

## LRB-FISCAL REVIEW SECTION ANALYSIS

**FINANCE & PERSONNEL COMMITTEE**

**ITEM 1, FILE # 041311**

**FEBRUARY 17, 2005**

**JEFF OSTERMAN**

File Number 041311 is an ordinance establishing minimum wage rates for employers in the city of Milwaukee.

### **Background**

1. The current State of Wisconsin minimum wage is \$5.15 per hour for all employees except opportunity employees (\$4.25 per hour) and tipped employees (\$2.33 per hour). An “opportunity employee” is an employee who is not yet 20 years old during the first 90 days of employment. These amounts have not been increased since 1997.
2. Since 1913, the Wisconsin Department of Workforce Development and its predecessor agencies have had the authority to promulgate administrative rules establishing minimum wages for various types of employees.
3. In March, 2004, the State’s Minimum Wage Advisory Council, which consists leaders from the business community, organized labor and the State Legislature, voted 16-2 to increase Wisconsin’s minimum wage rates. The recommended wage rates (for employees generally) were \$5.70 per hour effective October 1, 2004, and \$6.50 per hour effective October 1, 2005. The Department of Workforce Development subsequently issued a rule to implement these increases.
4. The Senate Committee on Labor, Small Business Development and Consumer Affairs and the Joint Committee for Review of Administrative Rules both objected to the minimum wage rules proposed by the Department of Workforce Development. In fact, the Joint Committee for Review of Administrative Rules has recommended passage of Senate and Assembly bills that would abolish the authority of the Department of Workforce Development to enact minimum wage increases by administrative rules. Instead, any future increase in the State’s minimum wage would have to be approved by a vote of the Legislature.
5. On January 1, 2005, the City of Madison implemented an ordinance establishing a minimum wage of \$5.70 per hour for all employees, \$5.18 per hour for opportunity employees and \$2.57 per hour for tipped employees. These amounts will be adjusted annually (each January 1), reaching \$7.75 per hour for all employees in 2008, with further adjustments for inflation thereafter. A coalition of business associations has filed a lawsuit against the City of Madison, claiming it lacks the legal authority to raise its minimum wage rate independent of the statewide rate. A Dane County Circuit Court denied the coalition’s request for an injunction to prohibit Madison from implementing the ordinance, but the lawsuit is proceeding (a hearing is scheduled for mid-March).

## Discussion

1. The proposed ordinance establishes minimum wage rates of \$5.70 per hour for employees generally, \$5.30 per hour for opportunity employees and \$2.57 per hour for tipped employees, effective October 1, 2005. On October 1, 2006, the general and opportunity rates would increase to \$6.50 and \$5.90, respectively. These are the same rates recommended by the Minimum Wage Advisory Council to be effective at the time of rule promulgation by the Department of Workforce Development and on October 1, 2005, respectively (in other words, they “lag” one year behind the proposed State increases). The proposed tipped-employee minimum wage is the same as the amount recently adopted by the City of Madison.
2. Beginning on October 1, 2007, and on each October 1 thereafter, the minimum wage rates shall be increased by the rate of inflation during the 12 months prior to September 1 of the year in which the adjustment is made. The adjusted wage rates shall be effective the following January 1.
3. The minimum wage requirements of this ordinance apply to all employers in the city of Milwaukee except the Federal and State governments and any offices, departments or agencies thereof. Thus, the City itself is required to pay these minimum wages. The specified minimum wages must be paid to all employees except golf caddies, “casual” employees (e.g., babysitters), camp counselors, part-time employees of colleges and universities and employees of rehab facilities.
4. The ordinance assigns the City’s Equal Rights Commission the responsibility for investigating, adjudicating and disposing of complaints of alleged violation of the minimum wage requirements. The Commission would investigate complaints using a procedure similar to its existing procedure for acting on housing and employment discrimination complaints. The Equal Rights Commission is staffed by the Office of Diversity and Outreach in the Department of Employee Relations.
5. The penalties for violation of this ordinance are \$25-\$200 for the 1<sup>st</sup> violation within one year, \$200-\$1,000 for the 2<sup>nd</sup> violation in the same year and \$1,000-\$2,500 for the 3<sup>rd</sup> or subsequent violation in the same year. In addition, an employer can be ordered to pay an aggrieved employee liquidated damages equal to twice the difference between the required wages and the wages actually paid. The ordinance also establishes a separate penalty of \$25-\$2,500 for each time an employer discharges, threatens to discharge or otherwise discriminates against any employee who files a complaint against the employer for violation of the minimum wage requirements.
6. This ordinance takes effect October 1, 2005, provided the State of Wisconsin does not increase its minimum wages to the specified levels before that date. If the State does increase its minimum wage rates, the ordinance is unnecessary and will not go into effect.

**Fiscal Impact**

This ordinance is likely to have a fiscal impact on the Office of Diversity and Outreach, which will be responsible for administering the ordinance and will have to devote staff time to reviewing complaints about payment of sub-minimum wages filed with the Equal Rights Commission

Please see the fiscal note for specific information on the fiscal impact of the proposed ordinance.

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