

**WAGE AND HOUR UPDATE:  
FEDERAL AND STATE CHANGES IN 2008**

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## OVERVIEW OF THE FAIR LABOR STANDARDS ACT – 29 U.S.C. §§ 201 - 219

### WHAT THE FLSA DOES AND DOES NOT REGULATE:

The FLSA requires that all covered, nonexempt employees be paid

- (1) at least the minimum wage for all hours worked, and
- (2) one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.

The **FLSA Minimum Wage Rate** increased to \$5.85 per hour effective July 24, 2007, and \$6.55 per hour effective July 24, 2008. The minimum wage will increase to \$7.25 effective July 24, 2009. The maximum tip credit is set at \$2.15 per hour.

The FLSA employs a "**suffer or permit**" standard – meaning that covered employees must be paid for all hours in which the employee worked even if not specifically requested by the employer. For this reason, it is typically difficult to defend claims as "unauthorized overtime" or "working before or after clocking in."

The FLSA<sup>1</sup> does not require:

1. vacation, holiday, severance, or sick pay;
2. meal or rest periods, holidays off, or vacations;
3. premium pay for weekend or holiday work;
4. pay raises or fringe benefits;
5. a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees; and
6. pay stubs or "W-2"s.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or for commissions in excess of those required by the FLSA. Also, the FLSA does not limit the number of hours in a day, or days in a week, an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The **Portal-to-Portal Act** limits the time that is compensable under the FLSA to exclude:

- (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
- (2) activities which are **preliminary to or postliminary** to said principal activity or activities.

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<sup>1</sup> Other laws may required one or more of these things, though, depending on the jurisdiction.

## TIME SPENT DURING WORKING HOURS

Compensable	Noncompensable
<ul style="list-style-type: none"> <li>• Coffee and snack breaks</li> <li>• Fire drills</li> <li>• Grievance adjustment during time employee is required to be on premises</li> <li>• Meal periods if employees are not relieved of duties, if not free to leave posts or if too short to be useful (less than ½ hour)</li> <li>• Meal periods of 24-hour on-call employees</li> <li>• Medical attention on plant premises or if employer directs outside treatment</li> <li>• Meetings to discuss daily operations problems</li> <li>• Rest periods of 20 minutes or less</li> <li>• Retail sales product meetings sponsored by employer</li> <li>• Show-up time if employees are required to remain on premises before being sent home</li> <li>• Sleeping time if tour of duty is less than 24 hours</li> <li>• Stand-by time—remaining at post during lunch period or temporary shut down</li> <li>• Suggestion systems</li> <li>• Travel: <ul style="list-style-type: none"> <li>- from job site to job site</li> <li>- from work site to outlying job</li> <li>- from preliminary instructional meeting to work site</li> </ul> </li> <li>• Waiting: <ul style="list-style-type: none"> <li>- by homemaker to deliver or obtain work</li> <li>- by truck driver standing guard while loading</li> <li>- for work after reporting at a required time</li> <li>- while on duty</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Absence for illness, holiday or vacation</li> <li>• Meal periods of ½ hour or longer if relieved of all duties and free to leave post (but can be confined to plant premises)</li> <li>• Medical attention by employee choice of outside doctor</li> <li>• Shutdown for regular maintenance</li> <li>• Sleeping time up to eight hours if tour of duty is 24 hours or longer, if agreement to exclude sleep time exists, facilities for sleeping are furnished, at least five hours of sleep are possible during scheduled period, and interruptions to perform duties are counted as hours worked</li> <li>• Union meetings concerning solely internal union affairs</li> <li>• Voting time (unless required by state law)</li> <li>• Waiting after relieved of duty for a specified period of time that allows employee to engage in personal activity</li> </ul>

## **WHAT ENTERPRISES ARE COVERED UNDER THE FLSA:**

1. Enterprises that have employees who are:
  - a. engaged in interstate commerce,
  - b. producing goods for interstate commerce, or
  - c. handling, selling or working on goods or materials that have been moved in or produced for interstate commerce.
2. For most firms, an annual dollar volume of business test of \$500,000 applies (i.e., those enterprises under this dollar amount are not covered).
3. The following are covered by the Act regardless of their dollar volume of business:
  - a. hospitals and institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises,
  - b. schools for children who are mentally or physically disabled or gifted,
  - c. preschools, elementary and secondary schools, and institutions of higher education (regardless of whether or not school is public or private, or operated for profit or not for profit),
  - d. post-secondary career programs if licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools, and
  - e. federal, state, and local government agencies.
4. An enterprise that was covered by the Act on March 31, 1990, and that ceased to be covered because of the increase in the annual dollar volume test to \$500,000, as required under the 1989 amendments to the Act, continues to be subject to the overtime pay, child labor and record keeping requirements of the Act.

