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## Federal Minimum Wage Increases July 2007

On May 25, 2007 President Bush signed legislation that will raise the federal minimum wage from \$5.15 per hour to \$7.25 per hour over the course of the next 26 months. This is the first increase in the minimum wage since 1997. Pursuant to the new law, the federal minimum wage will increase from \$5.15 per hour in three 70-cent steps. Here is the schedule for these increases:

- \$5.85 per hour effective July 24, 2007 (sixty days after enactment);
- \$6.55 per hour effective July 24, 2008 (one year after the first increase); and
- \$7.25 per hour effective July 24, 2009 (one year after the second increase).

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**REGULATION HIGHLIGHT**

## Five Common Misconceptions About USERRA

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a complex law which applies to all public and private employers in the United States, regardless of size. Many employers have misconceptions about exactly what is required by the law.

**Myth #1 USERRA only applies if an individual is called to active duty by the reserves or another branch of the military.**

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. (1002.5)

**Myth #2 USERRA only applies for absences up to 5 years.**

In actuality, there are a number of types of service that an employee can perform that do not count against USERRA's five-year service limit.

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or

she has reemployment rights when the initial period of obligated service is completed;

(2) If the employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

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(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements and (ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty;

(5) Service performed in a uniformed service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned; (1002.103)

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**COMPANY UPDATE**

## Updated Golsan Scruggs Website with Risk Management Resources

Golsan Scruggs has redesigned our website to provide more readily available risk management information for employers. Learn more about the importance of the four-step enterprise risk management process and what outcome you can expect. Look up industry terminology in our online glossary. Read articles on how best to mitigate risks in the changing business environment. Browse through examples of potential loss scenarios businesses may experience. There are also links to insurance companies, strategic partners, credit rating agencies, risk management industry websites and back issues of our newsletter *Managing Risk*.

① To visit our Golsan Scruggs website, go to (<http://www.golsanscruggs.com>).



## USERRA Misconceptions (con't)

**Myth #3 USERRA entitles an employee to the position which they had before their absence due to uniformed service.**

*As a general rule, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employer may have the option, or be required, to reemploy the employee in a position other than the escalator position.(1002.191)*

**Myth #4 The employer does not need to place the employee in the escalator position if they are not qualified for it.**

*The employee must be reemployed in the escalator position or a position of like seniority, status and pay. He or she must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position. (1002.197)*

**Myth #5 Once rehired, the employee loses protection under USERRA.**

*USERRA provides the employee with protection against discharge for one year after the date of reemployment if the employee's most recent period of uniformed service was more than 180 days. (1002.247)*

For further information, refer to the DOL Veteran's Employment and Training Service 20 CFR Part 1002 Uniformed Services Employment and Reemployment Rights Act of 1994; Final Rules dated December 19, 2005.

## EEOC Reports Increase in Charges Filed

The Equal Employment Opportunity Commission (EEOC) enforces federal laws prohibiting job discrimination.

Last year, the EEOC received a total of 75,768 discrimination charges against private sector employers, the first increase in charge filings since 2002, the federal agency reported recently as part of its Fiscal Year 2006 data.

The year-end statistics show that charges based on race (27,238), sex (23,247), and retaliation (22,555) were the most frequent allegations, as in past years. Other frequently cited charge bases were age (16,548), disability (15,575), national origin (8,327), and religion (2,541).

Additionally, 12,025 sexual harassment charges and a record 4,901 pregnancy discrimination charges were filed with the EEOC and with state and local Fair Employment Practices Agencies combined. A record 15 percent of sexual harassment charges were filed by men.

The FY 2006 data also show that the EEOC:

**Resolved** 74,308 private sector charges, with a historically high merit factor rate of more than 22 percent (representing favorable outcomes for charging parties). A record 8,201 cases were resolved through voluntary mediation.

**Recovered** a total of approximately \$274 million in monetary relief for charging parties: \$44 million through litigation and \$230 million through administrative enforcement, including mediation. Additionally, the agency obtained substantial non-monetary relief, such as employer training, policy implementation, reasonable accommodations, and other measures to promote discrimination-free workplaces.

**Filed** 371 merits lawsuits (direct suits, interventions and other enforcement actions), including 137 cases involving multiple aggrieved parties or victims of discriminatory policies.

These numbers do not include private lawsuits filed by individuals. Significant injunctive and remedial relief was also achieved through litigation settlements, jury verdicts and court rulings.

### EEOC CASE REVIEW

## Construction Company to Pay \$225,000 in Punitive Damages for Same-Sex Harassment Against Three Male Employees

A federal jury here returned a \$225,000 verdict Friday against Hill Brothers Construction Company and Engineering Company, Inc. (Hill Brothers) in a rare same-sex harassment lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC) on behalf of male employees who were sexually harassed by other men.

The EEOC charged in its lawsuit that Hill Brothers discriminated against Scott Beasley, Joel Graves and Douglas Smith in violation of Title VII of the 1964 Civil Rights Act by subjecting them to a sexually hostile work environment. After a week-long trial, the jury awarded \$75,000 each to Beasley, Graves and Smith as punitive damages in the case, which was presided over by U.S. District Judge Michael P. Mills. Beasley was also represented by private counsel.

Beasley, Graves and Smith were hired as truck drivers for Hill Brothers in September 1999, July 2001 and August 2001

(respectively). All three complained of harassment from Gregg Witt beginning in 2001. EEOC alleged that the harassment was severe, pervasive, and included sexually offensive comments and unwanted physical contact.

Although the jury did not award any back pay or compensatory damages, the EEOC will request the court to consider the award of additional damages and also will seek injunctive relief against Hill Brothers. The EEOC filed the lawsuit resulting in the jury trial after first attempting to reach a voluntary pre-litigation settlement with Hills Brothers.

EEOC Birmingham District C. Emanuel Smith noted: "Some employers may view male-on-male harassment as 'horseplay' or 'boys being boys' but this kind of intentional discrimination can cause needless suffering and permanent scars for employees - not to mention creating liability issues for employers who violate federal law."