



WAGE Watch

Monthly Newsletter | March 2017

Minimum Wage & Overtime Updates

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March madness is not limited to college basketball. This month has also seen numerous minimum wage proposals introduced and considered at the local and state levels. Local and state officials continue to battle over who gets to set the minimum wage. There have been a number of minimum wage rulings by state supreme courts since February's Wage Watch. And we are only one quarter of the way through 2017.

Gavel-to-Gavel Coverage: The Arizona Supreme Court rejected a constitutional challenge to the validity of a November 2016 ballot measure increasing the state minimum wage (and creating a paid sick leave law).

The Missouri Supreme Court held a state preemption law did not invalidate the St. Louis minimum wage ordinance.¹ The challengers have requested a new hearing.

The Nevada Supreme Court rejected arguments that the state's minimum wage law was preempted by either the National Labor Relations Act (NLRA) or the Employee Retirement Income Security Act (ERISA).²

The Connecticut Supreme Court upheld a Connecticut Department of Labor regulation that allows restaurant employers to apply a tip credit

toward payment of the minimum wage only for wait staff and bartenders who regularly and customarily receive tips. The court affirmed the Department's decision that the tip credit could not be used for delivery drivers.

Plaintiffs alleging Alabama's preemption law was racially motivated have appealed the dismissal of their case to the U.S. Court of Appeals for the Eleventh Circuit.

A federal judge granted an employer summary judgment on an employee's San Jose, California minimum wage claim. The court found that the ordinance permits coverage to be waived through a collective bargaining agreement (CBA). Therefore, the dispute was governed by the federal Labor Management Relations Act (LMRA) and the employee failed to exhaust the CBA's grievance procedure.

A state judge in Florida held Miami Beach's minimum wage ordinance (scheduled to become operative on January 1, 2018) was preempted by state law. The city intends to appeal the ruling.

A lawsuit has been filed in state court challenging a Washington State November 2016 ballot measure increasing the minimum wage (and creating a paid sick leave law).

Preemption Advocates (Little) Rock Out: On March 28, 2017, Arkansas Governor Asa Hutchinson (R) signed SB 668, which bans local jurisdictions from requiring private employers to provide a minimum

1 See Harry Wellford Jr., [Missouri Supreme Court Upholds St. Louis Minimum Wage Ordinance](#), Littler ASAP (Mar. 2, 2017).

2 See Rick Roskelley and Kathryn Blakey, [Nevada Supreme Court Weighs in Again on the Nevada Constitution's Minimum Wage Amendment](#), Littler ASAP (Mar. 24, 2017).

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or living wage rate, or employment benefit, that exceeds federal or state law requirements. Though SB 668 expressly provides it does not preempt a local minimum wage ordinance in effect on the law's effective date (which will be August 4, 2017), currently a local minimum wage ordinance does not exist.

What You Want & Iowa(nt) May Not Align: On March 30, 2017, Iowa Governor Terry Branstad (R) signed HF 295, which prohibits local laws concerning a minimum or living wage, employment leaves of absence, hiring practices, employment benefits, scheduling, or other employment conditions that exceed or conflict with federal or state law. The law takes effect immediately and says ordinances adopted before the law's effective date that violate the law are void and enforceable after HF 295's effective date. Two days prior, the Lee County, Iowa County Board of Supervisors enacted a minimum wage ordinance, joining Johnson County, Linn County, Wapello County, Polk County,³ and the City of Tiffin, which had enacted a local minimum wage ordinance. As [previously discussed](#), many local Iowa officials and residents oppose preemption, so it remains to be seen what, if any, legal action local governments might take in response to HF 295.

On a Governor's Desk: New Mexico HB 442 proposes to increase the state minimum wage from \$7.50 to \$9.25 per hour on January 1, 2018, and increase the tipped minimum wage from \$2.13 per hour to 40% of the minimum wage. It proposes banning local scheduling laws, but also contains an anti-preemption provision allowing higher, local minimum wage rates.

New Mexico SB 386 aims to increase the minimum wage, incrementally, to \$8.25 and \$9.00 per hour – and the tipped minimum wage to \$2.38 and \$2.63 per hour – on October 1, 2017 and April 1, 2018, respectively. However, Governor Susana Martinez (R) said she would veto both measures.

Cleared at Least One House: Minnesota HF 600 aims to ban local laws concerning wages, leaves of absence, scheduling, employee benefits, and other employment conditions. The Northfield, Minnesota City Council passed a resolution opposing preemption proposals.

