



**Legislative Department  
Seattle City Council  
Memorandum**

**Date:** May 22, 2014  
**To:** Select Committee on Income Inequality and Minimum Wage  
**From:** Dan Eder & Patricia Lee, Central Staff  
**Subject:** **Minimum Wage Legislation**

The Mayor submitted legislation on May 19, 2014 that proposes to create a local minimum wage and minimum compensation requirement for all employees working in Seattle. This proposal follows five months of work by the Mayor's Income Inequality Advisory Committee (IIAC) which included representatives of Seattle's business, labor and non-profit communities and three councilmembers. The IIAC reviewed data developed by the University of Washington's Evans School of Public Policy and the University of California Berkeley Institute for Research on Labor and Employment. The IIAC hosted numerous public engagement forums, including forums on specific employment sectors and an Income Inequality Symposium at Seattle University.

This memo summarizes the Mayor's proposal and identifies potential issues Council may want to explore further.

As a frame of reference in reviewing the Mayor's proposal, the Council's Select Committee on Income Inequality and Minimum Wage (Select Committee) recognized that enactment of a local minimum wage ordinance presents at least six major policy choices:

- What should the minimum hourly wage be?
- Which employees should it cover?
- When should the new minimum wage be in effect?
- How should it be calculated (i.e., should it take into consideration tips, commissions, benefits)?
- How should it be enforced?
- What remedies should be provided for violation?

The following details how the Mayor’s proposed ordinance addresses these six policy questions.

***A. Minimum hourly wage, starting date, and covered employees.***

Seattle’s minimum wage will rise in steps to \$15.00 an hour, phased in over several years. It will then be adjusted with inflation.

Seattle’s minimum wage and minimum compensation will cover the same employees as those currently covered under the State Minimum Wage Act.

Work performed in Seattle is covered if an employee works more than two hours in a two-week period.

The City minimum wage will be higher than the State minimum wage for all covered workers on January 1, 2015, the start date set in the legislation. In recognition that some smaller employers would have less flexibility to pay for increased labor costs, the phase-in periods to \$15) for smaller employers is longer than the phase-in period for large employers. The proposal defines **large employers** (“Schedule I” in the Mayor’s proposal) as employers that either (a) have more than 500 employees in the United States or (b) are franchises associated with any franchisor or franchise network that employees more than 500 employees in the United States. All other employers are defined as **smaller employers** (“Schedule 2” in the Mayor’s proposal).

The proposal would calculate the number of employees using the average number of employees per calendar week in the preceding calendar year.

Large employers are on a 3 or 4 year phase in schedule to pay a \$15/hour minimum wage; smaller employers are on a 5 to 7 year phase-in schedule to pay a \$15/hour minimum wage. The differences in these phase-in schedules are explained below.

***B. Implementation Schedules***

The proposed legislation sets out schedules describing the required hourly minimum wage and – for smaller employers – the hourly minimum compensation that employers must pay during each calendar year. Commissions, bonuses and piece work payments are counted as wages, and employers must pay the difference (if any) in each pay period whenever an hourly employee’s total wages are below the required minimums. This is consistent with the State Minimum Wage Act requirements.

The Mayor’s proposal includes defined steps up to \$15/hour (highlighted in yellow in Table 1) for all employers. The proposal includes different minimum wage requirements for large and smaller employers. For large employers, the required hourly minimum wage steps up to \$15/hour in three years; however, the required hourly minimum steps up to \$15/hour in four years if the employer provides qualifying medical plan payments. Qualifying medical plan payments must be for the equivalent of a Silver plan or higher as defined in the federal Affordable Care Act.

Table 1 shows the required minimum wages by year for large employers. In an effort to minimize confusion, this memo identifies the minimum wage that large employers are required to pay as the “General” Hourly Minimum Wage in order to distinguish it from the minimum wage that smaller employers will pay. The term “General” Hourly Minimum Wage is not in the proposed ordinance.

The increases beyond \$15/hour are projections and illustrative only since the future rate of inflation is unknown. The schedules assume 2.4% annual inflation every year until 2025. However, the actual hourly rates after \$15/hour will vary with the actual rate of inflation and thus may be larger or smaller than the projected amount shown on the schedule.

For large employers: After \$15/hour, the minimum wage increases at the rate of inflation rounded to the nearest penny; there is no adjustment formula.

