Democratic Congress Seeks To "Raise the Wage" To $15 Per Hour — Is Your Business Ready?

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On the heels of last week's Executive Order by President Biden calling for an immediate increase in the minimum wage for federal government employees and federal contractors, Democratic lawmakers in Congress have proposed a more than two-fold increase in the federal minimum wage from the current $7.25 per hour to $15 per hour by 2025 – and a gradual elimination of the tip credit by 2027. While it remains to be seen whether the *Raise the Wage Act of 2021*, introduced in Congress on January 26, will ultimately be passed and signed into law, employers should expect that there could very well be an increase in the minimum wage on the horizon and prepare accordingly. What should you do to get ready?

Gradual Increase To $15 Per Hour By 2025 Will Strain Businesses

The *Raise the Wage Act* proposes a gradual increase in the minimum wage over the next several years, consistent with several states that have increased their minimum wage rates in recent years (most recently Florida via constitutional amendment). While the minimum wage rate has not increased in over a decade since 2009, employers could see an immediate and significant increase in labor costs of more than 30%, as the proposal increases the minimum wage to $9.50 per hour in 2021 alone, followed by increases in the minimum hourly rate to $11.00 (2022), $12.50 (2023), $14.00 (2024), and $15.00 (2025). Following these increases, the minimum wage rate would be indexed to adjust annually for inflation.

Of course, with increased wages come higher employer-side payroll tax obligations and other related costs, creating additional strains on businesses. This proposal would be difficult for many employers to swallow in an economic boom, but it would be especially debilitating in the current economic environment where businesses of all sizes have struggled during the COVID-19 pandemic (in many cases relying on PPP funds to subsidize payroll at even the current minimum wage rate).

Hospitality Industry Employers Especially Will Suffer If Tip Credit Is Phased Out

Employers in the hospitality industry and other industries that rely on tipped workers should take special note of other proposed changes contained in the bill, which are even more dramatic and problematic for them. Currently, the FLSA permits employers to pay a minimum cash wage of $2.13 per hour and take credit for tips received by the employee up to the $7.25 per hour minimum wage. If an employee does not receive sufficient tips to meet the minimum wage for all hours worked in a workweek, the employer must pay the employee the difference between the cash wage and tips received and the minimum wage. Some states do not permit employers to take a tip credit, while others have a higher minimum tipped wage.

Under the *Raise the Wage* proposal, the tipped wage would immediately increase over 100% from $2.13 per hour to $4.95 per hour in 2021. The tipped minimum wage would subsequently increase to $6.95 (2022), $8.95 (2023), $10.95 (2024), $12.95 (2025), $14.95 (2026), and would be completely phased out in 2027, meaning employers would not be able to take advantage of a tip credit at that time.

Obviously, the substantial increase of more than 700% in labor costs associated with tipped workers will create a significant strain on employers in the hospitality industry. And it is unclear why the policy proposers deem this increase necessary in light of the current requirement that employers ensure employees receive at least the minimum wage after accounting for tips received. This existing stop-gap alone ensures tipped employees would get the minimum wage, even without raising the tipped wage rate — making the complete phase out of the tip credit not just incredibly burdensome, but seemingly unnecessary.

What's Next?

While President Biden and most of the Democratic-controlled House and Senate have come out in favor of the proposal, it should be no surprise that Republicans have largely balked. The House passed a version of this bill in 2019 but it never even saw a vote in the GOP-controlled Senate. The bill would require at least 10 Republican senators to support it in order to overcome the legislative filibuster, unless of course the Democrats launch the "nuclear" option of eliminating the filibuster. Or we could see supporters attempt to frame this proposal through the budget reconciliation legislative process which would require a bare-minimum 50-vote majority for passage.

Regardless of which process they choose to seek passage of the bill, there may some centrist Democratic senators who are firmly against the proposal as crafted. Many believe it is inappropriate to create a national standard due to the wide disparities in cost of living expenses from state-to-state, and in many cases, city-to-city, instead leaving minimum wage policy to be best set by local governments. It is unknown at this time whether the Democrats can even muster 50 votes to support the proposal as currently crafted.

Planning Ahead For An Increased Minimum Wage

Employers around the country will have to wait to see what becomes of the most recent proposal to increase the minimum wage. You should start planning now for at least some increase, whether to $15 per hour or some other (hopefully more reasonable) rate, especially if you are in the hospitality industry.

Keep in mind that an increase in the minimum wage rate to $15 would also increase the overtime premium rate for hours worked over 40 to a staggering $22.50 per hour (currently $10.875 per hour). Moreover, an increase to the minimum wage rate is likely to put upward pressure on wage rates for other jobs, especially those that are currently paid in the $10 to $15 per hour range — as those employees will expect to be paid more in light of the bump in minimum wage for lower skilled or less experienced workers. Further, at $15 per hour, an employee who works 40 hours per week would earn $600. This is just $84 less than the current minimum salary threshold for exempt employees, which would likely prompt regulatory increases of that rate as well.

In any event, you should forecast these changes in your fiscal planning and determine the potential impact on your businesses to prepare for at least some change in the near future. Fisher Phillips will continue to monitor the situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of our Wage and Hour Law Practice Group.

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