

Albuquerque Voters Pass Increase to Minimum Wage

By Danny W. Jarrett

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By a two-to-one ratio, voters in the City of Albuquerque decided in the November 6 General Election to [amend The Albuquerque Minimum Wage Ordinance](#) to raise the City's minimum wage from \$7.50 per hour to \$8.50 per hour effective January 1, 2013. The amended Ordinance also requires a cost-of-living (COL) adjustment to the minimum wage beginning on January 1, 2014, and each year thereafter, rounded to the nearest multiple of five cents. However, for employers who provide healthcare or childcare benefits equal to or in excess of an annualized cost of \$2,500.00, the minimum hourly rate payable to those employees is \$1.00 less than the then-current minimum wage. The amendment also includes changes to tipped employees' compensation.

The COL increase will be calculated as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index (All Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) published by the U.S. Department of Labor. Adjustments to the tipped minimum wage will be based upon the adjusted minimum wage and rounded to the nearest multiple of five cents.

Tipped Employees

Tips provided to tipped employees may be used in partial satisfaction of the minimum wage, provided that, beginning on January 1, 2013, employers pay tipped employees at least 45% of the minimum wage in cash. Beginning on January 1, 2014, and each year thereafter, employers must pay tipped employees at least 60% of the minimum wage in cash. An employer may credit tips as part of wages only if the employer notifies the employee in advance in writing, pays the employee a cash wage equal to or greater than the designated tipped minimum wage, and is able to verify that the total of the tips received and cash paid by the employer is equal to or greater than the minimum wage. The tips received by tipped employees become the property of the employee and shall not be shared with the employer; however, tip pooling among employees who customarily and regularly receive tips is permitted.

Notice Posting Requirements and Penalties

All employers are required to post in a conspicuous place at any workplace or job site a notice in English and Spanish (published each year by the City Attorney) informing employees of the current minimum wage and of their rights under the amended ordinance.

Employers who fail to pay the minimum wage may be subject to a civil action by the employee or the City Attorney. If the employee prevails in the action, the employee shall recover the balance of the wages owed, including interest thereon, and an additional amount equal to twice the wages owed. A prevailing employee also is entitled to recover his or her reasonable attorneys' fees and costs and expenses of suit. Employees also may bring claims for retaliation for exercising their rights under the Ordinance, and may recover actual damages and possible reinstatement to employment.

Reaction to the Amended Ordinance

The Albuquerque City Council reportedly has discussed overturning the amended Ordinance. Repealing or amending the Ordinance will require a simple majority of the city councilors and the mayor's approval. However, employers should not rely on an anticipated repeal and should be prepared to comply with all provisions of the amended Ordinance come January 1, 2013.

If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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