For smaller employers: After \$15/hour, the schedule rises with inflation and is rounded to the nearest quarter; there is an adjustment formula for minimum wage (4 years, highlighted in green in table 2) and for minimum compensation (2 years, highlighted in green in Table 2) in order to catch up to large employers.

**Table 1: Large employers**

	(A)	(B)
Year	“General” Hourly Minimum Wage (includes commissions, piece work, and bonuses)	Hourly Minimum Wage With Medical Benefits Plan Payments
2015	\$11.00	\$11.00
2016	\$13.00	\$12.50
2017	\$15.00	\$13.50
2018	\$15.36 *	\$15.00
2019	\$15.73 *	“General” Hourly Minimum Wage
2020	\$16.11 *	“General” Hourly Minimum Wage
2021	\$16.49 *	“General” Hourly Minimum Wage
2022	\$16.89 *	“General” Hourly Minimum Wage
2023	\$17.29 *	“General” Hourly Minimum Wage
2024	\$17.70 *	“General” Hourly Minimum Wage
2025	\$18.13 *	“General” Hourly Minimum Wage

\* Actual rates will vary with actual inflation; figures in Table 1 show the wages using a projected average 2.4 percent annual inflation. Starting in 2019, employer medical plan benefit payments do not affect the hourly minimum wage rate. In other words, column (A) and (B) will be the same rate.

Smaller employers have a longer phase-in period to \$15/hour, and they must meet two requirements in each pay period: minimum wage and minimum compensation. The Hourly Minimum Wage for smaller employers is defined in the same way as the “General” Hourly Minimum Wage for large employers. Hourly Minimum *Compensation* includes the Hourly Minimum *Wage* plus tips and qualifying medical plan payments.

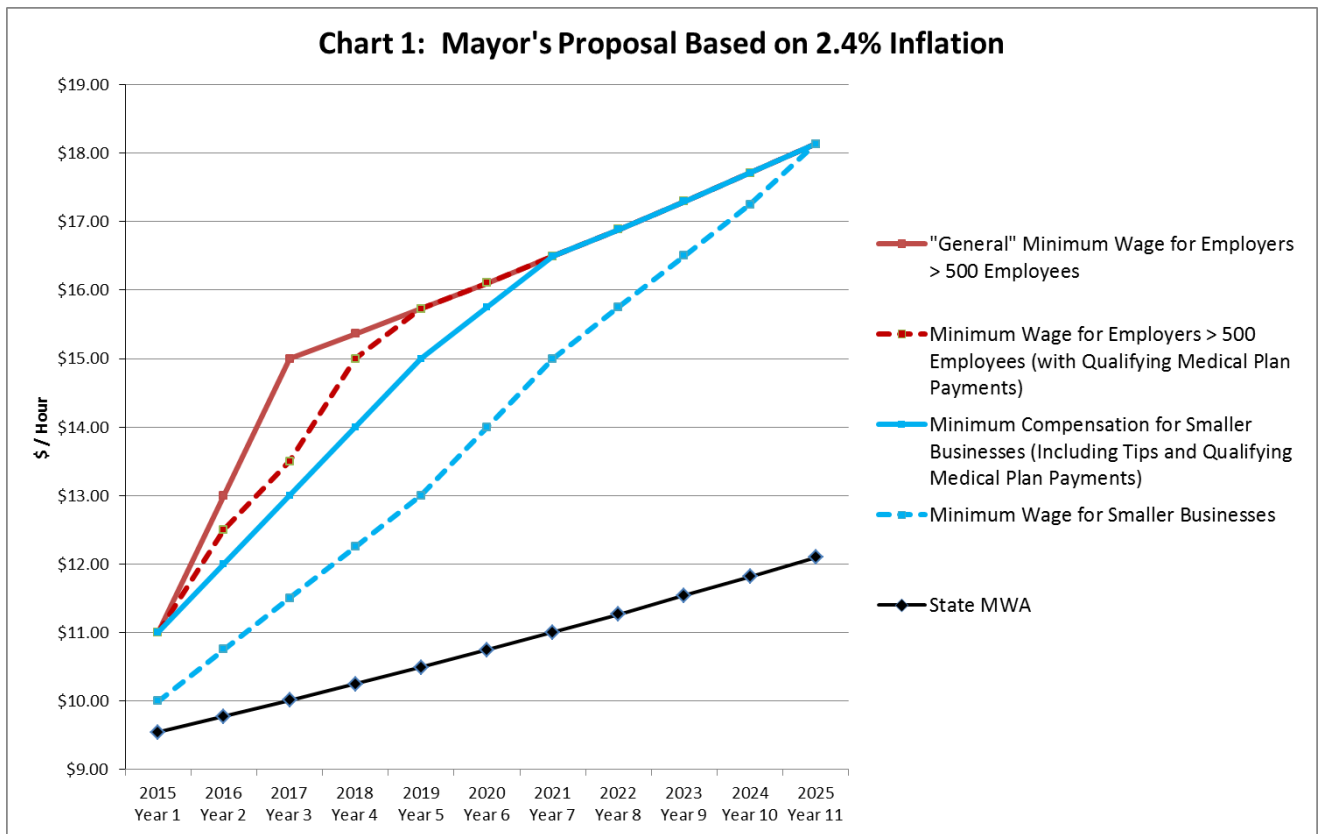
Table 2 shows the minimum hourly wage and minimum hourly compensation that employers must pay each year.

