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The Future of the Minimum Wage—2015 and Beyond

By Brian Dixon and Sebastian Chilco

2014 has been “The Year of the Minimum Wage.” Protests throughout the country, with workers calling for increased wages, drew significant media attention. President Obama and Democrats in both legislative chambers advocated for increasing the minimum wage under the federal Fair Labor Standards Act (FLSA)—which was last raised in July 2009—from \$7.25 to \$10.10 in increments over time. Due to the gridlock in Washington, legislative efforts failed, though the president exercised his executive authority to increase the minimum wage for federal contractors. In the absence of federal action, state legislators acted. Roughly 20 percent of state-level jurisdictions passed minimum wage laws in 2014. Unlike prior legislative actions, which resulted in a single increase, each minimum wage bill enacted in 2014 called for multiple increases, with some also requiring subsequent annual increases. Moreover, a handful of states put the question of whether to increase the state minimum wage before voters in the November 4, 2014 general election.

Recent changes to how minimum wage compliance is measured add to the issue’s complexity. Under the FLSA, compliance is generally determined by dividing an employee’s total compensation for a week by the total hours worked in the week. If the result is equal to or greater than the minimum wage, then the employer is in compliance with its obligations. The calculation may be affected by credits for such things as tips, meals and lodging, and reductions for employee-purchased uniforms and tools. In some states, such as California, the minimum wage must be paid separately for each hour of work.¹ And, for employees paid by piece rate or commission, the minimum wage must be paid separately for time spent in activities that do not directly result in the earning of piece rate or commission compensation.²

Regardless of whether operations exist in multiple states or a single state, employers must carefully monitor developments to successfully address the flurry of minimum wage activity. Moreover, businesses impacted by minimum wage increases are not limited to those with employees paid at or near the minimum wage. Minimum wage changes can also impact overtime-exempt employees in some situations.

This article will discuss minimum wage changes in 2014 that will take place in 2015 and future years. It will also examine the impact minimum wage increases may have on the compensation of some overtime-exempt employees, local minimum wage laws, and recommendations for managing minimum wage increases.

1 See, e.g., *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314 (2005).

2 See, e.g., *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013), *Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013), *Balasanyan v. Nordstrom, Inc.*, 913 F. Supp. 2d 1001 (S.D. Cal. 2012).

Overview of Minimum Wage Increases

Currently, the following 10 states require state officials to examine and potentially adjust the minimum wage annually: Arizona; Colorado; Florida; Missouri; Montana; Nevada; New Jersey; Ohio; Oregon; and Washington.

To date, legislatures in 10 states have enacted legislation which will increase each state's minimum wage in 2015. Also, voters in four states decided on November 4, 2014, to increase the state minimum wage in 2015.

Additionally, several states have enacted minimum wage increases for years following 2015:

- 2016: Alaska; Arkansas; California; Connecticut; District of Columbia; Hawaii; Maryland; Massachusetts; Michigan; Minnesota; Nebraska; Vermont; and West Virginia.
- 2017: Arkansas; Connecticut; Hawaii; Maryland; Massachusetts; Michigan; and Vermont.
- 2018: Hawaii; Maryland; Michigan; and Vermont.

In addition to the 10 above-referenced states that adjust their minimum wage rate each year, the following jurisdictions also plan to adjust their rates annually in the near future.: South Dakota (effective January 1, 2016); Alaska (effective January 1, 2017); District of Columbia (effective July 1, 2017); Minnesota (effective January 1, 2018); Vermont (effective January 1, 2019); and Michigan (effective April 1, 2019).

Minimum Wage Increases by State, Date, and Amount

Following are the increases in the minimum wage that are now known by state, date, and amount for 2015. Note that some states have more than one increase in a calendar year.

Rates Increasing on December 31, 2014

New York: The minimum wage will increase from \$8.00 to \$8.75 per hour. For tipped employees, the minimum cash wage (CW) and maximum tip credit (TC) will vary depending on whether an individual is a service employee, a resort hotel service employee, or a food service worker. For service employees, the CW will remain \$5.65 per hour, and the TC will increase from \$2.35 to \$3.10 per hour. For resort hotel service employees, the CW will remain \$4.90 per hour, and the TC will increase from \$3.10 to \$3.85 per hour. For food service workers, the CW will remain \$5.00 per hour, and the TC will increase from \$3.00 to \$3.75 per hour. Importantly, Governor Cuomo directed the state labor department to convene a Wage Board to review and recommend changes to regulations concerning service employees and food service workers, which could result in changes to how tipped employees are paid in the future.

