



Bills Introduced To Increase FLSA Minimum Wage

Insights

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Legislation has been introduced in the U.S. Senate (S. 1242) and in the U.S. House of Representatives (H.R. 15) that would increase the federal Fair Labor Standards Act's minimum wage from today's \$7.25 an hour to \$9.25 an hour immediately, and then to \$15 an hour in seven, annual steps. Increases (but never decreases) in the rate would thereafter be pegged to the median hourly wage of all employees as determined by the U.S. Bureau of Labor Statistics.

The official text-as-submitted of these bills is not yet available, but advance versions indicate that both would also phase-out the alleged "tipped-employee minimum wage", as well as the "Opportunity Wage" about which we wrote a couple of weeks ago.

Here We Go Again

The same considerations that have been raised against such increases in the past (including those that led American Samoa and the Northern Mariana Islands to urge in the strongest terms several years ago that they not be subjected to them) remain compelling today.

The measures' sponsors note that "States are not waiting for Congress" to raise minimum-wage rates. But this is true only as to *some* states, and even in their cases it is so only in widely-varying ways. As we have written before, there are substantial disparities among the states (and other jurisdictions) as to whether to set *any* minimum wage; whether to raise an existing minimum wage; to what level to increase an existing minimum wage; and over what timeframe and in what increments to make such action effective. This reveals that the one-size-fits-all, top-down, Washington-knows-best approach enshrined in the FLSA in 1938 is no longer appropriate (if it ever was).

The Bottom Line

Current conventional wisdom is that these bills are "dead on arrival" in a Republican-controlled Congress. But we are not so sure, at least where a potential increase of *some* amount is concerned. History suggests the possibility of a bargain, one under which Republicans will swap a substantial minimum-wage increase for something that supposedly alleviates the impact upon employers.

Consider, for example, whether the "comp time" proposal now being considered in the House and in the Senate could serve as a predicate for such a deal. Whatever else one thinks of this proposal, as things stand it would automatically expire in five years; a jump in the FLSA's minimum wage

undoubtedly will *not* do so.