



August 4, 2006

We hope the following information from our Center for Benefits Management is useful.

When The Minimum Is Not *De Minimis*

It's not enough that today's benefits manager needs to be part underwriter, actuary, communicator, accountant, systems analyst and oh-by-the-way, department head. Today's benefits manager also must be a pretty fair lawyer as well. This is true because among the underappreciated challenges confronting benefits managers is the need (struggle?) to keep abreast of the hundreds of regulatory requirements flowing from government agencies. It's possible that more are on the way.

While most Ohio voters may have their eye on the race for Governor, there is a spate of ballot initiatives wending its way through the petition approval process. When we step into the polling booth this November, we will be asked to say Yes or No to measures dealing with smoking bans, slot machines at racetracks, repeal of workers compensation "reforms" and the looming giant, a proposed increase in Ohio's minimum wage.

Wage legislation is not normally a subject for *In Focus*. However, there are aspects of the Ohio proposal that need to be recognized by everyone doing business here. If it is the benefits manager that sounds the clarion and arouses the attention of corporate colleagues down the hall, so much the better. Paul Revere is in the history books for something other than silversmithing.

The minimum wage proposal would amend Ohio's Constitution as follows:

- The minimum wage would increase to \$6.85 per hour on January 1, 2007 and be indexed for inflation annually beginning in 2008
- Employees receiving tip income would be paid at least one-half the new minimum wage
- The federal minimum wage (\$5.15/hour) would apply to employees younger than age 16 and to businesses with annual gross receipts less than \$250,000

The arguments for and against increases in the minimum wage *per se* have long since lost their grounding in hard economics. *In Focus* will not assess their relative merits in Ohio's case. What we do need to point out is the political significance of this proposal.

Some examples:

- A recent study by the Ballot Initiative Strategy Center showed that statewide ballot proposals increase voter turnout by up to 9%.
- In 1998, the Florida minimum wage initiative received 1.2 million more votes than President Bush, who carried the state.
- Ohio Senator Michael DeWine (Republican) is running for reelection against Democrat Sherrod Brown. Brown is a strong advocate of increasing Ohio's minimum wage. Senator DeWine is a long-time opponent of minimum wage increases. However, just two months ago, the Senator did an historic about face and voted *in favor* of Senator Ted Kennedy's bill that would have raised the federal minimum wage.

Lost in the fog of political posturing is what really concerns us, and should concern each *In Focus* reader. The source of our concern is the under-publicized record keeping and disclosure requirements attached to the minimum wage proposal. Consider:

- For three years following employment termination, employers would be required to retain all employee names, addresses, occupations, pay rates, actual amounts paid and daily hours worked for nearly all classes of employees, including executives.
- Both private and public employers would be required to release these records to any employee or other person acting on behalf of the employee. There are no limits to the number of requests allowed and no requirement that the eligible recipient of the records be an attorney acting on behalf of the employee.
- At its own discretion, the state would be authorized to conduct an investigation of the employer's records
- Any employee or person acting on the employee's behalf would be allowed to file suit against an allegedly non-compliant employer. If deemed non-compliant, the employer will be exposed to triple damages.

Taken together, the record keeping and disclosure requirements add a huge burden to employers. The open-ended disclosure rules amount to a gift-wrapped invitation to the plaintiff's bar to file suits without merit in the hope that just one will find a sympathetic jury happy to "stick it to the man".

Reasonable people of good will can differ on whether the public's best interests are better served with or without hikes to Ohio's minimum wage. But it is impossible to discern the good purpose well served by the recordkeeping and disclosure rules buried in this proposal. This time it's not the British who are coming - it's the trial lawyers. Let's get on our horses and make sure the right people in our organizations know what's up.

HSA Today

Continuing our series of Questions and Answers about HSAs that are practical but less publicized.

Question: If an employee asks his or her employer to deduct after-tax amounts from the employee's regular pay and forward those amounts as employee contributions to the employee's HSA, do the new comparability rules still apply?

Answer: No. After-tax employee contributions to an HSA are not subject to the new comparability rules. Such contributions are not considered as employer contributions; even though they were deposited into the employee's HSA by the employer.

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