



## MINIMUM WAGE CHANGE TAKES EFFECT



**Patty Wheeler** .....  
"The President signed the new law without fanfare on May 25."

Legislation signed by President Bush increases the federal minimum wage from \$5.15 to \$7.25 per hour by 2009. The minimum wage will increase to \$5.85 on July 24, 2007, and \$6.55 on

July 24, 2008. Finally, on July 24, 2009, it will go to \$7.25 per hour. This is the first increase in the federal minimum wage since 1997. At the time of

enactment, 29 states and Washington, D.C., had minimum wage rates in effect that were higher than the federal rate of \$5.15 per hour, while 21 states had wage floors equal to the national level or simply followed federal law. Even after the final increase to \$7.25 per hour in 2009, it appears that there will still be 11 states and Washington, D.C., with higher wage floors, ranging from \$7.40 per hour in Rhode Island and Michigan, to \$8.27 per hour in Washington state.

A minimum wage provision was added to the Iraq war funding bill, which the House approved in a vote of 348-73, and the Senate in 80-14 vote. The President signed the new law without fanfare on May 25.

## CONFUSION ALSO ARISES DUE TO VARYING STATE WAGE-HOUR LAWS AND EXEMPTIONS



**Mary Moffatt Helms** ....  
"In spite of the federal minimum wage changes, some states still have higher state minimum wage laws."

In spite of the federal minimum wage changes, some states still have higher state minimum wage laws. In addition, a number of states have exemption standards that are

materially different from either the current or former federal rules, including: California, Colorado, Hawaii, Oregon, West Virginia, and Wisconsin. In

particular, some states have different rules on executive exemption, including some states that follow different executive rule exemptions than the current white-collar exemptions under the Fair Labor Standards Act, which took effect in August of 2004. A different primary duty test can be found in the following 6 states: Connecticut, Illinois, Kentucky, Maryland, Montana, and North Dakota. Some states follow the "80-percent rule" of the former FLSA white-collar "long" tests, including the following states: Alaska, Arkansas, Minnesota, New Jersey, Pennsylvania, and Washington.

These considerations make difficulties for employers with operations in multiple states.

## KNOW YOUR ATTORNEY

Anita Patel



ANITA PATEL has been Of Counsel with the offices of Wimberly Lawson Seale Wright & Daves, PLLC., since 2002. Her law practice

exclusively focuses on immigration and nationality law. Anita received two Bachelor of Science degrees, both with honors, from the University of Tennessee, one in Finance and the other in General Business. She also received her law degree from the University of Tennessee, College of Law. Anita has been a sole practitioner in the Law Offices of Anita Patel, Knoxville, Tennessee since 1996. She is a member of the American Immigration Lawyers Association (AILA), the Knoxville Bar Association, and the East Tennessee Law Association for Women (ETLAW). Anita is fluent in Gujarati.

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Knoxville

## SUPREME COURT RULES WHEN EMPLOYEES MUST CLAIM DISCRIMINATION IN PAY



**Marty Conway** .....  
"The dissenters noted that the Equal Pay Act applies to pay disparities even though they first arose outside the limitations period."

.....  
almost 20 years. According to the complaint, she was the only woman among the 16 employees at the same management level and received less pay than any of her co-workers, even those with less seniority. She claimed that, although the decision to pay her less than her male counterparts earned was made years before she filed suit, the cumulative effect of the pay disparity had reached 40% by the time she took early retirement in 1998.

The 5-4 majority opinion was written by Justice Samuel Alito, Jr., who wrote, "The EEOC charging period is triggered when a discrete unlawful practice takes place. A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent non-discriminatory acts that entail adverse effects resulting from the past discrimination." The Court said that the plaintiff did not prove within that 180-day period that Goodyear actually intended to discriminate, a necessary element of a disparate treatment discrimination claim. In this case, Goodyear decided on a pay scale for the plaintiff at some point in the past, and a new violation did not occur with each new paycheck that she received.

