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California Raises its Minimum Wage and Expands Paid Sick Leave

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When it wants to, the California Legislature can act with impressive speed. It did so last week on a minimum wage increase bill (SB 3)¹ when, in less than 96 hours, it amended the legislation and sped it through two committee hearings and two final floor considerations. On Monday, April 4, 2016, California Governor Jerry Brown signed the bill, which will eventually raise the statewide minimum wage to \$15 per hour, into law. The bill's proponents said that under this measure, nearly six million California workers—more than one-third of the Golden State's workforce—will receive a raise.²

The amended law provides for six stepped annual statewide increases of the current minimum wage of \$10 an hour, starting on January 1, 2017, for employees working for employers of 26 or more employees. The increases are delayed for one year for employers of 25 or fewer employees.

The increases may be temporarily delayed by the Governor during the six-year phase-in period for state general economic, or state budgetary, reasons.³ The possible delays (called “off-ramps” in the committee reports⁴) may be used only twice during the phase-in period,⁵ with the last increase occurring on January 1, 2023.⁶

Starting August 1, 2022, the California Director of Finance will annually calculate the adjusted minimum wage to be implemented on January 1

1 Senate Bill (SB) 3, authored by Senator Mark Leno (D-San Francisco). The text of SB 3, along with its committee and floor reports, votes, bill versions, and amended text, are all available at <http://leginfo.ca.gov>. The current federal minimum wage is \$7.25 an hour; California's is \$10 an hour.

2 March 31, 2016, Assembly Floor Analysis for SB 3, p. 5.

3 New amended Labor Code § 1182.12(d).

4 See, e.g., March 31, 2016, Assembly Floor Analysis for SB 3, p. 2.

5 New amended Labor Code § 1182.12(d)(3)(C).

6 New amended Labor Code § 1182.12(b)(2)(F). The stated purpose of the phase-in period was to soften the economic blow of what would otherwise be a stark wage jump from \$10 to \$15 an hour. The one-year lag in the phase-in was stated to be a consideration for smaller employers.

of the following year.⁷ The calculation will be based on a specified formula, which includes a version of the consumer price index (CPI).⁸ SB 3's indexing provision allows only increases to the minimum wage – no decreases.⁹

Governor Brown huddled with legislators and some stakeholders the last weekend in March to reach a deal that included raising the state minimum wage, ditching two labor-backed minimum wage initiatives headed for the November 2016 California general election ballot (one of which had already qualified for the ballot), and extending paid sick leave to the state's estimated half-million, in-home supportive services workers.

Legislative suggestions for regional minimum wages, such as those passed in Oregon,¹⁰ and New York, were not considered for inclusion in the version of the bill that passed in California.¹¹ Thus, under SB 3's provisions, employers in El Centro will be paying their minimum wage workers the same rate as employers in San Francisco.

Unlike laws passed by some other states,¹² SB 3 does not bar counties and cities from enacting their own minimum wages that are higher than the state's minimum wage.

The enactment of SB 3 is expected to result in the withdrawal of the Service Employees International Union (SEIU)-backed minimum wage initiative that already qualified for the fall general election,¹³ as well as a second initiative on the same subject that had not yet qualified for the ballot.

Last week's votes in the two committees and in the State Assembly and Senate were along party lines (with a single exception), with Democrats supporting, and Republicans opposing, the bill. The final legislative floor report identified the "co-sources" of the bill as the SEIU California State Council, the United Food and Commercial Workers, and the Western Center on Law and Poverty.¹⁴

Though a significant boost, the new law will not create the first \$15-per-hour rate in the state. For example, the City of Los Angeles in 2015 enacted an ordinance to raise the city's minimum wage to \$15 an hour for larger employers by July 1, 2020.¹⁵

Who is affected?

