



Wage Watch: Minimum Wage & Overtime Updates (June Edition)

By Libby Henninger, Sebastian Chilco, and Corinn Jackson on June 30, 2017

Summer is upon us and the heat – from both a temperature and legislative perspective – is on. As employers across the country await action from federal labor officials concerning the currently-enjoined white collar salary rule, state measures increasing exempt employee pay continue to move through state legislative houses. Multiple states, counties, and cities are about to raise their minimum wage rates. And numerous state and local governments are contemplating new minimum wage measures or changes to existing schemes.

White Collar Salary Rule, Take 2: During a June 7, 2017 hearing before the House Appropriations Committee, U.S. Secretary of Labor Alexander Acosta indicated the Department of Labor intends to examine the currently-enjoined salary requirements for exempt bona fide executive, administrative, and/or professional employees. About three weeks later, on June 27, the Department sent a Request for Information related to the rule to the Office of Management and Budget for its review. The enjoined rule’s legality is before the U.S. Court of Appeals for the Fifth Circuit, and the government’s briefing is due by June 30, 2017.

Labor Department Opinion Letters Will Resume: On June 27, 2017, Secretary Acosta announced the Department’s Wage & Hour Division will again issue opinion letters to provide guidance to employers and employees.¹

July 1 Minimum Wage Changes: On July 1, 2017, minimum wage rates change in two states, the District of Columbia, and 14 local jurisdictions (most are in California). Though slated to take effect on July 1 (after originally being scheduled for January 1), Bangor, ME officials, on June 26, 2017, voted to repeal the city’s minimum wage because of voter-approved state-level changes approved at the November 2016 election.

Jurisdiction	Current Minimum Wage	July 1 Minimum Wage	Current Minimum Cash Wage (Tipped Employees)	July 1 Minimum Cash Wage (Tipped Employees)	Current Tip Credit	July 1 Tip Credit
Flagstaff, AZ	\$10.00 (State rate)	\$10.50	\$7.00 (State rate)	\$7.50	\$3.00 (State rate)	No change
Emeryville California (56+ Employees)	\$14.82	\$15.20	Not applicable	No change	Not applicable	No change
Emeryville California (55 or Fewer Employees)	\$13.00	\$14.00	Not applicable	No change	Not applicable	No change
Los Angeles (City), CA (26+ Employees)	\$10.50	\$12.00	Not applicable	No change	Not applicable	No change
Los Angeles (City), CA (25 or Fewer Employees)	\$10.00 (State rate)	\$10.50	Not applicable	No change	Not applicable	No change
Los Angeles (County - Unincorporated), CA (26+ Employees)	\$10.50	\$12.00	Not applicable	No change	Not applicable	No change
Los Angeles (County - Unincorporated), CA (25 or Fewer Employees)	\$10.00 (State rate)	\$10.50	Not applicable	No change	Not applicable	No change
Malibu, CA (26+ Employees)	\$10.50	\$12.00	Not applicable	No change	Not applicable	No change
Malibu, CA (25 or Fewer Employees)	\$10.00 (State rate)	\$10.50	Not applicable	No change	Not applicable	No change

Milpitas, CA	\$10.00 or \$10.50 (State rate)	\$11.00	Not applicable	No change	Not applicable	No change
Pasadena, CA (26+ Employees)	\$10.50	\$12.00	Not applicable	No change	Not applicable	No change
Pasadena, CA (25 or Fewer Employees)	\$10.00 (State rate)	\$10.50	Not applicable	No change	Not applicable	No change
San Francisco, CA (Generally)	\$13.00	\$14.00	Not applicable	No change	Not applicable	No change
San Francisco, CA (Government-Supported Employee)	\$12.53	\$12.87	Not applicable	No change	Not applicable	No change
San Jose, CA (Generally)	\$10.50	\$12.00	Not applicable	No change	Not applicable	No change
San Jose, CA (Youth Training Program)	Agency determines based on application	No change	Not applicable	No change	Not applicable	No change
San Leandro	\$10.00 or \$10.50 (State rate)	\$12.00	Not applicable	No change	Not applicable	No change
Santa Monica, CA (26+ Employees)	\$10.50	\$12.00	Not applicable	No change	Not applicable	No change
Santa Monica, CA (25 or Fewer Employees)	\$10.00 (State rate)	\$10.50	Not applicable	No change	Not applicable	No change
District of Columbia	\$11.50	\$12.50	\$2.77	\$3.33	\$8.73	\$9.17
Chicago, IL	\$10.50	\$11.00	\$5.95	\$6.10	\$4.55	\$4.90
Cook County, IL	\$8.25 (State rate)	\$10.00	\$4.95 (State rate)	No change	\$3.30 (State rate)	\$5.05
Maryland	\$8.75	\$9.25	\$3.63	No change	\$5.12	\$5.62

