

NEW CALIFORNIA LAW WILL RAISE MINIMUM WAGE FOR NEARLY ALL HEALTH CARE WORKERS

Insights
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A new law signed by Governor Newsom on October 13 will significantly impact California health care employers statewide by raising the minimum wage for nearly all health care employees – hourly and salaried – and providing employees a private right of action to enforce the minimum wage requirements. Here’s what you need to know about SB 525, which will become effective June 1, 2024.

Just About Everyone is Covered Under New Law

Coverage under [SB 525](#) is expansive applying to most health care employees and facilities.

“Covered Health Care Employee”

A “covered health care employee” is defined as an employee of a facility that provides patient care, health care services, or other services supporting the provision of health care. The new law doesn’t just apply to nurses, physicians, caregivers, medical residents, interns, or fellows. It also applies to those who provide tangential support to healthcare facilities. This includes janitors, housekeepers, groundskeepers, guards, clerical workers, nonmanagerial administrative workers, food service workers, gift shop workers, technical and ancillary services workers, medical coding and medical billing personnel, schedulers, call centers and warehouse workers, and laundry workers.

Independent Contractors are Considered “Employees”

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The law extends the definition of “employees” to include independent contractors. Independent contractors are covered if there is a contract with the health care facility to provide health care services or services supporting the provision of health care, and the health care facility employer directly or indirectly exercises control over the contractors’ wages, hours, or working conditions.

There is no specific framework for determining when a health care facility employer exercises the requisite degree of “control,” but states that all contractors are considered covered health care employees if they perform work on the premises of the health care facility. This means independent contractors who work on-site and merely provide ancillary services to support health care facilities, will likely be subject to the increased minimum wages.

However, it does include carve outs from coverage for outside salespersons, public sector workers whose primary duties are not health care, waste collection workers and workers providing medical transportation services.

“Covered Health Care Facility”

A covered health care facility includes the following general categories, subject to specific definitions: 1) any facility or other work site that is part of an integrated health care delivery system; 2) a licensed general acute care hospital; 3) a licensed acute psychiatric hospital; 4) a special hospital; 5) a licensed skilled nursing facility, if owned, operated, or controlled by a hospital or integrated health care delivery system or health care system; 6) a patient’s home when health care services are delivered by an entity owned or operated by a general acute care hospital or acute psychiatric hospital; 7) a licensed home health agency; 8) a clinic, including a specialty care clinic, or a dialysis clinic; 9) a psychology clinic; 10) outpatient and teaching clinics; 11) a licensed residential care facility for the elderly, if affiliated with an acute care provider or owned, operated, or controlled by a general acute care hospital, acute psychiatric hospital, or the parent entity of a general acute care hospital or acute psychiatric hospital; 12) a psychiatric health facility; 13) a mental health rehabilitation center; 14) certain licensed community clinics; 15) rural health clinic; 16) an urgent care clinic; 17) an ambulatory surgical center; 18) a physician group; 19) a county correctional facility that provides health care services; and 20) a county mental health facility.

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The New Minimum Wage Requirements and Important Definitions

The employee minimum wage will increase annually, commencing June 1, 2024, according to various schedules dependent on the applicable thresholds for the covered healthcare facility.

Below outlines the applicable minimum wage rates and effective dates by covered health care facility.

	Health Care Facility Employer	Hospitals	Clinics	Skill Nur Fac
First Stage	\$23.00 per hour from June 1, 2024 to May 31, 2025	\$18.00 per hour from June 1, 2024 to May 31, 2033	\$21.00 per hour from June 1, 2024 to May 31, 2026	\$21.00 per hour from June 1, 2024 to May 31, 2026
Second Stage	\$24.00 per hour from June 1, 2025 to May 31, 2026	\$25.00 per hour from June 1, 2033 and until as adjusted as specified	\$22.00 per hour from June 1, 2026, to May 31, 2027	\$23.00 per hour from June 1, 2026 to May 31, 2027
Third Stage	\$25.00 per hour from June 1, 2026 and until as adjusted as specified		\$25.00 from June 1, 2027 and until as adjusted as specified	\$25.00 per hour from June 1, 2027 and until as adjusted as specified

“Health Care Facility Employer” refers to covered health care facility employers that 1) employ 10,000 or more full-time equivalent employees, 2) that are a part of an integrated health care delivery system or health care system with 10,000 or more full-time equivalent employees, 3) that are dialysis clinics, or 4) that are owned, affiliated, or operated by a county with a population of more than 5,000,000 as of January 1, 2023.

