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Timely, topical insights on a variety of payroll and reporting issues.

Benefits

Arizona Court of Appeals Upholds Ruling That Ban on Local Minimum Wages and Benefits Is Unconstitutional

It was previously reported that on May 11, 2016, Arizona Governor Doug Ducey signed into law legislation that prohibits cities, towns and counties from regulating paid time off, retirement plans or other employee benefits.

The enacted legislation states in part as follows:

The regulation of employee benefits, including nonwage compensation, paid and unpaid leave and other absences, meal breaks and rest periods, is of statewide concern. The regulation of nonwage employee benefits pursuant to this chapter and federal law is not subject to further regulation by a city, town or other political subdivision of this state.

Nonwage compensation includes fringe benefits, welfare benefits, child or adult care plans, sick pay, vacation pay, severance pay, commissions, bonuses, and retirement plan or pension contributions.

On August 29, 2017, the Superior Court of Arizona for Maricopa County (the Court) ruled that this legislation prohibiting cities, towns, and other political subdivisions from adopting regulations that require private employers to provide "nonwage compensation" (e.g., fringe benefits, sick leave) was unconstitutional.

In its opinion, the Court noted that, in 2006, Arizona taxpayers voted in favor of a minimum wage initiative (Proposition 202) that included a provision allowing local jurisdictions to regulate minimum wage and nonwage benefits. The Court found that the enacted legislation failed to receive the required three-fourths vote in the legislature to modify a voter-approved initiative as required by the Arizona Constitution.

On February 5, 2019, the Arizona Court of Appeals, Division One, affirmed the Superior Court ruling that the legislation from 2016 (L. 2016, H2579), which prohibits cities, towns, and

other political subdivisions from adopting regulations that require private employers to provide "nonwage compensation" (e.g., fringe benefits, sick leave), was unconstitutional. The Court found that H2579 was unconstitutional because it violated the Voter Protection Act (VPA).

It is not known whether the state will appeal the ruling to the Arizona Supreme Court.

For a copy of the opinion in Meyer, et al. v. State of Arizona, Ariz. Ct. App., Dkt. No. 1 CA-CV 18-0031, please click on the link provided below.

<https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2019/CV%2018-0031.pdf>

New Jersey Requires Employers to Offer Pre-tax Transportation Benefits

On March 1, 2019, the Governor of New Jersey, Phil Murphy, signed into law Senate Bill 1567 (SB 1567) which requires all employers in the state who employ at least 20 employees that are not covered by a collective bargaining agreement to offer an opportunity to their employees to participate in an Internal Revenue Code Section 132(f) pre-tax transportation fringe benefit plan. This allows employees to pay for mass transit costs/and or parking expenses on a pre-tax basis.

Under SB 1567, a "pre-tax transportation benefit plan" is defined as follows:

"Pre-tax transportation fringe benefit" means a pre-tax election transportation fringe benefit that provides commuter highway vehicle and transit benefits, consistent with the provisions and limits of Section 132(f)(1) of the United States Internal Revenue Code of 1986 (26 U.S.C. s.132(f)(1)) at the maximum benefit levels allowable under federal law, to be deducted for those programs from an employee's gross income pursuant to Section 132(f)(2) of the United States Internal Revenue Code of 1986 (26 U.S.C. 8 s.132(f)(2)).

The Internal Revenue Code imposes statutory limits on each type of transportation fringe benefit. The monthly limit for parking is \$265 for 2019. The combined monthly limit for transit pass and vanpooling expenses is also \$265 for 2019 (as a result of the "transit parity" rule that makes the parking and combined limits the same).

It is important to note that the requirements do not apply to federal employees, who are eligible for a transit benefit equal to or greater than the pre-tax transportation fringe benefit.

Any employer found to be in violation of this requirement will be subject to a fine that will range from \$100 to \$250 for a first violation. The employer will have 90 days to offer a program before the penalty is imposed. After 90 days, each 30 days that an employer fails to comply will constitute a civil penalty and will subject the employer to a \$250 penalty.

Although SB 1567 is effective retroactively to January 1, 2019, the requirements (and penalties) will be implemented at the earlier date of February 29, 2020, or when regulations are adopted.

SB 1567 states as follows:

This act shall take effect immediately but shall remain inoperative for 365 days following the date of enactment or upon the effective date of rules and regulations adopted pursuant to Section 5 of this act, whichever occurs first.

