



Courtside *Newsflash!*

New Minimum Wage – Ripples in the Pond



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Anyone who has ever thrown a pebble into a pond understands that even a small pebble can cause some pretty big ripples. Such is the case with well-meaning legislation SB 3 signed by Governor Edmund G. Brown Jr. on April 4, 2016, which will increase the minimum wage to \$15.00 per hour by the year 2022. The increase will be gradual -- \$.50 per hour starting on January 1, 2017, another \$.50 per hour increase on January 1, 2018, and then \$1.00 per hour each January 1st thereafter until January 1, 2022. Small companies (25 or fewer workers) get a small break – their increases start in January 2018 and conclude in January 2023. After reaching the \$15.00 per hour rate, there are automatic increases of up to 3.5% for inflation as measured by the national Consumer Price Index. AB 3 provides some discretionary suspensions (which are unlikely to be exercised), such as for declining state sales tax revenues, labor market decline, or budget deficit. However, there are no suspensions for struggling businesses and a declining economy. The minimum wage requirement cannot be waived by collective bargaining or other agreements.

The “plunk” of the minimum wage pebble will initially have a positive impact in the form of higher wages for hourly workers. However, workers and employers may be disheartened by the ripples that follow. The California Chamber of Commerce expressed the opinion that the impact of SB 3 combined with the recent wage increase in January 2016 on companies with 25 or more employees may be a 50% increase the minimum wage over the next 6 years and up to an 87% increase in 8 years. Projections are that some areas of California will not be able to withstand an 87% increase in minimum wages.

Business Reorganizations

AB 3 does not address the fact that some jobs are just not worth the minimum wage requirement. Food service employers are expected to suffer severe negative impacts. Higher employment costs will result in higher prices which will result in fewer customers, and that will diminish the need for workers. New business models are already appearing in response to the impact of the minimum wage increase on the wages and tips earned by food servers. Some businesses are moving toward

automation and fewer employees; others are implementing no-tip policies and reflecting higher prices for food and service.

“Plunk – ripple – ripple” -- a business is reorganized and workers are terminated.

Higher Overtime Rate

Workers who work for minimum wage and work overtime hours will be paid \$15.75 per hour for regular overtime hours and \$21.00 per hour for double time hours.

“Plunk – ripple – ripple” – a business is paying more in wages and making less profit and workers are terminated.

More Employees Entitled to Overtime Pay

In addition to paying higher hourly wages and more overtime to their existing hourly work force, more employees will be entitled to overtime. Employers may have to re-classify formerly exempt workers as non-exempt workers if they no longer meet the minimum salary qualifications under California’s six exemptions. Nonexempt workers must be paid for all hours worked, including overtime. The current salary requirement is \$800 per week (approximately \$41,000 per year), which is almost twice that of the

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current federal minimum. Under the new law, in 2022 it will go up to \$62,400. Unlike the Federal law, employers in California are not allowed to satisfy up to 10% of the salary basis by payment of non-discretionary bonuses, incentives, and commissions as part of the salary basis. California employers will need to decide whether to increase the employee compensation to maintain their exempt status or reclassify them as hourly workers and comply rules for recording time worked, paying overtime, and re-arranging work schedules. Either way, the morale of the employees may be negatively affected. The reclassification of exempt workers to hourly workers also increases the employer's costs to create and maintain records.

“Plunk – ripple – ripple” -- an employer is paying more in wages, making less profit, may have to terminate workers, shorten hours, or make other negative changes.

Employer Notices Required

California law requires employers to post notices and provide itemized wage statements. The changes in minimum wage must be included in the posters and reflected on the hourly employees' paycheck stubs. Additionally, non-exempt employees must also be given a wage notice when they are hired and again within seven calendar days of any change to any information in the notice, including rate of pay, overtime rate of pay, and allowances that are part of minimum wage (such as meals and lodging).

“Plunk – ripple – ripple” – an employer is incurring additional administrative costs and must reduce staff or cut their hours.

Worker's Compensation, Temporary Disability and SSDI

A higher minimum wage likely would generate an increase in workers' comp-related costs for employers, based on increasing payrolls and higher indemnity benefits that are based on the average weekly wage of injured workers. An injured worker who files a Workers' Compensation claim is entitled to Temporary Disability (TD) compensation while unable to work and under active medical treatment due to the on-the-job injury. TD benefits are paid at a rate of two-thirds of the worker's average weekly salary. The same may hold true for those who qualify for Social Security Disability Insurance (SSDI) benefits because a higher income earned will lead to a higher SSDI payment since the rate is based on taxable earnings. So, an increase in pay rate will increase the TD and SSDI payments.

“Plunk – ripple – ripple” – an employer is required to pay additional higher insurance costs and must reduce staff or cut their hours.

Psychological Factor

Raising the minimum wage of lower paid workers can negatively affect all workers in a company. Employees who are paid just above minimum wage may feel it is unfair that a less experienced and less skilled worker gets a raise and they do not. This can result in resentment, discord, and diminished productivity.

“Plunk – ripple – ripple” – an employer is forced to manage and supervise co-worker issues which takes time away from productive business efforts and could possibly require termination of employees resulting in potential for labor law claims, all of which reduces profits.

Heightened Competition

The intention to help low-wage earners is likely to have the opposite effect. Workers with higher education, more experience and skills will be competing for the same positions, causing jobs to be more difficult to find.

“Plunk – ripple – ripple” – an employer replaces a worker with one who is better qualified to get more for the increased minimum wage paid.

Conclusion

The Department of Labor estimates that the increased salary basis test will result in depriving 4.2 million employees of exempt status. The minimum wage increases are expected to be unbearable by many businesses and will diminish or limit job growth and workplace harmony, resulting in workers having fewer opportunities for employment as employers cut back and struggle to keep their doors open.

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If you have questions about the information, we urge you to seek qualified legal counsel.

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