

September 17, 2014



Jack Schaedel,
Esq.

Questions
on this topic?
CLICK HERE

The Changing Minimum Wage Landscape

By Jack Schaedel

In keeping with American politicians' Labor Day tradition of announcing policy goals impacting the workplace, Los Angeles Mayor Eric Garcetti recently announced a proposal to increase the minimum wage in America's second-largest city to \$13.25 per hour by 2017. According to a follow-up article in the *Los Angeles Times*, the Mayor's proposal drew criticism, but not from the expected source or for the expected reason. Instead, the Mayor's proposal [was criticized](#) for increasing the wage too little and too slowly. Other cities in Southern California are also [considering similar increases](#).

Los Angeles is not out of step with the rest of the country. [As we predicted in December](#), many states and cities are raising their minimum wages. Milwaukee, Wisconsin, for example, increased its minimum wage on July 22, 2014, to \$10.10 per hour. Most American businesses must comply with at least some minimum wage law in addition to the federal Fair Labor Standards Act ("FLSA"). All but five states have a minimum wage law of their own, with 21 states' laws mandating a rate higher than the federal rate of \$7.25 per hour. As we have also previously reported, the federal government is continuing to weigh increases in the federal minimum wage. Employers nationwide therefore can no longer look at California as a high-wage anomaly, but may need a new strategy to comply with varying requirements in different locales.

An effective strategy requires not only knowing the minimum wage (or attempting to comply by finding the nation's highest

minimum wage and paying it everywhere), but also being aware of other rules and laws closely related to the minimum wage. Some examples include overtime, calculation of the rate of pay, definition of hours worked, meal and rest periods, and which employees are protected by which laws.

Overtime. Federal law requires payment of overtime premiums to non-exempt employees after 40 hours of work in a week. Some states, though, including California, require overtime after 8 hours in a day, even if an employee works fewer than 40 hours in a week. California is also among states that require double-time for hours beyond 12 in a day and beyond 8 hours on a 7th workday within a workweek.

Rate of Pay. Different jurisdictions calculate the rate of pay differently. Under federal law, for example, a non-exempt employee who is paid a fixed amount per week but works different hours each week, is said to have a "fluctuating workweek," but this is impermissible in states like California, Missouri, and Pennsylvania.

Covered Employees. Under federal law, a tipped employee may be paid \$2.13 per hour by the employer, as long as the employee's hourly pay, combined with tips, meets or exceeds the federal minimum. Not so under California law, which prohibits a "tip credit" toward the minimum wage. California also does not permit a lower wage for minors or "learners."

Meal and Rest Periods. The FLSA does not require employers to provide meal or rest periods, but 22 states and territories have such requirements. As violations of meal and rest period requirements often result in penalties or consequences based on a state's minimum wage, the financial impact of non-compliance can vary widely from state to state.

Hours Worked. State laws can vary widely from the FLSA in specifying employers' obligations to pay for time employees spend traveling, donning and doffing uniforms, waiting on call, and even sleeping. A critical factor in determining how much an employee should be paid is identifying which of those types of activities must be compensated.

How can an employer operating nationwide keep up with and abide by an increasingly diverse patch quilt of wage/hour regulations? No longer does a one-size-fits-all approach work. Instead, an employer must have legal counsel with nationwide reach and expertise in the specific laws in the states and cities in which it operates, or at the very least it should keep current or have experts on the ground keeping it current. An employee handbook for nationwide use should not specify a minimum wage, or even detailed overtime, hours, and meal/rest period policies. Instead, an

employer should have either a single nationwide handbook, the sections of which specifically refer employees to a state supplemental handbook, combined with state-specific mini-handbooks on wage and hour (and other state-specific) policies, or it should replace its single handbook with complete stand-alone handbooks for each state in which it employs people.

One thing is clear from the nationwide developments. There is no single state that is "bad for business" due to its wage/hour or other laws. Santa Fe, New Mexico in 2014 enacted a minimum wage of \$10.64, while Seattle, Washington's minimum wage will reach \$15.00 by 2017 for large businesses and by 2021 for all businesses. Instead, each economic market should be evaluated holistically based on its available workforce, geography, quality of life, cost of living, and other relevant factors. These can certainly include minimum wage laws, but as roughly 90% of states have some law impacting employers differently than does the FLSA, it is impossible to be a truly nationwide company and avoid certain jurisdictions.

The 60-Second Memo® is a publication of Gonzalez Saggio & Harlan LLP and is intended to provide general information regarding legal issues and developments to our clients and other friends. It should not be construed as legal advice or a legal opinion on any specific facts or situations. For further information on your own situation, we encourage you to contact the author of the article or any other member of the firm. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.



Copyright 2014 Gonzalez Saggio & Harlan LLP. All rights reserved.

Arizona | California | Florida | Georgia | Illinois | Indiana | Iowa | Massachusetts
New Jersey | New York | Ohio | Tennessee | Washington, D.C. | Wisconsin

www.gshllp.com