**Table 2: Smaller employers**

	(A)	(B)
Year	Hourly Minimum Compensation (includes tips and employer medical plan payments)	Hourly Minimum Wage (includes commissions, piece work, and bonuses)
2015	\$11.00	\$10.00
2016	\$12.00	\$10.50
2017	\$13.00	\$11.00
2018	\$14.00	\$11.50
2019	\$15.00	\$12.00
2020	\$15.75 **	\$13.50
2021	“General” Hourly Minimum Wage	\$15.00
2022	“General” Hourly Minimum Wage	\$15.75 **
2023	“General” Hourly Minimum Wage	\$16.50 **
2024	“General” Hourly Minimum Wage	\$17.25 **
2025	“General” Hourly Minimum Wage	“General” Hourly Minimum Wage

\*\* Actual rates will vary with actual inflation; figures in Table 2 show the wages and compensation using a projected average 2.4 percent annual inflation and applying the Mayor’s proposed adjustment formula. Starting in 2025, minimum compensation is no longer applicable, and small and large employers will be required to pay the same hourly minimum wage.

The Mayor’s proposal for large employers and smaller employers is summarized below in Chart 1.



**C. Enforcement and Remedies.**

The City’s 2014 Budget funded an advisory committee on labor standards that the City Council and the Executive established earlier this year. The Labor Standards Advisory Committee is expected to provide recommendations on how the City could increase employer compliance and city enforcement of the City’s current labor standards, in particular the City’s ordinances on wage theft, paid sick and safe leave and use of criminal background checks in employment decisions. The Labor Standards Advisory Committee will provide feedback to the Mayor and Council in mid-2014 and the Mayor will forward his recommendations to Council in the fall of 2014.

Given that timing and the likelihood that the Mayor and Council may make significant changes to the way the City enforces its labor standards, the minimum wage and minimum compensation proposal sets out an enforcement mechanism and remedy section modeled after the City’s current paid sick and safe leave and job assistance ordinances. Employers are required to provide notice of the required minimum wage and minimum compensation, retain payroll records for three years, pay the appropriate minimum wage and minimum compensation, and not interfere or retaliate against an employee who exercises their rights under the proposed ordinance.

Employees may seek assistance from the City by filing a charge alleging a violation of these requirements. The Department of Finance and Administrative Services (FAS) will investigate the charge to determine whether an employer violated the ordinance. Upon finding a violation, the Director of FAS will write up findings of fact and determinations, and confer with the employer and charging party on the appropriate remedy. The Director will then issue a notice of violation to the employer and impose a remedy that may include full payment of unpaid wages with accrued interest. The employer may appeal a Director's order and request a contested hearing. The Hearing Examiner may affirm, modify or reverse the Director's order. An employer may seek review of a Hearing Examiner's decision in Superior Court.

In addition to payment of unpaid wages, proposed monetary penalties are consistent with the City's existing labor standards laws and are as follows:

- Failure to provide notice of the appropriate minimum wage and minimum compensation:
  - Civil penalty of \$125 first violation and \$250 subsequent violations
  
- Interference with the Director in administering, or implementing the requirements in this ordinance is a violation and carries a civil penalty between \$1,000 and \$5,000. Central staff proposes the language in the proposed ordinance be clarified that interference is a civil violation not a criminal offense.
  
