



WAGE Watch

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WPI Wage Watch: Minimum Wage & Overtime Updates

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Since we published our annual article discussing minimum wage rates in 2017,¹ many state and local jurisdictions have adjusted their minimum wage rates, state legislative sessions have begun, signatures have been collected for ballot measures, and officials have hinted at policies they intend to pursue. One particularly interesting development we have seen is the emergence of several anti-preemption bills, or bills designed to upend the trend in recent years of state laws preempting the development of local minimum wage rates that would exceed the state or federal minimum wage rates.

In this article, we briefly recap legislative developments surrounding local and state minimum wage measures this month and forecast some of the minimum wage and overtime changes employers may see this year.

Let Me Introduce Myself Legislation: Minimum wage bills are being prepared in state legislatures across the country, including: Alaska; Arizona; Connecticut; Delaware; Florida; Georgia; Hawaii; Illinois; Indiana; Iowa; Massachusetts; Mississippi; Missouri; Montana; Nebraska; New Hampshire; New Mexico; New York; North Dakota; Pennsylvania; Rhode Island; South Carolina; Tennessee; Texas; Utah; Vermont; Virginia; and Wyoming. The inclusion of Mississippi, South Carolina, and Tennessee on this list is notable because none currently have a statewide minimum wage.

The proposed minimum wage increases are all over the wage spectrum. At the low end is Mississippi with a proposed \$7.50 hourly rate and Hawaii is at the high end

with a proposal to increase the minimum wage to \$22.00 hourly rate by 2022. Some states are proposing small incremental increases – e.g., a Delaware bill proposes four 50-cent increases – while other proposals are less subtle, e.g., a bill in Vermont proposes two \$1.66 increases followed by a \$1.68 increase.

A number of measures propose a \$15.00 an hour minimum wage. Some bills seek to catapult the minimum wage to that level – e.g., an Alaska bill seeks to increase the existing \$9.80 minimum wage to \$15.00 an hour on January 1, 2018, and an Illinois bill seeks to increase the existing \$8.25 minimum wage to \$15.00 an hour on October 1, 2017 – while other bills propose incremental increases that eventually will hit \$15.00 an hour, e.g., a Missouri bill proposes increasing the existing \$7.70 minimum wage to \$10.00 an hour on January 1, 2018, followed by increases of at least one dollar per year until a \$15.00 an hour rate is reached in 2023. Various states have proposed either immediately or incrementally increasing the minimum wage to \$10.10 an hour (e.g., Montana, Texas), the same rate former President Obama set for federal contractors.

In Hawaii, Indiana, and New York, bills have been introduced proposing the repeal of the tip credit. In Illinois, a bill proposes amending the minimum wage law to apply only to larger employers and to provide a tax credit for smaller businesses that elect to pay the minimum wage.

Battle at the Ballot: In Arizona, opposition to the voter-approved November 2016 Flagstaff minimum wage ballot measure, coupled with the voter-approved November 2016 statewide minimum wage ballot measure, is causing local officials to reexamine the citywide law set to take

¹ See Josh Kirkpatrick and Sebastian Chilco, [The Minimum Wage in 2017: A Coast-to-Coast Compliance Challenge](#), Littler Insight (Nov. 18, 2016).

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effect July 1, 2017. The Flagstaff measure generally establishes a minimum wage rate that exceeds the federal and state rate and will eventually require the local minimum wage to exceed the minimum rate set by the state by \$2.00 per hour. However, local officials are now concerned because the minimum wage plus \$2.00 per hour requirement was drafted before the voters approved a substantial statewide minimum wage increase.

A May 2017 Cleveland, Ohio minimum wage ballot measure was withdrawn after the state enacted a law preempting local minimum wage laws.

Additionally, signatures are reportedly being collected to place statewide minimum wage measures on future ballots in Florida and Missouri.

Bay Area Bonanza: The City of Milpitas, California is moving forward on a proposal to join 15 other cities in the San Francisco Bay Area that have adopted a local minimum wage. The details will be worked out after a draft ordinance is created, but the end goal is a \$15.00 per hour minimum wage sooner than later.

Also in Northern California, the Campbell City Council proposed establishing a citywide minimum wage that would rise to \$15.00 by July 1, 2019 – two-and-a-half years before the state rate will hit this level. The bill passed a first reading but did not pass a second reading.

Ch-Ch-Ch-Ch-Changes: SeaTac, Washington downwardly revised its 2017 minimum wage rate from \$15.35 to \$15.34 per hour.

Due to a voter-approved November 2016 state minimum wage ballot measure, Portland, Maine increased the minimum cash wage for tipped employees from \$3.75 to \$5.00 per hour and decreased the maximum tip credit employers could use from \$6.93 to \$5.68 per hour.

