

Labor and Employment Law Update **Lawyers for Employers®**

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Employers Must Prepare Now for Seattle's New Minimum Wage Rate, Effective April 1

Employers with employees working within the city limits of Seattle must begin complying with Seattle's Minimum Wage Ordinance on April 1. The new Seattle ordinance will increase the hourly minimum wage for covered employees to \$10 or \$11 per hour, depending on the employer's size. The ordinance increases the minimum wage incrementally over three to seven years until the hourly rate reaches \$15 for all covered employees working within the city limits of Seattle.

Under the ordinance, "large employers" include both businesses with more than 500 employees in the U.S. and businesses that operate as franchises, regardless of how many employees the individual franchisee employs. Large employers that do not pay toward employees' qualifying medical benefits plan will reach the \$15 per hour minimum wage for covered employees over three years. Large employers that do pay toward employees' qualifying medical benefits plan will reach the \$15 per hour minimum wage for covered employees over four years.

"Small employers" include businesses with 500 or fewer employees in the U.S. Small employers who elect to pay a flat wage to employees will reach the \$15 per hour minimum wage for covered employees in five years. Small employers also have the option of combining wages, contributions to qualifying medical benefit plans, and/or employee tips (if reported to the IRS) as part of employees' minimum compensation and paying a reduced minimum wage rate to covered employees. Small employers that select this option will reach the \$15 per hour minimum wage for covered employees over seven years.

The city proposed Administrative Rules for the Minimum Wage Ordinance (SMC 14.19) on February 19. The public had until March 6 to comment on the proposed rules. The ordinance and proposed Administrative Rules are available at: <http://www.seattle.gov/civilrights/labor-standards/minimum-wage>.

Lane Powell will be hosting a workshop focusing on the administration and implementation of the Seattle Minimum Wage Ordinance for large and small employers. Please let us know if you would be interested in attending the workshop and we will keep you informed.

The following discussion highlights some of the ordinance’s requirements. Employers are strongly encouraged to consult with legal counsel about how the ordinance will impact their policies and practices.

1. Which employees are covered by the ordinance?

The ordinance covers all employees who work more than two hours within Seattle city limits during a two-week pay period. It does not cover certain categories of workers, such as independent contractors, who are exempt from the state minimum wage requirements.

The city will establish the minimum wage by administrative rule for covered Seattle employees under the age of 18.

The city may issue a special certificate permitting an employer to pay a wage less than Seattle’s minimum wage, but greater than the Washington state minimum wage, to learners, apprentices, messengers and people with disabilities. To obtain such special certificates, the employer must show necessity under WAC 296-128 *and* secure a letter of recommendation from the Washington State Department of Labor and Industries.

2. Does the ordinance cover employees based outside of Seattle who occasionally work within Seattle city limits?

Yes, the ordinance applies to “occasional basis employees” unless the time they spend in Seattle is limited to traveling through, refueling, eating a personal meal and/or running personal errands.

Employers can require employees to track their own hours so long as the employer provides the employee with information about the ordinance and ensures that the employee has the necessary training and tools to accurately record his or her time.

3. What are the thresholds for large and small employers under the ordinance?

Large Employers — Schedule 1

- a. More than 500 employees within the U.S., regardless of location.
- b. All franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the U.S.

Small Employers — Schedule 2

- a. 500 or fewer employees in the U.S., regardless of location.

The City of Seattle has been sued by the International Franchise Association and five local franchisees who argue, on a variety of legal grounds, that the ordinance discriminates against franchises. The case was filed in federal district court in Seattle. The judge heard oral arguments on March 10, but it is not known when a ruling will be announced.

4. How do employers determine how many employees they employ for the purposes of the ordinance? Does it make a difference whether the employees work on a part-time or temporary basis, or outside the city limits?

Employees counted include those employed on a full-time, part-time or temporary basis, as well as those who work outside Seattle city limits. In other words, the Minimum Wage Ordinance uses a simple headcount method. This is a different method for measuring employees than that used under the city’s Paid Sick and Safe Time Ordinance, which requires determining the number of full-time equivalent employees.

