On June 29, 2022, the Los Angeles City Council ("Council") approved an ordinance that would raise the minimum wage for people working at "covered healthcare facilities" in the city of Los Angeles ("City") to $25 per hour.
This ordinance could have a profound impact not only on the health care workers it targets but also on private health care facilities and the quality and availability of health care services for Angelenos. Notably, because the ordinance only applies to private hospitals and clinics in the City while excluding public health care employers (like UCLA and the County of Los Angeles) and facilities outside City boundaries, it actually does not directly impact a majority of health care employers in the area. The ordinance now awaits Mayor Eric Garcetti’s signature and will likely go into effect before the end of the year.

The Service Employees International Union-United Healthcare Workers West (SEIU-UHW) first sponsored and pushed for the wage increase in the “Minimum Wage for Employees Working at Healthcare Facilities” initiative. Originally, SEIU-UHW’s goal was to bring the minimum wage increase to a vote of the people as part of this November’s general election. After collecting and confirming enough signatures, SEIU-UHW successfully petitioned to get it on the November ballot in Los Angeles. However, on June 21, 2022, the Council chose to adopt the ordinance instead of putting it before voters to decide the issue. Given that the first vote was not unanimous, Council members took a second vote on the measure this week and voted 10-0 in favor of passing the ordinance.

The ordinance states that the new minimum wage is designed to “help address the burnout, retention challenges, and worker shortages affecting health care workers in Los Angeles.” Currently, health care facilities in the City, like the vast majority of employers, are covered by the City’s general minimum wage of $16.04 as of July 1, 2022. The ordinance creates a special minimum wage applicable only to private health care facilities in the City. As drafted, the ordinance purports to prohibit employers from funding the minimum wage increase by laying off workers or reducing benefits or hours, but it is unclear how that could be enforced. Employers that do not comply with the new minimum wage in the ordinance would be subject to the administrative fines and penalties of the Los Angeles Office of Wage Standards Ordinance, such as Sections 188.07 and 188.08, which include penalties of up to $120.00 per day that wages were withheld from an employee. The ordinance also gives health care workers the right to bring a civil action against their employers “on behalf of the public.” In other words, the ordinance appears to allow health care works to bring forth Private Attorneys General Act (PAGA) claims.

However, employers may seek a one-year waiver from the minimum wage requirements in the ordinance if they can demonstrate that compliance with the new minimum wage would raise substantial doubt about the employers’ ability to operate. If an employer can demonstrate by substantial evidence that compliance with the ordinance would raise substantial doubt about the facility’s ability to function, a court of competent jurisdiction may grant a one-year waiver from the $25-per-hour minimum wage requirement.

As noted, the ordinance fails to cover most Los Angeles area health care facilities while also extending coverage to employees performing non-health care functions. Significantly, the ordinance is not restricted to traditional health care workers, such as nurses, respiratory therapists, clinicians, pharmacists, aides, and technicians, but extends coverage for common positions, such as janitors, maintenance workers, housekeepers, guards, food service workers, clerical and administrative workers,
and many other workers if they are working at privately owned hospitals, clinics, and nursing homes. Again, the ordinance excludes health care workers, managers, and supervisors at facilities that are not privately owned.

Opponents of the ordinance note it suffers from major flaws that result in the very inequities it is designed to prevent. For example, an employee who works at a Starbucks physically located inside of a “covered healthcare facility” would enjoy the minimum wage increase, whereas a Starbucks worker across the street from the facility would not. Therefore, people doing the same exact job in close proximity to each other will not be paid the same wages. Further, health care facilities will become incentivized or forced out of financial necessity to close down the cafeterias, gift shops, coffee shops, and similar services physically located within the facility to cut down on costs as a result of this wage increase. This, of course, would result in lost jobs for many employees and a diminution and deprivation of services for patients and their families.

