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Topics Covered In This Issue

THE AFFORDABLE CARE ACT (ACA) REMAINS THE LAW OF THE LAND

On March 24, 2017, Speaker of the House Paul Ryan pulled the American Health Care Act (AHCA) from consideration by the House of Representatives, which means the Affordable Care Act (ACA) was not amended and remains the law of the land for the foreseeable future.

Background

On March 6, House Republicans introduced the AHCA. The AHCA is a budget reconciliation bill, pursuant to January's budget resolution (S.Con.Res.3) for the federal government's 2017 fiscal year, directing Congressional committees to draft reconciliation legislation to repeal certain tax and spending provisions of the ACA. Although the AHCA was approved by several House committees, including Ways and Means, Energy and Commerce, Budget, and Rules over the past few weeks, on Friday, March 24 2017, it became apparent to House leadership and the Trump Administration that the bill did not have enough votes to pass the House. Faced with probable defeat, Speaker Ryan pulled the bill.

Next Steps

At this time, there does not appear to be a clear pathway to reviving ACA repeal and replace legislation. On Friday, both Speaker Ryan and President Trump indicated that legislative efforts to repeal and replace the ACA were over, at least for now. President Trump suggested that the Administration's strategy may be to let the ACA stay in place because he believes that "it's imploding and soon it will explode." Speaker Ryan and House Ways and Means Committee Chairman Brady (R-TX) indicated that House Republicans will now work on comprehensive tax reform legislation.

Based on the comments from Speaker Ryan and the White House, it appears unlikely that the AHCA or any alternative comprehensive repeal and replace legislation will be considered by Congress this year. Congressional leaders likely will attempt to adopt a new budget resolution for the federal government's 2018 fiscal year sometime later this spring. The 2018 budget resolution will likely include new budget reconciliation instructions to the House Ways and Means and Senate Finance Committees, instructing them to craft comprehensive tax reform legislation.

It is, however, possible that the Administration will consider additional regulatory actions related to the ACA. For example, Secretary of Health and Human Services (HHS) Tom Price recently invited governors to apply to HHS for State Innovation Waivers that would allow them to have greater flexibility to structure the provisions of health care in their states. The Administration will also likely consider possible actions that may be needed to stabilize the individual insurance markets, including finalizing the market stabilization rule proposed by HHS on February 17, 2017, and determining whether to appropriate money to fund Exchange/Marketplace
cost-sharing subsidies.

Impact to Employers

For employers, this means all ACA mandates, requirements, and potential penalties remain in effect at this time. For example, the employer "shared responsibility" mandate and related employer reporting requirements have not been amended and remain in place and enforceable by the Internal Revenue Service (IRS). Additionally, Exchange/Marketplace notices will continue to go out to employers, including those from federal Exchanges/Marketplaces (see the *Eye on Washington*, "Affordable Care Act

(ACA) Health Insurance Marketplace Notices" at https://www.adp.com/tools-and-resources/adp-research-institute/insights/insight-item-detail.aspx?id=48477C53-218A-4971-89F4-7BC32343CFAA for more information).

Employers should continue to comply with the ACA mandates and other requirements until any future legislation is enacted or additional guidance is issued by HHS, the Department of Labor, or the IRS.

FAIR PAY AND SAFE WORKPLACES EXECUTIVE ORDER REVOKED

On March 27, 2017, President Donald Trump officially completed the revocation of the Fair Pay and Safe Workplaces Executive Order (EO). This order had been referred to as the "blacklisting" Executive Order, because it would have required government contractors to report on violations of certain federal employment laws when bidding on most government contracts worth $500,000 or more before they could be awarded any such contracts.

Background

The concept behind the measure was to ensure that government contracts were awarded only to businesses that had a demonstrated record of compliance with 14 federal workplace fairness and safety laws, including the National Labor Relations Act (NLRA), Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act (FMLA), the Occupational Safety and Health Act (OSHA), and others. The Executive Order (EO) also would have prohibited covered federal contractors from requiring covered employees to agree to mandatory arbitration of Title VII discrimination claims, as well as tort claims related to sexual assault or harassment. Additionally, the EO would have created "paycheck transparency" rules, which would have required covered government contractors to include certain information on covered employees' wage statements. The final rule implementing these provisions was discussed in the previous *Eye on Washington*, "Fair Pay and Safe Workplaces Final Rule Released" at https://www.adp.com/tools-and-resources/adp-research-institute/insights/insight-item-detail.aspx?id=B7EFD125-DDDC-40E0-B107-335035B50B88.

