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## Florida's Minimum Wage to Increase on January 1, 2013

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On November 2, 2004, Florida voters approved a constitutional amendment that created Florida's minimum wage. The minimum wage applies to all employees in the state who are covered by the federal minimum wage. Florida law requires a new minimum wage calculation each year on September 30, based on the Consumer Price Index. If that calculation is higher than the federal rate (which is currently \$7.25 per hour), the state's rate then would take effect the following January.

Florida's minimum wage is currently \$7.67 per hour, effective January 1, 2012. According to our discussions with state officials, beginning January 1, 2013, Florida's minimum wage will be \$7.79 per hour, which is a 1.5% (or \$0.12) increase from last year due to the change in the Consumer Price Index.

Employers of "tipped employees" who meet eligibility requirements for the tip credit under the Fair Labor Standards Act (FLSA) may count tips actually received as wages under the FLSA. However, the employer must pay "tipped employees" a direct wage. Effective January 1, 2013, the new minimum wage for tipped employees should become \$4.77 per hour plus tips.

The state is scheduled to issue a press release today, confirming the rates. In deciding whether the federal or state minimum wage applies, federal law directs that businesses must pay the higher of the two. The Florida minimum wage will prevail over the federal rate until (and unless) the federal minimum wage becomes higher than the state rate.

Employers must pay their employees the hourly state minimum wage for all hours worked in Florida. The definitions of "employer," "employee," and "wage" for state purposes are the same as those established under the FLSA.

An employee who has not received the lawful minimum wage after notifying his or her employer and giving the employer 15 days to resolve any claims for unpaid wages may bring a civil action in a court of law against an employer to recover back wages plus damages and attorneys' fees. The state attorney general may also bring an action to enforce the minimum wage.

### **Additional Information**

Should you have any questions about the new minimum wage, please contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department at 866-287-2576 or via email at [clientservices@ogletreedeakins.com](mailto:clientservices@ogletreedeakins.com).

**Note:** This article was published in the October 15, 2012 issue of the Florida eAuthority.

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