**See 29 U.S.C. § 203.**

## **WHICH EMPLOYEES ARE EXEMPT FROM THE FLSA:**

There are numerous (oftentimes very specific) exemptions contained in **29 U.S.C. §§ 207 and 213**. The careful practitioner will review those sections and their accompanying regulations closely when analyzing any claim. Below is an outline of several important exemptions:

### **The Executive Exemption Requires:**

1. Salary of at least \$455.00 per week (\$23,660.00 annually);
2. Primary duty (generally 50% or more of work time) consists of management of the enterprise or of a department or subdivision thereof;
3. Customarily and regularly directs the work of two or more employees; and
4. Has authority to hire and fire other employees or has particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees.

**See 29 U.S.C. § 213(a)(1); 29 C.F.R. §§ 541.100-106.**

### **The Administrative Exemption Requires:**

1. Salary or fee-based pay of at least \$455.00 per week (\$23,660.00 annually);
2. Primary duty (generally 50% or more of work time) consists of performance of office or non-manual work relating to management or general business operations of the employer or the employer's customers; and
3. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

**See 29 U.S.C. § 213(a)(1); 29 C.F.R. §§ 541.200-204.**

**The Professional Exemption Requires:**

1. Salary or fee-based pay of at least \$455.00 per week (\$23,660.00 annually); and
2. Primary duty (generally 50% or more of work time) consists of either:
  - a. performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction (the learned professional exemption);
  - b. performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (the creative professional exemption); or
  - c. teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed (the teacher exemption).

NOTE: Salary requirement inapplicable to medical practitioners, lawyers and teachers.

**See 29 U.S.C. § 213(a)(1); 29 C.F.R. §§ 541.300-304**

**The Highly-Compensated Employee Test:**

1. Compensation of at least \$100,000.00 annually;
  - a. must be paid a guaranteed salary of at least \$455.00 per week
  - b. annual compensation can include commissions, nondiscretionary bonuses and other nondiscretionary compensation but does not include board, lodging, payments for insurance, retirement plan contributions and the cost of other fringe benefits
  - c. employer can make one final payment, either during last pay period of 52-week period or within one month after end of 52-week period, to achieve required level
2. Primary duty includes performing office or non-manual work; and
3. Employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an individual employed in an executive, administrative, or professional capacity.

**See 29 C.F.R. § 541.601.**

**The Outside Sales Exemption Requires:**

1. Primary duty of:
  - a. making sales within the meaning of the FLSA;
  - b. obtaining orders or contracts for services, which may be performed for the customer by someone other than the person taking the order; or
  - c. obtaining orders or contracts for the use of facilities.
2. And, must be customarily and regularly engaged away from the employer's place of business in performing such primary duty
  - a. Does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls
  - b. Any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business
3. The salary basis requirement does not apply.

**See 29 U.S.C. § 213(a)(1); 29 C.F.R. §§ 541.500-504.**

**The Computer Employee Exemption Requires:**

1. Salary of at least \$455.00 per week (\$23,660.00 annually) or \$27.63 per hour; and
2. Primary duty consists of either:
  - a. application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional applications;
  - b. design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  - c. design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  - d. a combination of duties described in (a), (b), and (c), the performance of which requires the same level of skills.