For a copy of the legislation, please click on the link provided below.

https://www.njleg.state.nj.us/2018/Bills/S2000/1567_R1.PDF

For a copy of Governor Murphy's signing statement, paste the following into your browser.

<http://d31hzhk6di2h5.cloudfront.net/20190301/46/61/7e/17/cf1c4242d92e5f6fd9abfc8a/S1567.pdf>



Paid Family Leave Expanded in New Jersey

On February 19, 2019, New Jersey Governor, Phil Murphy, signed into law Assembly Bill 3975 (A. 3975) that expands the state's paid family leave program, which was originally enacted in 2008. The paid family leave program partially replaces wages of workers who need to care for a seriously ill or injured family member, or bond with a newborn or newly adopted child. The program complements the Temporary Disability Insurance Program, which partially replaces wages during an employee's own injury, illness, or other disability, including pregnancy.

Some of the changes made by A. 3975 are as follows.

Effective Immediately:

- Expands the list of individuals eligible to take paid family leave. The definition of "family member" has been expanded to include domestic partners, siblings, parents-in-law, grandparents, grandchildren, other blood relatives, and any individual who can be shown to have the equivalent of a family relationship. "Child" also now includes foster children and children born via gestational carrier.
- Expands reasons to take family temporary disability leave to include medical attention, counseling or legal assistance and proceedings arising from domestic and sexual violence.

Effective June 30, 2019:

- Reduces the anti-retaliation employer size from 50 to 30 employers effective June 30, 2019.

Effective July 1, 2019:

- The one-week waiting period before the payment of Family Leave Insurance (FLI) benefits will be eliminated.
- Employers will no longer be allowed to require that employees use all their paid leave, up to two weeks (or 14 days), before the payment of FLI benefits.

Effective January 1, 2020:

- The expansion in the FLI program will be funded by an increase in the employee contribution to the FLI program only.
- The taxable wage base on which FLI is imposed is being expanded from 28 times to 107 times the New Jersey average weekly wage.
- Further information will become available when the taxable wage limits are announced by New Jersey for Tax Year 2020.

Effective July 1, 2020:

- Doubles the number of weeks for FLI from 6 to 12 weeks.
- Increases the weekly benefit maximum amount from two-thirds to 85 percent of the employee's weekly wage, with the maximum possible benefit increasing from 53 percent to 70 percent of New Jersey's average weekly wage.
- Increases intermittent leave from 42 days to 56 days within a 12-month period.

For a copy of A. 3975, please click on the link provided below.

https://www.njleg.state.nj.us/2018/Bills/A4000/3975_R3.PDF



Illinois to Increase Minimum Wage

On February 19, 2019, Illinois Governor J.B. Pritzker signed into law Senate Bill 1 (SB 1) that will gradually increase the state minimum wage from the current \$8.25 per hour to \$15.00 per hour by January 1, 2025 on the following schedule:

- \$9.25 per hour on January 1, 2020
- \$10 per hour on July 1, 2020
- \$11 per hour on January 1, 2021
- \$12 per hour on January 1, 2022
- \$13 per hour on January 1, 2023
- \$14 per hour on January 1, 2024
- \$15 per hour on and after January 1, 2025

Under Illinois law, workers who receive tips, like servers and delivery drivers, receive 60 percent of minimum wage and receive the rest in tips or are supplemented by their employer so the minimum cash wage for tipped employees will increase as shown below. The current cash minimum wage for tipped employees is \$4.95 per hour and will increase to:

- \$5.55 per hour on January 1, 2020
- \$6.00 per hour on July 1, 2020
- \$6.60 per hour on January 1, 2021
- \$7.20 per hour on January 1, 2022
- \$7.80 per hour on January 1, 2023
- \$8.40 per hour on January 1, 2024
- \$9.00 per hour on and after January 1, 2025

For a copy of SB 1, please click on the link provided below:

<http://www.ilga.gov/legislation/publicacts/101/PDF/101-0001.pdf>

Minnesota Court of Appeals Upholds Minneapolis Minimum Wage

It was previously reported that on June 30, 2017, the Minneapolis, Minnesota, City Council passed a minimum wage ordinance that will increase the minimum wage to \$15.00 for "large business" by 2022 and by 2024 for "small business."

