the state minimum wage, the constitutional amendment adopted the definition of “employee” found in the federal Fair Labor Standards Act (“FLSA”) (at 29 U.S.C. § 203).

- However, the constitutional amendment did *not* adopt the minimum wage exemptions contained in the FLSA, which are found in a separate section of that federal statute (at 29 U.S.C. § 213). In fact, the constitutional amendment explicitly stated that “only the exemptions set forth in this section shall apply to this section.”
- Thus, according to the State Constitution, all workers are entitled to the state minimum wage unless they are excluded from the definition of “employee” under the federal Fair Labor Standards Act (FLSA). The only exception is for “an individual employed in or about the property of the employer or individual’s residence on a casual basis.”
- Finally, the constitutional amendment explicitly stated that although the Legislature could pass implementing legislation to “create additional remedies, increase the minimum wage rate and *extend* coverage of the section”, the Legislature could not pass legislation “restricting any provision of this section.”

House Bill 690 (2006)¹

- After Ohio voters approved the constitutional amendment in 2006, the Ohio legislature rushed through an implementation bill that attempted to water down the new minimum wage amendment in the final days before Governor Ted Strickland, a minimum wage supporter, took office in January 2007.
- Namely, this 2006 bill incorporated the minimum wage exemptions contained in the federal FLSA, by providing that workers would not be entitled to Ohio’s minimum wage if they were not “employees” under state law (as defined in the state’s overtime provisions) *and* were exempted from federal minimum wage requirements under the FLSA.
- By incorporating the exemptions contained in the FLSA, this 2006 bill directly contravened the Ohio Constitution’s directives that “only the exemptions set forth in this section shall apply to this section,” and had the effect of impermissibly “restricting any provision of this section.” However, as a practical matter, the exemptions purportedly authorized under the 2006 bill were very small and excluded few Ohio workers.

House Bill 153 (2011)

- The state budget bill now under consideration in the state Senate would go much further and squarely violate the voter-approved constitutional amendment. It would exclude from state minimum wage coverage all workers who are either exempt from federal minimum wage coverage under 29 U.S.C. § 213 *or* are excluded from Ohio’s definition of employee.

¹ The bill was signed into law by Governor Bob Taft in early 2007.

- This measure purports to expand the limited, technical exemptions under the 2006 bill into significant loopholes, reducing the number of Ohio workers covered by the state minimum wage. Under current law (which, as noted, also contradicts the voter-approved constitutional amendment), workers are not covered by the state minimum wage if they are *both* (1) not an “employee” as defined in Ohio’s law *and* (2) exempt from federal minimum wage requirements under 29 U.S.C. 213. But under this proposed legislation, a worker would have to fall *under just one of these categories, not both*, in order to lose state minimum wage coverage.
- Some of the major categories of workers that would be affected by this proposed legislation include, but are not limited to:
 - *Homecare workers.* The federal minimum wage exemption for homecare workers, at 29 U.S.C. § 213(15), is broader than Ohio’s definition of employee under state law, at Ohio Rev. Code 4111.03(D)(b), which limits the state law exemption just to babysitters and live-in homecare workers. Under this proposed legislation, then, all homecare workers in Ohio who fall within the broader federal exemption – including homecare workers who are *not* live-in – would now lose state minimum wage coverage.
 - *Certain agricultural workers.* While Ohio’s definition of employee does not exclude agricultural workers, the federal minimum wage exemptions exclude some categories of agricultural workers from minimum wage coverage, at 29 U.S.C. § 213(6). Those workers would now be excluded from state minimum wage coverage under House Bill 153.
 - *Police officers and firefighters.* While Ohio’s definition of employee excludes police officers and firefighters, at Ohio Rev. Code § 4111.03(D)(3)(f), the FLSA does not exempt these workers from federal minimum wage coverage. Thus, these workers would now lose state minimum wage coverage under House Bill 153.

Conclusion

The proposed exemptions to state minimum wage coverage contained in the Senate budget bill directly conflict with the constitutional amendment passed by Ohio’s voters in 2006, and would impact potentially thousands of workers. If the measure is signed into law, it will likely lead to costly lawsuits and create uncertainty for employers and workers alike in Ohio.

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