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## New Minimum Wage and Military Family Leave Requirements for Employers

### Executive Summary

Many Indiana employers will soon be affected by two new changes in Indiana Law. The Indiana General Assembly enacted a bill this past legislative session that changes Indiana's Minimum Wage statute to require all employers who employ two or more individuals to comply with the federal minimum wage. Therefore, due to recent changes in the federal minimum wage, the new minimum wage rate in Indiana will be increased to \$5.85 beginning on July 24, 2007, and it will increase in \$0.70 increments over the next two years. *Reference: House Enrolled Act 1027.* The General Assembly also enacted a bill that will affect employers' leave policies. As of July 1, 2007, all employers who employ at least 50 employees for each working day during each of at least 20 calendar work weeks will be required to provide unpaid military family leave of up to 10 working days each year to a spouse, parent, grandparent, or sibling of a person ordered to active duty in the United States armed forces or the National Guard. *Reference: House Enrolled Act 1092.*

### Detailed Analysis

#### A. Increases to Minimum Wage

The Indiana Minimum Wage statute, as amended, now provides that employers who are not covered by the federal minimum wage will be required to pay employees "wages of not less than the minimum wage payable under the federal Fair Labor Standards Act of 1938 as amended (29 U.S.C. 201 et seq.)." Ind. Code 22-2-2-4(h). On May 25, 2007, President Bush signed into effect the "Fair Minimum Wage Act of 2007" which increases the federal minimum wage of \$5.15 an hour in three steps. For federal purposes, the minimum wage will increase as follows: (1) to \$5.85 beginning July 24, 2007; (2) to \$6.55 beginning July 24, 2008; and, (3) to \$7.25 beginning July 24, 2009.

#### B. Military Family Leave

In an effort to assist family members of individuals who are serving in the armed forces or the National Guard, the Indiana General Assembly also enacted a new statute providing for Military Family Leave. Ind. Code 22-2-13 et seq. Under the new statute, any employer who employs at least 50 employees for each working day during each of at least 20 calendar work weeks is required to provide up to 10 working days each year of unpaid military family leave to eligible employees. In order for an

employee to be eligible, the employee must: (1) be employed by the employer for at least 12 months; (2) have worked at least 1,500 hours during the 12 months preceding the commencement of the leave; and, (3) be the spouse, parent, grandparent or sibling of a person who is ordered to active duty. The statute defines "active duty" as full-time service in the armed forces of the United States or the National Guard for a period that exceeds 89 consecutive calendar days.

An employee may take this leave during the 30 days before the active duty orders go into effect, during a period when the person is on leave from active duty but the active duty orders are still in effect, and/or during the 30 days after the active duty orders are terminated. The eligible employee may elect, or the employer may require that the employee substitute any earned paid vacation leave or personal leave for any portion of the ten day period. If active duty orders are issued far enough in advance and a copy of the orders is available, the employee must provide the employer with a copy of the active duty orders and give at least 30 days notice before the date on which the employee intends to begin leave. An employer does have the right to require verification of the employee's eligibility for military family leave, and if the employee fails to provide verification, the employer may consider the employee's absence as unexcused.

During the employee's military family leave, the employer must allow the employee to continue health care benefits at the employee's expense. Upon returning from military family leave, an employee must be restored to the position he or she held before the leave began or be placed in an equivalent position. Additionally, an employer is not allowed to interfere with, restrain, or deny an eligible employee's exercise or attempt to exercise his or her rights provided by this law.

This new Military Family Leave statute takes effect on July 1, 2007. All covered employers should now establish a policy to address leave granted for family members of military personnel called to active duty. For more information regarding the statute, go to: <http://www.in.gov/legislative/bills/2007/PDF/HE/HE1092.1.pdf>.

Should you have any questions, please do not hesitate to contact your local counsel, or Stephen W. Lyman, John P. Ryan, Kevin A. Stella or Jennifer K. Handel at Hall, Render, Killian, Heath & Lyman at 317/633-4884.

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