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Seattle's New $15 Minimum Wage Raises Many Questions

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On June 2, the Seattle City Council voted unanimously to approve a $15 minimum wage ordinance. Mayor Ed Murray signed it the next day. The ordinance provides that all employers will be required to reach the $15 per hour wage over a period of years, depending on their number of employees. Very generally speaking, and subject to a number of specifics touched on below, employers with 500 or fewer employees will be required to pay $10.00 an hour starting on April 1, 2015, and will make annual increases culminating in $15.00 an hour in 2021. Employers with more than 500 employers will need to pay $11.00 an hour starting in April 2015, and will reach $15.00 an hour in 2017 (2018 for employers who contribute to employee health insurance premiums).

Employers are grappling not only with how to manage the logistics of the increased wage, but with how to read the ordinance's many definitions and exceptions. In the coming months we expect to see rule making and legal challenges that will hopefully clarify the impacts of the ordinance, so stay tuned. This blog post addresses a few of the questions we've been hearing so far.

Am I a Schedule 1 or Schedule 2 Employer?

Schedule 1 employers generally have more than 500 employees, while Schedule 2 employers generally have 500 or fewer employees. But it's not that easy. If you're a franchisee, as defined in the ordinance, you need to count all the employees employed by any other associated franchisee anywhere in the U.S.

Why does it matter which schedule I'm in?

Whether you are regarded as a Schedule 1 or Schedule 2 employer is important for two primary reasons: it determines how long you have to reach the minimum wage, and it determines whether you can consider tips and employer-paid healthcare premiums as part of the wage.

Schedule 1 employers reach the minimum wage of $15.00 more quickly, and while their contribution to health insurance premiums can delay the $15.00 minimum wage by a year (from 2017 to 2018) neither such contributions, nor tips, can be used to offset Schedule 1 employers' obligations.

Schedule 2 employers have longer to reach the $15.00 minimum wage (seven years, by 2021), and prior to reaching that number, they can use a combination of wages and tips and/or premium contributions to meet their obligations.

Some of my employees work occasionally in Seattle. Are they covered?

Hours in Seattle are covered if the employee works at least two hours in Seattle during each two-week period. If you have employees who do any work in Seattle, you should carefully monitor the amount of such work and be prepared to pay the applicable minimum wage for hours spent in Seattle.

The ordinance does provide that time spent in Seattle solely for the purpose of traveling through Seattle from a point outside Seattle to a destination outside Seattle (for instance, a drive on I-5 from Renton to Bothell) will not be considered work in Seattle so long as there are "no employment-related or commercial stops in Seattle except for refueling or the employee's personal meals or errands."

If two or more businesses are related, will their employees be counted together or separately?

The ordinance provides that for non-franchise employers (franchises are addressed in more detail below), separate entities may be regarded as an "integrated enterprise" for the purposes of counting employees and determining whether an employer is covered by Schedule 1 or Schedule 2. The concept of "integrated enterprise," with similar (or identical) multi-factor tests, exists in other employment laws, including Seattle's own Sick and Safe Leave ordinance and the federal Family and Medical Leave Act (FMLA). The ordinance also contains an important exception:

"There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this section as long as (1) separate legal entities operate substantially in separate physical locations from one another, and (2) each separate legal entity has partially different ultimate ownership."

This exception invites creative thinking about structuring (or restructuring) ownership and operations.

Is my business a "franchisee"?

The ordinance defines a franchise as a certain kind of written agreement providing benefits (including association with a trademark) in exchange for payment of a "franchise fee." Many employers know if they have a franchise agreement, but others may have business arrangements that are not called "franchise agreements," (for instance "management agreements") that might qualify under the ordinance. If you determine that you are a

franchisee, you will need to learn how many employees are employed by associated franchisees anywhere in the U.S. If that number is more than 500, you will be considered a Schedule 1 Employer regardless of how many employees you employ.