Montgomery County, MD	\$10.75	\$11.50	\$4.00	No change	\$6.75	\$7.50
Oregon (General)	\$9.75	\$10.25	Not applicable	No change	Not applicable	No change
Oregon (Urban)	\$9.75	\$11.25	Not applicable	No change	Not applicable	No change
Oregon (Nonurban)	\$9.50	\$10.00	Not applicable	No change	Not applicable	No change

Signed by the Governor: Maine LD 673 rolls back some voter-approved tip-related changes, including the tip credit’s eventual phasing out. The amended law does not impact operations in 2017. However, in 2018 and future years the tip credit standard will revert to no more than 50% of the minimum wage (so, *e.g.*, the maximum tip credit in 2018 will be \$5.00 per hour instead of the previously established \$4.00 per hour). As amended, the law says employers cannot deduct any amount from credit card tips, including but not limited to service fees assessed to the employer connected to the transaction. Additionally, employers using a tip credit must inform an affected employee in advance – orally or in writing – of the following information: 1) The cash wage the employer will pay the employee; 2) The tip credit amount; 3) That the tip credit cannot exceed the value of tips the employee actually receives; 4) That all tips received must be retained by the employee unless a valid tip pool limited to customarily and regularly tipped employees exists; 5) That the tip credit cannot be used for any employee who has not been informed by the employer of the tip credit provisions; and 6) If the employer uses a tip pool, the required contribution amount from the employee.

The Pen Is Mightier than the Sword: The governor of Nevada vetoed two minimum wage bills. Nevada SB 106 would have directed the Nevada Labor Commissioner to ensure that the state minimum wage is increased by 75 cents per year until it reaches \$12.00 or more per hour (if an employer does not offer health insurance to the employee) or \$11.00 or more per hour (if health insurance is offered). Nevada AB 175 would have defined the type and quantity of health benefits employers must offer to be eligible to pay the lower-tier state minimum wage rate.

On the Governor’s Desk: On June 26, 2017, Illinois SB 81 was sent to the governor. The bill seeks to increase the current \$8.25 minimum wage to the following rates on January 1: \$9.00 (2018); \$10.00 (2019); \$11.25 (2020); \$13.00 (2021); \$15.00 (2022). The bill would allow certain employees younger than 18 years old to be paid a lower rate.

Cleared at Least One House: California AB 1565 would require exempt executive, administrative, or professional employees to earn a monthly salary equal to \$3,956 or twice the state minimum wage for full-time employment (*i.e.*, the current standard), whichever amount is greater. California AB 1099 would require organizations using an online application or platform to connect customers with workers that allow payment by debit or credit card to allow tips via the same, which the worker must receive by the next regular payday following the tip. Both bills were approved by the State Assembly and have been assigned to the State Senate’s Committee on Labor & Industrial Relations.

Rhode Island HB 1575-A, a state budget bill, aims to increase the state minimum wage from \$9.60 to \$10.10 per hour effective January 1, 2018, and to \$10.50 per hour effective January 1, 2019. However, the bill does not amend a separate statute governing tipped employee wages, which allows employers to pay covered tipped employees a minimum cash wage of \$3.89 per hour if the cash wage plus tips equals at least the state minimum wage. The bill passed the State House of Representatives and is currently in the State Senate’s Finance Committee.

Cleared at Least One Committee: Delaware SB 10 passed out of the State Senate’s Labor Committee. The bill seeks to increase the state minimum wage from \$8.25 to \$8.75 per hour on October 1, 2017; to \$9.25 on October 1, 2018; to \$9.75 on October 1, 2019; and to \$10.25 on October 1, 2020.

What’s New in the Legislature: U.S. Representative Aumua Amata Coleman Radewagen (R – American Samoa) introduced two measures concerning the federal minimum wage rate applicable to American Samoa. HR 2964 and HR 3021 propose to “stop a scheduled increase in the minimum wage applicable to American Samoa.” According to a press release concerning HR 2964, the bill would “restore the system in place prior to 2007,” in which “the minimum wage in American Samoa was set by a Special Industry Committee under the direction of the Department of Labor.”

