



## Seattle Issues Final Rules for City's Minimum Wage Ordinance

By Judd Lees

On September 29, 2017, the Office of Labor Standards (“OLS”) for the City of Seattle published the final proposed revisions to the administrative rules for its Minimum Wage Ordinance, which, if approved, will take effect on January 1, 2018. These are rule revisions to Ordinance No. 124490, which took effect on April 1, 2015 and largely arise out of passage of statewide Initiative 1433 last year. The Ordinance is designed to transition large and small employers to a minimum wage of \$15 an hour on a graduated basis. Small employers (those with less than 500 employees), are to reach this threshold by 2019, unless the employers pay for medical benefits, in which case the \$15 threshold is to be attained by 2021. Large employers have already reached the \$15 minimum this year unless their employees are receiving creditable health care benefits, in which case the wage threshold will be reached in 2018. Below are some of the key rule changes, which will be voted on by the Seattle City Council before the end of the year in order to take effect in 2018.

### **Definition of Covered Work**

The trigger for application of the Ordinance to all employee hours within the geographic boundaries of the City is that employees either (1) be based in Seattle or (2) work in the City on more than an “occasional basis.” The new rules define this threshold as requiring that the employee Seattle work hours equal or exceed 50% of his or her total hours in a given year. Employers must therefore adopt a fixed, consecutive 12-month period of time, whether a calendar year, a tax year, a fiscal year, a contract year, or a year commencing on the employee’s hire date. For new employees who have not yet worked a year, the determination must be based on “the employer’s reasonable expectation” of the hours spent within and without the City. In the event employees do not or will not meet this threshold and therefore only work in Seattle on an “occasional basis,” the existing rules call for coverage during a two-week period only if the employee performs more than two hours of work within the City during such a period.

### **Credit for Employer Payments other than Wages**

With regard to employer credits for employee payments other than wages, OLS will allow employer credit for payments to medical benefit plans to satisfy the minimum wage only if the employee is enrolled and eligible to receive benefits. The two exceptions are: (1) employer payments made during a waiting period for employee eligibility; and (2) employer payments made on behalf of an employee enrolled in a Taft-Hartley multiemployer health and welfare plan. Service charges paid to the employees by customers, such as gratuities, delivery charges or portorage charges, may also count toward commissions or the City’s minimum wage but only if the employee’s compensation is above the Washington State minimum wage.

Employers must keep accurate records of the creditable employer payments and employers must keep records of the actuarial value of medical benefits.

### **Removal of “Disability” Exemption**

The most controversial proposed rules change is the removal of the authority of the Director of OLS to issue Special Certificates which allow employers to exempt employees with disabilities from the reach of Seattle’s new minimum wage. The elimination of the possibility of subminimum wages for people with disabilities mirrors state law and as well as statewide Initiative 1433.

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