



# Minimum Wage Hike Proposed: How Likely Is A Bump In Pay?

Insights

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Some lawmakers have plans to raise the federal Fair Labor Standards Act's minimum wage from \$7.25 to \$8.55 later this year, then step it up to \$15.00 per hour by 2024, and subsequently increase it annually in relation to statistical data from the Bureau of Labor Statistics. If this sounds familiar, it should, but we expect some more traction this time around.

## Raise the Wage Act

Not surprisingly, Democrats have introduced the Raise the Wage Act (H.R. 582) in the U.S. House of Representatives and a companion bill (S. 150) in the U.S. Senate this week. In May 2017 we wrote about a similar measure that would move the minimum wage up to \$15.00 in seven annual steps. Almost two years later the goal remains the same – and with two less annual steps such that the same net \$7.75 increase would come about in a more compressed timeframe. It similarly includes both the gradual elimination of certain exceptions and credits and an indexing approach to future increases to the basic minimum wage once at the \$15.00 rate. For today we will put aside the proposed indexing method for the minimum wage rate, except to say that this method simply misses the mark and that ultimately this is likely to be the most underrated, most impactful amendment to the minimum wage.

## The \$15 Mantra - Repeat It Frequently Enough, People Believe It

Racing to play catch up with increases in the most expensive locales in the nation, the proposed first step to \$8.55 per hour would occur only a few months after the Act becomes law (*if it becomes law*). Once again proponents of a federal minimum wage increase emphasize that more than half of the states already have adopted minimum wage rates higher than \$7.25. But clearly there still are many states with minimum wage rates at or below it. And even within those states with higher, there are disparities across the states plus complex differences *within* certain states.

So how does this backdrop support the \$15 mantra? These variations not only do *not* support it, they further demonstrate *the inappropriateness of a national minimum wage in the first place*, but I digress. At bottom, in the long term the bills propose the same exact target rate for approximately the same target date as before. That does not instill confidence that any *actual analysis* has been performed regarding the proposed 2019-2024 rates.

## Proposed Elimination of Minimum Wage Exceptions and Credits

The FLSA provides, under limited circumstances, lower minimum wage rates for individuals with disabilities under Section 14(c) and newly-hired teenagers under Section 6(g). Frankly, the

elimination of these two exceptions are of little consequence on the whole because they rarely are relied on due to their limitations.

On the other hand, phasing out the tip credit at Section 3(m) (addressing the availability of a "credit") has implications for many employers nationwide – except, of course, for those employers that already have thrown up their hands either because of state law limitations or the hassle of trying to comply with federal limitations (real or not). Indeed, while the credit would be reduced in phases, employers in these industries might want to rethink the whole American tipping practice and consider what better options might be out there.

### **The Bottom Line**

We expect that the minimum wage will increase at some point and, given that it has been a decade, this just might be the Congress that does it. The most troublesome pain points in the proposed legislation though should not be overlooked. Employers should consider, particularly if the bills pick up traction, writing members of Congress regarding not just the appropriateness of the rates but the initial timeframe and future issues caused by an *annual, index* method as well.

Hopefully members of Congress searching for a compromise will understand the faults in the proposed bills, and have a better sense of the amendments that the FLSA desperately needs to promote compliance.

### ***Service Focus***

Wage and Hour