New & Notable: Bills in two states seek to increase the minimum salary and/or fee that exempt executive, administrative, and professionals must receive. Rhode Island SB 505 and HB 5596 seek to increase the amount to \$1,036 per week, with annual adjustments beginning in 2020. Wisconsin SB 103 proposes increasing the amount to \$970 per week, with later annual adjustments.⁴

West Virginia HB 2969 proposes annually adjusting the minimum wage (\$8.75 per hour) on September 1, 2017, based on consumer price index increases. Three North Carolina bills (HB 238, HB 289, and SB 210) propose to increase the minimum wage – eventually to \$15.00 per hour in either 2021 or 2022 – and annually adjust rates in future years.

Oregon prohibits tip credits, but HB 3054 would allow tipped employees to be paid less than the minimum wage if the wage the employee receives from an employer plus tips are at least the minimum wage plus \$5.00 per hour. New York A. 6203 would lower the direct wage tipped employees must be paid and allow employers to apply a greater tip credit toward paying these employees the minimum wage. Conversely, Wisconsin SB 69 seeks to increase the tipped employee minimum wage by 95 cents per year until it reaches \$7.08 per hour, and eventually eliminate the tip credit.

In response to the above-referenced Missouri Supreme Court decision, state legislators introduced at least three new preemption measures (HB 1193, HB 1194, and SB 530). Arkansas HB 1846 aims, in part, to “resolve questions that have arisen regarding . . . [w]hat activities constitute ‘work’ under the Minimum Wage Act of the State of Arkansas, § 11-4-201 et seq., as

³ Before the state preemption law was signed, the Ankeny City Council voted 4-to-1 vote to opt out of the Polk County minimum wage ordinance, which was scheduled to become operative April 1, 2017.

⁴ The current federal minimum salary and/or fee requirement is \$455 per week.

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interpreted by the Supreme Court in *Gerber Products Company v. Hewitt*, 2016 Ark. 222, 492 S.W.3d 856.”

Texas SB 1586, the newest proposed Lone Star State anti-preemption measure, would allow local jurisdictions with a population of over 100,000 to adopt a minimum wage that exceeds the federal or state minimum wage (both of which are \$7.25 per hour).

Dead Man Walking: Various legislative proposals have died, including:

- New Hampshire SB 83, which sought to increase the state minimum wage to \$12.00 per hour by September 1, 2018;
- Maryland SB 607, which aimed to increase the minimum salary amount for exempt executive, administrative, and professional employees to \$913 per week on October 1, 2017, with adjustments in 2020 and every three years afterward;
- Montana HB 169, which sought to increase the minimum wage to \$10.10 per hour.

A Man with a Plan: Senator Sherrod Brown (D-OH) unveiled “[A Plan for Restoring the Value of Work in America](#),” which – in part – proposes raising the federal minimum wage to \$15.00 per hour and the minimum salary requirement for executive, administrative, and professional employees to \$47,476 per year – the same rate set in the enjoined U.S. Department of Labor Regulations. The senator has not yet introduced a bill codifying the proposed increase, but other components of his legislation package proposal (e.g., he co-sponsored [S. 636](#) concerning paid sick leave) have been introduced.

The People Have Spoken . . . But: Supported by the governor, Maine legislators introduced numerous pieces of legislation eliminating scheduled increases to the general and tipped employee minimum wage increase – and eventual annual increases – that voters approved during the November 2016 election. For example, LD 702 proposes to undo the eventual elimination of the tip credit, and revert to a tip credit of 50% of the minimum wage.

Some bills include regional flavor. LD 831 would require, on January 1, 2018, the minimum wage rate

to be “the average minimum hourly wage in the New England states of New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island on July 1st of the previous year, as determined by the Commissioner of Labor.” LD 775 would require the existing set minimum wage rates to “not exceed the average minimum wage paid in the New England states, as determined by the Commissioner of Labor.”

