You Never Heard Of The "Training Wage"?! (Updated 04/19/13)

Insights
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Pressure continues to mount for raising the federal Fair Labor Standards Act's minimum wage in three stages from the current $7.25 per hour to (so far) $10.10 per hour. Under pending proposals, the rate would thereafter be subject to annual increases linked to rises in the Consumer Price Index.

Leaving aside for now questions about the wisdom of these measures, history suggests that Congressional negotiations are or soon will be underway to strike a bargain – one under which the increases will be passed in exchange for something that ostensibly alleviates some of the impact upon employers. Experience also counsels vigilance in the interests of steering these discussions toward a tradeoff that actually has value.

The Past Should Not Be Prologue
A good example of what *not* to do is found in the gimmick that was proudly held up as a worthwhile exchange for the minimum-wage increases beginning in 1990. This "training wage" temporarily allowed employers to pay 85% of the FLSA minimum wage for up to 90 days to workers less than 20 years old under a variety of restrictions and conditions. The employee could be paid the training wage for another 90 days by a different employer under certain circumstances.

This exception was soon hamstrung by complicated U.S. Labor Department rules consuming more than 9,000 words, 41 sections, and over 15 pages in the Code of Federal Regulations. By the time the "training wage" expired in 1993, whatever limited utility it might otherwise have had was entirely undercut by what one large employer referred to as an "administrative nightmare".

A similar provision was part of the agreement for minimum-wage hikes that began in 1996. We have addressed the still-existing "opportunity wage" elsewhere; suffice it to say that this too has been ineffectual.

Address Matters Of Substance Instead
If there is to be a deal, *especially* a groundbreaking one that puts future increases on "autopilot", then it should consist of truly meaningful FLSA reform. There are many worthy possibilities, but some we have discussed in another post include:

An amendment creating at least a presumption of accuracy for time records kept by non-exempt employees under a clear employer procedure requiring and facilitating accurate timekeeping;

A revision allowing employees to be deemed exempt from the FLSA's minimum-wage, overtime, and timekeeping requirements based simply upon their being paid compensation beyond a specific threshold;

A modification excluding many, most, or even all bonuses and incentive pay from the "regular rate of pay" used to compute FLSA overtime compensation; and

Raising the annual-dollar-volume threshold for FLSA "enterprise" coverage to a level higher than $500,000 (an amount set 23 years ago that equates to over $930,000 today) so as to protect small businesses from the impact of minimum-wage increases.

Another candidate would be permitting the private sector's use of compensatory time off in lieu of overtime pay. A bill to that effect was recently introduced in the U.S. House of Representatives and has already been the subject of a committee hearing; perhaps this is in the offing as a tradeoff. Assuming for the moment that this amendment (as filtered through the inevitable U.S. Labor Department interpretations) would be of appreciable benefit, it would expire in five years. The proposed indexing of the minimum wage would *not* expire in five years; it seems ill-advised to sunset the benefit of the bargain.

Unless employers clearly and vigorously make their desires known to Congress without delay, the most that can probably be expected is something that will turn out to be as meaningless and soon-to-be-forgotten as the "training wage".

UPDATE 04/19/13: The "comp time" bill referred to in the post, H.R. 1406, has been approved by the Committee on Education and the Workforce for consideration by the full House of Representatives. The current version still contains the five-year "sunset" provision.