**See 29 U.S.C. § 213(a)(17); 29 C.F.R. §§ 541.400-402.**

## RECENT STATUTORY CHANGES TO THE FLSA

### **Amendment to the Motor Carrier Exemption: SAFETEA-LU Technical Corrections Act of 2008 110 P.L. 244; 122 Stat. 1572 (June 6, 2008)**

Certain provisions (Title III, Section 305-06) of the SAFETEA-LU<sup>2</sup> Technical Corrections Act of 2008 affect the scope of the motor carrier exemption under 29 U.S.C. § 213(b)(1). The amendment:

1. Carves out certain "covered employees" who work for motor carriers or private motor carriers but who are still subject to the overtime and minimum wage protections of the FLSA. Covered employees include those drivers, driver's helpers, loader, or mechanics who use (or affect the safety of) vehicles less than 10,000 pounds, unless:
  - (a) the vehicle is designed or used to transport more than 8 occupants for compensation,
  - (b) the vehicle is designed or used to transport more than 15 occupants but not for compensation, or
  - (c) the vehicle is used to transport hazardous materials requiring a placard.
2. Provides a safe harbor for liability by the employer for FLSA violations to covered employees during the timer period August 10, 2005 to August 10, 2006 so long as the employer did not have actual knowledge that it was liable under the FLSA for the covered employees.

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<sup>2</sup> "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users"

**Amendment to the Child Labor Penalty Provisions: Genetic Information Nondiscrimination Act 110 P.L. 233; 122 Stat. 181 (May 21, 2008)**

A miscellaneous provision (Title III, Section 302) of the Genetic Information Nondiscrimination Act amended the penalty provisions of the FLSA's child labor violations. The amendment is to **29 U.S.C. § 216(e)** and includes:

1. A civil penalty of up to \$50,000 for a child labor violation that causes death or serious injury. Serious injury is defined as:
  - (a) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, or tactile sensation);
  - (b) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or
  - (c) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.
2. An increase to the civil penalty for other child labor violations from \$10,000 to \$11,000 (though DOL regulations already impose an \$11,000 penalty).
3. An increase in the penalty for willful violations of the FLSA's overtime and minimum wage provisions from \$1,000 to \$1,100 for each violation.

## RECENT FLSA CASE LAW

### EIGHTH CIRCUIT

#### **Copeland v. ABB, Inc., 521 F.3d 1010 (8th Cir. Mar. 27, 2008)**

The FLSA required employer to compensate employee for time spent attending a medical appointment as "hours worked" when the employee attended the appointment at the direction of the employer's workers compensation administrator. The fact that the employee logged the appointment as "unpaid leave" did not waive her FLSA rights as waiver is only permitted if under the supervision of the Secretary of Labor or by court order.

### U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

#### **Huang v. Gateway Hotel Holdings, 248 F.R.D. 225 (E.D. Mo. Jan. 4, 2008)**

The court declined to entertain – until after the close of discovery – Defendant's contention (supported by affidavit) that the proposed opt-in class is not similarly situated. Instead, the court conditionally certified the collective action based on the "substantial allegations" of similarity made by Plaintiffs.

The court also provided some guidance regarding the preferred method for drafting the notice to potential opt-in plaintiffs – emphasizing the imperative to avoid legalese. The court struck from the notice the following statement:

[i]f this case does not proceed as a collective action, I also consent to join  
a subsequent action to assert these same claims

But the court did not address how it envisioned handling the claims of plaintiffs who opt into a case that is later decertified.

#### **Lewis v. Ark-La-Tex Fin. Servs., 2008 U.S. Dist. LEXIS 45588 (E.D. Mo. Jun. 10, 2008)**

##### **Case No. 4:08-CV-00234**

Plaintiffs asserted a claim against their employer and individually named two company officers under the FLSA's broad definition of employer pursuant to 29 U.S.C. § 203(d). The court dismissed the two company officers from the suit for lack of jurisdiction. The court reasoned that the FLSA provided subject matter jurisdiction over the individuals but the Plaintiffs failed to assert what contacts the company officers had with Missouri that were sufficient to establish personal jurisdiction over them.

**U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI**

**Kautsch v. Premier Communications, 2008 U.S. Dist. LEXIS 7219 (W.D. Mo. Jan. 31, 2008)  
Case No. 06-CV-04035**

The defendants moved to decertify the collective action. There were 743 plaintiffs opted into the case. The court denied the motion, holding that the plaintiffs had sufficiently demonstrated that a collective action was appropriate under a three-factor test:

1. How disparate are the factual and employment settings of the individual plaintiffs?
2. Are the various defenses available to defendant individual to each plaintiff?
3. Do fairness and procedural concerns counsel in favor of certification or decertification?