The scope of the minimum wage's application is set by the amended statute's definition of "employer."¹⁶ This definition is more expansive than some of the 22 other existing definitions of the term in the current

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- 7 New amended Labor Code § 1182.12(c)(1). Note that the initial assessment and possible adjustment in 2022 will be only for the minimum wage rate for employers of 26 or more employees. The initial assessment and possible adjustment of the minimum wage for smaller employers will occur one year later, because of the phase-in lag for that group of employers.
- 8 This process, known as "indexing" (see, e.g., new amended Labor Code § 1182.12(c)(3)(a)), is used to recalculate the periodic change in the minimum wage in at least 15 states, and many municipalities.
- 9 New amended Labor Code § 1182.12(c)(2).
- 10 See Jennifer Warberg, [Historic Minimum Wage Increase in Oregon](#), Littler ASAP (Mar. 4, 2016).
- 11 For a description of the significant differences in regional economic conditions within California, see Ben Casselman, [California's \\$15 Minimum Wage Makes A Lot Less Sense Outside Of Silicon Valley](#) 538 (Apr. 1, 2016).
- 12 See R. Brian Dixon and Sebastian Chilco, [Minimum Wages, Maximum Challenges in 2016 \(2017, 2018, ...\)](#), Littler Insight (Dec. 11, 2015). Missouri and Michigan included provisions preempting local minimum wages higher than the state's, as did North Carolina in March 2016.
- 13 "The Fair Wage Act of 2016" (Initiative No. 1695; 15-0032; text available through the Attorney General's website at <http://oag.ca.gov/initiatives>. Under state law, proponents have until June 30, 2016, to withdraw the measure from the November 2016 general election ballot. The initiative that has not yet qualified is the "Raise California's Wage and Paid Sick Days Act of 2016," and bears AG-issued number 15-0105.
- 14 March 31, 2016, Senate Floor Analysis, pp. 7-11. Listed supporters of the bill included many labor organizations, some cities and mayors, and one county. Listed opponents included many chambers of commerce and other business associations; the California Chamber of Commerce gave SB 3 its "job killer" rating.
- 15 See Shiva Shirazi Davoudian, [The Trend Continues: Los Angeles City Council Tentatively Approves Citywide \\$15 Minimum Wage and Proposes Sick Leave Ordinance](#), Littler ASAP (May 20, 2015). At this writing, some other California jurisdictions that will require \$15 per hour before SB 3, and the date the \$15 per hour rate becomes effective for at least some employers there, include the cities of San Francisco (7/1/18), El Cerrito (1/1/19), Emeryville (7/1/18), Mountain View (1/1/18), Santa Monica (7/1/20), Pasadena (7/1/20, with conditions), and Los Angeles County (unincorporated areas: 7/1/20).
- 16 New amended Labor Code § 1182.12(b)(3): "... 'employer' means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, 'employer' includes the state, political subdivisions of the state, and municipalities."

Labor Code,¹⁷ and includes entities that could be considered joint employers. There are no carve-outs in the definition of an employer for this new amended statute; public sector employers are included.

How much are the increases, and when are they implemented?

The bill sets two minimum wage rates, depending on whether an employer has 26 or more, or 25 or fewer, employees. The increases are delayed for one year for employers of 25 or fewer employees.¹⁸

Date	26 or More Employees	25 or Fewer Employees
January 1, 2017	\$10.50	\$10.00 (current rate)
January 1, 2018	\$11.00	\$10.50
January 1, 2019	\$12.00	\$11.00
January 1, 2020	\$13.00	\$12.00
January 1, 2021	\$14.00	\$13.00
January 1, 2022	\$15.00	\$14.00
January 1, 2023	\$15.00	\$15.00

Can these increases in the minimum wage be delayed for economic reasons?

Yes, but only the Governor can trigger the off-ramps, and only from 2017-2023. In addition, the Governor can only do so twice, based upon specified economic factors and certifications by the California Director of Finance.¹⁹ If a minimum wage increase is suspended by this method, subsequent increase dates are postponed for an additional year.²⁰

What about increases in the minimum wage after January 1, 2022?

Beginning in 2022 for employers with 26 or more employees, and in 2023 for employers with 25 or fewer employees, potential annual increases in the minimum wage for the following calendar year will be calculated by August 1 of each year by the Department of Finance.²¹

Are increases in the minimum wage automatic?

Yes, starting in 2023 for employers with 26 or more employees, and starting in 2024 for employers with 25 or fewer employees, *if* justified by the economic assessment formulas—unless a future Legislature passes, and the Governor signs, a bill providing otherwise.

When does the bill take effect?