Rates Increasing on January 1, 2015

Arizona: The state labor department announced that the minimum wage will increase from \$7.90 per hour to \$8.05 per hour. For tipped employees, the minimum cash wage will increase from \$4.90 to \$5.05 per hour, whereas the maximum tip credit will remain \$3.00 per hour.

Arkansas: Voters approved a ballot measure to increase the minimum wage from \$6.25 to \$7.50 per hour. For tipped employees, the minimum cash wage will remain \$2.63 per hour, whereas the maximum tip credit will increase to \$4.87 per hour from, depending on whether an employer was also subject to the FLSA, \$3.62 or \$4.62 per hour.

Colorado: The state labor department has proposed that the minimum wage increase from \$8.00 to \$8.23 per hour, that the minimum cash wage increase from \$4.98 to \$5.21 per hour, and that the maximum tip credit remain \$3.02 per hour. A hearing on Proposed Minimum Wage Order 31 was held on November 4, 2014, and the deadline for comments on the proposals was November 6, 2014.

Connecticut: The minimum wage will increase from \$8.70 to \$9.15 per hour. For tipped employees, the maximum tip credit an employer can claim will be 36.8% of the minimum wage per hour for wait staff, 18.5% of the minimum wage per hour for bartenders, and \$0.35 per hour for other tipped employees.

Florida: The state labor department announced that the minimum wage will increase from \$7.93 to \$8.05 per hour. For tipped employees, the minimum cash wage will increase from \$4.91 to \$5.03 per hour, whereas the maximum tip credit will remain \$3.02 per hour.

Hawaii: The minimum wage will increase from \$7.25 to \$7.75 per hour. For tipped employees, the maximum tip credit increases from \$0.25 to \$0.50 per hour. However, the tip credit can only be taken if wages and tips result in an employee earning at least \$7.00 more than the minimum wage. Accordingly, in 2015, to claim a \$0.50 per hour tip credit, an employee's hourly rate (wages plus tips) must be at least \$14.75 per hour.

Maryland: The first minimum wage change in 2015 will see the rate increase from \$7.25 to \$8.00 per hour. For tipped employees, the minimum cash wage will remain \$3.63 per hour, whereas the maximum tip credit will increase from \$3.62 to \$4.37 per hour. The second minimum wage change is discussed below.

Massachusetts: The minimum wage will increase from \$8.00 to \$9.00 per hour. For tipped employees, the minimum cash wage will increase from \$2.63 to \$3.00 per hour, and the maximum tip credit will increase from \$5.37 to \$6.00 per hour.

Missouri: The state labor department announced that the minimum wage will increase from \$7.50 to \$7.65 per hour. For tipped employees, the minimum cash wage will increase from \$3.75 to \$3.83 per hour, and the maximum tip credit will increase from \$3.75 to \$3.82 per hour.

Montana: The state labor department announced that the minimum wage will increase from \$7.90 to \$8.05 per hour. However, for businesses with annual gross sales of \$110,000 or less, the minimum wage will remain \$4.00 per hour. For tipped employees, Montana prohibits tip credits.

Nebraska: Voters approved a ballot measure to increase the minimum wage from \$7.25 to \$8.00 per hour. The minimum cash wage will remain \$2.13 per hour, whereas the maximum tip credit will increase from \$5.12 to \$5.87 per hour.

New Jersey: The state labor department announced that the minimum wage will increase from \$8.25 to \$8.38 per hour. For tipped employees, the department recommends a minimum cash wage of \$2.13 per hour, meaning the maximum tip credit would increase from \$6.12 to \$6.25 per hour.

Ohio: The state commerce department announced that the minimum wage will increase from \$7.95 to \$8.10 per hour. Additionally, the gross revenue threshold for employers who are not subject to the minimum wage provisions increases from \$292,000 to \$297,000. For tipped employees, the minimum cash wage will increase from \$3.98 to \$4.05 per hour, and the maximum tip credit will increase from \$3.97 to \$4.05 per hour.

Oregon: The state labor department announced that the minimum wage will increase from \$9.10 to \$9.25 per hour. For tipped employees, Oregon prohibits tip credits.