The court accepted statistical evidence from the class of plaintiffs (i.e., "40% of the 210 Plaintiffs responding to [discovery] stated that they were told not to report more than 40 hours") as sufficient indicia of the existence of a cognizable claim. The court also cited concerns that decertification may result "in 743 individual trials."

**Osby v. Citigroup, Inc., 2008 U.S. Dist LEXIS 39041 (W.D. Mo. May 14, 2008)  
Case No. 07-CV-06085**

The Plaintiffs alleged they were required to work off-the-clock and asserted both an opt-in FLSA collective action and an opt-out Rule 23 class action premised on unjust enrichment. The Defendant moved to strike the Rule 23 claim as (a) preempted by the FLSA, (b) inconsistent with the opt-in rubric of § 216(b), and (c) in violation of the Rules Enabling Act. The court declined at that early stage of the litigation to grant the motion. The court held that certain off-the-clock work may not be a violation of the FLSA but still lead to an unjust enrichment claim, thus rejecting the preemption argument. The court further declined to rule that collective actions and class actions are inherently incompatible or that a wage and hour claim pursued on a Rule 23 basis violates the Rules Enabling Act. The court adopted followed a majority of courts that have allowed opt-in and opt-out actions to proceed simultaneously. But see Harden v. WIS Holdings Corp., 2007 U.S. Dist. LEXIS 97608 (W.D. Mo. Jun. 27, 2007)(declining to accept supplemental jurisdiction over Rule 23 state law claims due to concerns with inherent incompatibility with § 216(b) of the FLSA).

**Chao v. Firstcall Staffing Solutions, Inc., 2008 U.S. Dist. LEXIS 56783 (W.D. Mo. Jul. 28, 2008)  
Case No. 08-CV-0174**

The Secretary of Labor sued solely for injunctive relief under the FLSA. The employer requested a jury trial. The Secretary argued that equitable actions are not triable to a jury. The court noted that neither the Supreme Court nor the Eighth Circuit has ruled on the question. The court followed the near unanimous view of courts in other circuits that a claim for injunctive relief under the FLSA is not triable to a jury.

**Robertson v. LTS Mgmt. Servs., 2008 U.S. Dist. LEXIS 79486 (W.D. Mo. Oct. 9, 2008)  
Case No. 07-0865**

This case addresses issues similar to those raised in Osby (*supra*) and followed the ruling in that case to the exclusion of the contrary holding in Harden (*supra*).

## RECENT DEPARTMENT OF LABOR OPINION LETTERS ON THE FLSA

The Wage and Hour Division of the Department of Labor issues FLSA Opinion Letters from time to time. These letters – when signed by the Division Administrator or a properly authorized designee – are considered an official ruling or interpretation of the FLSA for purposes of a good faith reliance defense under the Portal-to-Portal Act. See 29 U.S.C. § 259.

Wage and Hour Opinion Letters from 2001 to present can be located at:

[www.dol.gov/esa/whd/opinion/opinion.htm](http://www.dol.gov/esa/whd/opinion/opinion.htm)

Below is a list of the FLSA Opinion Letters issued in 2008:

### **FLSA2008-1                      March 6, 2008**

**Purchasing agents** working for a manufacturing concern are properly deemed exempt under the **administrative exemption** when the agents were authorized to make purchases up to \$25,000 without managerial approval and 99% of purchases were below the \$25,000 threshold.

### **FLSA2008-2                      March 17, 2008**

When an employee of a **public agency** that works a regularly scheduled shift **substitutes a shift** with another employee, then the public agency is not required to pay overtime for the additional hours for which the substituting employee was not originally scheduled to work. But the agency cannot permit an employee to substitute so many shifts that it would result in the employee not receiving minimum wage for all hours worked in a week.

### **FLSA2008-3                      April 21, 2008**

The Product Technology Application and Marketing Analysts working for a company that develops and sells products for use in retaining walls and foundations is exempt under the **administrative exemption** when the employees spend 40% of their time developing product tests alongside engineers, 30% of their time working as liaisons with the company's sales force, and 30% of their time performing standardized tests on products.

