



WAGE Watch



Monthly Newsletter | February 2017

Minimum Wage & Overtime Updates

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The year's shortest month contains a long list of minimum wage and overtime developments. Though to date in 2017 a minimum wage proposal has yet to pass a single state house, and measures in Mississippi, North Dakota, Virginia, and Wyoming were unsuccessful, new proposals across the country require employers' attention. While front-page stories may focus on the U.S. Department of Labor Secretary vacancy, employers should note that some of the most important developments are taking place in the papers' state and local sections.

Out of Office, But Not the Spotlight: Many public officials leaving office welcome the greater anonymity private citizen life provides. Some, however, retain their public figure status without a government position. Patricia Smith, the Obama administration's Labor Solicitor, will join the National Employment Law Project, a national organization focusing on workplace economic issues, including, e.g., raising the minimum wage. Thomas Perez, the Obama administration's Labor Secretary, has been elected to lead the Democratic National Committee. Although out of office, neither will be removed from the debate over whether, when, and how workplace standards should change.

What Cleared Committee: In three states, minimum wage increase proposals have passed at least one legislative committee. In Hawaii, a bill aims to eventually increase the minimum wage from \$9.25 to \$15.00 per hour in 2021, followed by annual adjustments. In New Hampshire, a bill seeks to eventually increase the minimum wage from \$7.25

to \$12.00 per hour by 2019, followed by annual adjustments. In New Mexico, one bill would increase the minimum wage from \$7.75 to \$8.45 per hour, with annual adjustments beginning in 2018, and also increase tipped employees' minimum cash wage from \$2.13 to \$2.65 per hour. A separate bill would increase the minimum wage to \$9.00 per hour on July 1, 2017, and increase the minimum cash wage to \$2.63 per hour.

In Minnesota, preemption bills are progressing, though Governor Mark Dayton has said he does not support standalone preemption measures. Conversely, a Maryland legislator proposing a state preemption law said he expects the bill will die in committee.

New & Notable: In February, the list of states with relevant minimum wage proposals expanded. Kansas, Kentucky, Nevada, and Maryland all have at least one minimum wage proposal calling for an eventual \$15.00 per hour minimum wage. In Oklahoma, bills seek to increase the current \$7.25 per hour minimum wage to either \$10.10 or \$10.50 per hour. A new Michigan bill proposes increasing the minimum wage from \$8.90 to \$15.00 per hour on January 1, 2018.

One Massachusetts bill proposes eliminating the tip credit in 2026, and another seeks to require a higher minimum wage rate for employees of big box retailers. A Minnesota bill aims to allow tipped employees to be paid a lower minimum wage if their cash wage plus tips exceeds the minimum wage

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(currently tip credits are prohibited). A Kentucky bill aims to eventually require a tipped employee's minimum cash wage to equal at least 70% of the applicable minimum wage.

Anti-preemption measures in Oklahoma seek to repeal the state law prohibiting local minimum wage laws. A West Virginia bill proposes a broad preemption law that would prohibit local governments from enacting minimum wage and overtime laws.

A Nevada bill aims to eliminate the daily overtime requirement while retaining the weekly overtime requirement.

Raising Arizona('s Minimum Wage): On March 9, 2017, the Arizona Supreme Court will hear oral arguments concerning a voter-approved November 2016 ballot measure that increased the state's minimum wage on January 1, 2017. Arguments will be limited to whether the measure violates the state constitution's "Revenue Source Rule" and, if so, what relief is appropriate.

In related news, legislative proposals aim to ease restrictions on the state legislature's ability to amend or repeal ballot initiatives or referenda.

Hot Under the White Collar: Legislators in Illinois, Maryland, and Ohio introduced bills to increase the minimum pay requirement for executive, administrative, and professional employees above the federal rate. In Illinois and Maryland, the initial proposed new rates are identical to those in the enjoined U.S. Department of Labor white collar regulations (\$913 per week / \$47,476 per year). Both proposals require each state's labor department to adjust the rates.

The Ohio proposal would raise the threshold amount to \$50,000 per year in 2018 and \$69,000 per year in 2019.

What's New (Mexico): On March 1, 2017, the minimum wage rates in the City of Santa Fe, New Mexico and the unincorporated areas of Santa Fe County will increase from \$10.91 to \$11.09 per hour. However, tipped employee rates will still differ. Under the city law, the minimum cash wage will

remain \$2.13 per hour but the maximum tip credit will increase from \$8.78 to \$8.96 per hour. Per the county law, the minimum cash wage will increase from \$3.27 to \$3.32 per hour and the maximum tip credit will increase from \$7.64 to \$7.77 per hour.

