

# EMPLOYMENT LAW QUICK UPDATES FOR 2021

COURTESY OF:

**DUNGAN & LEFEVRE**

A LEGAL PROFESSIONAL ASSOCIATION

## MINIMUM WAGE

### *Minimum Wage Increase*

- Beginning January 1, 2021, the Ohio State minimum wage has increased from \$8.70 per hour to \$8.80 per hour for non-tipped employees. For tipped employees, the increase is from \$4.35 per hour to \$4.40 per hour.
- These wage rates apply to businesses with \$305,000 or more in gross receipts. For smaller businesses, the minimum wage will remain at the federal rate of \$7.25.
- REMINDER: In 2006, Ohio voters passed a constitutional amendment requiring that the State minimum wage be recalculated each January 1 to account for inflation. Therefore, be on the look out for announcements each year from the State regarding the minimum wage.

## FLSA/INDEPENDENT CONTRACTORS

### *New Rule Clarifies Test for Independent Contractors Under FLSA*

- On January 6, 2021, the Department of Labor announced a final rule to clarify whether a given worker is an "employee" covered by FLSA or an "independent contractor."
- The main question is always whether the worker "is in business for him or herself" or "economically dependent on a potential employer for work." The rule highlights two "core factors" that usually determine the answer:
  - The nature and degree of control over the work.
  - The worker's opportunity for profit or loss based on initiative and/or investment.
- The rule also provides three other factors to consider if the core factors are inconclusive:
  - The amount of skill required for the work.
  - The "permanence" of the business relationship between the worker and the business.
  - Whether the work is part of an "integrated unit of production."
- The rule also provides specific examples to illustrate the factors.
- The rule will be especially relevant to businesses in the "gig economy."
- If your business utilizes "independent contractors" on a regular basis, you should consult with your HR department or legal counsel to ensure you compliance with FLSA.
- The final rule goes into effect on May 7, 2021.

## FMLA, COVID-19, AND TAX CREDITS

### *Employers Allowed Payroll Tax Credit for Paid Leave Through March 2021*

- Last year, Congress passed the Families First Coronavirus Response Act ("FFCRA"). Among other things, the law required covered employers to provide paid medical or family leave to employees for certain reasons relating to COVID-19. The act also allowed covered employers to claim a payroll tax credit for amounts given to employees for covered paid leave. (For a more detailed summary of the FFCRA, please see the informational materials previously provided by TACC)
- The FFCRA's requirements expired on December 31, 2020. However, other legislation passed by Congress at the end of 2020 allows eligible employers to voluntarily provide paid leave to eligible employees up until March 31, 2021. The employers would also be allowed to claim the payroll tax credit for any *voluntary* leave provided in that timeframe.
- To be able to claim the tax credit, the employer must be covered by the original FFCRA and the paid leave must be given to an employee for qualifying reasons under the FFCRA.
- A business considering providing this accommodation to its employees should consult legal counsel or an HR professional regarding leave eligibility and federal record-keeping requirements.