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Forget the Feds, Make Change Locally

Why Not Federal Legislation

- 1) The House is Not Friendly
- 2) The Senate is Not Friendly
- 3) The President hates us

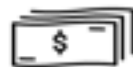
That's okay, its mutual

The Federal Government Hates Workers

Who Else Can Help?

- State
- County
- City/Municipality
- Special District

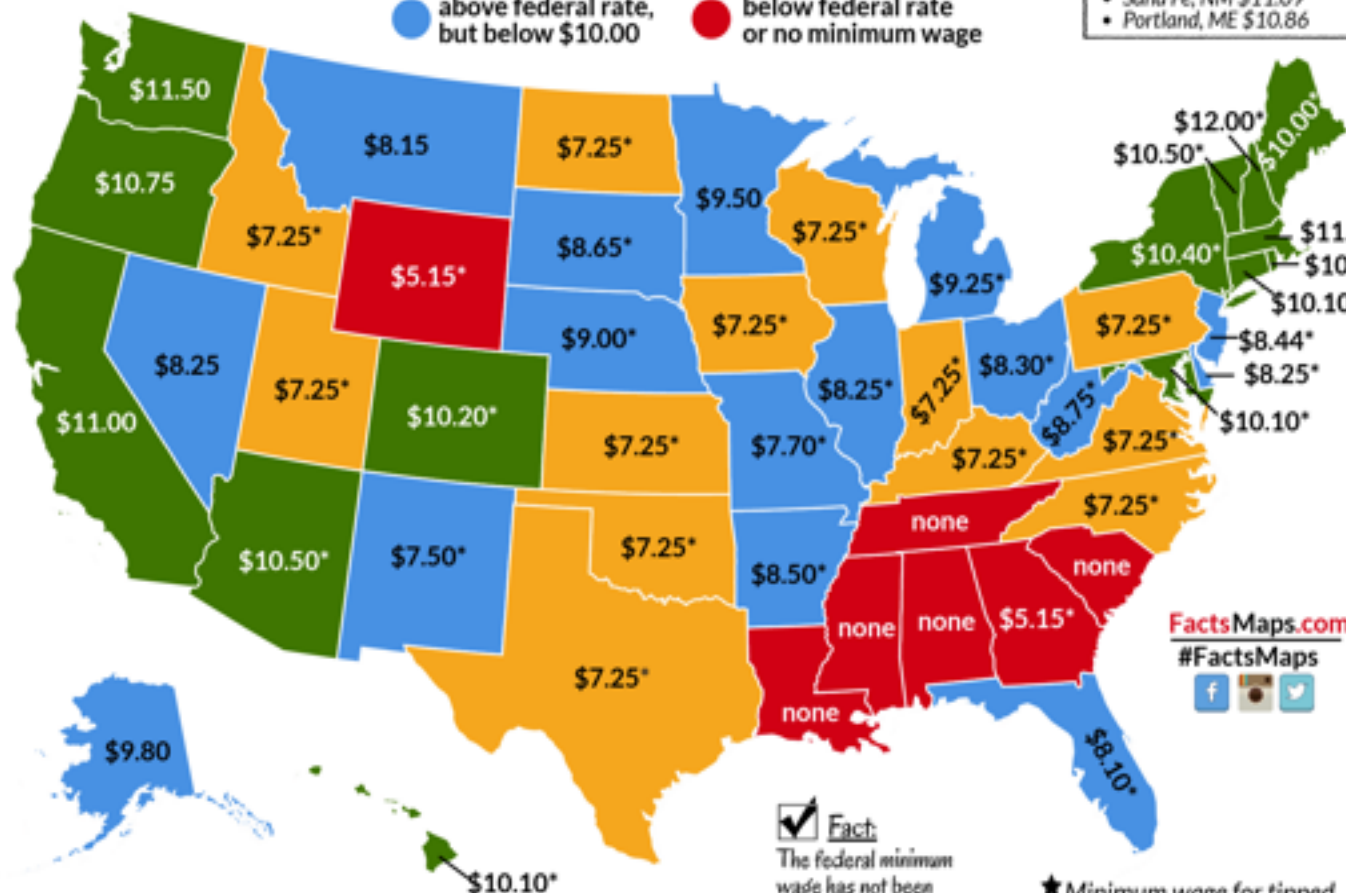
Minimum Wage by U.S. States as of July 1, 2018