Not So Sleepless in Seattle: Seattle, Washington's Office of Labor Standards proposed amending its minimum wage rules that touch upon, e.g., what it means to work in Seattle, recordkeeping obligations, and paying a lower minimum wage rate if medical benefits are provided. Comments must be submitted by February 28, 2017.

Washington State Regional Rates: A new bill proposes a regional minimum wage system in Washington that is similar to Oregon's. The bill would create an "urban area" (SeaTac, Seattle, and Tacoma), a "nonurban area" (various locations), and a "standard area" (which includes Spokane County, among other locations). Although these rates would be in effect until January 1, 2018 - when the state labor department would make annual adjustments - as written it is unclear whether all three rates would be adjusted or one adjusted rate would replace the three rates. The bill's preemption language is unclear.

Illinois: The City of Oak Forest, Illinois and the Villages of Rosemont, Bedford Park, and Mount Pleasant followed the Village of Barrington's lead and opted out of the upcoming Cook County minimum wage law. The Village of Mount Prospect is also considering opting out.

Responding to criticism about poor enforcement of the city's minimum wage law, officials in Chicago, Illinois contend administrative action will toughen and more citations will be issued.

Less Sweet Home Alabama: A federal judge dismissed a lawsuit that alleged Alabama was racially motivated when it enacted a law preempting local minimum wage ordinances. Unless appealed and overturned, the state preemption law stands and Birmingham's local minimum wage law will not be resurrected.

However, a state representative introduced a bill to create a \$10.00 state minimum wage.

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KC at the Bat: A Kansas City citywide ballot measure will not appear on the April 2017 ballot. However, a state trial court judge held the city must process the measure so it can be placed before voters. Subsequently, the City Council voted to place the initiative on the August 8, 2017 ballot.

Heartland Hullabaloo: In Iowa, state preemption proposals are irking but not dissuading local officials. The Polk County Board of Supervisors approved a resolution rebuking state legislators. The Linn County Board of Supervisors approved a resolution opposing state preemption efforts.¹ The Johnson County Board of Supervisors' Chairperson contended legal action against the state may be necessary. Lee County will continue its minimum wage task force. Black Hawk County created a new minimum wage task force. Governor Terry Branstad (R) indicated support for modestly increasing the state's \$7.25 per hour minimum wage – an opinion not shared by the State Senate Majority Leader Bill Dix (R).

Capture the Flagstaff: In Arizona, the Flagstaff City Council voted against having a May 2017 special election to vote on a ballot measure to repeal the voter-approved November 2016 ballot measure that created a citywide minimum wage. Instead, the repeal measure will appear on the November 2018 general election ballot. In the interim, the city will explore amending the law to remove a provision that, beginning January 2021, requires the local minimum wage to exceed the state minimum wage by \$2.00 per hour.

Balti-MORE: Previous efforts to adopt a minimum wage in Baltimore, Maryland failed, but the city

council president who formerly opposed the idea now supports a new proposal. As introduced, an \$11.25 per hour minimum wage would take effect July 1, 2019 and increase each July until it reaches \$15.00 per hour in 2022, followed by annual adjustments. A lower rate would apply to employers that gross less than \$400,000 per year or have fewer than 50 employees.

You're Surrounded, Come Out with Your Minimum Wage Up: Pennsylvania's \$7.25 per hour minimum wage mirrors the federal rate. However, each state it borders has a rate exceeding federal standards. A proposal by Pennsylvania Governor Tom Wolf to increase the rate to \$12.00 per hour would put Pennsylvania on level with New York State's current highest minimum wage rate (New York City fast food workers) and far exceed the rates in Delaware, Maryland, New Jersey, Ohio, and West Virginia, which range from \$8.15 to \$8.75 per hour.

Town (Hall) & Country: Vermont's annual Town Meeting Day will occur on March 7, 2017. Increasing the state minimum will be a popular topic. The outcomes of meetings could affect the state-level minimum wage debate.

It's Not All Good: The Desert Springs, California City Council's 2-2 vote split meant the Good Wage Ordinance was not adopted. The state minimum wage will govern non-exempt employees' wage rates.

Is (Big) Sky the Limit?: Bozeman, Montana Mayor Carson Taylor said the city should consider whether to adopt a local minimum wage that exceeds the state's \$8.05 per hour minimum wage.

We will continue to monitor and report on minimum wage and overtime developments as they evolve.

¹ Many cities within Linn County are waiting to see what will happen at the state level before deciding whether to continue participating in the countywide minimum wage in 2018.

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