Four justices issued a dissent, arguing that given the secrecy about salaries in some work places, many employees would not know for years, yet alone within 180 days, that they were getting paid less than co-workers in similar jobs. The dissenting justices also addressed the Equal Pay Act, which was enacted contemporaneously with Title VII and prohibits paying unequal wages for equal work because of sex. The dissenters noted that the Equal Pay Act applies to pay disparities even though they first arose outside the limitations period. However, the majority countered that if the plaintiff had pursued an Equal Pay Act claim, she would not be confronted with the same limitations that exist under Title VII.

*Editor's Note - It should be noted that the Court suggests a different result would occur if the claim had been brought under the Equal Pay Act, but EPA claims are limited to sex discrimination in pay and may not be brought on grounds of race, religion, national origin, age, or disability. The Court suggested that if the employer had initiated a pay system in order to discriminate, plaintiffs could use evidence of that discriminatory system that occurred before the 180-day charge filing period. Also, it should be noted that the charge-filing period is 300 days in most states, as the 180-day EEOC charge filing period is limited to states that do not have a state employment discrimination agency.*

In a highly publicized May 29, 2007 ruling, the U.S. Supreme Court ruled that workers who wish to sue under Title VII for discriminatory pay differences must file a charge with the EEOC "... within 180 days after each allegedly discriminatory pay decision was made and communicated to [plaintiff]." The Court indicated that employees claiming that they received disparate treatment based on gender or race must do so within 180 days of the original discriminatory action - not within 180 days of their last paycheck. *Ledbetter v. Goodyear Tire and Rubber Co., Inc.*, No. 05-1074 (U.S. May 29, 2007).

In *Ledbetter*, the plaintiff worked as a supervisor for Goodyear in Alabama for almost 20 years. According to the complaint, she was the only woman among the 16 employees at the same management level and received less pay than any of her co-workers, even those with less seniority. She claimed that, although the decision to pay her less than her male counterparts earned was made years before she filed suit, the cumulative effect of the pay disparity had reached 40% by the time she took early retirement in 1998.

## Perspective

### WHY THE “GRAND COMPROMISE” ON IMMIGRATION REFORM FAILED



**Fred Baker** .....

“Some opponents for example, attempted to insert “poison pill” amendments, not to help the bill, but to ensure its defeat.”

There is an old saying that many people look at their glass as “half-full,” while others look at their glass “half-empty.” In the case of the immigration reform bill, most members of the public looked at the immigration reform bill as “half-empty.” In fact, some proponents of the measure agreed that a major selling point of the bill was that it was equally unsatisfying to everyone, but it could be fixed later. Unfortunately, that strategy did not work.

The first problems occurred when the bill was “slammed” by potentially fatal amendments from both sides, Democrats, Republicans, proponents, and opponents. Some opponents, for example, attempted to insert “poison pill” amendments, not to help the bill, but to ensure its defeat. Many now believe that Congress has lost its last chance to attempt serious immigration reform until after the next Presidential election.

The most publicized issue in the bill was the so-called “amnesty” provision, which would have allowed illegal immigrants in the country before 2007 to receive renewable 4-year visas after paying fees and fines. The bill would have created an improved guest worker program and would have given 2-year visas to 400,000 workers a year. The most interesting part of the “grand compromise,” however, was that none of these programs would have gone into effect until certain triggers - including the hiring of additional border agents and the construction of hundreds of miles of border fencing - were met.

No one should really get the credit, or the blame, for the defeat of the compromise bill. Even traditional allies found themselves on opposite sides of the issue, such as the fact that some Hispanic groups backed the bill, while others opposed it. The problem is that the issues in any such immigration reform compromise are so controversial, it is difficult to draft a bill acceptable to a majority, particularly as every special interest group addresses the issues. Ironically, the Senate was to be the most likely to forge this compromise, as the issues were expected to be even more difficult in the House of Representatives. The next President is unlikely to show as much interest in immigration as President Bush, a former border state governor, so challenges remain for our country to “fix” the broken immigration system. Perhaps an intermediate development will be more legislation on the subject on the state level.

### UNION ORGANIZERS ATTEMPT TO FORM OWN UNION, IN THE FIRM’S RECENT ELECTION WIN



**Mary Dee Allen** .....

“A few weeks into the campaign, the employer discovered that a petition had been filed against the Prewitt Organizing Group, the employer of the 25-plus union organizers attempting to form a union at the client’s establishment.”

