

OUR INSIGHTS

Arizona's Proposition 206: Much More Than a Minimum Wage Increase

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On November 8, 2016, Arizona voters will decide on the “Minimum Wage and Paid Time Off Initiative,” known as Proposition 206. The purpose of Prop. 206 is twofold: (1) to increase Arizona’s minimum wage from \$8.05 per hour in 2016 to \$12.00 per hour by the year 2020 (with a nearly \$2.00 per hour boost starting on January 1, 2017), and (2) to require that employers provide paid sick time to employees.

While the first part of Prop. 206 seems to be getting more attention in the media and from the business community, the second part will trigger the most disruptive changes for Arizona employers, especially small employers. Recent polling indicates that nearly 60 percent of likely voters will vote “yes” on Prop 206. With those odds, Arizona employers need to become familiar with these looming changes and prepare accordingly.

The following is a brief summary of the proposition’s key provisions.

Minimum Wage Increase

If passed, Prop. 206 would increase the minimum wage in Arizona to:

- \$10.00 per hour on January 1, 2017;
- \$10.50 per hour on January 1, 2018;
- \$11.00 per hour on January 1, 2019; and
- \$12.00 per hour on January 1, 2020.

After 2020, Arizona’s minimum wage would increase according to increases in the cost of living, as is currently the law.

Prop. 206 preserves an employer’s right to pay \$3.00 per hour less than the minimum wage to an employee who customarily and regularly receives tips or gratuities.

Paid Sick Time Requirement

The less-publicized, but certainly more groundbreaking portion of Prop. 206, is its paid sick time (PST) component. Arizona law does not currently require any private or municipal employers to provide PST

for their employees. Under Prop 206, private employers and municipalities would be subject to the following requirements, starting on July 1, 2017:

- **All private and municipal employers** must accrue for each employee a minimum of one hour of paid sick leave per 30 hours worked according to the following terms and limits:
 - **Employers with 15 or more employees** must permit employees to accrue up to 40 hours of PST per year and to allow use of up to 40 hours of accrued PST per year.
 - **Employers with fewer than 15 employees** must permit employees to accrue up to 24 hours of PST per year and to allow use of up to 24 hours of accrued PST per year.
- Even part-time and temporary workers are considered “employees” under Prop. 206 and are entitled to PST.
- Like the federal Family and Medical Leave Act of 1993, employees are protected from retaliation and may not have PST absences count against them.
- “Foreseeable” leaves require an employee to “make a good faith effort to provide notice to the employer” in advance of the leave and make a “reasonable effort” to schedule the time off “in a manner that does not unduly disrupt the operations of the employer.”
- Leaves that are “not foreseeable” require no prior notice to the employer, unless the employer has a written policy containing procedures for providing notice.
- Employers may not require employees to find their replacements as a condition for receiving PST leave.
- Unused accrued sick leave carries over from one year to the next, but accrued paid sick leave does not need to be paid to employees whose employment is terminated for any reason.
- PST begins to accrue at the commencement of employment, or on July 1, 2017, whichever is later.
- An employer may require an employee hired after July 1, 2017, to wait until the 90th calendar day after commencing employment before using accrued PST.

Prop. 206 also specifies a number of situations for which an employee may use paid sick time, including:

- when the employee has a mental or physical illness;
- when the employee needs to care for a family member who has a mental or physical illness;
- when a public health emergency arises; and
- when an employee must address issues related to domestic violence.

In the likely event of the passage of Prop. 206, Ogletree Deakins will issue a more detailed analysis of

the initiative's paid sick time provisions and their expected impact on Arizona employers. Stay tuned!

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With decades of in-depth labor and employment law experience representing a wide range of employers, including the aerospace, healthcare, hospitality, retail, transportation, manufacturing and mining industries, Mr. Nagy has a keen understanding and perspective that few Arizona practitioners in the field can offer. His considerable employment litigation, arbitration, and appellate experience compliment and enrich the practical advice and creative solutions he provides to resolving complex human...