### **FLSA2008-4                      May 15, 2008**

Employer may arrange for its employees to purchase "dark colored, non-slip" shoes from a third-party vendor without the shoes being considered a "**uniform**" under **section 3(m)** of the FLSA when the employees can choose which shoes to purchase and can choose to purchase the shoes from another store. Further, the employer may arrange for its employees to pay for the shoes through **payroll deduction** so long as the employer does not receive a benefit from the store and it only deducts the actual cost of the shoes.

**FLSA2008-5**                      **May 30, 2008**

A school district breaks its fiscal year into 26 pay periods and must periodically adjust its **pay-period cycle** by one week every four years to ensure that there are only 26 pay periods in each year. This results in three weeks being paid in one set pay period, thus effectively reducing the pay rate to the **non-exempt** employee from \$520 in weekly pay ( $\$1,040 \div 2$ ) to \$346.67 per week ( $\$1,040 \div 3$ ). This arrangement did not violate the FLSA because the **regular rate** of pay even in the lesser weeks was still \$8.67 per hour ( $\$346.67 \div 40$ ) which is higher than the federal minimum wage and the employees received time-and-a-half at the (lower) regular rate for all hours worked over 40 in a week.

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The following opinion letters are designated "NA" because they were not signed by the Administrator of the Wage and Hours Division of the Department of Labor (or a properly authorized designee) and, therefore, do not carry the weight of an official ruling or interpretation under 29 U.S.C. § 259. Nonetheless, reliance on these "advisory" letters may still be probative of a good-faith defense to liquidated damages under **29 U.S.C. § 260**.

Below is a list of the FLSA "NA" Opinion Letters issued in 2008:

**FLSA2008-1NA**                      **February 14, 2008**

An employee who is classified as **exempt** at a full-time salary of \$23,660 per year (or \$455 per week) cannot be paid a **pro-rated salary** of \$15,000 per year when the employee switches to working **part-time** (typically 20 hours per week) and still maintain the exemption. The salary requirement of 29 C.F.R. Part 541 does not contain an exception for employees who typically work part-time. Thus, the employee must be paid time-and-a-half for all hours over 40 in a week and must not work enough hours in any given week to make the effective hourly rate for that employee fall under the minimum wage.

**FLSA2008-2NA**                      **February 14, 2008**

An employer is permitted to require its employees to track their own time when completing an **at-home computer training course**. No particular method of **time-keeping** is prescribed by the 29 C.F.R. Part 516, though the employer must pay for all hours "the employer knows or has reason to believe that the work is being performed."

**FLSA2008-3NA**                      **February 29, 2008**

A fire department cannot permit a **paid firefighter** to **volunteer** for work of a similar nature to his paid duties. So long as the fire department is a **non-profit organization**, the firefighter would be permitted to volunteer to perform tasks unrelated to his typical work duties – i.e., administrative duties, fundraising, and the like.

**FLSA2008-4NA**                      **February 29, 2008**

The **plant managers** of a ready-mix concrete business are properly considered exempt under the **executive exemption**.

**FLSA2008-5NA            March 7, 2008**

A **sheriff's department** can exclude from the calculation of total hours for overtime purposes the **occasional and sporadic time** spent by its law enforcement personnel on civilian duties because the civilian duties are of a **different capacity** than the deputies' typical work.

**FLSA2008-6NA            May 8, 2008**

An employee who picks up goods at his employer's office, sells them offsite, and then returns to his employer's office each day is exempt under the **outside sales exemption**.

**FLSA2008-7NA            May 15, 2008**

An employer must pay employees for time spent **working through required unpaid breaks** even when the employees have been instructed not to skip breaks. Additionally, employees who begin work early or works after the regularly scheduled finish time must still be compensated for work performed. This is true even if the employer has a published policy prohibiting **off-the-clock work**.

**FLSA2008-8NA            May 23, 2008**

An **ambulance driver** must be paid for **time spent on-call** during the winter when the driver is required to report to work within eight minutes of receiving a call and drivers are typically called into work once per day. In contrast, the driver was not required to be paid for on-call time during the non-winter months because calls into work were more sporadic – once or twice per week and sometimes not at all. The analysis turns on whether the employee can use the time effectively for his/her own purposes.

