

CLIENT ALERT: Follow-Up to Portland Minimum Wage Ordinance
November 16, 2020

I wanted to follow up on the Alert we sent out on the Portland minimum wage ordinance and specifically the emergency pay component. For those of you with no employees working on-site in Portland you need read no farther. Employers with employees working on-site in Portland may want to read on.

As some of you will have read in the media, there is disagreement about when employers must start paying the emergency minimum wage in Portland.

There is no debate that the new minimum wage in Portland does not go into effect until January 2022, when the rate will increase to \$13 per hour. The contentious issue is the timing of the emergency pay (which provides that employers must pay employees who work onsite in Portland during an emergency 1.5 times the minimum wage). Right now that would be \$18 per hour. The City has issued an opinion that the emergency pay is tied to Portland's minimum wage and not the state minimum wage; therefore, it does not kick in until January 2022 because currently Portland, by ordinance, does not have its own minimum wage. The proponents of the referendum vehemently disagree and claim that the new emergency pay must be paid starting December 3rd.

There is bound to be litigation. The City's opinion is logical and based on the plain language of the law, but it is not binding in court. While Portland will not enforce the ordinance prior to January 2022, the law contains a private right of action for employees. In other words, non-exempt employees may sue their employer directly if they are not paid at least \$18 per hour for on-site work in Portland. If they win they will recover attorney's fees and back pay. The City's ordinance has a penalty provision and the proponents of the referendum have stated that they may also argue that Maine's prompt pay wage law applies.

We anticipate that employers will take different approaches given the uncertainty. We recommend that employers consult with counsel to fully understand their options and the legal risks.

For more information, please contact Peter Lowe at plowe@brannlaw.com.