

June 5, 2014

## Seattle Increases Minimum Wage to \$15 Per Hour Over Several Years

By James Zissler and Breanne Sheetz

Seattle, Washington has enacted groundbreaking legislation that, over several years, will phase in a \$15.00 per hour minimum wage, the nation's highest for private employers who do not contract with governmental entities.<sup>1</sup> Although a handful of states have recently enacted incremental increases in the minimum wage,<sup>2</sup> Seattle's new ordinance, passed unanimously by its nine member City Council and signed by Seattle Mayor Ed Murray on June 3, takes the concept much further and could signal a national trend leading to similar increases being considered by other large cities. According to City projections, Seattle's new minimum wage will be nearly double Washington State's current minimum wage of \$9.32 per hour by 2025, due to built-in inflation adjustments.

### When will this change first take effect?

The first changes will take effect on April 1, 2015, followed by a phase-in over a period of years as discussed below.

### Which employees are covered by the new minimum wage?

In general, all employees in Seattle are covered for each hour worked within the geographic boundaries of Seattle. An employee who performs work in Seattle on an occasional basis is covered in a two-week period if the employee performs more than two hours of work within Seattle during that period. Time spent in Seattle solely for the purpose of traveling through Seattle, with no employment-related or commercial stops in Seattle except for refueling or meals, is not covered.<sup>3</sup>

### Are any employees excluded?

Individuals who are exempted from coverage under the Washington Minimum Wage Act are not covered under the Seattle ordinance. This includes, for example, individuals employed in a bona fide executive, administrative, professional, or outside sales capacity.<sup>4</sup> In addition, individuals

1 Foreshadowing the Seattle ordinance, the City of SeaTac, Washington recently enacted a \$15.00 per hour minimum wage for certain hospitality and airport workers. See Pamela Salgado and Kellie Tabor, [\\$15.00 Minimum Wage and Mandatory Paid Sick and Safe Leave for Transportation and Hospitality Workers Take Effect in City of SeaTac](#), Littler ASAP (Jan. 10, 2014).

2 See, e.g., <http://www.littler.com/wage-hour-counsel/michigans-minimum-wage-increase-925-over-four-years>.

3 City of Seattle, Wash., Seattle Municipal Code § 14.19.020(A).

4 Id. at §§ 12A.28.200; 14.19.010(G).

performing services under a work study agreement are not covered.<sup>5</sup> The Director of the Department of Finance and Administrative Services (“the Department”) may issue special certificates authorizing a lower minimum wage for learners, apprentices, certain messengers, and certain disabled individuals.<sup>6</sup> The Director will also establish a lower minimum wage for employees under eighteen years old.<sup>7</sup>

## Which employers must comply with the ordinance?

All employers are covered with respect to employees who work in Seattle. The ordinance divides employers into two categories based generally on the number of employees they employ: Schedule 1 Employers and Schedule 2 Employers. Higher minimum wage rates become effective more quickly for Schedule 1 Employers than for Schedule 2 Employers.

## How does an employer determine if it is a Schedule 1 or Schedule 2 Employer?

In most cases, Schedule 1 Employers employ more than 500 employees in the United States, regardless of where those employees are employed.<sup>8</sup> Schedule 2 Employers employ 500 employees or less anywhere in the United States.<sup>9</sup>

An employer’s Schedule status is calculated based on the average number of employees employed per calendar week during the previous calendar year for all weeks during which at least one employee worked. If an employer did not have any employees during the previous calendar year, the schedule will be calculated based on the average number of employees employed per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.<sup>10</sup>

Separate entities that form an integrated enterprise are considered a single employer if one entity controls the operation of another entity. Even if separate legal entities share some degree of interrelated operations and common management, the ordinance presumes they are separate as long as (1) they operate substantially in separate physical locations, and (2) each entity has partially different ultimate ownership. This provision, however, does not benefit franchises.<sup>11</sup>

## How are franchisees treated under the ordinance?

Any franchisee associated with a franchisor or network of franchises with franchisees that employ more than 500 employees in aggregate in the United States is considered a Schedule 1 Employer.<sup>12</sup> In other words, even if a franchisee employs only one employee, that franchisee is considered a Schedule 1 Employer if it is associated with a franchisor or network of franchises with franchisees that employ more than 500 employees in total in the United States.

## What are the new minimum wage rates?

The Seattle minimum wage is initially \$11.00 per hour, effective April 1, 2015, followed by incremental increases according to the timelines set forth below. Schedule 1 Employers have two and a half years to reach a minimum wage of \$15.00. Those that provide qualifying medical benefits will have an additional year. Schedule 2 Employers have four and a half years to reach \$15.00 per hour. Those that can claim a sufficient credit for tips and/or qualifying employer-paid medical benefits have an additional two years, and also benefit from a lower initial effective minimum wage rate of \$10.00 per hour.

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5 *Id.* at § 14.19.010(G).

6 *Id.* at § 14.19.020(C); RCW 49.46.060.

7 City of Seattle, Wash., Seattle Municipal Code § 14.19.020(D).

8 *Id.* at § 14.19.010(T).