As the bill had no urgency clause, it takes effect on January 1, 2017.

¹⁷ See, e.g., Labor Code § 1509(b): “Employer” means any person, partnership, corporation, association, or other business entity that employs 15 or more employees.”

¹⁸ New amended Labor Code § 1182.12(b)(1),(2).

¹⁹ New amended Labor Code § 1182.12(d)(1)-(3).

²⁰ New amended Labor Code § 1182.12(d)(3)(D).

²¹ New amended Labor Code § 1182(c)(1)-(3).

What else is in the bill?

SB 3 fulfilled a promise by the bill's author and supporters of 2013-2014's AB 1522 to extend the state's paid sick leave benefits to qualifying in-home supportive services (IHSS) workers, currently exempted from coverage.²² The application of the revised minimum wage takes effect for qualifying in-home supportive services workers on July 1, 2018.²³

The amendments to the paid leave law also set out, for IHSS workers only, a new and different definition of the current statute's term "full amount of leave." This term now means 8 hours or 1 day of paid sick leave in each year of employment, calendar year, or 12-month period beginning July 1, 2018; 16 hours or 2 days once the minimum wage reaches \$13; and 24 hours or 3 days once the minimum wage reaches \$15.²⁴

Related changes

In addition to the minimum wage law itself, the increases impact other wage and hour requirements that are based on the state minimum wage. Some examples:

- To be exempt from state overtime laws, the salaries of executive, administrative, and professional employees, and private school teachers, must be no less than two times the state minimum wage for full-time employment (i.e., 40 hours per week).²⁵
- Certain commissioned salespersons' earnings must exceed one-and-a-half-times the state minimum wage to be exempt from state overtime laws.²⁶
- Employees paid on a piece-rate basis.²⁷
- Certain employees, and sheepherders, can be required to provide and maintain hand tools and equipment customarily required by the trade or craft if their wages are at least two times the minimum wage.²⁸
- Collective bargaining agreement-based exceptions for numerous California laws require that employees' regular hourly rate of pay not be less than 30% more than the state minimum wage.²⁹

Can the Legislature change any of this before 2022?

Yes. This is a legislative enactment, not a constitutional amendment. Thus, any future Legislature can amend, repeal, or otherwise tinker with any of these statutory changes at any time.

What Steps Can an Employer Take Now?

- Assess whether the business entity is considered an "employer," especially for employees who may be indirectly employed by the organization.

22 Labor Code § 245.5(a)(3). March 31, 2016, Assembly Floor Analysis for SB 3, p. 5. Approximately 468,000 IHSS workers will be affected by this provision. March 31, 2016, Assembly Floor Analysis for SB 3, p. 4.

23 See new amended Labor Code § 246(a)(2).

24 See new amended Labor Code § 246(e)(1)-(3).

25 Labor Code § 515(a); see also Wage Orders, e.g., Wage Order 4, Section A(1)(f), A(2)(g), A(3)(d); Labor Code § 515.8(b)(3).

26 E.g., Wage Order 4, §3(D).

27 E.g., Wage Order 4, § 4(B).

28 E.g., Wage Order 4, § 9(B); Labor Code § 2695.2(b)(1)(sheepherders).

29 Exemption from wage notice requirement (Labor Code § 2810.5(c)(3)); exemption from mandatory paid sick leave (Labor Code § 245.5(a)(1)); exemption from meal period requirements in four specified industries or occupations: construction industry; commercial driver; security officers; electrical corporation, gas corporation, or local publicly owned electric utility (Labor Code § 512(e),(f)(1)-(4)); exemption from personnel records requirements (Labor Code § 1198.5(q)(4)); exemption from alternative workweek schedule requirements (Labor Code § 514; e.g., Wage Order 4, §3(I)).

- Assess compensation for the new minimum wage's effect on payment of overtime, overtime-exempt employees' compensation, and salary compression.
- Update minimum wage posters by the time a new rate takes effect.
- Inform employees about their new pay rate(s) when they take effect.
- Train HR, payroll, and managerial employees on increases, posting, and notice requirements, and how to respond to employee inquiries concerning wage rate changes.
- Be alert to interpretative frequently asked questions (FAQs) and regulations that may be issued by the Department of Industrial Relations on this subject.