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New Jersey Raises Minimum Wage by Constitutional Amendment

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On November 5, 2013, New Jersey voters overwhelmingly approved (by a 61% to 39% margin) a constitutional amendment to raise the state minimum wage to $8.25 per hour starting on January 1, 2014. The amendment further mandates an automatic yearly increase based on the Consumer Price Index ("CPI")[1] beginning on September 30, 2014. These annual adjustments will take effect every January 1st in perpetuity. Moreover, should the federal minimum wage (presently $7.25 an hour) exceed that of New Jersey's, the state rate will rise to match its federal counterpart and subsequent CPI increases would be calculated on that higher rate. The amendment does not indicate that the minimum wage would decrease should the CPI go down.

The amendment applies to any employee subject to the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a et seq. This includes any "non-exempt" employee who is overtime eligible. The amendment does not specifically address the minimum cash wages for employees whose wages include credits for tips, food and/or lodging from their employer. Nevertheless, the effect of the amendment is that employers who rely on such credits to meet the minimum wage, in whole or in part, will need to make up the difference between the credit and the new $8.25 per hour minimum wage. As such, the amendment also will affect employers in restaurant, hotel or other industries who utilize such credits.

New Jersey Governor Chris Christie did not support the amendment and vetoed legislation passed earlier this year that would have raised the minimum wage to $8.50 per hour with annual inflation adjustments. Christie expressed concern that automatic annual minimum wage increases might hinder economic recovery in times of recession and put an undue strain on small business owners. Tuesday's vote makes New Jersey one of only a handful of states that include their minimum wage rates in their constitutions—the other states being Florida, Colorado, Nevada and Ohio. In addition, New Jersey is only the eleventh state to tie its minimum wage rate to an annual cost of living increase, joining Arizona, Colorado, Florida, Missouri, Montana, Nevada, Ohio, Oregon, Vermont, and Washington.

New Jersey employers with workers currently being paid less than the new minimum wage rate, as well as employers who utilize credits for food, lodging, and gratuities, should prepare for the pay increase taking effect on January 1, 2014, and also should monitor the annual CPI increases to follow. Moreover, the new minimum wage in New Jersey will result not only in increased "straight time" costs, but higher overtime costs, which generally are calculated at 1.5 times an employee's hourly "regular rate." If you would like further information about this amendment or have other wage and hour questions, please contact your Proskauer relationship attorney.

[1] The adjustments will be calculated using the CPI-W for Urban Wage Earners and Clerical Workers.

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