- Failure to pay minimum wage:
  - Warning for first violation;
  - \$500 per employee for second violation;
  - Maximum of \$5,000 for third violation;
  - Maximum of \$20,000 for violation of this chapter.
  
- The proposed ordinance does not include a private right of action. However, State law makes intentional and willful failure to pay an employee wages required by statute, ordinance, or contract a criminal misdemeanor subject to a private civil action for enforcement of a remedy. It is possible that an employee could successfully file a claim under this State Wage Rebate Act (RCW 49.52) based on a violation of the Seattle minimum wage ordinance. That type of lawsuit would involve an employee as plaintiff and an employer as defendant. Remedies under State law can include twice the wages withheld, and attorneys' fees and costs.
  
- Under the proposed minimum wage legislation, all employers would be required to begin paying the City's new minimum wage and minimum compensation requirements on January 1, 2015. It is our understanding that the Executive will work with the appropriate City departments on the development of a notice, education and

outreach effort to employers and employees and whatever Director's Rules are necessary in the interim.

### **Potential Issues**

1. ***Non-profits.*** Some non-profits – especially those providing human services (e.g., shelter beds, emergency mental health counseling, food banks) – do not charge clients and cannot recoup higher labor costs through higher prices or profit reduction.

The Mayor's proposed legislation treats non-profit employers the same as other employers. Non-profit employers with 500 or fewer employees are on a 7-year schedule to provide \$15/hour minimum wage and on a 5-year schedule to provide \$15/hour minimum compensation (minimum wage plus tips and qualifying health plan payments). Non-profit employers with over 500 employees are on a 3-year schedule to provide \$15/hour minimum wage or on a 4-year schedule for employees receiving qualifying medical plan payments.

As discussed in the Select Committee on Minimum Wage and Income Inequality's meeting session with non-profits on May 7, 2014, the Seattle Human Services Coalition supports increasing the minimum wage to \$15/hour. However, they estimate that it will cost an additional \$10.9 million per year to boost the pay of over 2,500 employees in 28 organizations to \$15/hour, and they "urge the City to do a comprehensive analysis of the total investment needed for cost offset funding and to provide that funding" (emphasis added). Some of these non-profit organizations have more than 500 employees and would be on a 3 or 4 year phase-in to \$15/hour; others are on a slower track to \$15/hour because they are smaller employers.

#### **Options:**

- a. No change to Mayor's proposal.
  - b. Change Mayor's proposal to give all non-profits (regardless of the number of employees) a longer phase-in period to \$15/hour.
2. ***Certificates for City subminimum wages.*** The State Minimum Wage Act delegates authority to the Director of the Department of Labor and Industries (L&I Director) to issue certificates on a case by case basis allowing certain employers to pay sub-minimum wages for the following categories:
    - i. Employees with physical or cognitive disabilities; and
    - ii. Employees enrolled in a certified vocational training or apprenticeship program.



Currently, the L&I Director issues State certificates allowing certain employers to pay 75 percent of the State minimum wage to employees with cognitive disabilities. The L&I Director also issues State certificates allowing employers to pay 85 percent of the State minimum wage to trainees enrolled in a vocational education or apprenticeship program.

The Mayor's proposed legislation parallels the State certificate program. The proposed legislation would authorize the Director of Financial and Administrative Services (FAS Director) to issue a City sub-minimum wage certificate to employers for either of these categories if and only if the employer has first received a letter of recommendation from the L&I Director indicating that the employer has met State-developed criteria. The City sub-minimum wage certificate would allow such employers to pay sub-minimum wages to employees within the City of Seattle following the same guidelines and percentages used by the L&I Director.

**Options:**

- a. No change to Mayor's proposal.
  - b. Allow City sub-minimum wages, but use a different process, set different criteria, and/or establish different percentages for City sub-minimum wage certificates.
  - c. Do not allow City sub-minimum wage certificates for these categories.
3. ***Rules for City sub-minimum wages.*** The State Minimum Wage Act delegates authority to the State L&I Director to make rules regarding subminimum wages for employees under 18 years of age. Unlike the certificate programs described above, the State rule applies to all employers who have any employees under 18 years of age. All employers can follow the L&I Director's rules, and individual employers do not need to seek separate, express approval from the State L&I Director to pay subminimum wages to such employees. The State L&I Director has adopted rules that provide that employers may pay 14-year-olds and 15-year olds at 85 percent of the State minimum wage. The State L&I Director's rules do not allow a subminimum wage for 16-year-olds or 17-year-olds.