Impact to Employers

The EO was set to begin to be phased in beginning on October 25, 2016. However, a group of trade associations had sued to block enforcement of the EO, arguing that it should be enjoined for various reasons, including on the grounds that the EO exceeded the authority of the President and the Department of Labor (DOL), and that adherence to the EO would have resulted in First Amendment violations. As part of that litigation, a Texas federal judge issued a preliminary injunction right before the EO was scheduled to take effect, blocking the implementation of most of the measure. The paycheck transparency portion of the EO, however, was not subject to the injunction.

On March 6, 2017, Congress passed H.J.Res.37 at https://www.congress.gov/bill/115th-congress/house-joint-resolution/37 which, pursuant to the Congressional Review Act, invalidated the Fair Pay and Safe Workplaces EO. President Trump signed the legislation on March 27, 2017 finalizing the revocation of the EO. Accordingly, federal contractors are no longer required to comply with any of its provisions, including the paycheck fairness portion, which had taken effect on January 1, 2017. Regulations overturned pursuant to the Congressional Review Act, and any "substantially similar" regulations, cannot be reinstated by the Executive Branch absent Congressional approval.

IRS PROVIDES NEW EMPLOYEE CONSENT REQUIREMENTS FOR FICA REFUNDS

On March 20, 2017, the Internal Revenue Service (IRS) issued Revenue Procedure 2017-28 which provides guidance to employers on obtaining employee consents used to support a claim for credit or refund of overpaid taxes under the Federal Insurance Contributions Act (FICA) and the Railroad Retirement Tax Act (RRTA). The revenue procedure adopts many of the requirements included in initial guidance on employee consents released in IRS Notice 2015-15.

Background:

IRS procedures allow for interest and penalty-free amendments of employment tax returns, Forms 941, generally with respect to all types of employment taxes, if the error is corrected in the same calendar year in which the error occurred. Under payments or over payments of Federal income tax and the additional 0.9 percent Medicare tax withholding generally cannot be corrected in a subsequent year.

However, Social Security and the regular Medicare tax can be corrected for any year for which the statute of limitations has not expired (typically three years following the tax filing deadline of the year following the year of the error). Revenue Procedure 2017-28 describes the special procedures that taxpayers must follow with respect to over payments of FICA taxes in the year after the over payment has occurred and before the statute of limitations has expired. The employer is not permitted to obtain a refund of the employer portion of FICA and Medicare tax unless these procedures are followed.

Before IRS will grant an employer's request for a FICA tax refund, the employer must make reasonable efforts to ensure employees receive their share of the refund. Employers have two ways to do this:

(i) reimburse employees for their shares of the overpayment before IRS grants the refund; or

(ii) obtain employees' written consents to claim the refund, and then reimburse the employees after IRS grants it.

However, the IRS does not require employee consent if the employer paid the full tax rather than withholding the employee's share. IRS will waive consent and refund just an employer's share of overpaid FICA taxes if the employer has been unable to locate the employee or obtain the employee's consent after making reasonable efforts to do so.

Revenue Procedure 2017-28

In the Revenue Procedure the IRS clarifies the basic requirements for both a request for employee consent and for the employee consent and permits employee consent to be requested, furnished and retained in an electronic format. The revenue procedure also contains guidance regarding what constitutes “reasonable efforts” if employee consent is not acquired so that the employer can still claim a credit or refund of the employer share of overpaid FICA (or RRTA) taxes. Some of the highlights are as follows:

New Requirements for Requesting Employee Consent

- The employer may claim a refund of the over-paid employer share of the FICA (or RRTA) taxes without obtaining employee consent (i) if the employer makes "reasonable efforts" to repay or reimburse the employee or secure the employee's consent, (ii) the employer cannot locate the employee or (iii) the employee will not provide consent. The employer can demonstrate to the IRS that the employee will not provide the requested consent if the employee does not respond to the employer's request for consent or if the employee provides a response that indicates that the employee does not authorize the employer to claim a refund of FICA (or RRTA) taxes on his or her behalf. The revenue procedure sets forth the various methods for satisfying the new reasonable efforts rule.

- The IRS guidance provides that employees should be given a minimum of 45 days as a "reasonable period of time" to respond to the employer's request for consent to participate in the FICA refund claim. However, the revenue procedure does shorten the amount of time to respond to a second request for consent from 45 to 21 days.