Another significant disparity of the ordinance is its definition of “covered healthcare facility,” which creates an arbitrary discrepancy and exclusion for publicly owned facilities and indiscriminately covers all private health care providers irrespective of whether they are a for-profit entity or one of the many nonprofit private hospitals in the City. While the minimum wage increase affects health care workers at both for-profit and nonprofit private hospitals and other health care facilities, it excludes county- and government-owned hospitals even though those public facilities employ a large percentage of the City's health care workers. Given that the purpose of the ordinance was to acknowledge and reward health care workers who put themselves and their families at risk during the pandemic, the choice to exclude such a large percentage of these workers is counterproductive.

Hospital representatives have taken note of this unfair discrepancy, emphasizing that the measure is flawed because it creates pay discrepancies among workers at many health care facilities across the City that feel equally burned out and unappreciated. The No on the Los Angeles Unequal Pay Measure coalition, funded by the California Association of Hospitals and Healthcare Systems, has been vocal about its criticisms of the measure. The coalition’s website has a fact sheet that highlights the disparities between the health care employees who would enjoy the wage increase and those who would not. For example, the coalition’s fact sheet demonstrates that a food service worker at a private hospital would receive the higher minimum wage, but a clinician at UCLA or a county hospital would not. This fact sheet breaks down the many types of employees who would be excluded from the ordinance. The coalition’s website also discusses how the measure would increase costs to patients, consumers, and employers that are “already struggling to make ends meet” and “deepens the inequities in our health care system” in the wake of the COVID-19 pandemic.

As a result of these discrepancies in the ordinance, opponents argue the measure will have the opposite effect of its original purpose, which was to combat the increased difficulty of hiring and retaining hospital employees in the “Great Resignation.” Exhausted employees in county hospitals, who work in communities that need them the most, will be encouraged to leave their vital positions for a private hospital when they see their counterparts at covered facilities making more
than they are. Likewise, despite the ordinance’s attempts to prevent layoffs, the increased costs will inevitably drive some facilities to reduce services, relocate, or close while also driving up both the cost of care and a cup of coffee in the cafeteria at a time when Angelenos are already experiencing historic inflation.

In response to criticism that the measure only benefits health care employees at privately owned hospitals, SEIU-UHW spokesperson Renée Saldaña stated that “city government cannot legally set rates for county and state workers” and that privately owned hospitals made “record profits during the pandemic” whereas other health care facilities did not. However, this statement is not entirely accurate. Privately owned hospitals did not make “record profits” during the pandemic; instead, subsidies from the federal government helped hospitals survive during the pandemic, which otherwise has resulted in financial strain on the health care provided. In a study conducted by researchers from the Johns Hopkins Bloomberg School of Public Health, published in JAMA Health Forum on May 13, 2022, it was found that hospitals overall lost an average of $1.00 for every $100.00 earned from patient care activities in the pre-pandemic period, leading to an operating margin of negative 1 percent. In 2020, that number dropped to between $7.00 and $8.00 lost per every $100.00 earned, an operating margin of negative 7.4 percent. These financial losses can be attributed to the deferral of elective procedures and non-emergency appointments and a shifted focus on COVID-19 patients who flooded hospitals, a large percentage of whom were uninsured. In other words, researchers found that hospitals suffered financially during the pandemic and that relief funds “provided an important lifeline to keep financially weak hospitals up and running.” Moreover, the study found that hospitals serving disadvantaged patients were the most vulnerable to financial losses, which further underscores the illogical and unfair aspects of the ordinance.

**What Los Angeles Employers Should Do Now**

Assuming, as is likely, that the ordinance is signed into law, employers should do the following:

- Contact legal counsel to determine whether the ordinance applies to your facility.
- Work with legal counsel to determine how best to respond to, and comply with, the ordinance.
- Determine whether your facility qualifies for the one-year waiver, and prepare substantial evidence that compliance with the ordinance would impair the facility’s ability to operate (“substantial evidence” includes documentation of your financial condition, the condition of a parent or affiliated entity, and evidence of the actual and potential direct financial impact of compliance with the ordinance).
- Avoid laying off workers or reducing benefits or hours to cover the costs of the new minimum wage hike.

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