

# Publications

## Ohio Enacts Changes to Its Overtime Pay Requirements

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### CLIENT ALERT | 4.14.2022

Like the federal Fair Labor Standards Act (FLSA), Ohio's overtime law requires that employees be paid 1.5 times their regular hourly rate for hours worked in excess of 40 in a workweek. Ohio recently enacted Senate Bill 47, which excludes traveling to and from worksites and performing certain routine tasks from overtime pay requirements. The new law also prohibits opt-out class actions for overtime violations under Ohio law. The law becomes effective on July 6, 2022.

### Portal to Portal Act

Senate Bill 47 incorporates the exemptions found in the federal Portal to Portal Act which provide immunity from liability under the FLSA when an employer does not pay overtime under certain circumstances.

Under the new Ohio law, an employer will not be required to pay overtime compensation for any time that an employee spends:

1. Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform;
2. Activities that are preliminary to or postliminary to the principal activity or activities;
3. Activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours.

The overtime exemption applies to any activity that occurs either before the time on any particular workday at which the employee begins, or after the time on any particular workday at which the employee ends, a principal activity.

However, the new law's exemption from the overtime requirement for preliminary or postliminary tasks does not apply if the employee performs the task during the regular work day or during prescribed hours, or performs the task at the employer's specific direction.

Further, the overtime exemption does not apply when the employee performs the activity pursuant to an express provision of a written or unwritten contract or collective bargaining agreement, or when the employee performs the activity pursuant to a custom or practice applicable to the activity at the establishment or other place where the employee is employed and the custom or practice is not inconsistent with an applicable contract or collective bargaining agreement.

The express incorporation of the Portal to Portal Act interjects some uncertainty into Ohio's overtime law. The Portal to Portal Act itself does not expressly grant immunity to the federal overtime requirement for activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours (#3, above). Also, Senate Bill 47 provides two situations in which the exemption for preliminary or postliminary activities does not apply, but the Portal to Portal Act is silent as to those specific situations. It is currently unclear how incorporating the Portal to Portal Act into Ohio law and also providing similar exemptions in that law with different exceptions and exemptions from those exceptions will affect overtime liability.

### **Class Actions**

Currently, claims for overtime compensation under Ohio law may be brought as class actions in which employees are deemed part of the class unless they affirmatively opt-out. Under the new law, employees may not join in a class action for overtime compensation unless they first give written consent to become a party and that consent is filed with the court in which the action is brought. This is similar to the opt-in requirement under the FLSA and for minimum wage claims under Ohio law.

Contact your Vorys lawyer if you have questions about wage-hour compliance in Ohio or in other states in which you do business.