- The employer is permitted, but not required, to solicit and secure employee consents electronically, either by email or fax. However, the employer is required to provide employees with the option to provide the employee consent in a paper format upon request.

Requirements for Employee Consent

- The IRS guidance provides that employee consents must specifically identify the basis for the claim for refund. The revenue procedure provides the following example: "request for refund of the social security and Medicare taxes withheld with regard to excess transit benefits provided in 2014 due to a retroactive legislative change."

- The employee consent must be dated and contain the employee's signature under penalties of perjury. The penalties of perjury affirmation should be located immediately above the required signature. Undoubtedly, this requirement will hinder employers' efforts to obtain signed consents from employees as most employees will naturally be reluctant to sign a document that will be provided to the IRS under threat of penalties of perjury.

- The employee consent must specifically inform the employee that the employer refund claim does not include any claims for the overpayment of Additional Medicare Taxes. The employee, however, may make his or her own claim for a refund of over-paid Additional Medicare Taxes with his personal tax return (Form 1040).

- In order to minimize the risk of identity theft, the employee consent request can use a truncated taxpayer identification number (TTIN), replacing the first five digits of the employee's nine-digit number social security number with either Xs or asterisks (*e.g.*, XXX–XX–1234 or ***–**–1234).

Revenue Procedure 2017-28 Effective Date

The Revenue Procedure applies to employee consents requested on or after June 5, 2017. Employers who issued requests for employee consents prior to the effective date are not required to send new requests and can continue to rely on the procedures found in IRS Notice 2015-15 until June 5, 2017.

For a copy of Revenue Procedure 2017-28 please click on the link provided below:

https://www.irs.gov/pub/irs-drop/rp-17-28.pdf

ARKANSAS BANS LOCAL MINIMUM WAGE AND REQUIRED BENEFIT MANDATES

On March 24, 2017, Arkansas Governor Asa Hutchinson signed Senate Bill 668 (now Act 643) which prohibits "political subdivisions" from requiring more than federal or state requirements from employers. "Political subdivision" is defined as a county, city, or town in Arkansas.

Consequently cities, towns and counties in Arkansas are not allowed to establish local minimum wages or benefit requirements such as paid sick leave beyond those required under federal or Arkansas law.

Specifically Act 643 states in part as follows:

> "A political subdivision shall not establish, mandate, or otherwise require an employer to provide to an employee a minimum or living wage rate or employment benefit that exceeds the requirements of federal laws or regulations or state laws or rules."

For a copy of Act 643, please paste the following into your browser.

http://www.arkleg.state.ar.us/assembly/2017/2017R/Acts/Act643.pdf

INCREASED FLEXIBILITY REGARDING PAYMENT OF WAGES PROVIDED IN ARKANSAS

On March 14, 2017, the Governor of Arkansas Asa Hutchinson signed into law HB 1609 (now Act 435) which increases flexibility for employers regarding the frequency of payment of wages of employees.

Currently, Arkansas Code § 11-4-401(a) states as follows:

> "Except as provided in subsection (c) of this section, all corporations doing business in this state who shall employ any salespersons, mechanics, laborers, or other servants for the transaction of their business shall pay the wages of the employees semimonthly." [Emphasis added]

Act 435 modifies Arkansas Code § 11-4-401(a) as follows:

> "(a) Except as provided in subsection (c) of this section, all corporations doing business in this state who shall that employ any salespersons, mechanics, laborers, or other servants for the transaction of their business shall pay the wages of the employees **no less frequently** than semimonthly." [Emphasis added]

This allows employers to pay employees on pay periods other than semi-monthly such as weekly and semi-weekly.

Arkansas Code § 11-4-401(c) remain unchanged as follows:

> **(c)** All corporations with an annual gross income of five hundred thousand dollars ($500,000), or more, doing business in this state who shall employ any salespersons, mechanics, laborers, or other servants for the transaction of their business shall pay the wages of their management level and executive employees who are exempt under the provisions of Section 13 of the Fair Labor Standards Act, from the provisions of Sections 6 and 7 of that act, and who are compensated at a gross rate in excess of twenty-five thousand dollars ($25,000) per year, at a minimum of once each calendar month.