9 *Id.* at § 14.19.010(U).

10 *Id.* at § 14.19.020(B).

11 *Id.* at § 14.19.020(B).

12 *Id.* at § 14.19.010(T), (U).

**Schedule 1 Employers (More than 500 Employees)<sup>13</sup>**

	<b>Pay the <u>Lesser</u> of:</b>	
<b>Date</b>	<b>Hourly Minimum Wage (including commissions, piece-rate, and non—discretionary bonuses)</b>	<b>Hourly Minimum Wage if Employer Pays Toward Employee’s Qualifying Medical Benefits Plan</b>
<b>April 1, 2015</b>	\$11.00	\$11.00
<b>January 1, 2016</b>	\$13.00	\$12.50
<b>January 1, 2017</b>	\$15.00	\$13.50
<b>January 1, 2018</b>	Increased to reflect rate of inflation	\$15.00
<b>January 1, 2019 (and each year thereafter)</b>	Increased to reflect rate of inflation	No longer in effect

**Schedule 2 Employers (500 Employees or Less)<sup>14</sup>**

	<b>Satisfy Both:</b>	
<b>Date</b>	<b>Hourly Minimum Wage (presumably including commissions, piece-rate, and non-discretionary bonuses)</b>	<b>Hourly Minimum Compensation (wages plus tips and money paid toward employee’s qualifying medical benefits plan)</b>
<b>April 1, 2015</b>	\$10.00	\$11.00
<b>January 1, 2016</b>	\$10.50	\$12.00
<b>January 1, 2017</b>	\$11.00	\$13.00
<b>January 1, 2018</b>	\$11.50	\$14.00
<b>January 1, 2019</b>	\$12.00	\$15.00
<b>January 1, 2020</b>	\$13.50	\$15.75 (or equivalent to Schedule 1, if lower)
<b>January 1, 2021</b>	\$15.00	Equivalent to Schedule 1 minimum wage
<b>January 1, 2022</b>	\$15.75 (or equivalent to Schedule 1, if lower)	Equivalent to Schedule 1 minimum wage

<sup>13</sup> *Id.* at § 14.19.030(A), (B).

<sup>14</sup> *Id.* at §§ 14.19.040, 14.19.050.

	<i>Satisfy Both:</i>	
<b>January 1, 2023</b>	\$16.50 (or equivalent to Schedule 1, if lower)	Equivalent to Schedule 1 minimum wage
<b>January 1, 2024</b>	\$17.25 (or equivalent to Schedule 1, if lower)	Equivalent to Schedule 1 minimum wage
<b>January 1, 2025 (and each year thereafter)</b>	Equivalent to Schedule 1 minimum wage	No longer in effect

## What are the notice requirements?

Employers must post notice of the ordinance for employees in English, Spanish, and any other language commonly spoken in the workplace. The Department will provide an annual notice for this purpose. An employer who willfully violates this requirement will be subject to a civil penalty of up to \$125 for the first violation and up to \$250 for subsequent violations.<sup>15</sup> The ordinance does not specify a deadline for the initial posting of this notice, but a posting in advance of the April 1, 2015 effective date of the minimum wage obligation likely will be considered sufficient. The Department has not yet issued the form of this notice.

## How will Seattle enforce the new minimum wage?

Employees and the Director may file with the Department charges alleging a violation of Seattle's minimum wage within three years of the alleged violation. The Department will investigate alleged violations of the ordinance. The Director will have authority to issue subpoenas requiring the testimony of witnesses and the production of evidence. If the Department finds a violation, the appropriate remedy will include full payment of unpaid wages and accrued interest and may include a civil penalty of up to \$500 for a first violation, with the maximum amount of the civil penalty increasing for subsequent violations up to \$20,000 per employee, depending on the number of violations. The ordinance provides for an appeal procedure through a contested hearing and prohibits retaliation against employees who exercise their rights under the ordinance.<sup>16</sup>

## Are efforts underway to repeal or challenge the ordinance?

On June 4, 2014, Tim Eyman filed a statewide ballot initiative seeking to retroactively prohibit cities in Washington State from imposing a minimum wage greater than the State minimum wage. Mr. Eyman has sponsored many successful state initiatives in the past, most of them limiting taxes. An initiative similar to Mr. Eyman's, but promoted by a Seattle small business group, was previously filed on May 15, 2014.

The International Franchise Association has stated it plans to sue Seattle because the ordinance counts local franchise owners, regardless of the number of employees, as large employers due to their ties to national or global chains. Thus, these small franchisees only have three years to increase wages to \$15 per hour, while non-franchise competitors have up to seven years. This affects approximately 600 franchisees at 1,700 establishments in Seattle.

## Conclusion

While legal challenges to the ordinance are anticipated and, if filed, will be decided in the courts, employers with any employees in Seattle should consult with legal counsel about complying with the ordinance prior to the initial minimum wage increase which is effective April 1, 2015.

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<sup>15</sup> *Id.* at §§ 14.19.060(C), (F)(1).

<sup>16</sup> *Id.* at § 14.19.060.