For Wage and Hour Changes, Look Locally

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In the areas of salary thresholds and minimum wages, employers may expect little to change at the federal level under a Trump administration; however, there’s plenty of change afoot at the state and municipal levels:

Salary Thresholds

Federal Level

The final year of the Obama administration found employers’ human resources (“HR”), finance, and legal departments busy preparing to implement, and generally lamenting, a final rule released by the U.S. Department of Labor (“DOL”) that would increase the salary threshold for exempt executive, administrative, and professional employees from $23,660 (set in 2004) to $47,476, effective December 1, 2016 (“Final Rule”). However, those preparations came to a grinding halt on November 22, 2016, when, in a lawsuit filed by 21 states to overturn the Final Rule, Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas issued a preliminary injunction preserving the status quo, pending decision on the DOL’s authority to have adopted the Final Rule, as well as the rule’s validity.
During his presidential campaign, Donald Trump did not flat-out reject the Final Rule but was quoted as stating, “We would love to see a delay or a carve-out of sorts for our small business owners.” Now, however, with the selection of Andrew Puzder, a critic of the Final Rule, as Labor Secretary and with the cover of federal court’s injunction, it is virtually certain that the Trump administration will abandon the Obama administration’s effort to uphold the Final Rule.

State and Municipal Levels

The Final Rule may be moribund, but the push to increase the salary threshold for exempt employees likely is not. While there do not appear to be any currently pending bills or proposed rules to increase state salary thresholds for exempt employees, the forces that led to the Final Rule may find traction at the state level.

On December 31, 2016, for example, New York’s Department of Labor changed the state’s salary threshold for exempt executive and administrative employees from a uniform $675 ($35,100 annually) per week throughout the state to a threshold that depends upon location and, in New York City, employer size as well. New York State’s rule also provides for a period of annual increases to the thresholds—again, depending on employer size and location.

In California, the threshold for exempt status is set at twice the minimum wage, which, as of January 1, 2017, went up to $10.50. Thus, in California, the minimum salary for exempt employees is now $43,680/year.

Employers will need to remain vigilant in reviewing exempt positions in states with increased thresholds to determine whether (i) an employee’s salary should be increased or (ii) the employee’s position should be reclassified as non-exempt, keeping in mind that to be properly classified as exempt, the employee’s job must meet the primary duties tests for exempt classification and the employee must otherwise be treated as an exempt employee (e.g., not subject to impermissible salary deductions).

It will also be ever more important for employers to stay abreast of the minimum wage requirements of the locations in which they do business, keeping in mind that not all changes happen on January 1.

Minimum Wages

Federal Level

Former President Obama’s push to increase the federal minimum wage, which has been $7.25 since 2009, to $10.10 hit a predictable roadblock in Congress, which is unlikely to be challenged by the new administration. Puzder, CEO of the company that franchises the fast-food restaurants Hardee’s and Carl’s Jr., is on record as opposing an increase to the federal minimum wage, suggesting that the better economic policy would be an approach in which states and municipalities adjust minimum wages “based on regional economic conditions or local needs.”

President Trump, for his part, has both supported and opposed a $10 federal
minimum wage. He is also on record, however, for stating his preference for minimum wage hikes to happen at the state level, not through federal enactment.

State and Municipal Levels

The year 2017 brought minimum wage increases to 19 states and the District of Columbia. In November 2016, voters in Arizona, Colorado, Maine, and Washington approved ballot measures to raise their respective minimum wages. Following the recent trend, these new laws will raise the minimum wage incrementally through 2020. Arizona ($10), Colorado ($9.30), and Maine ($9.00) will each see annual increases to bring their minimum wage rates to $12 in 2020. Washington State’s minimum wage ($11) will rise incrementally to $13.50 by 2020.

Currently, five states, Alabama, Louisiana, Mississippi, South Carolina, and Tennessee, have no minimum wage law, meaning that the federal rate applies. For the rest, cost-of-living disparities between and even within states—as well local politics—has led to a crazy quilt of laws regarding minimum wage rates and how they are calculated. Several states match the current federal minimum wage of $7.25 hour. Two states, Georgia and Wyoming, have minimum wages of just $5.15 (although, with limited exception, employees in those states must be paid the federal minimum wage). For states with minimum wages higher than the federal rate, the current rates range from $8.10 (Florida) to $11.00 (Washington, as well as the District of Columbia). Many states have legislated annual adjustments based on cost-of-living indices, and other states have annual increases to gradually raise their minimum wages to a legislated maximum.

In addition to higher minimum wages and mandated incremental increases, some states have also enacted minimum wage laws that set different rates depending on the employer’s size and location. New York’s minimum wage law, for example, offers a trifecta of different rates for small and large employers, annual changes to the minimum wage rate, and regional variations. Added to this, many municipalities across the country have passed their own minimum wage laws, which exceed the rates set by their respective state statutes.

More change may be expected. In New Jersey, for example, Republican Governor Chris Christie vetoed a minimum wage bill that would have pushed the state’s minimum wage to $15 over time. If a Democratic governor is elected in New Jersey in November 2017, however, there is a good chance that the $15 minimum wage initiative will be revived and become law.

In conclusion, the state and municipal levels are where recent action has been in the areas of salary thresholds and minimum wages and, no doubt, where the action will continue to be, even after Trump takes office. Multistate employers may well need a scorecard to keep up.

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