Under Arkansas law, an Act becomes effective on the 91st day after the legislative session ends (adjournment sine die) or as provided in the act. No effective date was provided in Act 435. The Arkansas legislative session is estimated to end on June 12, 2017 so Act 435 will become effective mid-September 2017.

For a copy of Act 435, please paste the falling into your browser.

http://www.arkleg.state.ar.us/assembly/2017/2017R/Bills/HB1609.pdf

IOWA PROHIBITS LOCAL ORDINANCES REGARDING MINIMUM WAGES AND PAID SICK LEAVE

On March 30, 2017, the Governor of Iowa, Terry Branstad signed into law Iowa House File 295 (Act) which prohibits cities and counties in Iowa from adopting laws that provide employees with minimum wage and benefits that exceed the requirements of federal or Iowa state law.

In part, the Act states as follows:

> A county shall not adopt, enforce, or otherwise administer an ordinance, motion, resolution, or amendment providing for any terms or conditions of employment that exceed or conflict with the requirements of federal or state law relating to a minimum or living wage rate, any form pf employment leave, hiring practices, employment benefits, scheduling practices, or other conditions of employment.
>
> A city shall not adopt, enforce, or otherwise administer an ordinance, motion, resolution, or amendment providing for any terms or conditions of employment that exceed or conflict with the requirements of federal or state law relating to a minimum or living wage rate, any form pf employment leave, hiring practices, employment benefits, scheduling practices, or other conditions of employment.

It is important to note that the Act stipulated that “an ordinance, motion, resolution, or amendment adopted **prior** [emphasis added] to the effective date of this Act that violates this subsection is void and unenforceable on or after the effective date pf this Act.

The Act “being deemed of immediate importance, takes effect upon enactment.” Therefore the Act was effective on March 30, 2017, the date that it was signed by the Governor.

Currently, the Iowa state minimum wage mirrors the federal minimum wage at $7.25 per hour.

The following city and counties in Iowa had adopted ordinances that provided for minimum wages in excess of the $7.25 per hour threshold. These ordinances as of March 30, 2017 are now void.

City of Tifflin	$9.00
Johnson County	$10.10
Linn County	$8.25
Polk County	$8.75
Wapello County	$8.20

In addition, the Lee County, Iowa, Board of Supervisors on March 28, 2017 passed an ordinance to establish a minimum wage for workers in Lee County of $8.20 per hour to be effective May 1, 2017. This ordinance is now void as well.

For a copy of the Act signed by the Governor, please click on the link provided below:

https://www.legis.iowa.gov/docs/publications/LGE/87/Attachments/HF295_GovLetter.pdf

HEALTH SAVINGS ACCOUNTS EXEMPT FROM GARNISHMENT IN KENTUCKY

On March 27, 2017, Governor Matt Bevin signed into law Senate Bill 62 stipulating that funds deposited into a health savings account (HSA) are exempt from garnishment.

Senate Bill 62 amended KRS 427.010 to read as follows:

> The following personal property of an individual debtor resident in this state is exempt from execution, attachment, garnishment, distress or fee-bill: All household furnishings, jewelry, personal clothing and ornaments not to exceed three thousand dollars ($3,000) in value; tools, equipment and livestock, including poultry, of a person engaged in farming, not exceeding three thousand dollars ($3,000) in value; one (1) motor vehicle and its necessary accessories, including one (1) spare tire, not exceeding in the aggregate two thousand five hundred dollars ($2,500) in value; professionally prescribed health aids for the debtor, or a dependent of the debtor; and funds deposited in a health savings account as described in Section 223 of 13 the Internal Revenue Code of 1986.[Emphasis added]

Senate Bill 62 is effective June 28, 2017.

Note: It is not clear whether the bill only provides for garnishment exemption once funds are in the health savings accounts or whether funds earmarked for deposit to a health savings account such as employer health savings account contributions will be exempt as well. Further research will be completed and our findings reported.

http://www.lrc.ky.gov/recorddocuments/bill/17RS/SB62/bill.pdf

KENTUCKY CODIFIES PAYROLL CARDS AND DIRECT DEPOSIT METHODS

On March 27, 2017, Kentucky Governor Matt Bevin signed into law House Bill 378 (HB 378) which provides payroll cards and direct deposit are to become permissible methods for employers to provide wages to its employees.

Some of the conditions required of employers to utilize payroll cards to pay employee wages are as follows:

- Employees may not be charged an activation fee.
- The payroll card account must provide the employee with the ability to make at least one free withdrawal per pay period for any amount up to and including the full wage amount.

