

Local Wage Hikes In NY Could Create Compliance Headaches

By Pete Brush

Law360, New York (February 05, 2014, 6:54 PM ET) -- A bill that would empower local New York governments to raise their minimum wages without state approval could narrow a cost-of-living chasm between downstate and upstate, experts said Wednesday, but some warned of unintended consequences including higher compliance costs and potentially confusing layers of oversight.

Legal experts weighed in after New York Senate Democrats, led by conference leader Sen. Andrea Stewart-Cousins, D-Yonkers, [proposed](#) a slate of legislation that would accelerate wage raises already voted into state law, include tipped workers in the increase and cut tax subsidies for businesses that hire young workers. But their boldest proposal was a "one size does not fit all" measure that would strip Albany of its power over local minimum wage bumps and, thereby, keep the wage the same all across the state.

"This package is a Super Bowl win for New York. It's great to see that someone in Albany is looking out for low-wage workers and their families," said economist James Parrott of the nonpartisan Fiscal Policy Institute, who argues that wage hikes create jobs and boost profits for businesses by giving workers more economic power.

Passage is no sure thing, however, as state Republicans responded by saying [last year's wage hike](#) was as far as they planned to go and that their focus would be to create jobs and to "reduce the high cost of doing business in New York." Gov. Andrew Cuomo has thrown his support behind higher wages in the past, but had no immediate comment on the latest salvo from his fellow Democrats.

Passage of such a law would buck something of a national trend in which states are moving in the opposite direction, passing laws that block local wage hikes instead of sanctioning them, according to the National Conference of State Legislatures. Twelve states have affirmatively blocked local wage bumps, most recently Florida and Mississippi, the NCSL said.

States that tolerate, or are silent, regarding local variances include California, where San Francisco's \$10.74 hourly minimum wage is highest in the nation. Seattle, too, is considering a local wage hike, but Washington state's Republican lawmakers now are moving to block that move through a preemption law.

A law in New York allowing for such variances would see New York City, where the cost of living is vastly higher than it is upstate, begin to address the problem of having workers unable to meet basic living standards, according to Columbia Business School professor Rita Gunther McGrath.

"The cost of living in Manhattan is probably 10 times what it is in Rochester. Once you get

above the north end of Westchester, the cost of living just plummets,” McGrath said. “So I can see the case for localities to be able to fine-tune their policies on wages.”

But she also said employers could view having different workers subject to different minimums across the state as “a very tricky thing to get into.”

One unintended consequence and potentially serious headache for businesses would be if localities began to one-up each other by passing wage hikes to attract relatively cheap labor, according to McGrath and [Kelley Drye & Warren LLP's Barbara E. Hoey](#).

“Say you're a chain with a location in Town A and another in Town B, and Town B pays a higher wage,” Hoey said. “Am I going to have employees vying to transfer from one place to another?”

The biggest, most sophisticated corporations have experience in navigating different wage jurisdictions, but midsize and small business with footprints across New York's thousands of jurisdictions could see local control over wages as a “wrench thrown into the mix” in a state already famous for having many regulatory hurdles, according to labor and employment lawyer Evan J. White of White Harris PLLC.

Meanwhile, Brian Schaffer of Fitapelli and Schaffer LLP, who represents plaintiffs in wage and hour cases, downplayed those kinds of concerns, arguing that businesses already are used to a patchwork of requirements.

“In New York, there is a history of employment laws varying by location,” Schaffer said. “For example, the New York City Human Rights Law, which covers employees working within the city, provides far greater remedies and carries lower burdens of proof than the New York State Human Rights law.”

While the bill, S6516, is rather concise, it makes a point of imparting authority to local governments to enforce any wage raises. According to White, that could create a climate where both local authorities and the state [Department of Labor](#) would be in the mix on compliance.

“The possibilities here are endless,” White said, noting that more overseers and audits generally also translate to higher compliance costs. “The unknown is the concern in that regard.”

--Editing by Elizabeth Bowen and Chris Yates.