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Labor & Employment Alert

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12 California cities increase minimum wage — Effective July 1, 2023

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Starting July 1, 2023, Employers *in every city and municipality listed below* will be required to pay more than the state minimum wage (\$15.50 per hour) due to local laws requiring higher hourly rates.



What's the Impact

- / Employers who employ minimum wage employees will have to evaluate the cost of the minimum wage increases required by city (i.e., municipal) laws on their balance sheets.
- / Higher minimum wage obligations often come with “transition pains” in implementation (i.e., notifying payroll, or an outside payroll vendor), which can be delayed. Such delays can lead to violations of law and the accrual of penalties.
- / Wage & Hour lawsuits that encompass employees working in the below cities may experience an increase in exposure for claims arising from the alleged non-payment of minimum wages.

Effective July 1, 2023, the below cities (i.e., municipalities) are increasing the required minimum wage for non-exempt employees:

Municipality	Previous Minimum Wage Rate Per Hour	New Minimum Wage Rate Per Hour
Alameda	\$15.75	\$16.52
Berkeley	\$16.99	\$18.07
Emeryville	\$17.68	\$18.67
Fremont	\$16.00	\$16.80
City of Los Angeles	\$16.04	\$16.78
County of Los Angeles (unincorporated areas only)	\$15.96	\$16.90
Malibu	\$15.96	\$16.90
Milpitas	\$16.40	\$17.20
Pasadena	\$16.11	\$16.93
San Francisco	\$16.99	\$18.07
Santa Monica	\$15.96	\$16.90
West Hollywood	\$17.00/\$17.50 ¹	\$19.08

“It’s 5:00 pm. Do you know where your remote workers are?”

California has a diverse and bustling economy. Chances are that you have at least one employee that travels regularly for work. If those employees perform work in the municipal boundaries of the cities described in this article, it is possible they must be compensated at a higher rate than their standard rate of pay where your business is located. In other words, it is possible for your employees’ minimum wage to be temporarily “bumped-up” while working in one of these cities (i.e., or within the municipal borders thereof). Failure to pay that minimum wage can, in turn, lead to claims for unpaid wages under California law.

¹ Previously the minimum wage rate per hour for employers with fewer than 50 employees was \$17.00, and \$17.50 for employers with at least 50 employees. Now, there is no distinction and the minimum wage rate for all employees is \$19.08.

These municipal “bumped-up” minimum wages mean more than just higher payroll; they can also trigger additional (or at least more nuanced) recording and reporting obligations.

California law requires employers to keep accurate “payroll records showing the hours worked daily by and the wages paid to . . . employees employed at the respective plants or establishments.” (Cal. Lab. Code § 1174.5(d).) This means that employers may be required to list a traveling employee’s “bumped-up” minimum wage separately from their standard wage on their paystubs, or be subject to penalties and the chance of a lawsuit.

What’s the worst that could happen? Labor Commissioner claims, lawsuits, and penalties

California has an aggressive (if not draconian) penalty scheme that punishes the non-payment of wages in multiple ways, often leading to penalties that are 5x – 500x the actual unpaid minimum wages.

For example, suppose you had a minimum wage employee travel to West Hollywood for the day, and that under the terms of that municipal ordinance, the higher minimum wage of \$19.09 applied. It is the position of the California Department of Labor Standards Enforcement that:

The effect of having different federal, state, and local minimum wage rates governing a particular worker or location is that the employer is required to pay the highest of those rates applicable to the employee at a particular time. In most parts of the state (as of 1/1/17) that will be California’s minimum wage rate, but in some cities, it will be a higher local minimum wage rate.

Claims that an employer who (a) did not pay the higher city minimum wage, or (b) record the hours worked as a separate line item on a paystub, could open themselves up to suits for:

Failure to pay wage timely during employment:

California law has strict rules for how quickly an employer must pay earned wages. For non-exempt employees, the two most common paradigms are semi-monthly pay periods (pay twice a month) and bi-weekly pay periods (pay every two weeks). It may seem counter-intuitive, and unfair, but employers who fail to pay city- and/or municipality-required minimum wages may also be violating their obligations to pay all wages timely during employment—because the difference between the employee’s usual minimum wage and the higher city/municipality minimum wage was never paid in the first place.

Example: Emma Employee (“Emma”) is a minimum wage employee working for ACME Co. in a part of California where only the state minimum wage applies. So Emma normally earns \$15.50 per hour (in 2023). However, Emma works in West Hollywood on Thursdays, spending between 3–5 hours each time she’s there. ACME Co. forgets to pay Emma the bumped-up minimum wage of \$19.08 for each hour in West Hollywood. This means that Emma is potentially underpaid \$3.58 for each hour worked in West Hollywood.

For this sin of omission, California law could prescribe numerous (stacking) penalties, just a few of which are explained below.

Late Payment Penalty (Part A): 25 % of the unpaid wages

For each hour worked, Emma would be entitled to 25% of \$3.58, or \$0.90. So if Emma worked 10 hours in West Hollywood, her 25% "Part A" penalty would be \$9.00.

Late Payment Penalty (Part B): \$100 per pay period, per employee.

If there were 10 employees like Emma—who worked in West Hollywood but were not paid the "bumped-up" minimum wage for those shifts, ACME Co. could be fined \$1000 per pay period.

Failure to pay final wages "Waiting Time Penalties"

Employees who are not paid all earned wages either (a) at the time of separation, or (b) within 72-hours, depending on how the separation occurred, are entitled to recover "waiting time penalties" for each day the final wages are "withheld," up to a maximum of thirty day (30). Generally speaking, an employer who inadvertently (i.e., simply forgets or doesn't know) to pay a "bumped-up" minimum wage will be subject to these penalties, which can be a significant multiple of the actual unpaid wages.

Example: ACME Co. does not pay Emma the "bumped-up" minimum wage for the 10 hours she worked in West Hollywood. Even though Emma has only been (allegedly) underpaid by \$9.00, she is entitled to a full day of average daily pay (which can be a tricky calculation that you can read more about [here](#)). If we assume that Emma should make, on average, \$465 in state minimum wages per workweek (30 hours x \$15.50) and \$190.80 in West Hollywood minimum wages per workweek (\$19.08), then her weekly gross is \$655.80. If we divide this by the number of hours worked (40), that gives us an average of \$16.395 per hour. Thus, Emma's average daily pay is \$131.16 (\$16.305 x 8).

This means that every day that ACME Co. is late in paying Emma the same \$9.00, she is entitled to \$131.16 per day, which continues for a maximum of 30 days. Emma does not need to inform ACME that she is owed the \$9.00 for the penalties to apply. So if Emma notifies ACME Co. of the shortfall on Day 31, she is likely entitled to \$3,934.80 in waiting time penalties (\$131.16 x 30).

Penalties, fines, and PAGA lawsuits, oh my!

Failure to pay city and/or municipal minimum wages could also lead to fines/penalties for (a) inaccurate itemized paystubs, (b) inaccurate time and pay records, and more—any one of which could potentially open an employer up to a dreaded wage and hour class action or California Private Attorney General Act ("PAGA") lawsuit.

Nixon Peabody attorneys have extensive experience advising employers on how to meet the patchwork of municipal wage obligations across the state of California, and nationwide, as well as a strong bench of qualified attorneys who defend against such claims. If you have questions

about the minimum wages you pay to employees, or other employment policies and practices, or have found yourself in the sights of a “wage and hour” lawsuit alleging failure to pay city or municipal minimum wages, contact the authors of this article or your local Nixon Peabody office.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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