Rhode Island: The minimum wage will increase from \$8.00 to \$9.00 per hour. For tipped employees, the minimum cash wage will remain \$2.89 per hour, whereas the maximum tip credit will increase from \$5.11 to \$6.11 per hour.

South Dakota: Voters approved a ballot measure to increase the minimum wage from \$7.25 to \$8.50 per hour. For tipped employees, the minimum cash wage will increase from \$2.13 to \$4.25 per hour (*i.e.*, half the non-tipped employee minimum wage), whereas the maximum tip credit will *decrease* from \$5.12 to \$4.25 per hour.

Vermont: The minimum wage will increase from \$8.73 to \$9.15 per hour. For tipped employees, the minimum cash wage will increase from \$4.23 to \$4.58 per hour, and the maximum tip credit will increase from \$4.50 to \$4.57 per hour.

Washington: The state labor department announced that the minimum wage will increase from \$9.32 to \$9.47 per hour. For tipped employees, Washington prohibits tip credits.

West Virginia: The minimum wage will increase from \$7.25 to \$8.00 per hour. For tipped employees, the minimum cash wage will increase from \$2.13 to \$2.40 per hour, and the maximum tip credit will increase from \$5.12 to \$5.60 per hour.

Rates Expected to Increase Between February 26 – 28, 2015³

Alaska: Voters approved a ballot measure to increase the minimum wage from \$7.75 to \$8.75 per hour. For tipped employees, Alaska prohibits tip credits.

Rates Increasing on June 1, 2015

Delaware: The minimum wage will increase from \$7.75 to \$8.25 per hour. For tipped employees, the minimum cash wage will remain \$2.23 per hour, whereas the maximum tip credit will increase from \$5.52 to \$6.02 per hour.

Rates Increasing on July 1, 2015

District of Columbia: The minimum wage will increase from \$9.50 to \$10.50 per hour. For tipped employees, the minimum cash wage will remain \$2.77 per hour, whereas the maximum tip credit will increase from \$6.73 to \$7.73 per hour.

Maryland: The second change in 2015 will see the minimum wage increase from \$8.00 to \$8.25 per hour. For tipped employees, the minimum cash wage will remain \$3.63 per hour, whereas the maximum tip credit will increase from \$4.37 to \$4.62 per hour.

Additionally, **Nevada** may increase its minimum wage. The state labor department does not have to publish its decision until April 1, 2015.

Rates Increasing on August 1, 2015

Minnesota: The minimum wage for large employers (gross sales of at least \$500,000) will increase from \$8.00 to \$9.00 per hour, and the rate for small employers (gross sales of less than \$500,000) will increase from \$6.50 to \$7.25 per hour. For tipped employees, Minnesota prohibits tip credits.

Rates Increasing on December 31, 2015

New York: The minimum wage will increase from \$8.75 to \$9.00 per hour. For tipped employees, the minimum cash wage (CW) and maximum tip credit (TC) will vary depending on whether an individual is a service employee, a resort hotel service employee, or a food service worker. Unless the Wage Board makes changes to these rates, the rates will be as follows. For service employees, the CW will remain \$5.65 per hour, whereas the TC will increase from \$3.10 to \$3.35 per hour. For resort hotel service employees, the CW will remain \$4.90 per hour, whereas the TC will increase from \$3.85 to \$4.10 per hour. For food service workers, the CW will remain \$5.00 per hour, whereas the TC will increase from \$3.75 to \$4.00 per hour.

The Impact of Minimum Wage Increases on Overtime-Exempt Employees

Future minimum wage increases impact non-exempt employees and, in certain cases, may affect overtime-exempt employees. Accordingly, employers cannot fail to consider minimum wage increases simply because their employees are paid more than the minimum wage.

FLSA 7(i) Exemption States

Section 7(i) of the FLSA provides that overtime requirements do not apply to an employee of a retail or service establishment if his or her regular rate of pay exceeds 1.5 times the federal minimum wage, and more than half the employee's compensation for a representative period of not less than one month represents commissions on goods or services.⁴ Many states have adopted similar overtime exemptions. To comply with both state and federal law, an employer must ensure that the requirements of both exemptions, and the minimum wage rates on which they are premised, are met.