**FLSA2008-9NA            May 30, 2008**

**Jailers** employed by a city qualify as "law enforcement" personnel under **29 U.S.C. § 207(k)** which provides a partial overtime exemption. Though the jailers did not have the power to make arrests, they are still properly considered "security personnel in correctional institutions" which are specifically included as "law enforcement" personnel under § 207(k).

**FLSA2008-10NA          June 9, 2008**

**Medicaid service coordinators** who perform duties similar to a social worker do not qualify for the **learned professional exemption** even though the job is filled by registered nurses or employees with at least an **associate's degree** in health or human services. Because the job only requires an associate's degree, it does not require "knowledge of an advanced type . . . customarily acquired by a prolonged course of specialized instruction."

## **OVERVIEW OF MISSOURI MINIMUM WAGE LAW – Mo. Rev. Stat. §§ 290.500 - 530**

### **What Employers Are Covered:**

A covered employer is “any individual, partnership, association, corporation, business, business trust or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to an employee.” Local government employers are excluded.

### **Which Employees Are Not Covered (Partial List):**

1. Individuals employed in bona fide executive, administrative or professional capacity
2. Volunteers or independent contractors with educational, charitable, religious or non-profit organizations
3. Individuals employed for less than four months in any year in a resident or day camp for youth of children
4. Individuals employed by an educational conference center operated by an educational, charitable or not-for-profit organization
5. Any individual employed on or about a private residence on an occasional basis for six hours or less on each occasion
6. Any disabled person employed in a certified sheltered workshop
7. Domestic service employees
8. Employees paid on sales commission basis whose hours and places of employment are not substantially controlled by the employer
9. Any individual employed in a retail or service business whose annual gross volume of sales made or business done is less than \$500,000.00

### **Minimum Wage Requirements**

As of January 1, 2007, all covered employers were required to pay employees minimum wage of \$6.50 per hour. Every year, minimum wage will be adjusted based upon an increase or decrease in the cost of living.

Effective January 1, 2008, the Missouri state minimum wage increased to \$6.65 per hour.

### **Maximum Tip Credit**

If covered by the Missouri Minimum Wage law, the maximum tip credit cannot exceed one-half of state minimum wage rate.

As of January 1, 2008, the maximum tip credit in Missouri is \$3.32 per hour.

## RECENT DEVELOPMENTS IN MISSOURI WAGE AND HOUR LAWS

### Amendment to the Exemptions and Administration of the Missouri Minimum Wage Law 2008 Mo. H.B. 1883 (June 26, 2008)

Mo. Rev. Stat. § 290.505 was amended to broaden the scope of the exemptions incorporated from the FLSA. Previously, only the exemptions listed in 29 U.S.C. § 213(a)-(b) were incorporated into the Missouri law. After the amendment, all the exemptions available under the FLSA are also available under the Missouri law:

3. With the exception of employees described in subsection (2), the overtime requirements of subsection (1) shall not apply to employees who are exempt from federal minimum wage or overtime requirements **including, but not limited to, the exemptions or hour calculation formulas specified in 29 U.S.C. Sections 207 and 213, and any regulations promulgated thereunder.**

4. **Except as may be otherwise provided under sections 290.500 to 290.530, this section shall be interpreted in accordance with the Fair Labor Standards Act, 29 U.S.C. section 201, et seq., as amended, and the Portal to Portal Act, 29 U.S.C. section 251, et seq., as amended, and any regulations promulgated thereunder.**

Mo. Rev. Stat. § 290.505 (added language emphasized).

The new law also adds Section 290.523 which provides the Department of Labor and Industrial Relations with the authority to promulgate regulations to enforce and administer the Minimum Wage Law:

**290.523. The Department may, in accordance with Chapter 536, RSMo, promulgate such rules and regulations as are necessary for the enforcement and administration of sections 290.500 to 290.530. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of Chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and Chapter 536, RSMo, are nonseverable and if any of the powers vested with the General Assembly pursuant to Chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.**

(NEW) Mo. Rev. Stat. § 290.523 (added language emphasized).