- above \$10.00
- above federal rate, but below \$10.00
- federal rate
- below federal rate or no minimum wage

- Some local minimum wage rates:**
- San Francisco, CA \$15.00
 - Berkley, CA \$15.00
 - Los Angeles, CA \$15.00
 - Washington, DC \$13.25
 - New York City, NY \$13.00*
 - Oakland, CA \$12.86
 - San Jose, CA \$12.00
 - Portland, OR \$12.00
 - Santa Fe, NM \$11.09
 - Portland, ME \$10.86

- New Hampshire 12.00*
- Washington 11.50
- California 11.00
- Massachusetts 11.00*
- Oregon 10.75
- Arizona 10.50*
- Vermont 10.50*
- New York 10.40*
- Colorado 10.20*
- Maryland 10.10*
- Connecticut 10.10*
- Hawaii 10.10*
- Rhode Island 10.10*
- Maine 10.00*
- Alaska 9.80
- Minnesota 9.50
- Michigan 9.25*
- Nebraska 9.00*
- West Virginia 8.75*
- South Dakota 8.65*
- Arkansas 8.50*
- New Jersey 8.44*
- Ohio 8.30*
- Delaware 8.25*
- Illinois 8.25*
- Nevada 8.25
- Montana 8.15
- Florida 8.10*
- Missouri 7.70*
- New Mexico 7.50*
- Idaho 7.25*
- Indiana 7.25*
- Iowa 7.25*
- Kansas 7.25*
- Kentucky 7.25*
- North Carolina 7.25*
- North Dakota 7.25*
- Oklahoma 7.25*
- Pennsylvania 7.25*
- Texas 7.25*
- Utah 7.25*
- Virginia 7.25*
- Wisconsin 7.25*
- Georgia 5.15*
- Wyoming 5.15*
- Alabama none
- Louisiana none
- Mississippi none
- South Carolina none
- Tennessee none



FactsMaps.com
#FactsMaps

Fact:
The federal minimum wage has not been changed since July, 2009

★ Minimum wage for tipped professions and/or small businesses is less

Source: United States Department of Labor, state & local web sites

Two Ways for Government to Act

- Legislation generally effective - **Regulatory**
 - May differ based on size of employer
 - May differ based on industry
- Legislation may be only based on a market-participant theory - **Proprietary**

Market Participant

■ Boston Harbor

- A municipality, when seeking services, can control the terms of those services
 - Prevailing Wage
 - Sick Days
 - Minimum Wages
 - Health and Welfare (at all times)
 - Retirement (at all times)
 - Contributions to Apprenticeship
 - Local Hire

Language Matters

- Purpose of the regulation should be tailored
 - “to ensure efficient use of taxpayer dollars, minimize waste, and promote workers safety and fair treatment of workers”
 - To “remedy a projected shortfall of trained workers for work to be performed on behalf of the [City]”

Real Life Examples

- City of Cincinnati
 - Allied Construction Industries (6th Cir)
- City of Oakland
 - Port Ordinance
 - Living Wage Ordinance
 - Can control activities that occur outside the city

When the Entity is the End User...

- They get to direct the terms of the services they want
- They can't say only union contractors but they can say contractors who meet standards 1, 2, and 3.

Is this Useful?

- Absolutely
 - We are the ones who get them elected
 - We are the ones who can get someone else elected
- Win-Win
 - Entity gets what it needs while protecting or increasing the standards in the community

General Applicability

- State or local minimum wage
- Scheduling Ordinances
- May be industry specific
- May be size restricted

Topics that Can Be Addressed

- Minimum Wage
- Sick Leave (and other leave)
 - Transition of sick leave accruals to new employers
- Wage Fraud
- Misclassification
- Tip sharing
- Scheduling
- Retention

Real Life Examples

- Los Angeles City Wide Hotel Worker Minimum Wage Ordinance
- SeaTac Good Jobs Ordinance
- Disclosure
 - Wage Theft Act
 - Workplace Posters
 - Minimum wage
 - Sick leave
 - Right to form a Union?

