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Minimum Wage Increase For Employers With San Francisco Employees Effective February 23

□ □ by Diane Marie O'Malley, Esq. and Tiffany L. Gomez, Esq.

Beginning on February 23, 2004, the minimum wage for work performed within the geographic boundaries of San Francisco increases to \$8.50 per hour, \$1.75 above the state minimum wage of \$6.75. In addition, beginning on January 1, 2005, and each year thereafter, the San Francisco minimum wage will increase by an amount corresponding to the prior year's Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose metropolitan statistical area.

□ □ To Whom Does the New Minimum Wage Apply?

The new minimum wage applies to any employee (regardless whether the employee lives in San Francisco) who works two (2) or more hours per week within the geographic boundaries of San Francisco city and county. The new minimum wage requirement does not apply to employees covered by a collective bargaining agreement that expressly waives the San Francisco minimum wage requirement.

□ □ What Employers Must Comply?

Based on the definition of employer in the ordinance, **all employers**, regardless of geographic location, must pay the minimum wage to their employees who work within the City and County of San Francisco. The broad scope of the ordinance raises issues regarding temporary workers in San Francisco as well as the City's ability to enforce the ordinance against employers who do not maintain an office within the City and County.

Not all employers are immediately subject to the ordinance. Businesses with fewer than ten (10) employees (including temporary and part-time employees) and nonprofits regardless of the number of employees, have until January 1, 2006 to comply. On January 1, 2005, those small businesses and nonprofits must pay a minimum wage of \$7.75 per hour.

□ □ How is it Enforced?

The Living Wage/Living Health Division of the Office of Contract Administration (the "Division") is responsible for implementation and enforcement of the ordinance. An employee may file claims for wages and/or retaliation with this Division or file a complaint in court. In a court action, the employee may be entitled to an award of attorney fees. The Division can enforce the minimum wage requirements by ordering reinstatement of employees and payment of back wages and penalties, including liquidated damages of \$50.00 per day or a portion thereof.

What is especially troubling about the enforcement provision is that there is a rebuttable presumption of retaliation if any adverse action is taken against a person within 90 days of the person exercising his or her rights protected under the law.

The Division has indicated that further implementing rules and regulations will be adopted in the coming months. Perhaps these regulations will clarify whether the ordinance is meant to cover employers outside of the city and county of San Francisco. The required posting for employers is available at www.sfgov.org/oca/lwlh/mw/notice.pdf.

More Information

If you would like to pursue the subject of this newsletter or other labor and employment matters, please contact Diane O'Malley (415-995-5045, domalley@hansonbridgett.com), Tiffany Gomez (415-995-5093, tgomez@hansonbridgett.com) or any Hanson Bridgett attorney with whom you have an existing relationship.