

Insight

IN-DEPTH DISCUSSION

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Forget Trump or Clinton—What Else is on the November 8 Ballot?

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Next week, Americans will head to the polls to elect their 45th President. Across the nation, voters will also fill 469 congressional seats, including 435 in the House and 34 in the Senate. While these federal races tend to occupy much of the coverage and discussion as November 8 approaches, issues closer to home should not be overlooked. Voters in 12 states will select governors, and many ballots will feature proposed constitutional amendments or local initiatives. As the saying goes, “all politics is local,” and down-ballot decisions made this year will affect employers from coast to coast.

In preparation for the election, we briefly survey some of the labor and employment initiatives pending at the state and municipal levels.¹ Based on our review, voters will be asked to decide proposals on two issues in particular: marijuana restrictions and the minimum wage.

Marijuana

Voters in Arizona, California, Maine, Massachusetts, and Nevada will consider whether to legalize marijuana for recreational purposes. The Arizona initiative (Proposition 205), for example, would permit adults, aged 21 and over, to possess and use no more than one ounce of marijuana and to grow up to six plants. The measure would also establish a state regulatory department, a 15% tax on retail marijuana sales, and fines for smoking in a public place or under age. The California proposal (Proposition 64) is very similar, and would tax not only sales but also cultivation.²

1 This review is not all-encompassing, but seeks to identify broader employment-related trends and to highlight a few issues of interest.

2 For additional information about Proposition 64, please see Jennifer Mora, *California's Recreational Marijuana Initiative Is Not Expected to Impact Employer Workplace Drug Policies*, Littler ASAP (Aug. 5, 2016), <https://www.littler.com/publication-press/publication/californias-recreational-marijuana-initiative-not-expected-impact>.

Meanwhile, the availability of medical marijuana is on the ballot in Arkansas, Florida, Montana, and North Dakota. Arkansas voters were set to consider both a state constitutional amendment to legalize physician-certified medical marijuana (Issue 6), and a proposed act (Issue 7). However, on October 27, a divided Arkansas Supreme Court disqualified Issue 7 from appearing on the ballot on the ground that its supporters failed to gather enough signatures. The decision took effect immediately. Issue 6 will remain on the ballot.³

The proposals in Florida and North Dakota would legalize medical marijuana for use in the treatment of certain specified diseases, with some leeway for physicians to prescribe usage for other conditions (Florida) or for the state to add qualifying medical conditions for coverage (North Dakota). Medical marijuana is already legal in Montana, with limitations added by the state legislature in 2011. The ballot initiative there (I-182) asks voters to repeal some of the 2011 revisions and expand the availability of medical marijuana.⁴

Minimum Wage and Paid Sick Leave

Beyond the legality of marijuana, the other leading issue up for vote this year is the local minimum wage. The federal minimum wage is currently \$7.25 per hour, but most states or municipalities have enacted a higher rate. Voters in at least four jurisdictions, including Arizona, Colorado, Maine, and Washington, will decide whether to adopt minimum wage increases. Wage measures are also pending in several cities, such as Flagstaff, Arizona and Berkeley, California. And companion initiatives in Arizona, Washington, and Berkeley propose paid sick-leave laws, a hot-button election issue this year given the U.S. Department of Labor's "Lead on Leave" campaign and the growing number of cities heeding its call.⁵

Right-to-Work and Other Employment-Related Ballot Initiatives

While not as common as the above-noted issues, "right-to-work" constitutional amendments are also pending in two states this year. Although they vary, right-to-work laws generally prevent collective bargaining agreements from requiring a person to join a union as a condition of employment. Such laws are already on the books in roughly half of the states, and the debate continues as Alabama and Virginia weigh constitutional amendments.

While two southern states revisit their constitutions, voters in two large Pacific cities continue to prove that municipalities are today's laboratories of democracy—at least in matters of the workplace. In San Jose, California, residents will decide whether to require employers to offer current part-time employees additional hours before hiring new staff, including subcontractors or temporary workers. And in Seattle, voters will consider whether to increase hotel-worker protections against violent assault and sexual harassment, injuries, high healthcare costs, and industry disruptions.⁶

The following chart summarizes some of the key employment-related ballot initiatives that await their fate on November 8, including a few not mentioned earlier. Employers in these jurisdictions should stay abreast of developments on these issues, along with all of the other exciting results on Election Day.

3 If both Issue 6 and Issue 7 were approved by majority vote, the initiative with the most votes in favor would have superseded the second-place proposal. See Ark. Const. of 1874, art. 5, § 1.

4 The legalization of marijuana—medical or recreational—can create confusion for employers, especially those that maintain drug-free workplaces. A prior Littler article addressed some of these concerns in the context of the Pennsylvania medical marijuana act. See Jennifer Mora & Kate Arduini Blumenthal, *Pennsylvania's Medical Marijuana Act Leaves Employers' Ability to Enforce Strict Drug-Free Workplace Policies Hazy*, Littler Insight (May 10, 2016), <https://www.littler.com/publication-press/publication/pennsylvanias-medical-marijuana-act-leaves-employers-ability-enforce>. Employers operating in states that permit marijuana use typically can retain their drug-free workplace policies. Employers affected by changes in state marijuana laws are encouraged to contact counsel for specific advice.

