



WAGE Watch

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Minimum Wage & Overtime Updates

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As darkness falls across the land, the midnight hour is close[r] at hand for employers to revise their pay practices to ensure compliance with 2018 minimum wage rate changes. Hospitality industry employers may receive from the U.S. Department of Labor (DOL) a king-size treat, whereas entities may feel tricked by the Minnesota Department of Civil Rights' interpretation of which employers are subject to the city's minimum wage ordinance. Employers need not *try to scream or start to freeze*, because following is a *thriller* of an update concerning October minimum wage and overtime developments.

DOL Contends There Are, in Fact, Take-Backs:

The DOL has sent the Office of Management and Budget a finalized proposal to rescind a regulation prohibiting including non-tipped employees in a tip pool, the validity of which is currently before the U.S. Supreme Court. The proposal's contents are unknown.

On October 30, 2017, the U.S. Department of Labor petitioned the U.S. Court of Appeals for the Fifth Circuit to review a federal district court decision that found invalid the Department's final rule increasing the minimum salary that must be paid to exempt executive, administrative, and professional employees. Previously the Department appealed a preliminary injunction issued by the same judge that prevented the rule from taking effect. However, after the judge's summary judgment ruling, the Fifth Circuit granted the Department's request to dismiss

the injunction-related appeal. Per the Department, after the most recent appeal is docketed, a motion will be filed to "hold the appeal in abeyance while the Department of Labor undertakes further rulemaking to determine what the salary level should be."

Management-Side Attorney Dons Wage &

Hour Division Head Costume: Bryan Jarrett will temporarily oversee DOL's Wage and Hour Division. Last month, Cheryl Stanton, the South Carolina Department of Employment and Workforce's executive director, was nominated to be the permanent Division Administrator.

Senator Thinks About Giving Out Candy and Fruit:

Reports suggest Senator Lindsey Graham (R-SC) may propose increasing the federal minimum wage to garner support from Democrats for tax reform. Per Roll Call, Senator Graham stated "I wouldn't offer a minimum wage increase unless we cut taxes."

2018 Minimum Wage Rates Are Knocking at Your

Door: Labor agencies throughout the country have been announcing adjusted minimum wage rates that will take effect on January 1, 2018. At the state level, rates were announced for Alaska, Florida, Montana, New Jersey, and Ohio. Local officials in Albuquerque and Bernalillo County, New Mexico, and Seattle and SeaTac, Washington also announced their new rates. All new rates will be covered in our forthcoming article about minimum wage rates in 2018.

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The Cost of an Exempt Mask in California

Increases: The California Department of Industrial Relations announced rates that must be paid in 2018 to certain computer and medical professionals. Effective January 1, 2018, certain licensed physicians and surgeons will be exempt from state overtime requirements if they are paid at least \$79.39 per hour (up from \$77.15). Also effective January 1, 2018, certain computer software employees will be considered overtime-exempt if they are paid \$43.58 per hour (up from \$42.35 in 2017), a minimum monthly salary of \$7,565.85 (up from \$7,352.62), or a minimum annual salary of \$90,790.07 (up from \$88,231.36).

Agencies TP Employers with New Rules

& Guidance: The Minneapolis, Minnesota Department of Civil Rights released FAQ and rules implementing the city's minimum wage ordinance. In the FAQ, the Department has taken the position that the law applies regardless of whether a business is located in Minneapolis. Recently, a state trial court judge enjoined the city from enforcing its paid sick leave law against non-Minneapolis employers, and the case is currently before the Minnesota Supreme Court. In its rules, however, the Department has limited who may qualify as a covered employee to employees that work in Minneapolis at least two hours in a week. On its [minimum wage webpage](#), the Department has tools to help a business determine whether an employee is working in Minneapolis. The FAQ also discusses how business size is calculated, as the law sets different rates and schedules for businesses with more than 100 employees and those with 100 or fewer employees. The Department is accepting public comments on the FAQ until November 17, 2017.

Seattle, Washington's Office of Labor Standards (OLS) published two sets of final rules connected to its minimum wage ordinance. The first set - which is specific to the minimum wage law - involves various topics, including but not limited to, tracking hours worked by employees that work in Seattle on an occasional basis; eliminating the ability to pay a worker with a disability a lower minimum wage; service charges; recordkeeping

requirements; and retaliation. The second set concerns how OLS will enforce various local laws, including the minimum wage ordinance. For example, instead of primarily investigating violations based on complaints received, it "will conduct investigations based on tips from the public and employees, information from other enforcement agencies regarding labor standards violations by national employers that operate in Seattle, and research on industries that employ large numbers of vulnerable and low-income workers, including workers of color, immigrant communities, women, and other groups."

Court to Decide Whether Miami Beach Apples Will Be Candied or Crab:

On October 18, 2017, Florida's Third District Court of Appeal heard oral arguments concerning the validity of Miami Beach, Florida's minimum wage ordinance. On March 27, 2017, a state judge in Florida held the law - which was scheduled to become operative on January 1, 2018 - was preempted by state law and invalid.

What Trouble Are the Neighborhood Kids Getting

Into? Calumet City, Illinois will continue to not follow the Cook County Minimum Wage Ordinance, after the City Council voted against opting into coverage under the law.

Montgomery County, Maryland's Health & Human Services Committee considered Bill 28-17, which proposes increasing the county minimum wage, with the first increase occurring on July 1, 2018. The bill would also transform the law from a single- to dual-tier system, with different rates based on how many employees a business has. By a two-to-one vote, the Committee recommended amending the bill to: 1) change the proposed definition of small employer from 25 or fewer employees to 50 or fewer employees; and 2) delay the date by when a \$15.00 per hour rate would be mandatory from 2020 to 2022 for large employers, and from 2022 to 2024 for small employers.

In August 2017, Kansas City, Missouri voters approved a local minimum wage ordinance. However, that same month a state law took effect that preempted local wage laws, so the Kansas

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City minimum wage never took effect. To encourage employers to pay higher wages, the City Council of Kansas City will publish on its website a list of businesses that voluntarily pay employees the voter-approved rate, and businesses will be able to apply for a certificate that they can publicly display that shows they are paying the higher rate. However, the city also enacted a new consumer protection statute that prohibits businesses from misrepresenting that they pay the higher wage. Violations can be punished by a fine up to \$500, and each day a violation continues is a separate offense.

Officials in Taos, New Mexico are considering becoming a “home rule” jurisdiction, which would provide them authority to enact a local minimum wage ordinance, like Albuquerque, Bernalillo County, Las Cruces, and Santa Fe (City and County).

Minnesota Doles Out Anti-Retaliation Protections:

The Minnesota Supreme Court held that an employer

violates the state’s minimum wage and overtime law if it fires an employee for refusing to comply with the employer’s directive to share tips, and an employee can sue an employer for such a violation. A state trial court dismissed the former employee’s complaint, a state appellate court reversed that decision, and the state supreme court affirmed the reversal. Although there is no per se anti-retaliation statute in the Minnesota Fair Labor Standards Act (MFLSA), the state supreme court reasoned that a statute prohibiting mandatory tip sharing, coupled with a separate statute providing a private right of action for any MFLSA violation, meant the law “expressly authorizes an employee to sue for wrongful discharge arising out of a refusal to share tips.”

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

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