

# It's About Time...Ohio Brings Overtime Rules and Collective Action Procedures in Line with Federal Law

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Ohio recently passed amendments to its overtime laws, including exemptions to those requirements and collective action procedures for enforcing them. The amendments have an effective date of July 5, 2022. These changes bring Ohio's statutory scheme largely in line with federal law under the Portal-to-Portal Act of 1947. Specifically, the amendments provide that employers are exempt from paying overtime wages (*i.e.*, one and a half the regular rate of pay for hours worked in excess of 40 in one work week) under a variety of circumstances, including preliminary/post-preliminary activities, and *de minimis* periods of time beyond scheduled work hours. There are exceptions to these exemptions, and the applicability of a given rule (or exception) can be nuanced and quite fact-specific. For these reasons, wage and hour laws are often challenging to navigate. However, Ohio law now closely tracks federal law (*i.e.*, the Federal Fair Labor Standards Act) in this regard, bringing with it some consistency.

In addition to the substantive changes, the amendment eliminates traditional class action procedures (*i.e.*, under Civil Rule 23) for overtime claims. Instead, the updated code sections provide for *collective* action procedures. The difference? Class actions typically allow for a representative plaintiff (or group of plaintiffs) to file a lawsuit on behalf of numerous unnamed individuals who are provided with an opportunity to "opt-out" of the class – and thereby avoid being bound by whatever outcome or resolution flows from it. Conversely, collective actions require that each and every claimant that wishes to participate in the lawsuit provide affirmative, written consent in order to "opt-in."

As a practical matter, a collective action will typically reduce the number of claimants participating in a given lawsuit/resolution, and in turn result in a less valuable case. However, collective action also provides less certainty and "protection" to an employer in that any outcome (including settlement release) will only bind those individuals participating in the lawsuit – unlike a class action where a settlement typically releases wage claims of any and all class members, as long as they do not affirmatively "opt-out" (which is rare).

As one might imagine, these competing procedures – which are inherently inconsistent in that one requires an “opt-out” while the other requires an “opt-in” – long befuddled practitioners and courts when both federal and Ohio overtime claims were asserted in a single lawsuit. This presented an interesting quandary in that both collective and class procedures were available and often pursued simultaneously. The result was unnecessarily complicated litigation/notice procedures and/or settlement administration requirements. Ohio’s recent amendment will eliminate the inconsistencies and procedural difficulties often encountered in these cases.

If you have any questions related to Ohio’s recently adopted wage and hour laws, or similar federal law, please feel free to reach out to one of our Employment Practices Defense Group attorneys.

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