

THE FIGHT FOR \$15 AND MORE

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The \$15 Minimum Wage

Over the past several years we have seen nationwide efforts, often precipitated by unions, to increase the minimum wage at the local level to \$15 as a means of addressing economic inequality. The movement, called the "Fight for \$15," has seen some success in several states as well as in numerous cities. Cities such as Seattle, New York, San Francisco, San Jose and others in the Silicon Valley of California have adopted a \$15 minimum wage, usually to be reached by incremental increases over a period of years. Interestingly, some of these cities are now seeking to accelerate the progression and go to \$15 immediately. Emeryville, California recently took its minimum wage to \$15.20.

Despite the fact that a recent report by the National Bureau of Economic Research concluded that in Seattle the \$15 mandate has, as some predicted, resulted in job losses and reduced work hours, a report that the Seattle mayor's office apparently sought to undermine, and the fact that the state of Missouri recently rolled back a state-wide minimum wage increase for similar reasons, the efforts at the local level to require substantial increases in the minimum wage continue across the country, albeit at a slower pace. These efforts pre-date the current administration, which has very publicly promised to slow down the pace of regulation at the federal level. It is therefore difficult to ascribe any single cause for the increased local action. However, at present it continues to move forward, and is even likely to accelerate.

The battle over the minimum wage will continue at the state and local level as some states seek to raise wages while others eliminate wage increases that are enacted by the local city governments. Some states like Iowa, Missouri, and Kentucky have rolled back or prohibited local governments from raising the minimum wage in their locale. Other states are seeking to rapidly raise the minimum wage to \$15. Perhaps most striking are the comments from Governor Brown of California when he signed a bill to hike the minimum

wage in California. He stated, "Economically, minimum wages may not make sense.... Morally and socially and politically, they (minimum wages) make every sense because it binds the community together and makes sure that parents can take care of their kids in a much more satisfactory way...." Moreover, many states that raise the state minimum wage suffer backlash from rural areas that often cannot support a \$15 minimum wage. Of the states that have sought to raise the minimum wage, only Oregon has attempted to solve this problem by enacting different wages for urban and nonurban areas. New York has set a schedule for how fast the minimum wage will rise to \$15 in urban and non-urban areas of the state, but eventually the entire state will have a \$15 or higher minimum wage. As states seek to raise the minimum wage, there is likely to be increased tension between minimum wage supporters and opponents and urban and rural areas.

Fringe Benefits Also In Play

These local mandates by both states and cities have not been limited to minimum wage increases. Mandatory paid sick leave and paid family leave have also been required in many jurisdictions and are being considered by others. New Jersey and Rhode Island both have a paid family leave requirement. California has had a paid family leave requirement in effect for several years. Arizona implemented a mandatory paid sick leave policy for all employers as of July 1, 2017. New York also adopted a paid family leave somewhat similar to the unpaid federal Family and Medical Leave Act, to become effective for all employees as of January 1, 2018. In both California and New York the paid family leave is funded through employee payroll deductions and pays at a level somewhat similar to unemployment benefits. In addition to the paid time off for qualifying circumstances, the laws also obligate the employer to provide employees utilizing the leave mandatory reinstatement to their job upon return and continued health insurance coverage during the leave as if the employee were working. In the case of the new

Arizona sick leave law, if any adverse action is taken against an employee after requesting or taking such leave, it will be considered presumptively retaliatory. If utilized by employees to their full extent, the operational consequences of these mandated benefits could be dramatic for some employers.

An Out-of-Norm Trend

These actions to mandate increased minimum wages and/or additional fringe benefits through state or local governmental action are part of a rapidly growing trend of workplace regulation through means other than federal legislative or agency action that has been the norm for American business for decades. It requires a new approach on the part of employers and their representative associations. Active engagement with state and local officials, state legislatures, city councils and local business groups will be even more important than the national lobbying and political action efforts that have historically represented employers. Being aware and actively involved in addressing local initiatives or legislation should become a priority.

And we cannot say that such regulation is totally new. Some states, such as California, New York, and others have long had significant employer obligations in the area of work hours, overtime and employee work breaks. In fact, litigation of wage and hour claims under the highly technical California wage orders has virtually clogged that state's court dockets. With statutes of limitations extending back as far as four years, these types of claims are quite attractive to Plaintiffs' lawyers and many of these cases, most of them class actions, have resulted in millions of dollars in liability.

What Employers Can Do

What these developments mean for the average employer is that if they are to protect themselves against potential claims, they must now not only be politically engaged, but also must stay abreast of workplace rules issued by every legal jurisdiction that exercises authority over them. Political action to make your views known may now be a necessity. Since this trend of more local rules is not likely to be reversed, it would also be prudent to designate someone, in your organization, such as Human Resources or a manager who is responsible for personnel matters, to closely

monitor all local and state workplace regulations as well as any proposed legislation. In addition, review all current workplace policies to assure that you stay in compliance with these evolving laws. Employers have always been aware, at least in general, of their federal obligations to their employees, and must obviously continue to do so. However, we are now dealing with a new dynamic of local regulation that will require even closer attention as it expands to even more aspects of the employment relationship.

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