



WAGE Watch



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WPI Wage Watch: Minimum Wage and Overtime Updates

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Although the lazy days of summer may be grinding to a halt, August minimum wage and overtime developments showed no signs of a slow-down. Democrats continue to try to impress upon the electorate labor and employment-related differences between themselves and Republicans at the federal level, annual minimum wage adjustment announcement season has opened at the state level, and struggles continue at the local level.

Federal Judge Finds FLSA White Collar Salary Rule Invalid:

On August 31, 2017, Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas granted summary to the Plano Chamber of Commerce and more than 55 business groups, finding invalid the U.S. Department of Labor's final rule updating the Fair Labor Standards Act's (FLSA) regulations regarding the executive, administrative, and professional exemptions. The rule has never taken effect because previously Judge Mazzant issued an injunction blocking it. The rule's legality is also being considered by the U.S. Court of Appeals for the Fifth Circuit, which will hear oral arguments on October 3, 2017.

Land of 10,000 Rates: In Minnesota, different minimum wage rates apply depending on whether an employer is "large" or "small." A large employer is an employer with an annual gross sales volume of \$500,000 or greater, and a small employer is one with an annual gross sales volume of less than

\$500,000, respectively. A separate rate is available to covered hotels, motels, lodging establishments, or resorts that 1) contract with an employee working on a summer work travel exchange visitor program nonimmigrant visa ("J visa"), and 2) provide the employee food or lodging. The Minnesota Department of Labor and Industry announced that, effective January 1, 2018, the "large" employer rate will increase from \$9.50 to \$9.65 per hour. The rate for "small" employers, the training wage that may be paid to employees 20 years old or younger for their first 90 consecutive days of employment, the youth minimum wage for employees younger than 18 years old, and the "J visa" rates will increase from \$7.75 to \$7.87 per hour.

Rhode to Higher Wages: Rhode Island's state minimum wage will increase from \$9.60 to \$10.10 per hour on January 1, 2018, and to \$10.50 per hour on January 1, 2019. However, the measure did not amend a separate tipped employee wage statute, so the minimum cash wage covered tipped employees may be paid will remain \$3.89 per hour, thereby increasing the maximum tip credit employers may apply from \$5.71 per hour to \$6.21 per hour on January 1, 2018, and to \$6.61 per hour on January 1, 2019.

Manufacturing Overtime in Oregon: A new Oregon law should (at least temporarily) end a battle between the state labor department and the state

judiciary concerning daily and weekly overtime requirements in the manufacturing sector. As of August 8, 2017, certain manufacturing industry employers must pay employees the greater of daily or weekly overtime if employees work more than 10 hours in a day and more than 40 hours in a workweek. The law also sets a 55-hour weekly limit for most manufacturing-sector employees.¹

Illinois: Governor Bruce Rauner (R) vetoed SB 81, which would have eventually increased the state minimum wage from \$8.25 to \$15.00 per hour in 2022. The bill's sponsor, Rep. Will Guzzardi (D-Chicago), intends to push his colleagues in Springfield to override the veto.

Minimum Wage, I Don't Think We're in Kansas (City)

Anymore: On August 8, 2017, Kansas City, Missouri residents voted in favor of creating a local minimum wage ordinance that would have taken effect August 24, 2017 were it not for a then-existing state law preempting local minimum wage laws that were not in effect on August 28, 2015, and a separate state law preempting all local minimum wage laws, effective August 28, 2018. Instead of celebrating a hollow victory, advocates have refocused their attention. The City Council of Kansas City passed a resolution asking private employers to voluntarily increase wages, and called on city agencies to increase the wages of 21 city employees currently paid less than the voter-approved rate. At rallies, larger employers were called on to disregard state law and comply with the measure's local rate. In addition to lobbying state representatives, signatures are being collected to put before Missouri voters at the November 2018 election the question of whether to increase the minimum wage statewide.