³ Although the ballot measure states the minimum wage will increase on January 1, 2015, approved measures are not effective until 90 days after they are certified. Alaska. Stat. § 15.45.220. The Alaska Division of Elections' "target election certification date" is November 28, 2014, which would result in the measure taking effect during the final days of February 2015. Although uncertainty exists whether the January 1 or the post-90-days date controls for increase purposes, the state attorney general's office has informally suggested the latter controls. Moreover, once the results are certified, it expects the state labor department to announce the specific date the minimum wage will increase.

⁴ 29 U.S.C. § 207(i).

Executive, Administrative & Professional Employees

Under the FLSA, an individual may qualify as a bona fide executive, administrative, or professional employee if she or he is paid a salary of at least \$455 per week and meets the other requirements for application of the exemptions. The minimum salary requirement under the FLSA is not tied to the FLSA's minimum wage. Most states have similar overtime exemptions, but some states do determine the minimum salary required by reference to the state minimum wage rate.⁵ Employers in these jurisdictions must monitor minimum wage increases to ensure that the minimum salary requirements are met.

Local Living Wage and Minimum Wage Laws

In addition to ensuring compliance with federal and state minimum wage requirements, an increasing number of employers must comply with two sources of local minimum wage legislation. The first type of legislation, "living wage" ordinances, generally applies only to employers that contract with a local government entity. The second type of legislation, "minimum wage" ordinances, applies generally to all employees who work within the local jurisdiction. Living wage ordinances exist in over 100 cities and counties across the United States. Some examples of recently enacted living wage ordinances include King County, Washington (government contractors), and Los Angeles, California (hotels). Local minimum wage laws have been instituted by somewhat fewer local government entities. For example, minimum wage ordinances have been enacted in: Seattle, Washington;⁶ San Jose, California;⁷ Santa Fe, New Mexico;⁸ Prince George's County, Maryland.⁹ Additionally, minimum wage ballot measures were approved by voters in municipalities, including San Francisco (increase) and Oakland (new), California. Local minimum wage laws are being enacted at an increasing pace and employers must monitor such developments on an ongoing basis.¹⁰ Moreover, the local rates exceed not only the federal, but also the state, minimum wage, e.g., Oakland and San Francisco, California (\$12.25 per hour, effective March 2 and May 1, 2015, respectively, compared to the \$9 state rate in 2015), and Santa Fe, New Mexico (\$10.66¹¹ per hour, compared to the state \$7.50 minimum wage).

What Employers Should Do: Recommendations for Managing Minimum Wage Increases

- Have an effective system of monitoring minimum wage increases at all levels.
- Ensure non-exempt employees—tipped and non-tipped—are paid at least the minimum wage. If operating in a state that has a 7(i) exemption or an exempt employee salary basis component that uses the state minimum wage, ensure wage requirements are satisfied.
- Make sure that the minimum wage is paid separately for each hour of work in those jurisdictions which require such strict compliance.
- Update minimum wage posters.
- Inform employees about their new rate(s).
- Train HR, payroll, and managerial employees on increases, posting, and notice requirements, and how to respond to employee inquiries concerning wage rate changes.
- If a third-party payroll processor is used, confirm it is aware of changes and has updated systems accordingly.

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5 See, e.g., Alaska (Alaska Stat. § 23.10.055); California (California Wage Orders Nos. 1-13 & 15-16, § 1); Colorado (7 Colo. Code Regs. § 1103-1(5)); Maine (Me. Rev. Stat. tit. 26, § 663); Oregon (Or. Rev. Stat. § 653.010; Or. Admin. R. 839-020-0004); Rhode Island (R.I. Gen. Laws § 28-12-4.3).

6 See James Zissler and Breanne Sheetz, [Seattle Increases Minimum Wage to \\$15 Per Hour Over Several Years](#), Littler ASAP (June 5, 2014).

7 See Christopher Cobey and Karin Cogbill, [Increased Minimum Wage Is on Its Way: The City of San Jose's New Minimum Wage Ordinance Takes Effect on March 11](#), Littler ASAP (Mar. 7, 2013).

8 See City of Santa Fe, Living Wage.

9 Press Release, Prince George's County Council, [Legislation Increasing Minimum Wage in Prince George's County to \\$11.50 by 2017 Takes Effect Today](#) (Oct. 1, 2014).

10 See, e.g., City of Chicago, [Minimum Wage Working Group](#).

11 The rate may further increase in 2015, as Santa Fe annually adjusts the rate. In January 2014, the city announced the rate would increase to \$10.66 per hour on March 1, 2014.