

Publications

Labor and Employment Alert: Cleveland Proposes Enacting Its Own \$15/Hour Minimum Wage

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Faced with a petition drive to put a minimum wage proposal on the November ballot, Cleveland City Council must now consider an **ordinance** that would mandate a \$15 per hour minimum wage for those employees working within Cleveland's geographic boundaries. This would almost double the current minimum wage for Cleveland workers as Ohio's statewide minimum wage is currently \$8.10 per hour.

As currently proposed, the ordinance would increase the minimum wage to \$15 per hour on January 1, 2017. Beginning on January 1, 2018, that minimum wage would increase annually for inflation. Employers that employ 25 or more employees within the City's geographical boundaries would have to pay that wage to all employees, except for (1) individuals employed by a solely family owned and operated business who are family members of the owner; (2) individuals employed on a casual basis on the employer's property or residence; (3) individuals exempt from the minimum wage under Ohio law; and (4) tipped employees, for whom the employer can take a tip credit of up to one-half the minimum wage.

The ordinance prohibits agreements to pay employees less than the minimum wage and forbids employers from reducing the wage rate of any employee as a result of the ordinance (so this precludes an employer from off-setting a minimum wage increase for some employees by reducing the wages of other employees). The ordinance also protects employees from discrimination or termination for exercising or enforcing their rights under the ordinance. An employee may bring a civil action for a violation, and the ordinance provides for double damages plus attorney's fees and costs.

The ultimate fate of the ordinance is unclear. First, under the City charter, the council now has 60 days in which to hold hearings on the ordinance and 30 days in which to hold a vote – which could occur no later than the middle of August – to pass the ordinance as proposed by the petitioners, reject it completely, or pass an amended version. The petitioners can have the original ordinance placed before the voters in November if city council amends or rejects the ordinance.

Second, even if passed by the voters, the ordinance may be unconstitutional. While the Ohio Constitution provides cities with broad authority under Home Rule to enact legislation relating to self-government and general health, safety, and welfare, Home Rule authority is not unlimited. Ohio courts have held that the Ohio Constitution limits the ability of municipalities to adopt laws that conflict with the Ohio Minimum Wage Act. For example, in *City of Kettering v. SERB*, the Second Appellate District noted that, “We have held that the Minimum Fair Wage Standards Act which [applies] to all major employe[r]s in Ohio, both private and public, takes precedence over a municipal wage ordinance.”

We will report on any significant developments as the ordinance winds through the legislative process. In the interim, contact your Vorys lawyer if you have questions about the ordinance or Ohio’s minimum wage law.