Pennsylvania HB 1520 was introduced and referred to the State House of Representatives’ Committee on Labor. The bill seeks to increase the minimum wage from \$7.25 to \$12.00 per hour on January 1, 2018, and subsequently increase the minimum wage by 50 cents per hour each succeeding January 1 until it reaches \$15.00 per hour on January 1, 2024. The bill seeks to immediately increase the minimum cash wage tipped employees must be paid from \$2.83 to \$9.00 per hour, and to increase the rate on January 1 in future years: \$9.38 (2019); \$9.75 (2020); \$10.13 (2021); \$10.50 (2022); \$10.88 (2023); \$12.00 (2024). Beginning in 2025,

the bill would increase the minimum wage and minimum cash wage according to increases in the consumer price index, rounded to the nearest multiple of five cents. Also, if enacted, employers should expect changes to the tests for determining whether an individual qualifies as a bona fide executive, administrative, professional, and/or outside sales employee, because the bill directs the Secretary of the Pennsylvania Department of Labor & Industry to revise regulations concerning these (and other) employees “to carry out the purposes of this act and to safeguard the payment of the wage rates established under this act.”

Ohio Preemption Law Declared Unconstitutional: In late 2016, Ohio enacted SB 331, which in part banned local jurisdictions from establishing a minimum wage that differed from the state minimum wage. On June 2, 2017, an Ohio state court judge held SB 331 violated the state constitution’s single subject rule (the bill also addressed animal welfare). We anticipate the state will appeal the ruling.

The Ins (but Mostly) Outs of Cook County: A significant number of municipalities in Cook County have enacted their own ordinances that purport to opt out of the county’s minimum wage ordinance, which becomes operative on July 1, 2017. In its final rules governing the ordinance, the Cook County Human Rights Commission states that the county minimum wage does not apply to work in “a municipality that has lawfully preempted the Ordinance.”

Flagstaff, Arizona Amendments: The Flagstaff Arizona City Council is considering amendments to its minimum wage ordinance, which becomes operative on July 1, 2017. Under the proposed amendments, employers claiming a tip credit must establish – each week – that an employee’s minimum cash wage plus tips equal at least the city minimum wage, and the proposal specifies the rate of interest on unpaid wages damages will be 10% per year. If enacted, the changes would become effective 30 days after the Council adopted the ordinance (the earliest date it could adopt would be July 5, 2017).

Minneapolis Minimum Wage: Shortly after state preemption efforts failed, the Minneapolis City Council moved forward on creating a local minimum wage. Under the most recent version of the proposed ordinance, a two-tier local minimum wage would be created for large employers (more than 100 employees) and small employers (100 or fewer employees). The ordinance’s operative dates would be January 1 and July, 2018 for large and small employers, respectively. A \$15.00 per hour minimum wage would apply to large employers on July 1, 2022 and to small employers on July 1, 2024. After a rate hits \$15.00, it would be annually adjusted in subsequent years.

Albuquerque Minimum Wage Survives “Challenge:” On May 30, 2017, a New Mexico state court judge rejected a defendant’s motion to dismiss a lawsuit filed against it for allegedly violating Albuquerque’s minimum wage ordinance. Even if challenge was not untimely (the law has been operative since January 2013), the “fatal flaws” the defendants identified – a summary instead of the complete ordinance, and a typo – were, per the judge, “not sufficiently serious failings to warrant overturning the voices of 66% of participating voters.” Also, the judge rejected the defendant’s contention that the ballot measure was invalid because it contained multiple issues instead of a single issue.

What the Future May Hold: Nevada Senate Joint Resolution 6 proposes amending the Nevada Constitution to provide for a state minimum wage increase in 2021 and \$1.15 per year increases beginning in 2022 until the minimum wage reaches \$14.00 per hour. The measure would also permit class actions for violations, and increase remedies for a violation. However, before the proposal is put before Nevada voters in November 2020, it must again be approved by the legislature in the 2019 legislative session.

Bills that Ran out of Steam: Three Maine bills failed to garner sufficient support to advance. LD 778 would have eliminated future annual increases to the minimum wage based on changes to the consumer price index. LD 831 would have based the state’s minimum wage on the average New England minimum wage rate. LD 1609 would have decreased the minimum salary exempt executive employees must be paid, decreased scheduled minimum wage rate increases, and reverted to tip credit standards that existed before voters approved changes at the November 2016 election (including eventually phasing out the tip credit).

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

Footnotes

¹ See Tammy McCutchen and Lee Schreter, [DOL: Opinion Letters Are Back!](#), Littler ASAP (June 27, 2017).