



Ohio Amends Wages and Hour Law and Collective Action Opt-in Procedure

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Ohio Governor Mike DeWine signed Senate Bill 47 ("SB 47") into law on April 6, codifying Ohio law to provide certain exceptions when employers are not required to pay employees overtime wages. The new law essentially aligns Ohio law with the federal Portal-to-Portal Act (PPA) amendments to the Fair Labor Standards Act (FLSA). The law becomes effective on July 6. Under the PPA and the new Ohio law, employers are not required to pay overtime wages to an employee for time spent:

- Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform;
- Performing activities that are preliminary to or postliminary to the principal activity or activities;
- Performing activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours.

The recent increase in the use of remote workers has blurred the line for Ohio employers as to whether brief activities such as listening to voicemails, reading emails, or checking schedules are compensable. Unfortunately, the new amendment does not define what is "insubstantial" or "insignificant."

Ohio law is now consistent with federal law in holding that employers are not required to pay overtime for those activities when they occur *before* the time on any workday that the employee commences the principal activity, or *after* the time on any workday that the employee stops performing the principal activity.

The exceptions, however, do not apply if the employee performs the activities at the employer's direction or during the employee's regular workday. In addition, the exceptions do not apply if performed pursuant to:

- An express provision of a contract in effect at the time the employee performed the activity, including a collective bargaining agreement;
- A custom or practice in effect at the time of the activity that is not inconsistent with a contract in effect at the time the employee engaged in the activity, including a collective bargaining agreement.

This amendment of the Ohio law eliminates confusion about what is and what is not considered compensable activities and reduces the burden on both employers and employees of having to keep track of those brief activities performed outside of the regular workday, which is particularly difficult for remote employees.

Additionally, Ohio law now eliminates an “opt-out” class action mechanism based on Ohio state law. Instead, consistent with the federal FLSA, Ohio law now requires an employee to affirmatively opt-in to a lawsuit to join a collective action. This should eliminate the potential of giant classes of former employees who are not interested, one way or the other, in participating in wage and hour lawsuits and will limit claims only to those truly interested in opting in.

For more information, please contact [Neal Shah](#), [Jessica Sexton](#), or any attorney in Frost Brown Todd’s [Labor and Employment](#) practice group.

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