Wimberly and Lawson recently represented a major poultry processor in defeating a petition filed by the United Food and Commercial Workers Union (UFCW), by a vote of 798 to 270. Something very unusual happened during the course of the campaign, almost unprecedented - union organizers attempted to form their own union, an effort opposed by their employer, the union organizing group itself.

A few weeks into the campaign, the employer discovered that a petition had been filed against the Prewitt Organizing Group, the employer of the 25-plus union organizers attempting to form a union at the client’s establishment. Further, the union organizing group, contended that the union organizers were not entitled to a union, because they were only temporary workers. As of the date of this publication, this issue remains pending before the NLRB. In any event, these union organizers that were attempting to form a union among their own group, were not successful in the organizing campaign, as

the firm’s client defeated the union by a 3-1 margin. This situation confirms what this writer has long said - that the most anti-union employers in the country, are the unions themselves. They generally will not tolerate a union among their own organizers or personnel.

This writer recalls a situation a number of years ago, during a meeting of many union officials, it was announced that the union would “fire anyone that signs a union card.”

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## IMMIGRATION REFORM DEFEATED



**Jerry Pinn** .....  
"Proponents of the final vote could secure only 46 votes to shut off debate, with the forces of the political right and left overwhelming the attempted bipartisan compromise."

On June 28, the U.S. Senate apparently dealt a fatal blow to immigration reform this year, and probably next, by falling well short of the 60 votes needed to cut off debate and seek a final vote on the reform bill. Proponents of the final vote could secure only 46 votes to shut off debate, with the forces of the political right and left overwhelming the attempted bipartisan compromise. The compromise legislation would have required enacting tough border

enforcement measures and a crackdown on employers of illegal immigrants before reforms could take effect. The reforms included a pathway for citizenship for illegal immigrants, a broader guest worker system, and dramatic changes in the system of legal immigration. The 761-page bill had been developed with the support of the Bush Administration and a bipartisan group of about a dozen senators from both parties. However, opponents of the legislation mounted a furious campaign, and the compromise that was reached was targeted not only by opponents of illegal immigration, but was opposed by most labor unions and by some immigration advocates. Fifteen Democrats and thirty-six Republicans opposed a measure to bring the bill to a vote, resulting in its defeat. Numerous "poison pill" amendments

had been inserted by opponents and was part of the process in defeating the legislation. Concerned administration officials voiced after the vote, that without the additional measures in the bill, the current flood of illegal immigration is not likely to recede. Commentators believe it will be extremely difficult to bring back the bill in the Senate for a third time this year, and next year is considered even more difficult as it is an election year.

## THE SENATE ALSO DEALS A FATAL BLOW TO UNION ORGANIZING BILL - FOR NOW



**Howard Jackson** .....  
"This bill was known as the "card check" bill because it would have required employers to recognize and bargain with a union that presented signed authorization cards from a majority of the employees."

On June 26, Democratic Senators were not able to gather enough votes to force consideration of the union-backed Employee Free Choice Act, which has been labor's top legislative priority. The bill won the support of a majority of Senators, but the 51-48 vote was not large enough to defeat a filibuster against the bill. Democrats in March were able to pass a similar bill in the U.S. House by a vote of 241-185, but control only 51 seats in the Senate. The vote to end the filibuster in the

Senate split strictly along party lines, with the lone exception being Sen. Arlen Specter (R.-PA) who joined the Democrats to shut off debate. This bill was known as the "card check" bill because it would have required employers to recognize and bargain with a union that presented signed authorization cards from a majority of the employees.

The Bush Administration had indicated that it would veto the measure, causing John J. Sweeney, AFL-CIO's President, to express confidence that the bill would fare better if a Democrat won the White House next year. "This is really about 2009," Mr. Sweeney said. "But it's important that we show the country that we have majority support."

The Republicans attempted to put labor on the defensive by asserting that the majority sign-up is less fair than secret-ballot, government-conducted elections. Supporters of the bill argued that majority sign-ups are fairer than secret-ballot elections, arguing that workers often feel intimidated by their employers during unionization drives.