

California Minimum Wage Update



By Todd Scherwin & Colin Calvert

On Monday, April 4, 2016, California Governor Jerry Brown, flanked by union and state government officials in LA, signed into law an increase to the statewide minimum wage from \$10.00 to \$15.00 per hour. The bill, SB 3, was an agreement reached between the Governor and state legislators on March 28 and avoids a similar ballot initiative reaching California voters this November. While the state of New York announced a deal last week that will also increase the state minimum wage to \$15.00 in most areas (while preserving the possibility of a suspension in the rate growth depending on economic factors), California becomes the first state to implement a statewide rate at that level.

The Governor's plan follows previous legislation, signed into law in 2013, which raised the minimum wage from \$8.00 to \$9.00 in July 2014, and to \$10.00 on January 1, 2016.

Rate To Increase Each Year For Next Six Years Except for Small Businesses

Although the scope of this minimum wage increase is historic and unprecedented, the increase to \$15.00 will not happen immediately.

Instead, it would be phased in gradually each year until reaching \$15.00 per hour by January 1, 2022, subject to an exception accommodating certain small businesses.

DATE	NEW RATE
January 1, 2017	\$10.50
January 1, 2018	\$11.00
January 1, 2019	\$12.00
January 1, 2020	\$13.00
January 1, 2021	\$14.00
January 1, 2022	\$15.00

Businesses with 25 or fewer employees will have an additional year to comply, which means that the first increase for them will occur on January 1, 2018, and they will have until January 1, 2023 to reach \$15.00 per hour.

Local Ordinances Still In Effect - For Now

This agreement does not affect higher local minimum "living" wage ordinances. Eleven cities and counties in the state have set their own minimum wages which, in some cases, currently outpace the planned statewide increases. Employers will be obligated to pay the higher local rate until the statewide rate catches up and surpasses it. At that point, employers will have to pay workers the higher state minimum rate.

Opportunity For Flexibility If Needed

As indicated on the state website, in anticipation of signing the bill, Governor Brown explained, "This plan raises the minimum wage in a careful and responsible way and provides some flexibility if economic and budgetary conditions change" by increasing the minimum wage over time that would be consistent with anticipated economic expansion. In his public address, the Governor also made clear that this legislation (which was more conservative than alternatives pushed by organized labor), was necessary to achieve "social justice." At the signing event, Governor Brown explained that "economically, minimum wages may not make sense," but communities have a moral obligation to provide a "living wage," or a wage sufficient to support a family.

Accordingly, the plan is not so rigid that it would prevent intervention in an economic downturn. It permits the Governor "to act by September 1 of each year to pause the next year's wage increase for one year if there is a forecasted budget deficit (of more than one percent of annual revenue) or poor economic conditions (negative job growth and retail sales)." The plan also provides for the possibility of further growth. It provides that "once the minimum wage reaches \$15.00/hour for all businesses, wages could then be increased each year up to 3.5 percent (rounded to the nearest 10 cents) for inflation as measured by the national Consumer Price Index." This plan also will phase in sick leave for In-Home Supportive Services workers starting in July 2018. Some have touted the Governor's one-size-fits-all plan as irresponsible with unforeseeable consequences, but only time will reveal the impact of this new law as it unfolds over the next several years.

Plan Likely Would Replace Ballot Initiative

Importantly, California's plan for increasing the minimum wage, if implemented and passed this year, likely will replace a current public initiative called the California "Fair Wage Act of 2016" fifteen dollars

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31 LOCATIONS

Minimum Wage Initiative (2016). The initiative, currently scheduled to appear on the November 2016 ballot, is designed to increase the minimum hourly wage to \$15 per hour by 2021. The proponents are expected to withdraw the ballot initiative now that the Governor signed the final bill passed by the legislature. The ballot measure lacked provisions allowing the governor to suspend wage increases in difficult or slumping economic times.

Ongoing Federal Efforts To Raise Pay

Outside California, the Governor's plan follows efforts by federal legislators and President Obama to increase the federal minimum wage. Indeed, Governor Brown stated "I'm hoping that what happens in California will not just stay in California but will be exported to the rest of the country." While these plans have been unsuccessful, there are nonetheless some changes already coming under federal law that should be noted. For example, President Obama has approved changes to federal wage and hour regulations that will impact many businesses.

The most significant anticipated change will raise the minimum salary for salaried-exempt white collar employees from \$23,660 to somewhere around \$50,000. This will exceed California's current minimum salary for salaried exempt employees (based on the California minimum wage) and even the salary levels under the Governor's planned schedule, at least for the initial years. These changes are expected to take effect this year.

What Does This Mean For California Employers?

Now that the measure has been formally passed and signed into law, California employers have many things to consider, and several things that can be done now.

In anticipation of the expected minimum wage increases in California, as well as actual and proposed changes to federal regulations, employers in California should act quickly and seek legal counsel to make sure that all elements of their compensation agreements will be adjusted to comport with the applicable minimum wage levels. This includes meal and lodging deductions, commissioned salesperson exemption pay levels and related minimum draws, minimum pay for employees using their hand tools, minimum salary requirements, and a whole host of other considerations.

If you have any questions about this legislative proposal or how they may affect your business, please contact your Fisher & Phillips attorney or one of the attorneys in our California offices.

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