A "large business" is defined as all employers that employ more than one hundred (100) employees and a "small business" is defined as all employers that employ one hundred (100) or fewer employees.

The tiered wage increases are as follows:

Date	Large business: five years	Small business: seven years
Jan. 1, 2018	\$10.00	No increase
July 1, 2018	\$11.25	\$10.25
July 1, 2019	\$12.25	\$11.00
July 1, 2020	\$13.25	\$11.75
July 1, 2021	\$14.25	\$12.50
July 1, 2022	\$15.00	\$13.50
July 1, 2023	\$15 indexed to inflation	\$14.50
July 1, 2024	\$15 indexed to inflation	\$15.00

A large business based in Minneapolis filed a law suit in 2017 attempting to stop the Minneapolis minimum wage ordinance from taking effect, but lost that case when a Hennepin County judge ruled in favor of the city. The business appealed the decision arguing the city's law is preempted by the state's minimum wage law. However, on March 4, 2019, the Court of Appeals of Minnesota (the Court), in a 2 to 1 vote, ruled that the Minneapolis minimum wage ordinance is not preempted by state law and declared the ordinance valid and enforceable.

However, because of the one dissenting vote, the business may appeal the Court's decision.

Virginia Amends Minimum Wage Law

On March 8, 2019, the Governor of Virginia, Ralph Northam, signed into law House Bill 2473, which revised the types of jobs that are excluded from the protections of the Virginia state minimum wage law. Effective July 1, 2019, the following jobs now must be paid the state minimum wage per hour. The state minimum wage currently mirrors the federal minimum wage of \$7.25 per hour.

- newsboys
- shoe-shine boys
- babysitters (those who work 10 or more hours per week)
- ushers
- doormen
- concession attendants
- cashiers in theaters

Those who are employed as babysitters for fewer than 10 hours per week and golf caddies remain exempt under the law.

For a copy of House Bill 2473, please click on the link provided below.

<https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+HB2473ER+pdf>

Washington State Issues Policy Regarding Tips and Service Charges

On March 6, 2019, the Washington State Department of Labor and Industries released its final Administrative Policy regarding tips and service charges. By way of background, in November 2016, Washington voters approved Initiative 1433, which contained four primary changes to state law as follows:

- Requires employers to provide paid sick leave to most employees beginning January 1, 2018.
- Increases the minimum wage over the next several years.
- Ensures tips and service charges are given to the appropriate staff.
- Protects employees from retaliation when exercising their rights under the Minimum Wage Requirements and Labor Standards Act.

The Administrative Policy is presented in a question-and-answer format and contains sections on tips, service charges, payday, deductions, record keeping, and paid sick leave.

Some examples of the questions and answers are provided as follows:

- **Do tips and gratuities count towards the state minimum wage?**

No. Tips and gratuities are in addition to, and may not count towards, the employee's hourly minimum wage. A credit towards the minimum wage is not permitted. Employees must receive the full minimum wage.

Ordinances setting minimum wages above the state minimum wage, and the treatment of tips and gratuities under those ordinances, are subject to interpretation by the local authority. The department enforces ordinances as obligated wage payment requirements. See RCW 49.48.082(12) and RCW 49.52.050(2).

• **May employers administer tip arrangements established by employees?**

Yes. If employees come to an agreement amongst themselves to share tips with other employees, the employer may, but is not required to, assist in administering the employees' tip agreements, for instance by distributing credit card tips as requested by its employees. However, managerial or supervisory employees that are exempt under RCW 49.46.010(3)(c) may not be included in tip arrangements established by employees and an employer may not keep any portion of the tips received by its employees.

• **May an employer adopt a policy against accepting tips and gratuities?**

An employer may adopt and enforce a policy prohibiting an employee from accepting tips and gratuities. However, if a customer leaves a tip or gratuity in defiance of a policy prohibiting the employee from accepting them, the employer may not confiscate the tip.

• **Do service charges count towards the state minimum wage?**

No. The employee portion of service charges is in addition to, and may not count towards, the employee's hourly minimum wage. A credit towards the minimum wage is not permitted. Employees must receive the full minimum wage.

Ordinances setting minimum wages above the state minimum wage, and the treatment of the employee portion of service charges under those ordinances, are subject to interpretation by the local authority. The department enforces ordinances as obligated wage payment requirements. See RCW 49.48.082(12) and RCW 49.52.050(2).