Previous to this bill, Kentucky statutes and regulations dis not expressly address the payment of wages using payroll cards.

HB 378 also codifies the Kentucky Labor Cabinet's policy of allowing wages to be paid by direct deposit.

Finally, the bill also requires that employers that have at least 10 employees must provide to employees from whom it deducts from wages a paper or electronic statement providing the amount and purpose of each deduction. Employers that provide an electronic statement must provide employee access to a computer and printer to review and print statements.

HB 378 is to take effect 90 days after the legislature adjourns, which would be June 29 as the legislature ended its session on March 30.

For a copy of HB 378, please click on the link provided below:

http://www.lrc.ky.gov/record/17RS/HB378.htm

NEVADA MINIMUM WAGE TO REMAIN UNCHANGED

The Nevada Office of the Labor Commissioner has announced that the minimum wage requirements will remain the same as of July 1, 2017. Specifically the minimum wage for employees who receive qualified health benefits from their employer will remain at $7.25 per hour and the minimum wage for employees who do not receive health benefits will remain at $8.25 per hour.

By way of background, the 2006 Minimum Wage Amendment to the Nevada Constitution requires the minimum wage to be recalculated and adjusted each year effective July 1 based on increases in the federal minimum wage, or, if greater, by the cumulative increase in the cost of living.

In addition, daily overtime rate requirements will also remain the same as of July 1, 2017. Employees who receive qualified health benefits from their employer and earn less than $10.875 per hour, and employees earning less than $12.375 per hour who do not receive qualified health benefits must be paid overtime whenever they work for more than eight hours in a 24-hour period. Nevada is one of a few states with a daily overtime requirement in addition to the requirement that employees be paid overtime for working more than 40 hours in a workweek. Overtime requirements do not apply to exempt employees.

For a copy of the Nevada announcement please paste the following into your browser.

http://labor.nv.gov/uploadedFiles/labornvgov/content/About/Forms/2017%20%20Minimum%20Wage%20Press%20Release.pdf

NEW MEXICO GOVERNOR VETOES MINIMUM WAGE INCREASE

On April 6, 2017, Governor Susana Martinez vetoed two pieces of legislation that would have raised the minimum wage in New Mexico from its current level of $7.50 per hour.

House Bill 442 (HB 442)

HB 442, if enacted, would have required employers in the state to pay a minimum wage of $9.25 per hour on or after January 1, 2018.

Senate Bill 386 (SB 386)

SB 386, if enacted would have raised the minimum wage as follows:

Beginning October 1, 2017 and prior to April 1, 2018, $8.25 an hour.

On and after April 1, 2018, $9.00 an hour.

In addition, SB 386 would have allowed an employer employing trainee employees during the training period a training minimum wage rate of $8.00 an hour for a period of up to 60 days.

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

HB 442

https://www.nmlegis.gov/Sessions/17%20Regular/final/HB0442.pdf

SB 386

https://www.nmlegis.gov/Sessions/17%20Regular/final/SB0386.pdf

OREGON BOLI DECISION ON OVERTIME STOPPED BY COURT

It was recently reported that Oregon's Board of Labor and Industries (BOLI) modified its interpretation of the overtime rules applicable to employees working in certain industries. Under O.R.S. 652.020(1), employees working in mills, factories, and manufacturing establishments must be paid at one and one-half times the employee's regular rate of pay for hours worked in excess of 10 in any day and any hours in excess of 40 hours per week. In addition, these employees may not work more than 13 hours in any given day. Further, O.R.S. 653.261 requires employers to pay overtime at one-and-one-half times the employee's regular rate of pay to non-exempt employees working more than 40 hours in any workweek.

In interpreting the two statutes together, BOLI historically has taken the position that "when employees who are entitled to daily overtime have worked more than 40 hours in the workweek and have also exceeded the maximum number of hours on one or more days, thereby earning daily overtime, the employer should calculate overtime hours worked on both the daily and weekly bases and pay the greater amount."

Recently however, BOLI changed its interpretation to require that "when determining the amount of overtime earned by an employee who, during a work week has worked more than 10 hours per day in a manufacturing establishment and more than 40 hours in the week, [employers] must calculate the amount of overtime earned by the employee under each regulation and pay **both overtime amounts** to the employee."