The proposed legislation was intended to parallel the State rule-making protocols, but it inadvertently omitted a section giving the FAS Director rule-making authority for employees under 18 years of age. The Mayor's proposal was supposed to include language that allowed the FAS Director to issue rules allowing all employers to pay a City subminimum wage to all employees under 18 years of age. Executive Staff provided language to correct that omission. If approved by Council as an amendment to the proposed ordinance, the new language would authorize the FAS Director to make rules following the guidelines and percentages used by the State L&I Director's rules.

In addition to correcting this omission, Council may wish to consider further expanding the FAS Director's rule-making authority. For instance, the City could authorize the FAS Director to make rules for a sub-minimum training wage for employees during a set

period of months starting when the new employee is first hired. The City could also allow a sub-minimum training wage for defined subsets of employees to achieve policy objectives.

**Options:**

- a. Make no changes to the Mayor’s proposal.
  - b. Correct the drafting error to authorize FAS Director to authorize youth wages through rules but make no other changes to the Mayor’s proposal.
  - c. Authorize a new category of subminimum training wages either for all new employees or only for certain types of employees.
4. **“Micro-employers.”** Council may wish to include an additional provision for employers with a much smaller number of employees (perhaps up to 10 employees). The University of Washington’s Evans School report concluded that approximately 75 percent of all business establishments in the City of Seattle have fewer than 10 employees, while 12 percent of all Seattle employees work in such business establishments.

The Mayor’s proposed legislation provides a \$15/hour minimum wage with a 7-year phase-in period for smaller employers whose employees receive tips or medical benefits. The Mayor’s proposal requires these smaller businesses to pay \$15/hour within 5 years for employees who do not receive tips or medical benefits.

**Options:**

- a. No change to Mayor’s proposal.
  - b. Exempt micro-employers from the new City minimum wage.
  - c. Adopt a different phase-in period to \$15/hour for micro-employers.
5. **Harmonizing wage schedules.** Council may wish to consider a simpler approach to bring all employers to a common minimum wage. The Mayor’s proposal includes a formula for increasing both the minimum wage and the minimum compensation for smaller employers beyond \$15/hour up to the “General” Hourly Minimum Wage paid by larger employers.

The Mayor’s approach as presented to the Select Committee on May 5 and again on May 13 included a schedule of minimum wage increases for smaller businesses based on an assumption that the minimum wage for larger businesses would rise with inflation at an average of 2.4 percent per year. However, the legislation uses a different approach.

The legislation does not change the steps for seven annual increases up to \$15/hour in 2021 for smaller employers. However, it replaces the subsequent steps starting in 2022 with a formula to smooth the further increases. The approach is intended to increase the minimum wage on roughly even steps up to the minimum wage paid by larger employers

even if actual average inflation is significantly different than 2.4 percent. The formula appears to accomplish the stated goal, but the approach is quite complicated.

Council may want to consider an alternative approach that includes a defined schedule for smaller employers in lieu of the formula. Actual inflation could be on average lower or higher than the projected 2.4 percent. The alternative approach would provide that smaller employers must pay the lesser of the two schedules. This would provide certainty for smaller business owners for all years up through 2024. Smaller businesses would catch up to the “General” Hourly Minimum Wage for larger businesses in fewer than four years (in the event that average inflation is lower than 2.4 percent). The last step – from the 2024 minimum wage to the 2025 General Hourly Minimum Wage – could be larger than projected (in the event that average inflation is greater than 2.4 percent).

**Options:**

- a. No change to Mayor’s proposal.
- b. Replace the adjustment formulas with a schedule for smaller employers after reaching \$15/hour (i.e., in 2022 through 2025) and provide that smaller employers must pay whichever is lower:
  1. the new schedule for smaller employers; or
  2. the “General” Hourly Minimum Wage schedule for larger employers.

**Next Steps:**

Council’s Select Committee is scheduled to meet on May 27, 2014 after the Full Council meeting and on May 29, 2014 at 9:30 AM. If there are other options or issues Council would like to explore, please let us know and we will prepare them for the next Council meeting.