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W A G E A N D H O U R

States and Localities Tussle for Wage-and-Hour Control

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Special to the Legal

With the changing of the guard in Washington, D.C., employers are breathless with anticipation as to what changes may be coming down the pike in the wage-and-hour arena. However, given the lack of a Secretary of Labor, we still are waiting to see what the administration has in store for employers.

This, of course, does not mean that developments in wage-and-hour law have been static. From paid sick leave to increasing the minimum wage, states and localities have passed a wide array of wage-and-hour laws over the past few years. Spurred in part by the “Fight for \$15” movement, 21 states and the District of Columbia have changed their minimum wage laws since January 2014, according to the Economic Policy Institute. Some of these changes have come from legislatures, while



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others like state laws in Colorado and Maine, were approved by voters at the ballot box. Localities have increasingly entered the fray as well, increasing minimum wages above state minimum wage levels.

This trend has not been confined to traditionally employee-friendly states such as California and New York. Indeed, according to the National Employment Law Project, more than 40 cities and counties, including Birmingham, Alabama; Johnson County, Iowa and Lexington, Kentucky have increased their local minimum wage in recent years.

We have seen plenty of activity in Philadelphia on the wage-and-hour front as well. Philadelphia's Wage Theft Ordinance, which went into effect on July 1, 2016, permits the filing of administrative complaints to the city's wage theft coordinator as well as private rights of action. The Wage Theft Ordinance also may impact city licensing for applicants and licensees that have “been found guilty, liable or responsible, in any judicial or administrative proceeding,” of violating Pennsylvania's Wage Payment and Collection Law, the Pennsylvania Minimum Wage Act or any other federal or state law “regulating the payment of wages.” In 2015, the city's “Promoting Healthy Families and Workplaces” Ordinance was passed mandating that employers in the city of Philadelphia with 10 or more employees provide paid sick leave to their employees. Most recently, on Jan. 23, Philadelphia Mayor Jim Kenney signed into law

an amendment to the Philadelphia Fair Practices Ordinance prohibiting employers from inquiring about a prospective employee's wage history. This amendment is set to go into effect on May 23, 2017.

Both in Pennsylvania and nationally this local wage-related legislative activity is increasingly running into a brick wall. On Feb. 8, 2017, the Pennsylvania Senate

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passed a bill that would pre-empt Philadelphia's recent amendment to the Fair Practices Ordinance. That bill is now awaiting action in the Pennsylvania House. The Senate passed another bill (both this term and last term) seeking a similar pre-emption fate for Philadelphia's paid sick leave law. Similar efforts are taking place outside of Pennsylvania as well. According to the Center for Media and Democracy, 36 states considered pre-emption legislation in 2016, more than the 29 states that considered it in 2015, and the 23 states that did so in 2014. Twenty-three states

(including Pennsylvania) have pre-emption laws that prohibit localities from increasing the minimum wage, while 16 states prohibit localities from having paid sick leave laws. According to ThinkProgress, just last week the Iowa state Senate passed a law that would take away minimum wage increases in four different counties.

The pre-emption trend has quickened since the November elections both nationally and locally, with a Philly.Com article in February asking "Is the GOP-controlled legislature picking on Philadelphia?" So goes the push-pull of federalism at the state and local levels, with the increasingly red state legislatures bumping up against the blue localities—a trend that shows no signs of abating.

With the expectation that the federal minimum wage of \$7.25 per hour (which has been at that level since 2009) likely will not increase in the near term, along with the likely demise of the more than doubling of the weekly salary amount to remain exempt under the "white collar" exemptions of the Fair Labor Standards Act, state and local activism in this area is likely to continue to grow. In February 2017, the National Employment Law Project (NELP) put out a policy brief titled, "Fighting Preemption: The Movement for Higher Wages Must Oppose State Efforts to Block

Local Minimum Wage Laws." In this publication, NELP advocates against state pre-emption laws, arguing for "local control over wages" in "cities and counties where the cost of living is higher than in other parts of the state." The battles lines have been drawn as states and localities tussle for control over the minimum wage, mandatory paid sick leave, and other wage and hour issues.

While many eyes are focused on Washington and the policy priorities of the new administration, states and localities continue to wrestle with these wage-and-hour issues. Mindful of this trend, employers with operations in many different jurisdictions should be attentive to the burgeoning law in this area, especially at the local level and the state efforts to resist local legislation. •