Court Decision Contrary to BOLI Interpretation

On March 9, 2017, in Mazahua Reyes v. Portland Specialty Baking, LLC, Multnomah County Circuit Judge Kathleen Dailey held that employees working in mills, factories, and manufacturing establishments are entitled only to the greater of daily or weekly overtime pay in a workweek, not both.

Judge Dailey's opinion explained that BOLI's new interpretation failed to give effect to the relationship between Oregon's general overtime law and the particular daily overtime law for workers in mills, factories, and manufacturing establishments. Her opinion specifically states that the pre-December BOLI interpretation is the proper interpretation for calculating daily and weekly overtime requirements and dismissed the lawsuit's claims seeking both daily and weekly overtime payments in the same workweek.

While Judge Dailey's decision will likely be appealed, at this point in time, employers are only required to pay "the greater" of daily or weekly overtime owed to employees

It is also important to note that Senate Bill 984 is pending before the Oregon legislature, which would codify the "greater of the two" calculation method.

Further updates will be provided as the resolution to this matter progresses, whether it be through the courts or the legislature.

WYOMING AMENDMENT PERMITS AN EMPLOYER TO PAY FINAL WAGES ACCORDING TO COLLECTIVE BARGAINING AGREEMENT

Wyoming has amended the law permitting the time period for the payment of wages upon termination of employment to be at a different time, if specified in a collective bargaining agreement between the employer and the employee.

Federal law does not require employers to give former employees their final payment of wages immediately. Many states, however, have requirements on when former employees must receive their final pay and may require immediate payment.

Wyoming law sets forth the requirements for the final payment of wages to an employee who has quit or is discharged. An employer in the State of Wyoming has until the next regularly scheduled pay date to pay a separating employee all wages owed. This holds true whether the employee quits or is terminated. Applicable law was amended to permit payment of final wages as provided in a collective bargaining agreement.

The Legislature of the State of Wyoming has amended the law via House Bill 0092, as follows:

> Section 1. W.S. 27-4-104(a) is amended to read: (added language in **bold** letters)
>
> 27-4-104. Payment of employee quitting or discharged and suit for wages; generally.
> (a) Whenever an employee quits service or is discharged, the employee shall be paid whatever wages are due him in lawful money of the United States of America, or by check or draft which can be cashed at a bank, no later than the employer's usual practice on regularly scheduled payroll dates ***or at a time specified under***

> ***the terms of a collective bargaining agreement between the employer and the employee***. The employer may offset from any monies due the employee as wages, any sums due the employer from the employee which have been incurred by the employee during his employment. This section does not apply to the earnings of a sales agent employed on a commission basis and having custody of accounts, money or goods of his principal where the net amount due the agent may not be determinable except after an audit or verification of sales, accounts, funds or stocks.

For a copy of Wyoming HB 0092, please click on the link provided below:

http://legisweb.state.wy.us/2017/Enroll/HB0092.pdf

ADDITIONAL LOCALS OPT OUT OF COOK COUNTY, IL MANDATES

Previously it was reported that Village of Barrington and the City of Oak Forest had opted out of the Cook County, Illinois ordinance that provides for a minimum wage increase and paid sick leave for county residents set to be effective July 1, 2017. Illinois law allows cities and villages within a county to opt out of laws enacted by counties.

The following five villages have also chosen to opt out of the Cook County ordinance:

- Village of Mount Prospect
- Village of River Forest
- Village of Elmwood Park
- Village of Rosemont
- Village of Tinley Park

As a result of these seven jurisdictions choice to opt out, employers within these city and villages are only required to comply with federal and Illinois state laws regarding the minimum wage and paid sick leave. Therefore employers within the Village need only pay the Illinois state minimum wage of $8.25 per hour rather than the Cook County minimum wage of $10.00 per hour effective July 1, 2017.

In addition, employers in the seven jurisdictions do not need to comply with the Cook County paid sick leave ordinance that requires employers to provide their workers with one hour of paid sick time for every 40 hours worked.

RAISE TO BALTIMORE, MD MINIMUM WAGE VETOED

On March 24, 2017, the Mayor of Baltimore, Maryland announced that she would not be signing the legislation to raise the minimum wage in the city. The Baltimore City Council had previously approved a measure on March 21, 2017 to raise the city's minimum wage to $15.00 an hour by the year 2022 on an 11-3 vote.