Is This Heaven? No, it's Iowa: State officials may seek to commandeer control over Iowa's minimum wage to eliminate the hodgepodge created by four countywide laws and one citywide law, but any proposal will likely invite criticism if the statewide rate preempts local laws and creates a rate that is less than existing local standards.

Mind the Gap: The aforementioned Maine minimum wage increase's effective date was delayed from January 1 to January 7, 2017, so Bangor, Maine delayed its local law's effective date from January 1 to July 1, 2017 to prevent a six-day period in which the local rate (\$8.25) exceeded the

state rate (\$7.50 on January 1 and \$9.00 on January 7). Bangor may also repeal its law due to state changes.

San Jose, California's amended law did not take effect until January 6, 2017. The San Jose law also created a five-day period in which employers in the city with 25 or fewer employees were subject to a minimum wage rate of 10 cents less than employers with 26 or more employees.

Municipal Mutiny: The Village of Barrington opted out of the Cook County, Illinois minimum wage (and paid sick leave) law, and other localities in the county are expected to follow suit. Nevertheless, the county has solicited input from stakeholders concerning regulations it should create to implement the law.

News from Lake Wobegon: Minneapolis is contemplating a citywide minimum wage law. Its authority to enact such a law was strengthened by a state trial court judge who recently ruled the city's paid sick leave law was likely valid as to Minneapolis businesses (but likely invalid to businesses without a Minneapolis location).² If Minneapolis enacts a law, St. Paul may not be far behind. These local efforts are impacting activities at the state level – a statewide preemption bill that would prevent localities from enacting their own minimum wages has been introduced, and reports are circulating concerning statewide increases.

The Fight for 15: In Maryland, the Montgomery County Council approved a bill to increase the countywide minimum wage to \$15.00 per hour, but the county executive vetoed it. Although the council could attempt to override the veto, it appears the measure's opponents are unlikely to change sides.

In Vermont, the Burlington City Council recently voted to place on the March ballot the following question: "Shall the voters of Burlington advise their representatives to the Vermont Legislature to support an increase in the Vermont minimum wage to \$15 an hour?" Burlington Mayor Miro Weinberger (D) has said he will sign this resolution when it hits his desk. While the measure is advisory in nature, members of the state house and senate have previously introduced bills to raise the state's minimum wage to \$15.00 by 2020 or 2022. Vermont Governor Phil Scott (R) has said he does not support minimum wage increases through legislation.

² See Sarah Gorajski, [Court Limits Reach of Minneapolis Mandatory Sick and Safe Leave Law](#), Littler Insight (Jan. 27, 2017).

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Size Matters: New York State and California have state-imposed minimum wage rates that vary by employer size. While this minimum wage by number of employee rule generally applies in California, the rule applies in New York only for work performed in New York City. California and New York State labor officials put out guidance concerning how employers can determine how many employees they have.³

Suit Up: In Arizona, a state trial court judge and the state supreme court denied a request to prevent the aforementioned state minimum wage ballot measure's first scheduled increase from occurring on January 1, 2017.

The Missouri Supreme Court ordered Kansas City to place a local minimum wage measure on a future ballot, which may indicate how the court will rule in a suit involving a St. Louis minimum wage law and Missouri's preemption law.

Additionally, lawsuits are ongoing involving Alabama's preemption law, as well as Miami Beach, Florida's local law and Florida's preemption law.

Anti-Preemption: Over the past few years, more states have enacted preemption laws that prohibit local governments from enacting various types of laws, including those setting a local minimum wage exceeding the state or federal rate. This session, we are beginning to see "anti" preemption measures, i.e., bills that propose to repeal existing preemption measures so local laws can be enacted (e.g., in Kentucky and Texas), propose to change general or minimum laws without an existing preemption device to expressly allow local measures (e.g., in Hawaii), or propose to maintain the status quo, i.e., allow existing local laws but preempt future laws (e.g., in Illinois).

3 See Bruce Millman and Emma Fuirslund, [New York State Has Adopted Amendments to Existing Minimum Wage Orders](#), Littler Insight (Dec. 28, 2016); see also Sebastian Chilco and Sarah Ross, [Why Learning How to Count to 26 Just Became Important: Recent Changes to California and Local Minimum Wage Laws](#), Littler ASAP (Jan. 5, 2017).

Overtime Changes Over Time: In the last few months of 2016, the U.S. Department of Labor's salary increase proposal was blocked by a federal judge in Texas and the DOL appealed to the Fifth Circuit to reverse this nationwide injunction.⁴ Given the possibility the new administration will withdraw this appeal, democrats in various state houses are expected to push to increase the minimum salary requirements for bona fide executive, administrative, and/or professional employees under state law.

2017 is shaping up to be an interesting year for employers. We will continue to monitor and report on minimum wage and overtime developments as they evolve.

4 See Sean McCrory, Maury Baskin, Robert Friedman, and Tammy McCutchen, [Federal Court Blocks New Overtime Rule](#), Littler Insight (Nov. 23, 2016).

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