

City of San Diego Raises Minimum Wage, Requires Paid Sick Leave

June 15, 2016

On June 7, 2016, voters in the City of San Diego, California approved, by referendum, the San Diego City Council's minimum wage increase ordinance that had previously been vetoed by Mayor Kevin Faulconer. The ordinance increases the minimum wage in the City of San Diego to \$10.50 an hour (California's statewide minimum wage is currently \$10 an hour). The ordinance will become effective once the election results are certified, which is expected to be July 7, 2016.

Known as the Earned Sick Leave-Minimum Wage Ordinance, the law requires that the minimum wage be paid for every hour an employee works within the geographic boundaries of the City of San Diego. The ordinance defines "employee" as "any person who, in one or more calendar weeks of the year, performs at least *two hours* of work within the geographic boundaries of the City of San Diego for an employer," and who qualifies for the payment of minimum wage under the California minimum wage law. Not covered by the ordinance are independent contractors, or those who have been issued a special license by the state to be employed at less than minimum wage, certain youth employees in publicly-subsidized summer or short-term employment programs, and certain counselors at organized, outdoor camps. The location or headquarters of the employer is irrelevant.

Under the ordinance, the minimum wage in San Diego will increase to \$10.50 an hour, with a subsequent increase on January 1, 2017 to \$11.50 an hour. Starting on January 1, 2019, the minimum wage will then increase "by an amount corresponding to the prior year's increase, if any, in the cost of living," as defined by the Consumer Price Index. However, if the federal or California state minimum wage is increased above the San Diego minimum wage, the minimum wage under the San Diego ordinance will match the higher federal or California wage and be effective on the same date.

The ordinance also requires paid sick leave in San Diego. Employees must receive one hour of paid, earned sick leave for every thirty hours worked within the geographic boundaries of San Diego, at the same hourly rate or other measure of compensation that the employee earns. Earned sick leave will accrue when employment starts, but employers can enforce a 90-day waiting period before an employee can use accrued sick leave. Employers may limit the use of the leave to forty hours in a consecutive twelve-month period, but accrual cannot be capped and unused leave must be carried over. Upon an employee's separation from employment, employers do not have to pay out unused leave, but they must reinstate accrued sick leave if the employee returns within six months.

Employers must post notices informing employees of the increased minimum wage and their right to paid sick leave. The City will publish a template notice and make it available to employers. Employers must also maintain records for at least three years documenting wages earned, and sick leave accrued and used by employees. If an employer fails to keep adequate records, it will create a rebuttable presumption in court that the employer has violated the ordinance and the employee's reasonable estimate regarding hours worked, wages paid, and sick leave accrued and taken may be relied upon.

Employers with workers in San Diego should review their employees' compensation rates in light of these mandated increases, as well as their current paid sick leave policies. For example, there are several key differences between the San Diego ordinance and California's statewide paid sick leave law. Our attorneys have deep counseling and litigation experience on these issues. To discuss these issues further or pose questions about this alert, please contact one of the attorneys listed above.

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