Maryland's current minimum wage is $8.75. The bill would have raised the minimum wage in the city gradually to reach $15 an hour by 2022, although businesses with fewer than 50 employees would have until 2026 to phase in the increase. The increase wouldn't apply to employees younger than 21.

Mayor Catherine Pugh stated as follows in her veto measure:

> "The economic impact that I think this has on the city making us the 'hole in the donut.' It is not appropriate at this time that I will sign this bill."

An effort by the council to override the Mayor's veto failed.

FLAGSTAFF, AZ ADOPTS MINIMUM WAGE ORDINANCE

The city of Flagstaff has adopted a minimum wage ordinance (2017-08) that will increase the minimum wage rate from $10.00 per hour to the following:

July 1, 2017	$10.50
January 1, 2018	$11.00
January 1, 2019	$12.00
January 1, 2020	$13.00
January 1, 2021	$15.00 or $2.00 above state minimum wage rate.

The minimum wage will be increased on January 1, 2022 and on January 1 of successive years, by the increase in the cost of living.

It is important to note that Ordinance 2017-08 modified the language in Proposition 414, a measure passed by the Flagstaff voters on November. The Ordinance states in part:

> It is the intent of the City Council to amend the timeline in Proposition 414 to further its purposes by adjusting the incremental rate at which the minimum wage is escalated in order to provide for a gradual increase in the minimum wage to $15.00 an hour by 2021, as contemplated by Flagstaff voters.

For a copy of Ordinance 2017-08 which shows the modifications to Proposition 414, please click on the link provided below:

http://www.flagstaff.az.gov/DocumentCenter/View/51141

LOS ANGELES, CA MODIFIES PAID SICK LEAVE ORDINANCE

It was previously reported in the June 2016 Tech Flex that Los Angeles City Mayor Eric Garcetti had approved Ordinance 184320 (Ordinance) which amended Article 7 of Chapter XVIII of the Los Angeles Municipal Code to provide paid sick leave benefits to employees. **The Ordinance contained an "Urgency Clause" resulting in its provisions becoming effective on June 6, 2016 and operative on July 1, 2016.**

Under the Ordinance:

- Every employee who, on or after July 1,2016, works in the City for the same employer for 30 days or more within a year from the commencement of employment is entitled to paid sick leave.
- Paid sick leave accrues on the first day of employment or July 1, 2016, whichever is later.
- An employee may use paid sick leave beginning on the 90th day of employment or July 1, 2016, whichever is later.

For more information regarding the Ordinance, please click on the link below to the June 2016 Tech Flex and see the article titled "Los Angeles Mayor Approves Paid Sick Leave Ordinance."

https://viproom.adp.com/home/clients/fsa_cobra/tf/Tech_Flex_Newsletter_June_2016.pdf

On March 14, 2017, the City of Los Angeles Office of Wage Standards (OWS) revised its rules implementing the Minimum Wage Ordinance (MWO), which includes mandatory paid sick leave requirements along with its MWO frequently asked questions (FAQs). Some of the changes to the MWO's and FAQs are as follows:

- Provide that an employer's business size is based on covered employees, *i.e.*, individuals who perform at least two hours of work in a particular week within the City of Los Angeles and are entitled to the state minimum wage.
- Specify that employers can use different sick leave methods for different employee classes, *e.g.*, accrual-based system for part-time employees and frontloading for full-time employees.
- At the end of each year, employers—at their discretion—can pay out accrued but unused sick leave that exceeds the 72-hour overall cap.
- For existing businesses that operated before January 1, 2016, determining whether they have 26 or more employees or 25 or fewer employees is based on the average number of covered employees in 2015. For employers that began business on or after January 1, 2016, business size is based on the number of covered employees during the first pay period.
- The MWO's only pay-related requirement is that an employee using sick leave be paid at the least the city's minimum wage. The revised rules, however, require employers to use either of the following calculation methods to determine the rate of pay for the sick leave: 1) Calculate in the same manner as the regular rate of pay for the workweek in which sick time is used (regardless of whether overtime is worked that workweek); or 2) Divide total wages—excluding overtime premium

pay—by total hours worked in the full pay periods of the prior 90 days of employment. This is the same calculation method state law requires for all employees except bona fide executive, administrative, or professional employees (which OWS contends are not covered by the MWO).

- The MWO states that employers with a paid leave or paid time off policy that provides 48 hours of compensated time off do not have to provide additional paid sick leave. The revised rules clarify that paid time off includes, but is not limited to, vacation, sick, paid time off, floating holiday, holiday, or personal days.

