During his 2013 State of the Union, President Barack Obama recommended raising the national minimum wage to $9/hour and indexing it to inflation. Although California’s $8/hour rate is above the current national rate of $7.25/hour, the state will still be affected if the President’s proposal becomes law. This short subject provides a brief history of the minimum wage, looks at the current practice of the law, and provides context on how California fits within the national framework.

The first minimum wage law in the United States was in Massachusetts in 1912. It was voluntary and protected only women and children workers. California passed its own law in 1913, setting the rate at 16¢/hour. Minimum wage laws were often overturned by courts during this early period, declaring such laws unconstitutional for violating an individual’s right to contract. The first national minimum wage law—the National Industrial Recovery Act—was passed in 1933, and then unanimously overturned by the U.S. Supreme Court in Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

The Supreme Court continued to overturn state and federal wage laws throughout the 1930s, until it reversed course and voted to uphold Washington’s law in West Coast Hotel Co. v. Parrish, 300 U.S. 379, 400 (1937). This was part of a larger change in the court from overturning New Deal legislation to upholding it. In 1938 the Fair Labor Standards Act (FLSA) (29 USC Chapter 8) passed, establishing the first national minimum wage at 25¢/hour. Since then, the minimum wage has been a cornerstone of federal labor standards.

**Minimum Wage Across the U.S.**

There is significant variation in minimum wage laws across the country, as shown in Figure 1. Five southeastern states have no minimum wage laws. Puerto Rico and four other states have minimum wage laws that set their rate below the federal level, allowing the federal rate to preempt them. Guam, the U.S. Virgin Islands and 22 other states set their minimum wage to the federal rate. Twenty more, including the District of Columbia, set a local minimum wage above the federal rate. Arizona, Colorado, Florida, Missouri, Montana, Nevada, Ohio, Oregon, Vermont, and Washington index their wage to inflation, allowing for regular increases to match declines in the purchasing power of the dollar (marked "**" on the map).

The FLSA preempts local law in any state that either does not provide for a minimum wage, or establishes a rate below the federal level. States can require a minimum wage higher than the federal rate, or extend coverage to employees not covered under FLSA. Many salaried and fee-basis workers are exempt from FLSA, depending on the level of independence and discretion the employees have in completing their duties. As of
the latest revision to the law in 2004, exemption from the federal minimum wage is not predicated on job title, but on actual job functions and duties.

The FLSA also differentiates between tipped and non-tipped employees. Job functions that “customarily and regularly receive more than $30 in tips” per day are subject to the rate for tipped workers—currently $2.13/hour. However, the California minimum wage law does not offer this distinction, instead requiring that both classes of employees receive the state minimum wage over and above any tips received.

**MINIMUM WAGE IN CALIFORNIA**

California has generally set a higher minimum wage than the U.S. as a whole. When the federal 25¢ minimum wage was implemented in 1938, the rate in California was 33¢ (32 percent above the federal rate). From 1947 to 1949 California’s rate was 62.5 percent above the federal rate (65¢ vs. 40¢ per hour). This was followed by over a decade (1950 to 1963) where California’s rate either lagged behind or was at parity with the federal rate. Today, California’s $8 rate is 75¢ (or a little over 10 percent) higher than the federal rate.

Washington’s $9.19/hour is the highest minimum wage among the states; however, San Francisco has the highest overall, with a minimum wage of $10.55/hour. A few other California cities have followed San Francisco in establishing higher minimum wages. San Jose has a $10 minimum wage. Long Beach requires hotels with more than 100 rooms to pay employees a minimum wage of $13/hour. Emeryville requires hotels to pay their non-management employees a minimum of $9.00/hour with an average of $11.00/hour across the same group.

Similar to the minimum wage are living wage laws, which typically require employers doing business with a municipality to pay their workers a wage adequate to meet basic needs for living (usually shelter, food, clothing, medical care, and transportation). Such laws only cover the municipality’s employees and businesses working directly under contract, not all businesses operating within the city or county’s jurisdiction. Los Angeles recently extended its living wage law to cover hotels near Los Angeles International Airport. According to the UC Berkeley Labor Center, 32 municipalities in California have Living Wage laws.

**FURTHER READING**

- Department of Industrial Relations, History of California Minimum Wage, www.dir.ca.gov/iwc/MinimumWageHistory.htm
- UC Berkeley Center for Labor Research and Education, Reports on Living Wage, laborcenter.berkeley.edu/livingwage/

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