

TUESDAY, JUNE 21, 2016

PERSPECTIVE

## The fragmentation of California wages

By Peter Hering

On June 7, San Diego voters approved a minimum wage increase for the city of San Diego to \$10.50 per hour immediately and \$11.50 per hour on Jan. 1, 2017. In the same ballot measure, voters approved an increase in the minimum number of sick days employers must provide from three to five days. Just a few days earlier, the Los Angeles City Council approved a similar increase from three to six days.

These events are just two more examples of California's fragmented minimum wage and sick leave landscape. And despite recent legislative action in Sacramento, it is doubtful that this trend will slow anytime soon.

### A Fragmented Landscape

Although raising the federal minimum wage is a recurring topic of national discussion, it remains at \$7.25 per hour. In contrast, in California, the minimum hourly wage is set to gradually increase from its current \$10 to \$15 by Jan. 1, 2022, for large employers (26 or more employees) and by Jan. 1, 2023, for small employers (25 or less employees).

Even more significant, however, is what has been happening at the local level. Since 2015, at least 11 cities and counties have passed their own minimum wage increases, most recently the city of San Diego. The largest municipalities to have passed such increases are the city and the county of Los Angeles, both of which have increased the minimum wage to \$10.50 per hour starting on July 1, 2016 (large employers), and July 1, 2017 (small employers). And both municipalities are accelerating minimum wage increases to \$15 per hour by July 1, 2020 (large employers), and July 1, 2021 (small employers). In San Francisco, the minimum wage will increase to \$15 per hour even sooner — on July 1, 2018.

Other local jurisdictions to have passed minimum wage increases that exceed California's requirements include: Berkeley, Long Beach, Oakland, Palo Alto, San Jose, Sacramento and Santa Monica.

The result is that businesses who operate in various parts of California are

Since 2015, at least 11 cities and counties have passed their own minimum wage increases, most recently the city of San Diego.



Shutterstock

increasingly confronted with the logistical and economical challenge of paying their employees more than the state minimum wage.

A similar trend is happening with paid sick leave benefits. In July 2015, California became the first state to require at least three days of paid sick leave per year for all employees. Since then, municipalities have taken the baton and passed measures to increase the amount of paid sick leave, including: San Diego (five days); Los Angeles (six days); San Francisco (nine days); and Santa Monica (nine days).

### The Challenge

The fragmented minimum wage and sick leave landscape is a compliance nightmare. Employers have to account for at least 17 municipalities with minimum wages higher than the state minimum and at least seven municipalities with different sick leave requirements than California's Paid Sick Leave Law. Further, they must keep track of any additional ordinances contemplated all over the state. Ultimately, employees could be subject to different minimum wages in the same week, even the same day.

But even before being able to pay the correct minimum wage, employers have to determine which of their employees are subject to which minimum wage rates. This inquiry can be extremely challenging, especially for businesses who have mobile employees (e.g., drivers, service providers). Most municipalities claim jurisdiction over employees if they work two hours within the geographic limits of the municipality in a week. Some ordinances are clear that the higher minimum wage only applies

to hours worked within the municipality's jurisdiction (county of Los Angeles, city of San Diego). Other ordinances are silent on such limits (city of Los Angeles). The county of Los Angeles is a special nightmare because its ordinance only applies to the unincorporated parts of the county. However, there are 88 incorporated cities in the county where the ordinance does not apply. Thus, tracking employees' exact location could become necessary.

A similar nightmare is created by the various sick leave ordinances. While state law gives employers options on how to provide paid sick leave, allowing for both accrual or up-front methods, not all municipalities allow the same flexibility. Some, like the city of San Diego and San Francisco ordinances, only allow for one type of accrual. Thus, a business that has chosen to provide sick leave to its employees by giving them a fixed amount at the beginning of the year (as permitted by California law) would have to change its system for its employees in those municipalities.

The headache does not stop there. Most of the municipalities have their own posting requirements and enforcement agencies, which could be investigating businesses in addition to state or federal agencies.

### The Opportunity

While the splintered landscape creates a compliance nightmare on the one hand, it also creates an opportunity for experimentation. The current trend presents cities, businesses and individuals with significant choices. Cities are free to account for their specific cost of living situation. Some cities may choose to attract businesses by not increasing their local minimum wage above the state minimum thereby keeping labor costs lower than in neighboring cities or counties. Other cities may choose to follow the trend and raise their own minimum wage or sick leave to attract workers. Some businesses may choose to relocate to cities with lower minimum wages while others might choose to stay to take advantage of the workers attracted by the higher minimum wage or sick leave. Other businesses might voluntarily choose to raise wages or sick leave even in areas where they are not required to do so to attract employ-

ees or to make the "minimum wage" consistent across all work locations. Lastly, employees might choose to work in cities with higher minimum wages while living in neighboring counties with lower costs of living, while others might move where the minimum wage is lower but job creation higher.

### A Proposal

Municipalities should be free to set their own minimum wage and determine the right amount of sick leave for their constituents. But their ability to do so should be within some basic guidelines to provide for some uniformity in how local ordinances are drafted and applied. These state-mandated boundaries should govern only the technical aspects of minimum wage and sick leave ordinances, not the amounts. Such boundaries will lessen the compliance burden by allowing employers to create uniform policies while not inhibiting the local choice significantly.

For example, if California law allows for both accrual and up-front grant sick leave policies, municipalities should not be free to undermine the choice provided by the state Legislature, even though they are free to require more sick leave. Similarly, there should be a statewide rule regarding when local minimum wages apply and how broadly they apply. It might be prudent to have a rule that local minimum wages will only apply if an employee worked at least 20 percent of his or her weekly hours within a specific jurisdiction. There should also be more uniformity about when local increases go into effect, so that employers can adjust their payroll around a single day, and all such local minimum wage rates and sick leave requirements should be accessible for businesses and individuals in a single location.



PETER HERING  
Rutan & Tucker

**Peter Hering**  
is an attorney  
at *Rutan & Tucker*. You can reach him at (714) 338-1804 or [phering@rutan.com](mailto:phering@rutan.com).