5 For more on the regulatory component of the DOL's campaign, see Sarah J. Gorajski, *DOL Issues Final Rule Implementing Paid Sick Leave for Federal Contractors*, Littler Insight (Oct. 3, 2016), <http://www.littler.com/publication-press/publication/dol-issues-final-rule-implementing-paid-sick-leave-federal-contractors>.

6 See Michael J. Lotito and Dan Thieme, *Seattle Ballot Initiative Targets Hotel Industry*, Littler ASAP (Aug. 10, 2016), <http://www.littler.com/publication-press/publication/seattle-ballot-initiative-targets-hotel-industry>.

Jurisdiction	Ballot Initiative	Highlights of the Initiative
Marijuana Initiatives		
Arizona	Proposition 205: Recreational Marijuana	Proposition 205 would: (1) permit adults 21 years and older to privately possess and use up to one ounce of marijuana and grow up to six plants; (2) declare violations a petty offense subject to a fine up to \$300; (3) create a department to regulate and license marijuana growers and sellers; (4) grant local jurisdictions authority to regulate; (5) establish licensing fees for marijuana establishments; and (6) levy a 15% tax on marijuana products.
Arkansas	Issue 6: Constitutional Amendment Regarding Medical Marijuana	Issue 6 would amend the state constitution to: (1) legalize marijuana for treatment of specified medical conditions; (2) establish a system for cultivation and distribution for qualifying patients through licensed facilities, including the setting of application fees and operation requirements; and (3) allocate tax revenue generated from the marijuana industry to technical institutes, vocational schools, workforce training, government entities, and the general fund.
California	Proposition 64: Recreational Marijuana	Proposition 64 would: (1) legalize marijuana for adults 21 and over; (2) impose a retail sales tax of 15%, as well as cultivation taxes on flowers and leaves; (3) designate state agencies to license and regulate the industry; (4) allow local regulation and taxation; and (5) authorize resentencing for prior marijuana convictions.
Florida	Amendment 2: Medical Marijuana	Amendment 2 would amend the state constitution to: (1) legalize marijuana for treating debilitating medical conditions, including 10 specified conditions; (2) allow caregivers to assist in patient use; and (3) give the Department of Health authority to register and regulate cultivation and distribution centers and to issue patient identification cards.
Maine	Question 1: Recreational Marijuana	Question 1 would: (1) permit adults 21 years and older to privately possess and use up to two and one-half ounces of prepared marijuana and to grow and transfer up to six mature plants (or 12 immature plants); (2) impose a retail sales tax of 10% on marijuana and related products; (3) provide for licensing and regulation of cultivation and testing facilities, as well as stores; and (4) declare violations a civil offense subject to a fine up to \$100.

Jurisdiction	Ballot Initiative	Highlights of the Initiative
Massachusetts	Question 4: Recreational Marijuana	Question 4 would: (1) permit adults 21 years and older to possess and use up to 10 ounces in their homes, and up to one ounce outside of their homes; (2) permit adults 21 years and older to grow up to six plants in their homes and to possess or produce hemp; (3) permit adults to give up to one ounce to another adult; (4) create a Cannabis Control Commission to administer and regulate; (5) impose an additional 3.75% tax on retail sales of marijuana and related products, with authorization for localities to impose a separate tax of up to 2%; and (6) allocate funds from the state excise tax to administer the law.
Montana	Initiative I-182: Medical Marijuana	I-182 would: (1) rename the existing law to “the Montana Medical Marijuana Act;” (2) repeal the current limit of three patients for each licensed provider; (3) repeal the requirement that doctors who certify 25 or more patients annually be referred to the board of medical examiners; (4) require annual inspections of facilities, rather than unannounced inspections by law enforcement; and (5) set out licensing and testing requirements.
Nevada	Question 2: Recreational Marijuana	Question 2 would: (1) permit adults 21 years and older to purchase, possess and consume up to 1 ounce of marijuana (or 1/8 of an ounce of concentrated marijuana) and to grow up to six plants; (2) authorize regulation of cultivation and testing facilities, as well as stores, by the Department of Taxation; (3) license only wholesale liquor dealers to distribute marijuana for the first 18 months; (4) limit the number of stores per county depending on population; (5) affirm penalties for violations and affirm an employer’s right to enforce workplace marijuana bans; (6) establish application fees; and (7) impose an excise tax of 15% on wholesale sales by a cultivating facility.
North Dakota	Measure 5: Medical Marijuana	Measure 5 would: (1) legalize marijuana for treatment of specified medical conditions, or for any condition added by the Department of Health; (2) permit qualifying patients or caregivers to obtain up to 3 usable ounces; and (3) create a system for identification cards, as well as for monitoring and regulating marijuana cultivation.
Minimum Wage Initiatives		
Arizona	Proposition 206: Fair Wages and Healthy Families Act	Proposition 206 would: (1) increase the minimum wage to \$10 in 2017, \$10.50 in 2018, \$11 in 2019, and \$12 in 2020; (2) increase the wage with the cost of living, beginning in 2021; (3) not affect the state law as to tipped wages; and (4) guarantee annual sick leave to employees, to be used for the employee’s care or the care of a family member, for a public health crisis, or to address domestic violence. Sick leave would be earned and would be capped at either 40 hours (businesses with 15 or more employees) or 15 hours (businesses with less than 15 employees).

