

Client Alert

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Ohio Supreme Court Upholds the Minimum Wage Exemptions in Ohio Law

OCRM and Other Organizations File Amicus Briefs in Case

Retailers in Ohio dodged a bullet last week. In a 5-2 ruling, the Ohio Supreme Court decided that a 2006 constitutional amendment increasing the minimum wage *did not* eliminate previously applicable exclusions and exemptions to the minimum wage requirement.

The opinion, *Haight v. Minchak*, 2016-Ohio-1053 (2016), held that the definition of “employee” in Revised Code § 4111.14(B) does not conflict with the definition of “employee” in the 2006 Fair Minimum Wage Amendment to the Ohio Constitution. Accordingly, § 4111.14(B) is constitutional and incorporates the minimum wage exemptions and exclusions contained in the Fair Labor Standards Act (FLSA). While the case involved outside salespeople, the definition of “employee” at issue encompasses executive, professional, and administrative employees and so the Court’s decision has wide-ranging ramifications.

The case concerned John Haight and Christopher Pence, who were commissioned-based, outside salespeople for the Cheap Escape Company. In 2012, they sued Cheap Escape, and its owners, alleging they should have been paid the minimum wage (even though they had been properly paid their commissions) in accordance with the Fair Minimum Wage Amendment.

The employees and their supporters argued that § 4111.14(B)’s exclusion of outside salespeople from the definition of “employee” – and hence from the minimum wage – violated the Amendment. Cheap Escape – along with the Ohio Council of Retail Merchants and other trade associations supporting the company – replied that as outside salespeople, Haight and Pence were exempt from minimum wage under the FLSA and Ohio law and so had been properly paid. The OCRM and the other trade associations retained [Nelson Cary](#), [Dan Clark](#), and [Mike Griffaton](#), of [Vorys, Sater, Seymour and Pease](#), to prepare the brief advancing their members’ interests.

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In rejecting the employees' arguments, the Court first explained that the Fair Minimum Wage Amendment provides that the term "employee" has the same "meanings" as in the FLSA. Because "meanings" is plural, it indicates that more than one definition applies "which then necessarily includes both exclusions and exemptions."

Second, the Court observed that the Amendment "incorporates the FLSA without any limitation." So the plural of the term "meanings" "indicates that the entirety of the FLSA is to be considered when determining who is covered under its protections." The Court explained that the drafters of the Amendment could have drafted the language differently to preclude this interpretation, but did not.

And, third, the Court cited to literature the Amendment's proponents used to inform voters of the intent of the Amendment. "It appears that the proponents intended that terms such as 'employee' are to be defined consistently with the definition in federal law; this necessarily includes the exemptions."

The Court concluded:

To be entitled to minimum wage, an individual must be an 'employee.' Article II, Section 34a of the Ohio Constitution provides that 'employee' shall have the same 'meanings' as in the FLSA. This provision is without further limitation. Therefore, both the FLSA exclusions and exemptions are to be considered when determining whether an individual is an employee. Because R.C. 4111.14(B)(1)'s provisions are consistent with this interpretation, the statute is constitutional.

The importance of the Court's ruling cannot be understated and extends beyond outside salespeople. Had the Court decided that the FLSA's exemptions were not incorporated into Ohio law, Ohio retailers would have lost the minimum wage exemption for nearly all employees – including those who are otherwise exempt from overtime such as executive, administrative, and professional employees. These employees would have also been subject to the recordkeeping procedures that today apply only to non-exempt, hourly employees.

About Vorys: Vorys has proudly served as OCRM counsel for decades and has significant experience representing retailers across the state and country. The firm was established in 1909 and has grown to be one of the largest Ohio-based law firms with nearly 375 attorneys in seven offices in Columbus, Cincinnati, Cleveland and Akron, Ohio; Washington, D.C.; Houston, Texas; and Pittsburgh, Pennsylvania. To learn more visit Vorys.com/retail.

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