

CHICAGO TARGETS RETAILERS WITH “LIVING WAGE” PROPOSAL

Insights

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The City of Chicago is considering the enactment of an ordinance which would require certain retailers to pay employees a “living wage” of at least \$10.00 per hour, plus \$3.00 per hour in benefits. Living wage Laws are intended to require a covered business to pay its employees a wage that will allow them to support themselves and their families, without having to rely on government assistance. The proposed ordinance also includes provisions that will make it easier for unions to organize retailers.

While the Chicago ordinance goes farther than most, it is only part of a trend of local and state governments specifically targeting retailers for special treatment.

Focusing On Retailers

While Chicago would not be the first city or municipality to adopt a minimum wage higher than the federal minimum wage, the proposed Chicago ordinance is unique in a few respects. First, the ordinance is targeted at “big box” retailers; it does not have an across the board application to other retail businesses. Second, most of the living wage ordinances adopted by other municipalities regulate the wages and benefits paid to municipal employees and employees performing contract work for the municipality.

The rationale behind these ordinances is that municipalities should not contract with or subsidize companies that pay sub-standard wages. But this rationale is not applicable to the Chicago ordinance. Indeed, the proposed Chicago ordinance appears to be one of the few times that a municipality has specifically targeted a particular private business demographic and set out to regulate its wage and benefits practices.

The proposed ordinance is applicable to any company that operates a retail store within the geographic boundaries of Chicago, and defines a “Large Retailer” as a

company with gross annual revenues of \$1 billion or more. In addition, the indoor premises of the retail store must be a minimum of 75,000 square feet. Based on the foregoing parameters, it is evident that the ordinance's primary target is "big box" retailers such as Wal-Mart, Sam's Club, Home Depot, Lowe's, Costco, Office Depot, Best Buy, and Target.

The Specifics

As previously noted, the ordinance requires a covered business to pay employees a living wage, starting at \$10.00 per hour. The living wage rate would increase annually in accordance with the cost of living. The ordinance also requires a covered business to pay employees a "benefits rate" of at least \$3.00 per hour with annual cost of living adjustments. The benefits rate includes payments made by a covered business for any bona fide fringe benefits, paid directly to the employee or to a third-party on behalf of the employee, such as for benefits related to health care, retirement security, disability, training, education, and paid leave.

In other words, the ordinance requires a covered business to provide health insurance and/or other types of employee benefits in order to meet the minimum threshold. Needless to say, these requirements will certainly increase the cost of doing business for "big box" retailers operating covered retail stores within the City of Chicago. The affected retailers will be forced to pass these costs along to consumers, potentially causing county-based consumers to shop in other counties, and perhaps giving such retailers second thoughts about doing business in Chicago.

Union organizing made easier

In addition to imposing a living wage, the ordinance provides members of the public with a right of access to the public areas of the retail store (parking lots, sidewalks, pedestrian areas, outdoor employee break areas, and other similar outdoor areas) to engage in non-commercial speech with customers and employees. In fact, the ordinance specifically provides that such speech may include distributing literature and soliciting signatures on forms and petitions addressed to public officials, government agencies, religious organizations, business entities, or other community institutions.

That means that the ordinance would allow unions ready access to the employees of "big box" retailers and therefore heighten the prospects of union organizing campaigns. The ordinance also contains a broad antidiscrimination and retaliation provision (including prohibiting the hire of an individual with a criminal conviction unless certain conditions can be satisfied). The ordinance provides for enforcement through the imposition of civil penalties by the City of Chicago and private lawsuits by aggrieved individuals.

Pros And Cons

As expected, the ordinance has sparked significant comment on both sides of the

debate. Religious organizations and church groups, community organizations and social groups, and labor unions strongly favor the ordinance. These proponents contend that the ordinance is necessary to force “big box” retailers to pay their employees a living wage and will serve to “preserve the middle class,” while decreasing government welfare expenditures. Proponents also argue that the ordinance will allow smaller businesses to compete, spur additional spending, and create economic growth in Chicago’s poorer communities.

Several “big box” retailers and pro-business groups vehemently oppose the proposed ordinance. A handful of Chicago aldermen, including those from some of the economically-challenged districts, have also opposed the ordinance out of concern that it will drive needed jobs from their communities, as “big box” retailers may decide that it is not costeffective to do business within Chicago and relocate stores to the suburbs. In addition, some “big box” retailers have argued that the ordinance is unnecessary as they are already paying wages comparable to \$10.00 per hour and providing such employee benefits as health insurance. Opponents also question the moral obligation of “big box” retailers to take care of adult employees, through the proposed living wage, when the government and society has failed to take appropriate measures to address their needs.

Of particular relevance, opponents also point to data from other municipalities that have raised their minimum wage, to amounts less than \$10.00 per hour, finding that jobs are lost, hours are decreased, and that job openings are not filled as quickly. Proponents are quick to point out that the data is not entirely clear that raising the minimum wage will result in a loss of jobs, and argue that it forces the growth of better paying jobs. Constitutional questions as to Chicago’s proposed ordinance have also arisen, since the ordinance only targets a narrow band of retailers, and opponents have stated that legal challenges will be filed immediately if the ordinance is passed.

What The Future Holds

As of late May 2006, thirty-three of the fifty Chicago City Council members have approved the proposed ordinance, enough votes to pass it. In addition, there have been a number of recent public rallies in support of the ordinance. Accordingly, it appears to be just a matter of time before the ordinance is presented for a vote. Some commentators expect the ordinance to come up for a formal vote within the next few months.

Assuming Chicago passes the ordinance, it will carry significant obligations for “big box” retailers doing business within the City, and those considering moving into Chicago or expanding upon their existing operations. Beyond the economic considerations, the ordinance may also serve to increase union organizing activity and campaigns at “big box” retailers as unions will have ready access to the public areas of a retail store. Given this access, and the heightened employee wage and

benefits rates (translation: more union dues), it is no wonder why unions are firmly behind the ordinance.

In addition, if the ordinance proves "successful," similar ordinances could be implemented covering other business sectors, such as in the service and hotel industries. Companies and "big box" retailers doing business outside of Chicago should also take note of this legislation as the above issues readily apply to other communities. Based on the scope of this ordinance, and its implementation in such a large metropolitan community area, other municipalities are bound to monitor its success or failure and examine whether such an ordinance is appropriate for their locale.

Conclusion

As the federal government has resisted raising the federal minimum wage, more and more state and local governments have acted to increase it in their state and particular communities. The Chicago ordinance seeks to take this a step further by focusing on a particular business enterprise and mandating not only a higher living wage, but the provision of employee benefits. This is a major development and companies should keep a close eye on the status of this ordinance as it will significantly impact "big box" retailers doing business in Chicago, and potentially other municipalities across the country.

This Labor Alert is intended to provide an overview of the proposed ordinance, not to provide legal advice on any specific factual matter. For more information contact our Retail Industry Practice Group at retail@laborlawyers.com. or any attorney in our Chicago office at 312.346.8061.