Flagstaff AZ MW Amendments: The Flagstaff, Arizona City Council voted six-to-one to amend the voter-approved November 2016 ballot measure creating a citywide minimum wage ordinance. The primary reason for the change was the impact the state minimum wage increase – also approved by voters on November 8 – had on the Flagstaff ordinance, which required payment of a specific rate or a rate \$2 above the state minimum wage, whichever is greater. The “or \$2 above the state minimum wage” language has been removed in most instances. On July 1, 2017, the minimum wage will be \$10.50, which is less than the original \$12.00 rate (\$10.00 state minimum wage plus \$2.00) but more than the specified rate of \$10.00 per hour. The specific – and now only – rates effective January 1, 2018, 2019, and 2020 will be \$11.00, \$12.00, and \$13.00 per hour, respectively. The rate on January 1, 2021, will be \$15.00 “or \$2.00 above the state minimum wage,” whichever is greater. On January 1, 2022, the amendments require a rate of \$15.50 “or the \$2.00 above the state minimum wage,” whichever is greater, and delay annual adjustments based on consumer price index increases from 2022 to 2023. The amendments do not alter the tipped employee provisions. A \$3.00 per-hour maximum tip credit will apply on July 1, 2017, and on January 1, 2018, 2019, 2020, and 2021. A covered tipped employee can be paid a minimum cash wage of \$3.00 per-hour less than the minimum wage if wages received from an employer plus tips equals at least the minimum wage. The tip credit will decrease to \$2.50 per hour on January 1, 2022.

Should I Stay or Should I Go Now: The list of municipalities opting out of coverage under the Cook County, Illinois minimum wage (and paid sick leave) ordinance expanded, with the villages of River Forest and Elmwood Park joining the villages

of Barrington, Mount Prospect, Rosemont and Tinley Park, and the City of Oak. The Village of Bedford Park has only opted out of the paid sick leave ordinance. The Village of Elk Grove is proposing its own minimum wage (and paid sick leave) law, though six of seven City Council candidates believe the minimum wage should be a state – not a local – issue. The City of Park Ridge is still considering whether to opt out, and the Town of Arlington Heights delayed an opt-out vote due to residents' opposition.

Sizing Up Los Angeles Employers: The City of Los Angeles Office of Wage Standards revised its citywide minimum wage (and paid sick leave) regulations and FAQ.⁵ A FAQ clarifying business size stands out. In Los Angeles, a different minimum wage rate applies to employers with 26 or more, or 25 or fewer, employees. Also, employers with 25 or fewer employees can pay the lower minimum wage rate until the minimum wage reaches \$15.00 per hour on July 1, 2021 – regardless of whether its employee count increases to 26 or more in the interim. The revised FAQ provides that an employer's business size is based on covered employees, i.e., individuals who perform at least two hours of work in a particular week within Los Angeles and are entitled to the state minimum wage.

Less in Baltimore: Baltimore, Maryland Mayor Catherine Pugh vetoed a bill that would have created a citywide minimum wage. A veto override requires the votes of 12 of the 15 City Council members. Under the proposal, the minimum wage would have eventually increased to \$15.00 per hour on July 1, 2022.

If at First You Don't Succeed, Try, Try Again: Shortly after it placed a proposed citywide minimum wage ordinance on the August 8, 2017 ballot, the City Council of Kansas City, Missouri passed its own minimum wage

ordinance. This is the second ordinance the council passed in recent history. In 2015, it adopted, and the mayor signed, an ordinance. However, the ordinance was rescinded because sufficient signatures were collected to place a challenge measure before voters, and the state enacted a preemption law. Although Kansas City may be encouraged by the Missouri Supreme Court's upholding the validity of the St. Louis ordinance, potential obstacles remain. In the St. Louis case, two separate state statutes were at issue. The court found the first statute – an older law – did not prevent cities from enacting local minimum wage laws. The second, more recent statute preempted local minimum wage laws not in effect by August 28, 2015 – the date the St. Louis ordinance was scheduled to take effect. Even if approved by the mayor, the most recent Kansas City ordinance is on unsteady footing (the same may be true concerning the ballot measure).

After her bill to raise the minimum wage did not pass, Montana Rep. Mary Ann Dunwell introduced House Joint Resolution 26 to study the impact of potentially raising the minimum wage. On March 28, 2017, a hearing on the bill was held by the Montana House of Representatives' Business and Labor Committee; however, the next day it was tabled, signaling that it is unlikely the resolution will progress further.

And Thank You for Your Support: During an advisory vote on the state's annual Town Hall Meeting Day, Burlington, Vermont residents voted 5,004 to 1,618 to support eventually increasing the state minimum wage to \$15.00 per hour. In St. Paul, Minnesota, all five declared November 2017 mayoral candidates support creating a \$15.00 per hour citywide minimum wage ordinance.

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

⁵ OWS also revised its minimum wage / paid sick leave regulations, which primarily impact the latter. For information about the changes, see Maria Harrington and Sebastian Chilco, [City of Los Angeles Updates Paid Sick Leave Rules and FAQs](#), Littler ASAP (Mar. 27, 2017).

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