Legal Update Article

# Nevada Supreme Court Rejects an Interpretation of 'Health Insurance' that Would Nullify State Wage System

By Joshua A. Sliker

June 12, 2018

## Meet the Authors


### Joshua A. Sliker

(He/Him)
Principal and Office Litigation Manager
Joshua.Sliker@jacksonlewis.com


## Related Services

Construction
Energy and Utilities
Entertainment and Media
Financial Services
Government Contractors
Healthcare
Higher Education
Hospitality
Insurance
Life Sciences
Manufacturing
Real Estate
Retail
Staffing and Independent Workforce
Technology
Transportation and Logistics
Wage and Hour

In the last of a series of decisions reached by the Nevada Supreme Court interpreting the Minimum Wage Amendment ("MWA") to the Nevada Constitution, the Court concluded that an employer may pay the lower of the state's two-tier minimum wage "if the employer offers health insurance at a cost to the employer of the equivalent of at least an additional dollar per hour in wages, and at a cost to the employee of no more than 10 percent of the employee's gross taxable income from the employer." *MDC Restaurants, LLC, et al. v. Eighth Judicial District Court*, 134 Nev. Adv. Op. 41, 2018 Nev. LEXIS 42 (May 31, 2018).

### Background

The MWA was enacted following voter ballot initiatives in 2004 and 2006. The MWA states, in relevant part:

> Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be [seven dollars and twenty five cents ($7.25)] per hour worked, if the employer provides health benefits as described herein, or [eight dollars and twenty five cents ($8.25)] per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer.

Nev. Const. art. 15, § 16(A).

The MWA has been a source of confusion for employers struggling to comply with its well-intentioned, but ambiguous, provisions. Over the past year, the Court clarified several of the MWA's requirements in a series of opinions. The Court's latest opinion continues that theme by defining "health benefits."

### The Decision

The Court succinctly stated that the issue was "to clarify what health benefits an employer must provide to qualify" to pay the lower-tier minimum wage rate (currently, $7.25 an hour). The Court resolved this issue by ruling unanimously that "an employer may pay the MWA's lower-tier minimum wage to an employee if the employer offers health insurance at a cost to the employer of the equivalent of at least an additional dollar per hour in wages, and at a cost to the employee of no more than 10 percent of the employee's gross taxable income from the employer."

Considering the meaning of "health benefits" as it appears in the MWA, which was enacted by "The Raise the Minimum Wage for Working Nevadans Act" voter initiative, the Court found that "[w]hen voters passed the MWA they sought to provide higher wages to

employees, or in the alternative, health insurance in order to 'fight poverty' and 'ensure that workers … receive fair paychecks that allow them and their families to live above the poverty line.'" However, the Court made clear that "nothing in the text or purpose of the MWA … suggests that the voters intended to create one tier [of minimum wage] that was inherently more or less valuable to employees than the other." The Court explained that "the [minimum wage] tiers are different means to the same end …."

To fill the definitional gap in the text of the MWA, the Labor Commissioner promulgated Nevada Administrative Code (NAC) 608.102, defining "health insurance" as insurance that covers "those categories of health care expenses that are generally deductible by an employee on his individual federal income tax return pursuant to 26 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne directly by the employee." However, and despite this definition, Nevada's Eighth Judicial District Court adopted definitions found in Nevada Revised Statutes (NRS) Chapters 608, 689A, and 689B, addressing employer-provided health insurance, individual health insurance, and group and blanket health insurance, respectively. The Nevada Supreme Court noted the lower court used these statutory definitions to determine that the limited benefit plan offered by the employer in this case was *not* "health insurance."

The Court rejected the Labor Commissioner's NAC definition as well as the District Court's adopting the definitions found in the Nevada Revised Statutes finding. It found that NAC 608.102 was an "unworkable standard" and NRS Chapters 608, 689A, and 689B "do not set the constitutional standard for the quality of health insurance that allows an employer to pay the lower-tier minimum wage."

Reviewing the MWA's goals, the Court made clear that the issue was "not the types of benefits provided … [but] whether there is some minimum quality or substance of health insurance that an employer must provide for the employer to pay the lower-tier minimum wage under the MWA." The task, the Court explained, was to find a "guiding principle in the text, history, and purpose of the MWA and articulate a workable standard to assess whether a health insurance plan is sufficient to qualify an employer to pay the lower-tier minimum wage."

The Court reasoned that, "[g]iven that the MWA provides for two tiers [of minimum wage] in furtherance of the same purpose, common sense dictates that an employer who pays the lower-tier minimum wage must offer health benefits that, at the very least, fill the one-dollar gap in value between the $7.25 per hour lower-tier minimum wage and the $8.25 per hour upper-tier minimum wage." Thus, the Court concluded that "health benefits must mean the equivalent of one extra dollar per hour in wages to the employee, but offered in the form of health insurance as opposed to wages."

## Key Takeaways

- The Supreme Court rejected the argument that "health insurance" means only those plans that comply with the provisions of NRS Chapters 608, 689A, and 689B.
- The Supreme Court also rejected the definition of health insurance found in NAC 608.102.
- The Court found employers comply with the MWA's requirement to offer health insurance to employees and dependents so long as the employer spends "at least one additional dollar per hour" on the cost of health insurance for each employee and the insurance offered costs the employee no more than 10 percent of the employee's gross

taxable income from the employer.

Finally, although the case was sent back to the District Court for additional factual findings regarding the insurance plan at issue, the Court strongly implied that limited benefit or "mini med" plans may qualify as "health insurance," as long as they comply with the Court's new definition of health insurance.

Employers will need to review their health plans and consider the following questions:

- Is the employer paying the equivalent of at least one dollar an hour in wages toward the health insurance plan being offered to each of its employees; and, if so,
- Is the total cost of the plan to the employee (and the employee's dependents) no more than 10 percent of the employee's gross taxable income from the employer?

The exact parameters of the new requirements likely will be determined through future litigation and court decisions. Jackson Lewis will continue to monitor and provide updates on MWA developments.

Please contact your Jackson Lewis attorney to discuss the latest case and your specific organizational needs.