More Examples

- Work Place Access
 - California AB 119 (New Employee Orientation)
Public Sector
 - California Agricultural Relations Act
 - Representative to inspect personnel files
 - OSHA inspection

Example: Equal Pay

- Goal – Women not having to work more hours to get the same total pay
- How to achieve it:
 - Transparency
 - Anti-Retaliation
 - First Day Pay
 - Comparable Worth
 - State Contractor Responsibility
 - Limiting Justification for Pay Differentials
 - Increased Enforcement

Example: Paid Sick Leave

- Goal: People who are sick get paid to stay at home and not get me sick.
- How to achieve it:
 - At the state level: Arizona, California, Connecticut, Massachusetts, Oregon, Rhode Island, Vermont, and Washington
 - Montgomery County, District of Columbia, Cook County and Chicago, Minneapolis and St. Paul
 - But before the state had it, Oakland, San Francisco, Portland, Seattle, Tacoma, etc.
- But what about another way? Tax incentives

Paid Sick Leave (continued)

- The devil is in the details:
 - Unless otherwise provided (like the Oregon law), the local ordinance, with different standards still applies
 - Lots of ways to approach issues: How many days? How are they paid? Do they accrue? What about the CBA? Requirement of a Dr. note? Attendance point? Use for broad purposes? Need to find a replacement? Cashed out at separation? Additional unpaid days?

Example: Wage Theft

- Goal: Leaving work with the wages you earned
- How to achieve it:
 - Increase Penalties
 - Individual liability
 - Liens
 - Treble damages

Wage Theft (continued)

- Targeting Bad Actors
 - Surety bond to contract with the state
 - Liability for successor organizations
 - Contractor responsibility
- Stronger Local or State Enforcement
 - Criminalize
 - Empower Cities or Counties to enforce
 - Create enforcement mechanisms
 - Private attorney general acts

Example: Paid Family Leave

- Goal: Taking the FMLA you are entitled to while still able to put food on the table
- Currently available in California, New Jersey, New York, Rhode Island and Washington, D.C.
 - Coming soon to Washington
- Differences in the amount of time and the percentage of pay
- How to achieve it:
 - Paid for by the employees (small payroll tax)

Remedies

- Wages owed with penalties
- Private right of enforcement? Or only through the designated agency?
- Limits on future work opportunities?
 - Chicago – 3 strikes and out
 - Denial of business licenses for labor law violators
 - Requirement to post a bond
- Public Shaming

Things to Consider

- Set increases? Tie to CPI? Ways to delay increases?
- All employers? Does it depend on size? How is size defined?
- How many hours worked is enough to qualify?
- CBA carve-out? If so, clear and unambiguous?

What is the Chamber of Commerce Worried About?

- Minimum wage increases
- Misclassification penalties
- Wage Theft
- Paid Leave
- Pre-employment Inquires
 - Arrests
 - Convictions
 - Credit History
- Equal Pay Laws
- Labor Peace Ordinances

What's Going on With Ride Shares?

- Local regulation getting harder
 - Texas statewide to provide one set of rules
 - Uber and Lyft left Austin over fingerprinting but now are back
 - 40 states have statewide regulation
- Organize as independent contractors
 - Seattle (hearing Feb 5)
 - New York (Independent Drivers Guild)

But Some Have Different Approaches

- Massachusetts
 - Fee on ride-sharing services
 - Establish requirements for background checks (one stage done by the state)
 - Vehicle inspections
 - Insurance (provided by the company)
 - Limits hours to 12 out of 24

Overall...

- Vote and change the national discussion
- But until the midterms and the 2020 election
 - Don't lose hope
 - Work locally and at the state level
 - These are the laboratories for the federal stage
- Do it responsibly
 - When you write bad law or laws that are preempted, it discourages others from even trying

Questions?