



Title: Raising the Kentucky Minimum Wage?

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In an effort to modernize, the Fair Labor Standards Act underwent an overhaul that raised the minimum salary necessary to become exempt from overtime pay. Although the changes have not yet gone into effect due to an injunction in place while the Department of Labor hashes things out in a Texas federal court, the message is clear. Similarly, eighteen states have raised their minimum wage requirements above the 2009 federal mandate of \$7.25 per hour. Now the 115th U.S. Congress (2017-2018) is considering the Raise the Wage Act (S.1242) which has been read twice and referred to the Committee on Health, Education, Labor and Pensions. Should it become law, the Raise the Wage Act will gradually raise the minimum wage to \$15 per hour by 2024, and will eliminate the separate minimum wage requirements for tipped employees, bringing them up to the same minimum wage as regular employees after a certain time period.

Although Kentucky has not yet joined the ranks of its eighteen sister states, legislators have pushed for a minimum wage increase in the past, successfully clearing the House Labor & Industry Committee in 2016 before amendments were filed that were seen as weakening the bill. Louisville and Lexington adopted ordinances gradually raising their local minimum wages until the Kentucky Supreme Court invalidated them on state sovereignty grounds that same year. In 2017, our legislature pushed further with both the House and Senate filing bills directed at increasing the minimum wage to varying degrees, though neither made it much further. Without any further legislation, Kentucky's minimum wage will generally continue to follow the federal rate. KRS 337.275.

With that in mind, the fight in the Commonwealth continues. A bill was introduced in the Senate this past November to raise the minimum wage incrementally over the next seven years until it reaches \$15 per hour in 2025, much like the federal Raise the Wage Act. If successful, the minimum hourly wage for Kentuckians will go up to \$8.20 an hour as of July 1, 2018, with similar increases for tipped workers as well. Certain small businesses earning less than \$500,000 in annual gross sales would be exempted from the adjusted minimum wage requirements. The bill (BR 65/SB 17) has been sent to the Appropriations & Revenue Committee as of January 3, 2018,

and includes language that permits local governments to adopt wages exceeding the state minimum wage level much like Louisville and Lexington previously attempted.

Should the wage rates increase, an important factor to consider is that the increase will affect not only hourly employees, but likely those paid on commission or day/piece-rates as well. See KRS 337.010 (defining wages to include commissions, among other things). Adjusting the pay rates for commission or piece-rate employees in order to comply with the minimum wage would involve consideration of a number of factors, such as the number of hours worked regardless of the sum paid. See 803 KAR 1:060. While it is impossible to determine the likely result of proposed state and/or federal legislation, employers and employees alike should monitor the Raise the Wage Act and SB 17.