



WAGE Watch

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WPI Wage Watch: Minimum Wage and Overtime Updates (December Edition)

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2017 may be so last year, but minimum wage and overtime developments in its final month may forecast what types of measures we will see in 2018. And employers should remember that as of January 1, 2018, state and local minimum wage rates will increase in various parts of the country, and the rate of pay certain exempt employees must be paid will increase in some states.¹

Tip Rule Comment Deadline Extended: The U.S. Department of Labor (DOL) extended the time to comment on its proposal to revise regulations concerning tipped employees that are paid the full FLSA minimum wage by their employer without a tip credit being taken. Commenters have until February 5, 2018 to weigh in on the proposed regulations.

FLSA Penalties Increase in 2018: The DOL is required to annually adjust its civil money penalty levels for inflation. In a final rule that will be published on January 2, 2018 in the Federal Register, the DOL increases the penalty for a repeat or willful violation of the FLSA's minimum wage or overtime provisions from up to \$1,925 per violation to up to \$1,964 per violation.

Cuomo Says No Mo to Tip Credit: New York State Governor Andrew Cuomo (D) directed the state labor commissioner to hold hearings about possibly eliminating

the tip credit that employers may apply toward paying covered tipped employees the minimum wage.

Signed, Sealed, Delivered: The Massachusetts Secretary of State confirmed what proponents of a ballot measure to increase the state minimum wage claimed last month, i.e., sufficient signatures were collected to put the matter before the state legislature. If the item is not approved by the legislature by May 2018, and proponents collect sufficient additional signatures, voters will decide the matter at the November 2018 election.

Local Governments Press State Legislators on Minimum Wage: Even after a state law was enacted to preempt its local minimum wage ordinance, Johnson County, Iowa continued to push for higher wages. Recently, a report it commissioned on the impact of the former countywide ordinance was published, which concluded “there was a larger increase in the average weekly earnings of Johnson County workers in the Leisure and Hospitality sector than in the comparison counties during the period after the minimum wage ordinance went into effect” and “little indication that employment or business activity in low-wage sectors or in the overall economy in Johnson County decreased, or grew more slowly, when compared with the other counties or the state of Iowa.” The county plans to forward the report to state legislators, with hopes of a statewide minimum wage increase.

A resolution supporting “an incremental increase of the [state] minimum wage to \$15 and indexing the minimum wage to future increases in the cost of living” was well received by the Northampton, Massachusetts City Council.

¹ To catch up on 2018 developments, see Lee Schreter and Sebastian Chilco, [The Minimum Wage in 2018: A Rates-Only Update](#), Littler Insight (Nov. 8, 2017), Libby Henninger, Sebastian Chilco, and Corinn Jackson, [WPI Wage Watch: Minimum Wage and Overtime Updates \(November Edition\)](#), WPI Report (Nov. 30, 2017), and Dan Thieme and Sebastian Chilco, [Exempt Employee Pay Minimums Will Increase in 2018 in Various States](#), Littler Insight (Dec. 11, 2017).

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Local Developments: Las Cruces, New Mexico amended its minimum wage law to clarify that the first annual adjustment will occur on January 1, 2020, not January 1, 2018 as some city officials believed.

The Village of Wilmette, Illinois created a working group to study the impact of Cook County's minimum wage (and sick time) ordinance on the village, employers, and employees. Wilmette is one of many localities that opted out of coverage from the county law.

The City Council of Sonoma, California – approximately 45 miles north of San Francisco – voted to progress discussions about implementing a citywide minimum wage, though to date, a specific proposal has not been filed.

Local Laws, State Court: The Third District Court of Appeal of Florida affirmed a state trial court judge's ruling that the City of Miami Beach, Florida did not have the authority to enact its minimum wage ordinance, which would have instituted a citywide minimum wage on January 1, 2018. The court held that Florida Statutes section 218.077 banned local minimum wage laws, and that amendments to the state constitution in 2004 did "not nullify or limit this statute." The city has petitioned the state supreme court to review the decision.

A state trial court judge in Hennepin County denied a request to temporarily enjoin the Minneapolis, Minnesota Minimum Wage Ordinance from taking effect on January 1, 2018 for employers with more than 100 employees, and July 1, 2018 for employers with 100 or fewer employees. Various organizations claim the local ordinance is preempted by state law.

Better Late than Never: Additional state and federal minimum wage year-end developments follow.

S. 2177 and H.R. 4505 – more commonly known as the Restoring Overtime Pay Act of 2017 – seek to amend the FLSA to codify parts of the now-defunct salary rule for white collar employees that the DOL adopted during former President Obama's final term. Specifically, the proposed amendments would require the Secretary of Labor to create regulations that: 1) set the minimum salary amount at a weekly rate equal to the 40th percentile of earnings of full-time salaried workers in the lowest-wage

Census Region (though the Secretary could set a higher minimum salary); and 2) update the minimum salary amount every three years.

New Jersey A. 3794 failed to gain traction in the 2016-17 legislative session and will not carry over into 2018. The bill sought to establish a three-tier minimum wage. The lowest rate would have applied in a county with high unemployment (greater than six percent), and the highest rate in a county with low unemployment (less than five percent); everywhere else the general rate would have applied. Beginning on January 1, 2024, the general rate would have been annually adjusted, and the other rates would be \$1.25 per hour more (low unemployment), or \$1.00 per hour less (high unemployment), than the general rate.

In New Mexico, the state labor department amended various wage and hour regulations, which in part impact determinations concerning whether an employee is exempt from state minimum wage and overtime requirements. More specifically, the regulations no longer define "executive," and the test previously used to determine whether an individual was employed in a bona fide executive capacity – and is therefore exempt – is now applied to determine whether an individual is an exempt foreperson, superintendent, or supervisor.

Although Virginia does not have a law that expressly bans local minimum wage laws, HB 39 proposes to expressly permit local measures, and to no longer exempt from the state minimum wage individuals whose employment is covered by the FLSA.

2017 has seen multiple minimum wage and overtime developments at the federal, state and local levels. In 2018, Littler will continue to monitor and report on minimum wage and overtime developments as they occur.

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