

Washington Minimum Wage Goes Up in 2011

By Michael A. Griffin

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Washington's minimum wage, currently the highest in the nation, will increase to \$8.67 an hour effective January 1, 2011, an increase of 12 cents over the 2010 rate. The state minimum wage applies to agricultural and non-agricultural jobs in Washington, including tipped employees, as Washington's minimum wage law does not recognize a tip credit.

Washington recalculates the minimum wage each year in September based on the change in the federal Consumer Price Index for Urban Wage Earners and Clerical Workers during the 12-month period ending each August 31. According to the state's Department of Labor & Industries, Washington is one of ten states that adjust their minimum wage based on inflation and the CPI. The other states that do this are Arizona, Colorado, Missouri, Florida, Montana, Nevada, Ohio, Oregon and Vermont.

This year's recalculation of the Washington minimum wage presented a novel question of state law because, although the Index increased 1.4 percent during the 12-month period ending August 31, 2010, it had decreased the prior year in the recessionary economy, and the current year's increase did not return the Index to its previous peak. The Washington minimum wage was stable at \$8.55 an hour in both 2009 and 2010 when the Index decreased, because the state statutory language requires the Washington Department of Labor & Industries to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation.

In a legal opinion given to the Department, the state Attorney General concluded that the state statute "instructs the Department to hold the minimum wage steady until the [Index] regains its lost value" and that only "when the [Index] rises above the August 2008 level" will the Department be required to make a responsive increase in the state minimum wage rate. Washington AGO 2010 No. 7 (Sept. 15, 2010) (available at <http://www.atg.wa.gov/AGOOpinions/Opinion.aspx?section=archive&id=26444#1>). The Attorney General noted that ignoring the Index's decrease in a prior year and simply increasing the minimum wage based on the prior 12 months' escalation "effectively resets the minimum wage at a higher level with respect to the [Index] each time the [Index] falls and then recovers. Over time, employee purchasing power increases faster than the cost of living."

In announcing the 2011 increase, the Washington Department of Labor & Industries rejected the Attorney General's opinion. Director Judy Schurke said, "Our best read of the law is that when the cost of living rises over the previous 12 month period, the minimum wage rises accordingly." Washington business leaders are evaluating options for responding to this decision by the Department, which may include litigation or legislation. A similar issue could arise in other states that use the Index to adjust their minimum wages.

Jackson Lewis is keeping track of the minimum wage issue in Washington and will keep you informed of significant developments.

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