New Minimum Wage Law Signed: First Increase In Ten Years

Insights
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On Friday, May 25, President Bush signed new minimum-wage legislation which Congress passed a day earlier. The federal minimum wage (currently $5.15 per hour) will rise in three steps as follows:

DATE	INCREASE
July 24, 2007	to $5.85 per hour;
July 24, 2008	to $6.55 per hour;
July 24, 2009	to $7.25 per hour.

Although the increases are phased in over two years in increments of $0.70, there is much talk in the press of a "$2.10 increase to $7.25 per hour." Such talk is likely to contribute to some of the inevitable, indirect effects of a change in the minimum wage. For example, there is likely to be speculation and expectation among workers further up the pay scale that they will be receiving wage increases too (sometimes called the "spillover effect").

There are several legal issues and practical issues which employers need to consider in connection with the coming increases in the federal minimum wage.

Increased Employee Sensitivity To Wage Laws

As evidenced by the continuing explosion of wage-hour lawsuits, employees (and their attorneys) are already sensitized to noncompliance with wage-hour laws. With the minimum wage increasing, managers should immediately evaluate both the payroll changes required by the new law and any other changes which may be overdue because of preexisting compliance issues (including those involving overtime-pay practices). Since employees will likely be more alert to pay-related concerns in response to heavy minimum-wage publicity both now and as increases phase in, it is more important than ever that employers ensure their compliance with the pertinent laws.

Retail Industry Employers

Employers taking advantage of the FLSA's overtime exception for commission-paid employees in retail or service establishments should note that a minimum-wage change will have a significant impact. An employer relying upon this exception must ensure that an affected employee's average or "regular" rate in an overtime workweek is more than 1.5 times the minimum wage. Obviously, then, this floor will rise with each step-increase in the minimum-wage.

Employers with Tipped Employees

The new law does not increase the minimum cash wage required for employees for whom a tip credit is claimed, currently set at $2.13 per hour. Nevertheless, with the higher minimum wage, employers of tipped employees need to be sure that the tips received by such employees are sufficient to bring their total wage (the cash wage paid plus the tip credit taken by the employer) to an amount at least as great as the new minimum wage. In most cases, this shouldn't be a problem as long as the employees are making healthy amounts in tips.

State And Local Laws

Employers must, of course, observe any higher minimum-wage rate required by an applicable state or local law. Many states have already raised their own minimum-wage levels beyond the current federal figure, and some have provided for their own thresholds to move in tandem with the federal rate.

Broad Wage-Scale Increases?

A minimum-wage increase can trigger other practical issues, as well. For one thing, employers using grade- or range-based pay systems should think carefully before implementing an across-the-board percentage increase corresponding to hikes in the minimum wage. Raising the entire wage structure will be expensive and might be unwarranted.

For example, if you are satisfied that a particular pay grade is already competitive at a rate well over the new threshold, then raising that grade's minimum, midpoint, and maximum by the percentage in which the minimum wage has increased will boost payroll expenses to an extent which is arguably unnecessary. The alternative of increasing all wage rates on an across-the-board cents-per-hour basis presents the same potential problem, if only to a lesser degree.

Focused Wage Increases?

On the other hand, management still faces pressure to raise above-the-minimum wages by at least some amount due to 1) employee expectations flowing from extensive media coverage of a minimum-wage jump; and 2) the wage compression which could result from meeting the new legal requirements at the lowest pay levels.

For one thing, as the difference dwindles between the salaries of exempt managers or supervisors, versus the hourly wages of first-line employees, this can lead to unhappiness among the higher-level group while at the same time discouraging qualified rank-and-file employees from accepting promotions.

One approach to this problem is emphasizing differences in non-cash compensation or other advantages for managers and supervisors, such as more-desirable health benefits, expanded pension or profit-sharing opportunities, increased vacation or other leave allotments, and so on. If an increase in managers' and supervisors' salaries is nevertheless deemed necessary, this should still be addressed on a case-by-case basis which takes into account market information on pay and benefits.

benefits.

Our Advice

Compliance, of course, is a given. In addition, you should study both the direct and indirect effects of the coming minimum-wage increases. This is actually a good opportunity to evaluate your compliance with all aspects of the wage-hour laws and to implement any necessary changes.

This Legal Alert provides a brief overview of a specific law. It is not intended, and should not be considered, as legal advice for any particular fact situation.