

AN UPDATE ON THE MINIMUM WAGE LAWS IN DC

Federal Minimum Wage

After almost a decade without an increase in the federal minimum wage, Congress enacted new minimum-wage legislation. The legislation provides that the minimum wage, which was \$5.15 at the time the legislation was adopted, will gradually increase over the next two years. Specifically, the minimum wage will increase in the following three stages:

- (1) July 24, 2007, the minimum wage will rise to \$5.85 per hour;
- (2) July 24, 2008, the minimum wage will rise to \$6.55 per hour; and
- (3) July 24, 2009, the minimum wage will rise to \$7.25 per hour.

Employers who use the “tip credit” are permitted to continue paying employees \$2.13 per hour, provided however, that the employer ensures that the employee’s total compensation, including tips, reaches the new required minimum wage.

The impact of the increase in the federal minimum wage is largely dependent upon whether the laws of the state in which an employer is located provide for a minimum wage that exceeds or meets the revised federal rate. Like several other states, the

District of Columbia’s minimum wage rate is higher than the current federal minimum wage rate. Currently, the District of Columbia’s minimum wage is \$7.00 per hour. As such, employers within the District are not required to increase their minimum-wage employees, as their minimum wage rate exceeds the newly-implemented federal minimum wage. If, however, the District of Columbia elects not to increase its minimum wage to \$7.25 on July 24, 2009, employers within the District of Columbia will still be required to adhere to the federal rate and pay their employees \$7.25 per hour, even though the local rate is lower.

The increase in the wage rate inevitably leads to speculation and expectation amongst an employer’s workforce, including those who receive more than the minimum wage, that they will receive wage increases. As such, the employees who are paid more than the new minimum wage will likely benefit from an increase in their wages due to the expectation that they will also receive wage increases. This “spillover effect” can have a significant impact on employers who are unable to bear the increased cost associated with the actual pay increase.

The “spillover effect” has also led to employees’ increased sensitivity regarding wage-hour issues. In addition, due to heightened media attention and publicity

associated with the adoption of the minimum wage increase, employees are more sensitive regarding pay-related issues. As a result, employees are more likely to file a lawsuit against an employer whom they believe has violated local, state or federal wage-hour laws. Under District of Columbia law, an employee who is successful in a wage-hour lawsuit can collect compensatory, liquidated damages, plus costs and reasonable attorneys' fees. *See* DC. Code Ann. §32-1308. Moreover, an employer may be found liable even where the underpayment was due to an oversight or unintentional mistake. Given the foregoing, it is in an employer's best interest to review its payroll policies and procedures to help ensure they comply with applicable federal and state laws. If changes are required to their policies and practices, employers should revise them immediately, thus reducing any potential liability.

D.C. Wage Laws

In addition to the federal minimum wage law, D.C. employers have to comply with D.C. Laws that impact the wages paid to their employees. If these laws are more favorable to employees, then the employer must comply with D.C. law in lieu of the federal laws.

D.C. Living Wage Law

On March 25, 2006, Mayor Anthony A. Williams signed into law the "Way to Work Amendment Act of 2006," which establishes a new minimum "living-wage" of \$11.75 per hour for certain employees working in the District of Columbia. *See* Leg. B. 286, D.C. Cncl., 2005-06 Sess. (D.C. 2006). Under the new law, known as the "Living Wage Act of 2006," the new minimum wage

will be applicable to any nonprofit employer that:

1. Employs more than 50 individuals;

and

2. Either:

- (a) has a contract with, or receives government assistance from, the District government in the amount of \$100,000 or more annually; or
- (b) is a sub-contractor and is paid \$15,000 or more from a D.C. government contract, or receives \$50,000 or more from another organization receiving government assistance.

"Assistance" is broadly defined as a contract, loan, or tax increment financing that results in a financial benefit.

Recognizing the potential fiscal burden the law will place on nonprofit organizations, the law contains several exceptions, enabling certain nonprofits to be exempt from the bill's requirements.

For example, the legislation exempts contracts/agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration that are designed to provide health services.

Additionally, Medicaid provider agreements for direct care services to Medicaid recipients are exempt from the living wage requirement, provided, however, that the direct care service is not provided through a home care agency, a community residence

facility, or a group home for mentally retarded persons.

The law also exempts employers who have previously negotiated collective bargaining agreements in which the parties agreed to lower wages; collective bargaining agreements negotiated after the effective date of the legislation must, however, “result in the employee being paid no less than” the living wage specified in the Living Wage Act.

Whether the Living Wage Act applies to a nonprofit organization will depend, of course, on whether it has more than 50 employees; has D.C. government contracts or receives D.C. government assistance in the amount of \$100,000 or more or is a covered subcontractor.

D.C. Minimum Four Hour Shift Requirement

According to the District of Columbia’s Municipal Regulations, an employer is required to compensate an employee for at least four hours of work for each day on which the employee:

- reports for work under general or specific instructions, but does not receive work, or
- is given less than four hours of actual work.

If, however, the employee is regularly scheduled to work less than four hours a day, the employer is required to pay the employee for the hours regularly scheduled (i.e., not the minimum four hours of work). Should an employer face a situation where it must pay an employee for four hours of work, even though the employee worked for

less than four hours, the minimum wage must be calculated by paying the employee’s regular rate for the hours actually worked, plus payment at the minimum wage for the hours not worked.

Given the foregoing, nonprofit organizations are encouraged to review their payroll policies and procedures to help ensure they comply with applicable federal and state laws. If changes are required to their policies and practices, employers should revise them immediately, thus reducing any potential liability.

D.C. Split Shift Requirement

Under the District of Columbia minimum wage law, an employer must pay an employee for one additional hour at the minimum wage for each day during which the employee works a *split shift*. A *split shift* occurs when an employee’s schedule of daily hours worked is not consecutive (i.e., when an employee’s work day is split into two or more working periods).

The regulations do provide an exception for employees living on the premises of the employer. Thus, if an employee lives on the employer’s premises, the employer is not required to pay an employee an additional hour for each day he/she works a *split shift*.

As noted above, employers are encouraged to review their payroll policies and procedures to help ensure they comply with applicable laws. If changes are necessary, an employer should immediately revise its policies and practices to help insulate it from any potential liability.

D.C. Poster Requirement

Employers subject to federal and District of Columbia's minimum wage laws and/or regulations are required to post a copy and/or summary of the applicable laws and regulations. The poster must be posted in a conspicuous and accessible place in the worksite, such as a communal break room. Should an employer need a poster, the employer may request one from the Mayor, who will provide a poster free of charge. Or, an employer can obtain the poster by visiting the District of Columbia's Department of Employment Services website, at <http://www.does.dc.gov>.

D.C. Wage Payment Law Regarding Separation of Employment

Periodically, an employer is faced with having to deal with an employee who separates from employment, whether voluntary or involuntary. One issue that often arises is the manner in which the employer should pay the employee's wages up to the point of separation. Under the District of Columbia's Wage Payment Law, when an employer discharges an employee, the employer shall pay the employee's wages earned no later than the working day following discharge. See D.C. Code Ann. §§ 32-1301-1310.

If, however, an employee (not having a written contract of employment for a period in excess of 30 days) resigns or quits, the employer shall pay the employee's wages due on the earlier of the next regular payday or within 7 days from the date of quitting or resigning. In the case of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of 4 days from the date of discharge

or resignation for the determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid. Notably, these provisions do not apply if a collective bargaining agreement provides otherwise.

It is important to note that if there is a dispute concerning the amount of wages due, the employer shall give written notice to the employee of the amount of wages which the employer concedes to be due and shall pay such amount within the time required above.

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