Employers with employees during the previous year:

The number of employees is calculated by the average number of employees employed per calendar week during the preceding calendar year for all weeks where at least one employee worked.

Employers without employees during the previous year:

The number of employees is calculated by the average number of employees employed per calendar week during the first 90 calendar days of the current year of business.

5. How are “wages” defined for all employers?

Wages include salary, hourly pay, piece rate, commissions and nondiscretionary performance bonuses. *Tips and employer payments toward medical benefits plans are not considered wages under the ordinance.*

6. How is “minimum compensation” defined for small employers?

Small employers can meet the minimum compensation requirements with a combination of wages, tips the employee receives and reports to the IRS, and money paid by the employer towards an individual employee’s *qualifying* medical benefits plan.

7. What is a “qualifying medical benefits plan?”

A qualifying medical benefits plan must be the equivalent of a “silver” or higher-level essential benefits package as defined in the federal Affordable Care Act. Alternatively, a qualifying medical benefits plan must be designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan, whichever is greater. Employers can only consider contributions to qualifying medical benefits plans that employees actually receive towards minimum compensation requirements. Again, this is a different standard than that used for the Seattle Paid Sick and Safe Time Ordinance, which focused on whether the benefits were *offered*.

8. What are the notice and posting requirements?

Employers are required to provide employees with notice of:

- a. An employee’s entitlement to minimum wage and minimum compensation;
- b. The ordinance’s prohibition against retaliation; and
- c. An employee’s ability to file a complaint for violation of minimum wage or minimum compensation requirements or retaliation for activities protected under the ordinance.

9. How can employers comply with the notice requirements?

Employers should display a notice published each year by the city informing employees of the current minimum wage and minimum compensation rates for that workplace or jobsite, and of employees’ rights under the ordinance.

The notice must be displayed in a conspicuous place at any workplace or job site where any covered employee works.

The notice must be written in English, Spanish and any other languages commonly spoken by employees at the particular workplace or job site.

10. What are the record-keeping requirements under the ordinance?

Employers must retain payroll records for covered employees for a period of *three years*, and the records should document minimum wages and minimum compensation paid to each employee.

11. What happens if an employer threatens to report the immigration status of an employee who wants to report a violation of the ordinance?

The ordinance prohibits an employer from threatening a person filing a wage claim that the employer will inform the government about the person’s immigration status, including whether that person is lawfully in the U.S., and from threatening to report or reporting to the government the suspected citizenship or immigration status of the person or his or her family member. *This covers all communications, including direct, indirect, explicit or implicit.*

12. What are the penalties for failure to comply with the ordinance?

- a. If an employer willfully fails to provide notice of the appropriate minimum wage and minimum compensation, the employer may be subject to a civil penalty of \$125 for the first violation and \$250 for subsequent violations.

- b. If an employer fails to pay minimum wage and/or minimum compensation, the city will determine an appropriate remedy, including full payment of unpaid wages and accrued interest due to the aggrieved party.
- c. An employer's willful interference with the city in administering or implementing the requirements in this ordinance carries a civil penalty of between \$1,000 and \$5,000.
- d. An employer who violates the ordinance will also be subject to civil penalties depending on the circumstances. For the first violation, the penalties range from a warning or penalty up to \$500. The amount of the civil penalty increases with subsequent violations, and is based on a per-employee penalty or an amount equal to the total amount of unpaid wages, whichever is greater. This penalty increases to as much as \$20,000 per employee for an employer found to have committed more than three violations.

13. Which city department currently is responsible for enforcing this ordinance?

Mayor Murray has proposed centralizing all of the city's labor standards enforcement within the Seattle Office for Civil Rights (SOCR). If Seattle City Council approves this legislation, SOCR will enforce the Minimum Wage Ordinance in addition to the Paid Sick and Safe Time Ordinance, and the Job Assistance Ordinance (which limits use of criminal history records in employment).

For more information, please contact the Labor and Employment Practice Group at Lane Powell: lanepowellpc@lanepowell.com

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