Better Late than Never: A little over two years after Emeryville, California's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance took effect on July 2, 2015, the City Manager published online its implementing regulations that cover, e.g., calculating business size (which impacts what minimum wage rate applies) and posting requirements.²

Seattle Subminimum Wage to Be Subbed Out:

Less than one month after a related announcement by Seattle Mayor Ed Murray (D), Councilmember Lisa Herbold (D-West Seattle and South Park) and the Office of Labor Standards (OLS), Seattle OLS proposed revising its minimum wage rules to eliminate the ability to pay a subminimum wage to employees with disabilities. Public comments may be submitted until September 6, 2017.

Fighting Ballot Measure with Ballot Measure: We have regularly written about the trials and tribulations of the Flagstaff, Arizona Minimum Wage Ordinance. Although strong voter support led to its passage, post-election opposition sprung up. In the latest episode, a state trial court judge dismissed a lawsuit to keep off the 2018 ballot a measure to overturn the original ballot measure.

How Do You Like Dems' Apples: Although unlikely to advance, S. 1652, the Wage Theft Prevention and Wage Recovery Act, introduced by Senator Patty Murray (D-WA), is another example of Democrats' attempting to highlight differences between themselves and Republicans through legislation. The bill proposes various changes to the Fair Labor Standards Act, including an onboarding notice requirement, a paystub requirement, a provision governing by when final wages must be paid, extending the statute of limitations, a requirement that employers provide copies of, or access to, payroll records, and increased penalties and fines.

We Owe You an Explanation: The Arizona Supreme Court released a full written opinion to explain its March 2017 limited-text holding that Proposition 206, which increased the state minimum wage and created a statewide paid sick leave law, did not violate the Arizona Constitution's Revenue Source Rule, Separate Amendment Rule, and Single Subject Rule.

What's New (For Mathletes): HB 1715 proposes increasing Pennsylvania's minimum wage rates every two months for a two-year period following an initial 60-day period. Under the bill, the minimum wage would increase from \$7.25 per hour to \$9.50 per hour

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and, 60 days later, would increase by 18.75 cents every two months for two years. Similarly, after an initial 60-day period, the \$2.83 per hour minimum cash wage that tipped employees may be paid would increase 24.75 cents every two months for two years. Thereafter – sorry adjustment enthusiasts – annual adjustments to the minimum wage and minimum cash wage would occur based on changes to the consumer price index. HB 1715 also would allow employers with gross annual sales of less than \$200,000 to petition the state labor department to pay non-exempt employees the minimum wage minus 10% of the federal minimum wage (Pennsylvania Minimum Wage -(Federal Minimum Wage (\$7.25) x .10) = Lower Pennsylvania Minimum Wage).

Florida currently annually adjusts its minimum wage based on changes to the consumer price index. SB

166 would add a new layer to equations, beginning with the 2019 minimum wage. The bill would retain annual adjustments, but would require the adjusted figure for 2019 to additionally be increased by \$1.00 per hour, and in subsequent years the annual adjustment would be further increased by \$1.50 per hour. So, e.g., if a 10-cent-per-hour consumer price index-related increase were to occur in 2019, it would really be a \$1.10 per hour minimum wage increase (in future years a 10-cent-per-hour CPI increase would result in a \$1.60 per hour minimum wage increase). But, for the 2024 minimum wage and subsequent year minimum wage rates, straightforward annual adjustments would resume.

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

1. For a more detailed discussion, see Adam Brauner, [Oregon Enacts New Law Impacting Overtime and Maximum Hour Limits for Manufacturers](#), Littler ASAP (Aug. 18, 2017) and David Symes, Jennifer Warberg, and Adam Brauner, [Court Rejects Recent Interpretation of Oregon Overtime Laws That Would Have Required Certain Employers to Double Count Daily and Weekly Overtime](#), Littler ASAP (Mar. 14, 2017)
2. For a more detailed discussion about the rules, see Adam Fiss and Sebastian Chilco, [Emeryville, California Adopts Rules Implementing Its Minimum Wage, Paid Sick Leave, and Hospitality Service Charge Ordinance](#) (Aug. 11, 2017).

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