“Hospital” refers to hospitals with a high governmental payor mix, an independent hospital with an elevated governmental payor mix, a rural independent covered health care facility, or a covered health care facility that is owned, affiliated, or operated by a county with a population of less than 250,000 as of January 12, 2023.

“Clinics” refers to various clinics, including community clinics, rural health clinics, and urgent care clinics that meet specific requirements as provided under the California Health and Safety Code.

“Skilled Nursing Facilities” refers to health facilities that provide skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis, if owned, operated, or controlled by a hospital or integrated health care delivery system or health care system.

“Other” refers to all other covered health care facilities that do not meet the above definitions

Other Important definitions to determine which schedule applies.

- **“Health care system”** means a parent entity that owns, controls, or operates two or more separately licensed hospitals.
- **“Hospital with a high governmental payor mix”** means a licensed acute care hospital, where the combined Medicare and Medi-Cal payor mix is 90% or greater.

- “Independent hospital with an elevated governmental payor mix” means a hospital, where the combined Medicare and Medi-Cal payor mix is 75% or greater and the hospital is not owned, controlled, or operated by any parent entity with two or more separately licensed hospitals.
- “Integrated health care delivery system” means an entity or group of related entities that consists of one or more hospitals and one or more physician groups, health care service plans, medical foundation clinics, other health care facilities, or other entities, providing health care or supporting the provision of health care. The hospital(s) and other entities must be related either through a parent and subsidiary relationship, joint or common ownership or control, common branding, common boards of directors and shared senior management, or some other contractual relationship.
- “Rural independent covered health care facility” means a hospital that is not part of an integrated health care delivery system and is not owned, controlled, or operated by any parent entity with two or more separately licensed hospitals and meets other specific requirements.

Salaried Employees Also Receive New Wage Floor

In addition to raising the minimum hourly wage, SB 525 also establishes minimum standards for salaried employees. Under the new bill, covered employers must ensure that salaried employee earn a monthly salary equivalent to no less than 150% of the health care worker minimum wage or 200% of the applicable minimum wage, whichever is greater.

Employers Can Apply for Waiver Program

The increased minimum wages under SB 525 will undoubtedly impact covered employers financially. To address the potential financial concerns, the new bill requires the Department of Industrial Relations to develop a waiver program that will allow covered employers to apply for a one-year temporary pause or alternative phase in schedule of the minimum wage requirements.

Covered employers who wish to apply for a waiver would need to demonstrate that compliance with the minimum wage requirements would detrimentally affect the

operations of their business. This determination will be based on various factors including: the actual or likely closure of the covered health care facility or patient services or programs, the actual or likely loss of jobs, the nature of the health care facility, whether the closure of the facility would significantly impact access to services in the region, and whether the covered health care facility is in financial distress.

The waiver program will be developed by the Department of Industrial Relations no later than March 1, 2024, in which more information regarding how to apply for a waiver will become available.

Stay Tuned: Additional Information Will Arrive from Department of Health Care Access and Information

On or before January 31, 2024, the Department of Health Care Access and Information will publish helpful information on the department's website. This information will include a list of all covered health care facility employers with 10,000 or more full-time equivalent employees and covered health care facility employers that are a part of an integrated delivery system or health care system with 10,000 or more full-time equivalent employees. It will also publish a list of all hospitals that qualify as a hospital with a high governmental payor mix, independent hospital with an elevated governmental payor mix, or a rural independent covered health care facility.

Once published, employers should review these lists to determine that they are accurately classified. This is especially important for qualifying hospitals that would be subject to the less stringent scheduling requirements. If a covered health care facility believes they were wrongly excluded from the list of qualifying hospitals, they can make a request with the Department of Health Care Access and Information to be properly classified. Such requests must be made before January 31, 2025.

Main Takeaways

SB 525 will go into effect in June 2024, so you should consult with your employment counsel to determine if the minimum wage requirements apply to your business, what workers are covered under the bill, and whether your business qualifies for a waiver.

You should also be prepared to revise applicable policies to ensure compliance with the new minimum wage requirements and review their wage and hour practices. With a higher minimum wage comes higher meal and rest period premiums, higher reporting time pay, higher split shift premiums, and higher waiting time penalties.

Lastly, since SB 525 extends to independent contractors, covered employers should also review your service contracts to ensure covered contractors are paid in accordance with the increase minimum rates.

Conclusion

If you have questions regarding best practices for updating and implementing policies and procedures in light of these changes, please contact your Fisher Phillips attorney, the authors of this Insight, any attorney in one of [our six California offices](#), or any attorney in our [Healthcare Industry Team](#) for more information. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on this and other employment topics directly to your inbox.