- Under the MWO, OWS may allow an employer to maintain a paid leave policy that does not meet all the law's requirements if the policy is overall more generous to employees. OWS has published a new form for employers to use to request a determination that their policy qualifies for this limited exemption. The revised rules state that a determination will be based on the totality of the circumstances, including a combination of the following benefits:

Group 1	Group 2	Group 3
Required benefits:	At least one of these benefits must be provided, but providing only one may be insufficient, depending on the benefit's value:	These benefits will also be considered:
Access to a combined paid and/or unpaid sick leave totaling 48 hours per year that can be taken with no adverse action	Employer pays more than twice the city minimum wage Employer offers paid compensated time off such as holidays, paid vacation days, etc. Employers pay into a trust fund to benefit employees	Employer offers a health benefit at no cost to the employee Employer offers a retirement package Employer offers flexible schedules Deferred Compensation Package including residuals

- The revised regulations allow for limited accrual caps if employers use an accrual-based instead of a frontloading system. A maximum bank operates as a temporary cap on accrual—employees stop accruing once their leave bank contains a specific number of unused hours (in Los Angeles, employers can set the maximum amount at 72 hours). Whatever amount is in the bank at the end of the year must be carried over to the following year. Employees only resume accruing leave after they use the bank's already-accrued leave.

For a copy of the revised MWO rules and regulations, please click on the link provided below.

http://wagesla.lacity.org/sites/g/files/wph471/f/MWO-RulesandRegulations-2017-03.pdf

For a copy of the revised MWO FAQs, please click on the link provided below.

http://wagesla.lacity.org/sites/g/files/wph471/f/MWO-FAQ-2017-03.pdf

MIAMI BEACH, FL MINIMUM WAGE ORDINANCE STRUCK DOWN

On March 28, 2017, Judge Peter Lopez of the Miami-Dade Circuit Court struck down an ordinance to increase the city minimum wage which was passed by the Miami Beach City Council in June of 2016.

The Florida Retail Federation, Florida Restaurant & Lodging Association and Florida Chamber of Commerce filed suit against the city in December 2016 over the city law, arguing that it is preempted by state law that prohibits local governments from setting its own minimum wages.

Miami Beach argued that the 2004 constitutional amendment that set a state minimum wage higher than the federal wage allows municipalities to set their own minimums.

In his decision, Lopez stated in part as follows:

"The city's wage ordinance is not valid under 218.077 Fla. Stat., which preempts local minimum wage."

Florida Statute 218.077 states as follows:

218.077 Minimum wage requirements by political subdivisions; restrictions.—

(1) As used in this section, the term:

(a) “Employee” means any natural person who is entitled under federal law to receive a federal minimum wage.

(b) “Employer” means any person who is required under federal law to pay a federal minimum wage to the person’s employees.

(c) “Employer contracting to provide goods or services for the political subdivision” means a person contracting with the political subdivision to provide goods or services to, for the benefit of, or on behalf of, the political subdivision in exchange for valuable consideration, and includes a person leasing or subleasing real property owned by the political subdivision.

(d) “Federal minimum wage” means a minimum wage required under federal law, including the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. ss. 201 et seq.

(e) “Political subdivision” means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

(f) “Wage” means that compensation for employment to which any federal minimum wage applies.

(2) Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a federal minimum wage, or to apply a federal minimum wage to wages exempt from a federal minimum wage.

(3) This section does not limit the authority of a political subdivision to establish a minimum wage other than a federal minimum wage:

(a) For the employees of the political subdivision;

(b) For the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a

subcontractor of such an employer, under the terms of a contract with the political subdivision; or

(c) For the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

(4) If it is determined by the officer or agency responsible for distributing federal funds to a political subdivision that compliance with this act would prevent receipt of those federal funds, or would otherwise be inconsistent with federal requirements pertaining to such funds, then this act shall not apply, but only to the extent necessary to allow receipt of the federal funds or to eliminate the inconsistency with such federal requirements.

Miami Beach's attorneys said they will appeal the Lopez ruling immediately.

The Florida state minimum wage is currently $8.10 per hour and is adjusted annually for inflation on January 1. Had the law gone into effect, wages in the Miami Beach would have risen to $10.31 per hour January 1, 2018, and then increased gradually until they hit $13.31 in 2021.