

RESOLUTION 09-05-2014

DIGEST

Wage Orders: Meals and Lodging Benefits for In-House Employees

Amends Industrial Wage order number 5 to provide additional credits when the local minimum wage exceeds the state level.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Industrial Wage Commission order number 5 to provide additional credits when the local minimum wage exceeds the state level. This resolution should be approved in principle because it would allow employers to take advantage of the increased earnings of its employees for tax savings purposes.

Until recently, the statutory state minimum wage was universally used in California. Increasing numbers of cities are setting a municipal minimum wage. Counties will not be far behind in this trend. Where there is a two-tier minimum wage scheme in existence, there is no reason why employers who provide employee housing should be deprived of credits based in the additional employee income. This resolution would provide that, where local minimum wage rates exceed the state minimum wage, the employer may apply up to two-thirds of the ordinary rental value against the additional local minimum wage obligation.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Industrial Welfare Commission Wage Orders, Order 5 to read as follows:

Order 5

1 [Sections 1 through 9 remain unchanged.]

2 10. MEALS AND LODGING

3 (A) "Meal" means an adequate, well-balanced serving of a variety of wholesome,
4 nutritious foods.

5 (B) "Lodging" means living accommodations available to the employee for full-time
6 occupancy which are adequate, decent, and sanitary according to usual and customary standards.
7 Employees shall not be required to share a bed.

8 (C) Meals or lodging may not be credited against the State minimum wage without a
9 voluntary written agreement between the employer and the employee. When credit for meals or
10 lodging is used to meet part of the employer's State minimum wage obligation, the amounts so
11 credited may not be more than the following:

12	<u>Effective</u>	<u>Effective</u>	<u>Effective</u>
13	<u>January 1, 2007</u>	<u>January 1, 2008</u>	<u>July 1, 2014</u>

14 Lodging:

15	Room occupied alone	\$35.27 per week	\$37.63 per week	<u>\$42.33 per week</u>
16	Room shared	\$29.11 per week	\$ 31.06 per week	<u>\$34.94 per week</u>
17	Apartment - two-thirds (2/3) of			
18	the ordinary rental value, and			
19	in no event more than	\$423.51 per month	\$451.89 per month	<u>\$508.38 per month</u>
20	Where a couple are both			
21	employed by the employer,			
22	two-thirds (2/3) of the ordinary			
23	rental value, and in no event			
24	more than	\$626.49 per month	\$668.46 per month	<u>\$752.18 per month</u>
25	Meals:			
26	Breakfast	\$2.72	\$2.90	<u>\$3.26</u>
27	Lunch	\$3.72	\$3.97	<u>\$4.47</u>
28	Dinner	\$5.00	\$5.34	<u>\$6.01</u>

29 Where local regulation or ordinance provides a minimum wage or living wage that is
30 higher than State minimum wage, the employer may apply up to two-thirds (2/3) of the ordinary
31 rental value of the lodging against the additional local minimum wage obligation.

32 (D) Meals evaluated, as part of the minimum wage, must be bona fide meals consistent
33 with the employee's work shift. Deductions shall not be made for meals not received nor lodging
34 not used.

35 (E) If, as a condition of employment, the employee must live at the place of employment
36 or occupy quarters owned or under the control of the employer, then the employer may not
37 charge rent in excess of the values listed herein.

38 [Sections 11 through 22 remain unchanged.]

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: Existing law limits the credit toward minimum wage obligations that an employer may receive for providing a resident apartment manager with a free apartment to the higher of 2/3 of the ordinary rental value or a fixed amount, even for expensive apartments and without regard to the possibility of local minimum wage laws.

Historically, the Industrial Welfare Commissions Wage Orders have permitted an employer to use lodging credit to a single employee sufficient to cover minimum wage for 56.48 hours of work each month. Each increase in State minimum wage has been matched with a proportionate increase in the amount of credit that may be taken for food and lodging. However, the Industrial Welfare Commission, which promulgated the Order, was disbanded as the result of State budget cuts.

In addition, in locations where there is a higher minimum wage, such as Los Angeles, San Francisco, San Jose, and portions of Santa Monica, lodging typically has a higher value. As a result, apartment owners are providing more expensive apartments, but getting fewer hours of work in exchanges.

Some trial courts in the jurisdictions with higher minimum wages have allowed an employer to use the value of an apartment that exceeds the statutory cap to satisfy the difference between state minimum wage and higher local wages. The Deputy Labor Commissioners, however, take

the position that an apartment owner who has applied anything in excess of the regulatory cap to satisfy local minimum wages has not paid minimum wage.

The Solution: This Resolution provides that the fixed caps apply only to State minimum wage obligations and permit an employer to take additional credit for lodging, up to 2/3 of the fair rental value of the lodging, to satisfy higher local minimum wage obligations. It also increases the caps consistently with the upcoming minimum wage increase.

This resolution would allow employers to use high value apartments to satisfy the additional wage obligations imposed under local ordinances. The cap is limited, in that the State wage obligation would still dictate the maximum that could be applied as against State minimum wages and the employer could never use more than 2/3 of the fair rental value as minimum wage credit.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

This resolution would impact Wage Orders No. 1 through 8 and 10 through 17, which should be amended to conform to this change.

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