

New York State Living Wage Bill

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The New York State Legislature is currently considering a bill that would require employers to pay employees at least \$15.00 per hour. The bill would almost double New York State's current minimum wage, which is \$8.00 per hour.

The bill, aimed at large employers and chain stores in New York State, would require those employers to pay a defined living wage for each hour worked. Importantly, the bill would establish wage increases indexed to the consumer price index or another such index reflecting cost of living increases.

The bill, sponsored by Daniel Squadron, a state senator from New York City, argues that the proposed legislation is part of a national movement and fight for fair wages.

Living wage laws are gaining significant momentum across the country with dozens of cities and municipalities implementing living wage laws[.] [T]his bill would ensure that employers who can most afford it would provide New Yorkers a fair wage for a fair day's work.

S6455-2013 has been introduced into the New York State Senate and A9386-2013 has been introduced into the New York State Assembly.

Covered Employers

The bill applies to a limited subset of employers. First, the bill applies to most retail sales and restaurant establishments that have at least 11 locations throughout the United States. Second, the bill applies to all employers with annual gross revenue of at least \$50 million. Therefore, this bill would force large retail and fast food chains, including McDonald's, 7-Eleven, and Wal-Mart, to cease their practice of paying some of the lowest wages in the workforce, and to begin paying what the New York State Legislature would deem a living wage.

Notably, the proposed legislation would not apply to small employers, manufacturing companies, and not-for-profit entities.

Covered Employees

The bill also contains specific provisions for those employers whose employees "customarily and regularly" receive tips. For those employees, the bill provides that employers must pay those employees no less than 70% of the living wage rate, provided that the combination of the living wage and tips totals no less than the living wage rate. Importantly, such calculation may be made based upon the total wages and tips received by the employee over the course of his or her shift.

For instance, if Starbucks pays a barista a wage of \$10.50 per hour, and that barista earns \$4.50 in tips an hour, then Starbucks will be deemed to have complied with the requirements of the bill, even though Starbucks paid that barista a wage less than the proposed starting living wage rate of \$15.00 per hour.

Conversely, if Starbucks fails to pay that barista at least 70% of the living wage rate (in this example, anything less than \$10.50/hour), then Starbucks will be deemed to have failed to comply with the requirements of the bill.

For all other employees of covered employers, the bill requires payment of 100% of the living wage rate.

Liability

The bill provides a private right of action if an employee is paid by his or her employer less than the wage to which he or she is entitled. The bill would allow wronged employees to recover several categories of damages, including: (i) the amount of any underpayments; (i) costs and all reasonable attorney's fees; (iii) prejudgment interest; and (iv) liquidated damages in the amount of 100% of such underpayments (if the employer cannot provide a good faith basis for its underpayment of wages).

Along with a private right of action, the bill empowers the New York State Department of Labor to investigate and bring civil actions against employers that do not abide by its provisions. Accordingly, the bill requires employers to retain payroll records pertaining to employees for a period of 4 years, and shall allow the New York State Department of Labor access to such records to monitor compliance.

The bill does not allow employers and individual employees to wave its provisions by contract. However, provisions of this bill may be waived by the written terms of a bona fide collective bargaining agreement.

Importantly, although the bill applies to a limited subset of employers, violations could be common and far-reaching. For instance, covered franchisors will not escape liability for the acts of their franchisees. The bill expressly provides that covered employers will be jointly and severally responsible for any violation of this bill, even if perpetrated by acts of franchisees or subcontractors.

Potential Impact

If passed, the bill would impart additional obligations upon a specific but large subset of employers. At the same time, the bill would provide covered employees with additional wage rights. Given the stakes, questions regarding whether the bill covers a particular employer may be ripe for litigation, and employers would do well to determine whether they are covered in a timely fashion in the event it is passed by the state legislature. Accordingly, if the bill is passed and an employee has any question regarding whether her employer would be covered by the bill and is not receiving wages on a basis consistent with the bill upon its taking effect, the employee should consider contacting an attorney experienced in employment and/or wage-hour matters to discuss.

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