

TUESDAY, JULY 1, 2014

PERSPECTIVE

Lessons for California's minimum wage proposal

By Timothy J. O'Connell

Now that the city of Seattle has leap-frogged actions in California to establish what will become the highest minimum wage in the nation, and similar efforts are underway at the state and local level in California — Los Angeles officials are considering raising the minimum wage to \$15.37 an hour for workers in large hotels — businesses should brace themselves for attempts to enact heightened minimum wages in cities and towns across the state. Here are a few things the employers in Southern California should know about what happened in Seattle.

What did Seattle do?

In response to pressure from a coalition led by socialist Kshama Sawant, the Seattle City Council unanimously approved a compromise minimum wage proposal submitted by Mayor Ed Murray. The new ordinance amends the Seattle Municipal Code to increase the minimum wage within the city to \$15 per hour, over a phase-in period of several years. Depending on the size of the employer, the minimum wage will reach \$15 per hour in three to seven years, and will be adjusted thereafter for inflation.

Which employees are covered?

The ordinance incorporates the standard “white collar” exceptions from the minimum wage laws, so that executive, administrative and professional employees, as well as outside salespersons, are exempt. Similarly exempt are volunteers, and employees who reside or sleep at their place of employment. Generally, however, all other individuals who work for an employer are covered by the new heightened minimum wage.

What about employees based outside of Seattle?

An employee must receive the minimum wage for all hours worked within the city of Seattle, if the employee works more than two hours within Seattle in any two-week period. An exception excludes employees who are merely traveling through Seattle, even if they stop for meals or refueling within the city.

How much is Washington's minimum wage?

Washington's minimum wage is currently one of the highest in the nation, at \$9.32 per hour. It is indexed to inflation, increasing every January based on



Demonstrators in downtown Seattle, Aug. 1, 2013.

Associated Press

changes in the Consumer Price Index from the previous September to August. If inflation continues for the rest of the summer at the same rate it has for the previous eight months, Washington employers expect to see the minimum wage increased in 2015 to the neighborhood of \$9.47 to \$9.54.

What is the phase-in schedule for Seattle's minimum wage?

The ordinance is effective April 1, 2015. It divides employers into two groups, based on the number of employees employed anywhere in the nation. Employers with more than 500 employees nationwide are “Schedule 1 Employers.” These large employers must immediately increase the minimum wage to \$11 per hour on April 1, 2015. Large employers that do not offer healthcare benefits will see that minimum wage raised in two steps to \$15 per hour by 2017. Large employers that do offer healthcare benefits will not be hit by the \$15 per hour minimum wage until 2018.

The phase-in is slower for employers with 500 or fewer employees nationwide (“Schedule 2 Employers”). For these smaller employers, employees who are paid only a cash wage will have the minimum wage increased to \$11 per hour in 2015. It will be raised \$1 per hour every year thereafter, until hitting \$15 per hour in 2019. Smaller employers who provide their employees benefits, including employees receiving tips, have a longer phase-in period. Employees receiving tips and benefits will receive a minimum wage of \$10. per hour in 2015, gradually increasing to \$15 by 2021. For all employers, the amounts are increased thereafter for inflation.

Are there controversies about the

definitions of Schedule 1 and Schedule 2 Employers?

Very much. One of the biggest controversies is the ordinance's treatment of franchises. Regardless of the size of the actual entity employing the employees, all franchisees are lumped together with their franchisor, and thus almost all of them are treated as Schedule 1 Employers, even if the actual business employing people in Seattle is a small employer under any other definition.

Why did the Seattle City Council treat franchisees so differently from other small businesses?

Frankly, it was political. Franchisees in fast food, hospitality, janitorial and other industries employ many low-wage employees. It was not politically possible to treat these employees as if they were employed by a small employer.

Is the ordinance being challenged?

Yes. The first litigation challenging the ordinance has already been filed in federal court in Seattle. Brought on behalf of franchisees, it challenges the competitive disadvantage these small employers are expected to operate under, when compared with independent businesses of a similar size. That litigation was just filed, and there is currently no timetable for its resolution.

What about teenagers or other new workers?

The ordinance allows the city's Department of Finance and Administrative Services to issue rules establishing a “trainee wage” for workers under the age of 18. The city has not yet published any such regulations, so the actual utility of this potential carve-out remains to be seen.

How have Seattle businesses react-

ed to the ordinance?

Business reactions have been all over the map.

Some employers have discussed increasing prices to accommodate the increased wage. Also commonly discussed is increasing the number of hours employees must work in order to be eligible for healthcare, although regulations concerning ongoing healthcare reform could affect such changes.

Another change being discussed by many Seattle businesses is eliminating the line on credit card bills for “tips” and replacing it with a “service charge.”

Some employers have already publicly shelved plans for additional hiring as they evaluate the impact of the heightened minimum wage.

Are there other potential pitfalls for Seattle?

Yes. Anytime the level of legally mandated costs of employment are raised, the incentive for “under the table” work is raised as well. Problems with the underground economy will undoubtedly increase with the minimum wage.

Additionally, none of the suburbs of Seattle have evidenced any rush to copy Seattle's self-proclaimed bold experiment. Seattle businesses will face increased pressures from their lower-cost competitors outside the city limits.

Finally, the city has not studied the potential distortions arising from the focus on such an extreme minimum wage. Employers that offer healthcare, retirement, vacation or other non-wage benefits will see their preferred compensation model under pressure.

Timothy O'Connell is a partner in *Stoel Rives LLP's Seattle office* and is admitted to practice law in California. He advises and represents employers on virtually every aspect of labor and employment law and litigation, including collective bargaining, unfair labor practice and representation

TIMOTHY O'CONNELL
Stoel Rives

proceedings, labor arbitrations, equal employment and discrimination cases, wrongful discharge litigation, wage and hour counseling and litigation, and general personnel management.