Jurisdiction	Ballot Initiative	Highlights of the Initiative
Flagstaff, Arizona	Proposition 414: Minimum Wage	Flagstaff Proposition 414 would: (1) increase the minimum wage to \$10 by July 1, 2017, \$11 on January 1, 2018, and \$1 each year until it reaches \$15 in 2021; (2) thereafter, increase the minimum wage by the increase in the cost of living, relying on the consumer price index (CPI); and (3) set lower hourly wages for tipped employees.
Berkeley, California	Measure BB: Minimum Wage/ Sick Leave	Berkeley Measure BB would: (1) increase the minimum wage to \$13.25 by October 1, 2017, \$14.05 by October 1, 2018, and \$15 by October 1, 2019; (2) thereafter, increase the minimum wage by the increase in the cost of living, relying on the CPI; and (3) guarantee paid sick leave, to be used for family members, spouses, domestic partners, or other designated people. Sick leave would be earned, would be capped at 48 hours annually, and could be rolled-over subject to the cap.
Berkeley, California	Measure CC: Minimum Wage/ Sick Leave	Berkeley Measure CC would: (1) increase the minimum wage to \$15 by October 1, 2017; (2) beginning in January 2019, increase the wage using two factors—(a) an annual adjustment based on the CPI plus (b) an additional 3% increase until the wage reaches the “Berkeley Living Wage Standard,” which is currently \$16.81 an hour and increases annually per the CPI; and (3) guarantee paid sick leave, to be used for family members, spouses, domestic partners, or other designated people. Sick leave would be earned, would be capped at either 48 hours (businesses with less than 10 employees) or 72 hours (all other businesses), and could be rolled-over subject to the caps.
Colorado	Amendment 70: Minimum Wage	Amendment 70 would: (1) increase the minimum wage to \$9.30 on January 1, 2017; (2) thereafter, increase the wage by \$0.90 per year until it reaches \$12.00 in 2020; (3) increase the tipped wage minimum to \$8.98 plus tips by 2020; and (4) beginning in January 2021, increase the wage based on increases to the CPI.
Maine	Question 4: Minimum Wage	Question 4 would: (1) increase the minimum wage to \$9 on January 1, 2017, with annual increases of \$1 until the wage reaches \$12 in 2020; (2) thereafter, increase the wage annually per the cost of living, relying on the CPI and rounding up to the nearest nickel; and (3) increase the tipped wage minimum to at least \$5 on January 1, 2017, with further increases each year until it matches the hourly-worker wage.
South Dakota	Referred Law 20: Minimum Wage	Referred Law 20 would: (1) lower the minimum wage, for non-tipped employees under age 18, to \$7.50; (2) exempt minor employees from annual cost-of-living wage adjustments; and (3) prohibit employers from displacing an employee to hire someone at the lower youth rate.

Jurisdiction	Ballot Initiative	Highlights of the Initiative
Washington	Initiative No. 1433: Minimum Wage/ Sick Leave	Initiative No. 1433 would: (1) increase the minimum wage to \$11 on January 1, 2017, \$11.50 on January 1, 2018, \$12 on January 1, 2019, and then \$13.50 on January 1, 2020; (2) thereafter, increase the wage annually per the cost of living, relying on the CPI; and (3) guarantee paid sick leave, to be used for the employee's care or the care of a family member, for a public health crisis, or to address domestic violence. Sick leave would be earned, would be capped at 40 hours, and could be rolled-over.
Other Initiatives		
Alabama	Amendment 8: Right-to-Work	Amendment 8 would: (1) amend the state constitution to reflect the existing right-to-work law; and (2) prohibit employers from conditioning employment on union membership or non-membership and from requiring workers to pay union dues.
San Jose, California	Measure E: Opportunity to Work	Measure E would: (1) require employers to offer current, qualified part-time employees additional hours before hiring new staff to fill a need, including subcontractors or temporary staffing agencies; (2) neither require, nor prevent, an employer from offering hours that would entitle the worker to overtime compensation; (3) require employers to post notice of employee rights under the law; and (4) permit employers to seek a hardship exemption annually. Small business under the municipal code could be exempt, although special rules apply for franchisees.
Seattle, Washington	Initiative 124: Hotel Employees Health and Safety	Initiative 124 would require hotel owners to: (1) institute protections for employees regarding sexual assault and harassment (e.g., panic buttons); (2) take steps to prevent on-the-job injury (e.g., limiting the area per shift to be cleaned by housekeeping staff); (3) offset the cost of health insurance; and (4) retain workers in the event of a change in ownership.
Virginia	Amendment: Right-to-Work	This amendment would: (1) amend the state constitution to reflect the existing right-to-work law; (2) prohibit employers and unions from agreeing to condition employment on union membership or non-membership; and (3) prevent a union from acquiring an employment monopoly.