

Massachusetts Minimum Wage Law

In June 2014, Governor Patrick signed into law a measure which will incrementally increase the state's minimum wage to \$11 per hour by 2017. Specifically, on January 1, 2015, the minimum wage increased from \$8.00 to \$9.00 an hour. Additional \$1.00 increases will go into effect at the start of the 2016 and 2017 calendar years. In December, the state's Executive Office of Labor and Workforce Development apparently sent a mass email to employers on its mailing list, including municipal employers, reminding them of the increase. That email implied that the increase applied to all employers, including municipal and other public sector employers. We have been asked by numerous clients whether the state's minimum wage law and the recent increases apply to municipal employees.

General Laws c.151, §1, the so-called "minimum wage law," makes it unlawful to pay "any person in an *occupation* in this commonwealth ... a wage of less than \$9.00 [as of January 1, 2015]." Section 2 of the same chapter defines "occupation" as "an industry, trade or business or branch thereof ..." In 1979, the Massachusetts Appeals Court held that G.L. c.151 did not apply to municipalities or its employees based on the "rule that statutes regulating persons and occupations engaged in trade and industry are ordinarily construed not to apply to the Commonwealth or its political subdivisions unless the Legislature has expressly or by clear implication so provided." Thirty years later, a Federal District Court judge relied on that same rationale in holding that the Legislature did not intend the minimum wage law to apply to municipalities. Likewise, in 2002 the state's Department of Labor issued an opinion consistent with the well-established positions of the Massachusetts Appeals Court and Federal District Court.

In early 2014, however, when legislators began debating the proposed increase to the minimum wage, it became less clear whether they intended for G.L. c.151, §1, amended as proposed, to apply to municipal employees. The House passed a bill (H.4079) on April 1, 2014 containing an amendment (Section 84) stating that the increases "shall apply to municipalities beginning October 1, 2014." Media reports indicated that this language was added to allow municipalities to hire and continue paying student lifeguards at the current minimum wage. Thereafter the Senate passed a separate bill (S.2123) that was silent on the issue of the law's applicability to municipalities. During the so-called consolidation process where the two branches of the General Court resolve differences, Section 84 of the House bill was "held in conference," meaning that it was not included in the final version of the bill eventually passed by both branches.

Based upon the established case law and the legislative history of the amendment to the minimum wage law, it is our opinion that the state minimum wage law and the increases thereto do not apply to municipal governments or their employees. As a result, municipal and other public sector employers will continue to be governed only by the federal minimum wage law, which presently requires payment to employees at a rate of \$7.25 per hour.

If you have further questions on this issue, please contact Darren Klein or Tim Zessin at the firm's main number below, or respectively at dklein@k-plaw.com or tzessin@k-plaw.com

THE LEADER IN PUBLIC SECTOR LAW