

Louisiana Employment Law Letter

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WAGE AND HOUR LAW

Raising more than minimum wage: High court hears debate over wage hike

On February 2, 2002, New Orleans voters approved a local ordinance raising the minimum wage in the city to \$1 above the federal minimum wage. The increase was scheduled to take effect on May 2, 2002. However, business associations opposing the ordinance filed suit, arguing that it violates a Louisiana law prohibiting localities from establishing their own minimum wages. Although the district court in Orleans Parish decided the minimum wage hike is legal, the business groups appealed to the Louisiana Supreme Court, which has stayed (or halted) the ordinance's application until further notice and is considering the appeal right now.

Race to the courthouse

Only days after the ordinance passed, a local business group filed suit against the city of New Orleans, arguing that the ordinance violates a 1997 Louisiana statute prohibiting localities from establishing their own minimum wage rules. Meanwhile, the ordinance's supporters filed their own suit, claiming that the 1997 statute prohibiting local minimum wage ordinances by cities with so-called "Home Rule Charters" violates the Louisiana Constitution. The two lawsuits were consolidated into one case to determine the ordinance's fate and the increase in New Orleans' minimum wage.

Home Rule rules in New Orleans

The court explained that because New Orleans is governed by a Home Rule Charter, which is recognized by the Louisiana Constitution, the city has "the right, power, privilege, and authority to adopt and enforce local police power . . . and to do and perform all of the acts pertaining to its local affairs, property and government, which are necessary or proper in the legitimate exercise of its corporate powers and municipal functions." Only Louisiana's constitution, state statutes

permitted by the constitution, and the Home Rule Charter itself can limit the city's charter powers.

Ordinance found not to violate Louisiana's constitution

Opponents of the increased minimum wage argued that the ordinance violates Louisiana's constitution. Article 6, Section 9, of the constitution prohibits municipalities from enacting ordinances that govern private or civil relationships. The court found that the ordinance raising the minimum wage doesn't violate that constitutional provision because it doesn't attempt to govern and doesn't conflict with any legal relationship established by the Louisiana Legislature.

Law prohibiting localities from setting their own minimum wage ruled unconstitutional

The court then dealt with the effect of Louisiana's law prohibiting municipalities from enacting their own minimum wages. Opponents of the minimum wage argued that the state law supersedes the local ordinance and that the minimum wage ordinance is therefore illegal. Supporters counterattacked with the argument that the state law is unconstitutional because it conflicts with the New Orleans Home Rule Charter. Opponents, in turn, argued that Louisiana's law is constitutional because Article 6, Section 9, reserves the police power for state government and the law prohibiting municipalities from setting minimum wages is a valid exercise of state police power.

The court found that for the state law to be valid, the ordinance's opponents must prove that it's vital to state interests and a reasonable exercise of the state's police power and that the state is unable to achieve its purpose through other means less detrimental to the New Orleans Home Rule Charter.

In analyzing whether the state law holds up to that "strict scrutiny," the court reviewed conflicting opinions from local economists on the impact of a \$1 increase in the minimum wage. Opponents presented the testimony of Dr. Timothy Ryan, a well-known economist from the University of New Orleans. But the court discounted his testimony as "speculative" and tainted by bias because he hadn't conducted a study on the impact of a \$1 increase in the minimum wage. Also, as a matter of economic theory, he opposes a minimum wage regardless of whether it's set by federal, state, or local law.

The court next reviewed a four-month survey of Orleans Parish businesses regarding the effect of a \$1 increase in the city's minimum wage, conducted in 1999 by Dr. Robert Pollin. The study concluded that the increase would affect an average business' operating costs by less than one percent. Based on that study, Pollin's opinion was that there would be no significant impact on the state's business economy if New Orleans raised its minimum wage by \$1. The court, however, failed to consider the researcher's own bias; he's a well-known national advocate for so-called "living wage" laws.

In the end, the court concluded that the ordinance's opponents hadn't proved that the Louisiana law prohibiting local governments from establishing a minimum wage passed the "strict scrutiny" test. The court said the law isn't necessary to protect the state's vital interests as a whole, it interferes too severely with New Orleans' Home Rule powers, and it's an unreasonable exercise of state police power. Therefore, the court declared the state law unconstitutional.

Finally, the court reviewed the New Orleans Home Rule Charter's terms to see if the minimum wage ordinance was a valid exercise of city power granted in the charter. Noting the broad language conveying power to the city, the court concluded: "This authority clearly delegates to the citizens of New Orleans the power to seek out innovations in government in an effort to deal with their particular problems and needs without undue interference by the state legislature." *New Orleans Campaign for a Living Wage v. The City of New Orleans*, Civ. Dist. Ct., Orleans Parish No. 2002-1824 (3/29/02).

The battle goes on

On April 12, 2002, the Louisiana Supreme Court granted the opponents' application for appeal and halted implementation of New Orleans' minimum wage increase until further action by the supreme court. The court heard oral arguments on May 13, 2002, and a decision is expected any day now (so we'll have an update in our next issue).

If the supreme court agrees with the trial court and says the ordinance is legal, there are a lot of issues for Louisiana employers to consider. First, which employers and employees will be subject to the minimum wage? The ordinance simply requires "employers" to pay "employees" at least the minimum wage. "Employer" is defined by the ordinance as any person or group acting in the interest of an employer with regard to an employee performing work in New Orleans. "Employee" includes "an individual employed and performing work in the city of New Orleans, for or on behalf of an employer."

So it isn't clear whether a business located outside New Orleans would have to pay the higher wage to an employee who, for instance, has to make a delivery or perform a service in the city. Sure, the employee is performing work in the city, but is he "employed *and* performing work" in the city, even if he normally reports to work in another parish?

Also, the ordinance refers to some but not all of the exceptions contained in the federal minimum wage law. For example, the federal law excludes individuals who volunteer their services solely for humanitarian purposes. But the New Orleans ordinance doesn't refer to that section of the federal statute or to volunteers when listing applicable exceptions.

The ordinance appears to give the New Orleans City Council power to enact further increases without holding another public vote. Also, the ordinance doesn't include language creating a private claim for underpaid employees but provides that an employer paying less than the minimum wage commits a misdemeanor punishable by a fine of up to \$200 per employee for each day that wages are paid less than the ordinance mandates.

Finally, although the ordinance applies only to New Orleans, the supreme court's decision will have broad ramifications for employers all over Louisiana, especially if it's upheld. In that case, any Louisiana city with a Home Rule Charter — East Baton Rouge Parish, Jefferson Parish, St. Bernard Parish, St. Charles Parish, Shreveport, Lake Charles, Deridder, Plaquemines Parish, Thibodeaux, and Natchitoches — would be free to enact its own version of the minimum wage law.

A decision upholding the New Orleans minimum wage increase also would allow Home Rule cities to enact their own overtime laws or limit hours at work. The result could bring about different minimum wages and different overtime laws, depending on where you're located. And if you have operations in multiple locations throughout the state, you may have different

minimum wage and overtime rules for different employees. That kind of result would be chaotic and certainly wouldn't be a catalyst for economic development by companies that may be looking to locate in Louisiana.

Look for upcoming editions of *Louisiana Employment Law Letter* to discuss any new developments in the case, or contact the editors with questions about how the law might affect your organization.

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