• **To which employees must an employer pay the employee portion of a service charge?**

The employee portion of a service charge must be paid to employees who serve customers, excluding managerial or supervisory workers. This may include, but is not limited to, servers, bussers, banquet attendants, banquet captains, bartenders, barbacks, porters, and bell persons. RCW 49.46.160(2)(a).

• **How soon after they are received must the employer pay tips, gratuities, and the employee portion of a service charge to their employees?**

Tips and gratuities (or the share of tips and gratuities due to the employee from a pool), or the employee portion of a service charge received in cash, may be retained by the employee. If received by the employer (for instance, tips paid by credit card), the employer must pay tips, gratuities, and the employee portion of a service charge to the employee no later than wages earned in the same period are paid. When paying tips to an employee, an employer may not require an employee to contribute more than the employee actually received in tips to a mandatory tip pool.

• **Must employers compensate employees for tips, gratuities, and service charges they would have received while using paid sick leave?**

No. Normal hourly compensation for the purposes of paid sick leave does not include tips, gratuities, or service charges, unless the employer or a collective bargaining agreement requires they be included. See WAC 296-128-600.

For a copy of the complete Administrative Policy, please click on the link provided below.

http://www.lni.wa.gov/WorkplaceRights/files/policies/esa12.pdf?utm_medium=email&utm_source=govdelivery

Wyoming Enacts Garnishment Exemption Law

On February 19, 2019, Wyoming Governor Mark Gordon signed into law House Bill 89 (H89). Under the provisions of H89, effective July 1, 2019, an employee's disposable earnings will remain exempt if the earnings were deposited in the employee's account with a financial institution (i.e., bank, trust company or credit union) within 20 calendar days prior to the garnishment being served against the employee's account, on the day of service of the writ or within 10 business days after service of the writ.

The judgment creditor may request the garnishment be issued to the employee's employer and financial institution at the same time(?), however, if the earnings are successfully garnished, as shown on a pay stub or similar instrument, the remaining amount deposited into the account will be entirely exempt from the garnishment.

For a copy of H89, please click on the link provided

<https://www.wyoleg.gov/Legislation/2019/HB0089>

Alameda City, California, Enacts Minimum Wage Ordinance

The city of Alameda, California, has passed an ordinance establishing a local minimum wage that applies to all employees who work at least two hours in a calendar week within the city as follows.

July 1, 2019	\$13.50
July 1, 2020	\$15.00

Beginning July 1, 2022, and on July 1 of every year thereafter, the minimum wage will increase based on the cost of living with no increase greater than five percent.

Employers may not use a tip credit for tipped workers. The ordinance also notes that if the scheduled California minimum wage increase to \$15 per hour is temporarily suspended, the city will also temporarily suspend the Alameda scheduled minimum wage increase for July 1, 2020, for one year.

For a copy of the ordinance, please click on the link provided below.

<https://www.alamedaca.gov/files/sharedassets/public/alameda/econ-dev-amp-comm-services/alameda-ca-code-of-ordinances.pdf>

Pasadena, California, to Increase Minimum Wage

The Pasadena City Council has passed a measure to increase the city minimum wage. The current Pasadena minimum wage is \$12.00 per hour for small employers (1-25 employees) and \$13.25 per hour for large employers (26 or more employees). Effective as the date noted below, the minimum wage in the city will be increased as follows:

Small Employers:		Large Employers:	
July 1, 2019	\$13.25	July 1, 2019	\$14.25
July 1, 2020	\$14.25	July 1, 2020	\$15.00
July 1, 2021	\$15.00	July 1, 2021	\$15.00

Beginning on July 1, 2022, the minimum wage for both small and large employers will be increased based on the Consumer Price Index.

Employers are not allowed to take a tip credit when paying tipped employees.

San Francisco, California, Announces Increase to Minimum Wage

The San Francisco Office of Labor and Standards Enforcement (OLSE) has announced that the minimum wage rate will increase from \$15.00 per hour to \$15.59 per hour, effective July 1, 2019. This increase is based on Section 12R.4 of the San Francisco Administrative Code, which requires that on July 1, 2019, and each year thereafter, the minimum wage rate will be adjusted annually based on the regional increase in the Consumer Price Index.

For a copy of the announcement, please click on the link provided below.

<https://sfgov.org/olse/minimum-wage-ordinance-mwo>

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