

# Huge NY Wage Hike Bill Would Touch Off Litigation Bonanza

By Pete Brush

Law360, New York (April 16, 2014, 6:43 PM ET) -- A bill to nearly double the hourly minimum wage large New York businesses pay to \$15 would keep New York lawyers busy for years by setting the plaintiffs bar on the hunt for misclassifications and other missteps and spurring employers to argue the law doesn't apply to them, experts said Wednesday.

Democratic state lawmakers, in an ongoing and [multipronged](#) push to get workers more money, want companies earning more than \$50 million gross revenue per year, as well as potentially many more employers, to be responsible for an hourly wage far higher than the [current](#) \$8 state hourly minimum and more than double the federal minimum.

Sponsor Daniel Squadron, a state senator from New York City, says the bill spares small and medium-sized business from the wage requirement but would force big businesses like [McDonald's](#), [7-Eleven](#) and [Wal-Mart](#), which reap huge profits, to help fund workers' paths out of "crushing poverty."

"These businesses, rather than paying the lowest wages, should be required to pay a living wage," Squadron said at a City Hall press conference in Lower Manhattan.

The legislation, partly the brainchild of the [National Employment Law Project](#), could have compelling economic benefits if passed, according to economist James Parrott of New York's nonpartisan Fiscal Policy Institute. He says paying the poorest workers more would alleviate the burden on New York taxpayers.

"We know that many large retail and fast food chains pursue an employment strategy of paying wages so low that many of their employees qualify for food stamps, Medicaid and other taxpayer-funded subsidies," Parrott said.

With national chains like McDonald's earnings billions in profit every year, there's no reason to think they can't pay workers more money, according to NELP lawyer Tsedeye Gebreselassie.

But while supporters hail the proposal as one that spares small employers while forcing the richest to pay up, others say raising the wage for a large swath of big employers across the state would be tantamount to raising it for all — because small business would be forced to follow suit.

"Think about a little deli in the city next to a Chipotle," said Jeffrey W. Brecher, a [Jackson Lewis PC](#) employment partner. "If you're looking for a job, where would you go? The Chipotle is paying \$15."

Big employers, meanwhile, would be tempted to go after the law's details in legal bids to escape

the huge payouts it contemplates, he said.

“There are many vague terms in the proposal as to coverage. There would likely be litigation as to who constitutes a large employer and who constitutes a formula retail store,” Brecher said. “This alone would keep lawyers busy for the foreseeable future just in litigating coverage questions.”

Regardless of gross revenue, any “formula retail store” with 11 or more outlets would be covered, the bill says, defining such businesses as those with standardized merchandise, appearance or signage.

The proposal as drawn also applies to subcontractors and franchisees — for one example potentially to individuals who run Subway shops and the like — and the huge pay raise could affect operations that use a big name but are, in reality, very small, employment-side lawyers said.

That could trigger challenges if franchise owners feel they're being unfairly treated compared to their neighbors. Constitutional challenges undercutting the rational basis for such a law also were not outside of the realm of possibility, according to legal experts.

"There is no rationale as to why a larger employer should be required to pay more to an employee for the same work the employee would perform at a small business, just because the larger business can afford it," said Yale Pollack of [Kaufman Dolowich & Voluck LLP](#).

Another major effect, according to employment-side lawyers, would be that the law could throw current rules surrounding how much tipped restaurant workers are paid into disarray, more than doubling the minimum wage for tipped workers and putting big restaurant chains into a position where they might have to take aggressive action to cut costs.

That in turn would set the plaintiffs bar on the hunt for violations, according to Brian S. Schaffer of Fitapelli & Schaffer LLP, a veteran Empire State wage-and-hour plaintiffs' lawyer.

“This bill would have a significant impact on margins,” Schaffer said. “When that happens, big companies tend to try to be creative in trying to protect those margins.”

The giant wage hike under the proposal — it runs, via simple back-of-the-napkin math, easily into the billions or tens of billions of dollars — could tempt employers to aggressively reclassify hourly workers as salaried employees or to push workers to report fewer hours.

"This could lead to all sorts of liabilities," Schaffer said. "It could lead to companies pressuring their workers to work off the clock, saying, 'You're getting \$15 an hour, don't complain or you'll be fired.'"

The legislation also could tempt businesses to revamp their corporate structure in such a way that they might not fall under the scope of the legislation, Schaffer said.

“I could see employers trying to do things like that to avoid these requirements,” he said. “I would imagine this bill would be met with incredible push-back from the businesses community.”

--Editing by Jeremy Barker and Philip Shea.