

CITY COUNCIL REPORT

DATE: May 25, 2016

TO: Mayor, Vice-Mayor and City Council

FROM: Stephanie Smith, Assistant to the City Manager

CC: Josh Copley, Barbara Goodrich, Shane Dille and Leadership Team

SUBJECT: State House Bill 2579

This City Council Report and attachments will provide background on State House Bill 2579 and its implications to the City of Flagstaff.

SUMMARY

HB 2579 amends Arizona Revised Statutes related to the payment of wages. Specifically, the bill provides a definition for wage and nonwage employee compensation and benefits. HB 2579 was introduced by Representative Petersen of (LD 12 – Gilbert) and Representative Mesnard (LD 17 – Chandler) on February 3rd. The bill passed the House on March 1st and then passed the Senate on April 11th. Governor signed the bill into law on May 11th. The bill will take effect on August 6th.

PROVISIONS AND IMPLICATIONS

The following are provisions to the bill:

1. Defines *minimum wage* as the nondiscretionary minimum compensation given to an employee, including commissions but excluding tips and gratuities.
2. Adds *nonwage compensation* to the list of employee regulations that are of statewide concern and not subject to further regulation by any city, town or political subdivision of the state.
3. Authorizes a political subdivision to establish a minimum wage equivalent to the statutory requirements of the Minimum Wage Act.
4. Designates *nonwage compensation* as: fringe benefits, welfare benefits, child/adult care plans, sick pay, vacation pay, severance pay, commissions, bonuses, retirement plan/pension contributions, other federal employment benefits, other amounts more than the minimum compensation due to an employee.
5. Removes from the definition of *wages*: sick pay, vacation pay, severance pay, commissions, bonuses and other amounts promised by the employer who has a policy or practice of making such payments.
6. Requires the Arizona Department of Labor to investigate all nonwage claims, if they are timely filed.

BACKGROUND:

Current law states that Arizona employers are required to pay regular employees at least the minimum wage, currently \$8.05 per hour. Proposition 202, a voter initiative passed in 2006 (effective January 1, 2007), established the Act, requiring an annual increase in minimum wage based on the Consumer Price Index of All Urban Consumers, Bureau of Labor Statistics, U.S. Department of Labor. *Wages* means the nondiscretionary monies due to an employee in return for labor or services, whether determined by time, task, piece, commission or other means of calculation. *Wages* also includes sick, vacation and severance pay, commissions and bonuses, plus other amounts as promised by the employer as a policy or practice. (A.R.S. § 23-350)

The cash wage (\$3.00 less than minimum wage) is paid to employees who regularly and customarily receive tips or gratuities. If the cash wage plus tips do not equal the minimum wage, then employers are responsible for paying the difference to the employee.

According to the Industrial Commission of Arizona (ICA), Labor Department, any person can file a complaint if the person is not receiving the state minimum wage or has been retaliated against for asserting a claim or right under the Act. (www.ica.state.az.us)

RECOMMENDATION / CONCLUSION:

This report is for information only.

ATTACHMENTS:

- HB 2759 as transmitted to the Governor

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HOUSE BILL 2579

AN ACT

AMENDING SECTIONS 23-204, 23-350 AND 23-357, ARIZONA REVISED STATUTES;
RELATING TO THE PAYMENT OF WAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-204, Arizona Revised Statutes, is amended to
3 read:

4 23-204. Employee benefits: state preemption; exemption;
5 definition

6 A. The regulation of employee benefits, including **NONWAGE**
7 compensation, paid and unpaid leave and other absences, meal breaks and rest
8 periods, is of statewide concern. The regulation of **NONWAGE** employee
9 benefits pursuant to this chapter and federal law is not subject to further
10 regulation by a city, town or other political subdivision of this state.

11 B. This section does not apply to any employee benefit, including
12 **NONWAGE** compensation, paid and unpaid leave and other absences, meal breaks
13 and rest periods, provided by a city, town or other political subdivision of
14 this state to any of its employees.

15 C. **FOR THE PURPOSES OF THIS SECTION, "NONWAGE COMPENSATION" INCLUDES**
16 **FRINGE BENEFITS, WELFARE BENEFITS, CHILD OR ADULT CARE PLANS, SICK PAY,**
17 **VACATION PAY, SEVERANCE PAY, COMMISSIONS, BONUSES, RETIREMENT PLAN OR PENSION**
18 **CONTRIBUTIONS, OTHER EMPLOYMENT BENEFITS PROVIDED IN 29 UNITED STATES CODE**
19 **SECTION 2611 AND OTHER AMOUNTS PROMISED TO THE EMPLOYEE THAT ARE MORE THAN**
20 **THE MINIMUM COMPENSATION DUE AN EMPLOYEE BY REASON OF EMPLOYMENT.**

21 Sec. 2. Section 23-350, Arizona Revised Statutes, is amended to read:

22 23-350. Definitions

23 In this article, unless the context otherwise requires:

24 1. "Department" means the labor department of the industrial
25 commission of Arizona.

26 2. "Employee" means any person who performs services for an employer
27 under a contract of employment either made in this state or to be performed
28 wholly or partly within this state.

29 3. "Employer" means any individual, partnership, association, joint
30 stock company, trust, ~~OR~~ corporation, the administrator or executor of the
31 estate of a deceased individual or the receiver, trustee or successor of any
32 of such persons employing any person. Employer also includes this state and
33 any county, municipality, school district or other political subdivision of
34 this state.

35 4. "Hours worked" includes all time an employee is employed.

36 5. **"MINIMUM WAGE" MEANS THE NONDISCRETIONARY MINIMUM COMPENSATION DUE**
37 **AN EMPLOYEE BY REASON OF EMPLOYMENT, INCLUDING THE EMPLOYEE'S COMMISSIONS,**
38 **BUT EXCLUDING TIPS OR GRATUITIES.**

39 ~~5.~~ 6. "Payroll card account" means an account that is directly or
40 indirectly established through an employer and to which electronic fund
41 transfers of an employee's wages are made on a recurring basis whether the
42 account is operated or managed by the employer, a third-party payroll
43 processor, a depository institution or any other person.

1 ~~6.~~ 7. "Wages" means nondiscretionary compensation due an employee in
2 return for labor or services rendered by an employee for which the employee
3 has a reasonable expectation to be paid whether determined by a time, task,
4 piece, commission or other method of calculation. ~~Wages include sick pay,
5 vacation pay, severance pay, commissions, bonuses and other amounts promised
6 when the employer has a policy or a practice of making such payments.~~

7 Sec. 3. Section 23-357, Arizona Revised Statutes, is amended to read:

8 23-357. Investigation of wage claims

9 A. The department shall investigate wage AND NONWAGE claims timely
10 filed under section 23-356 to determine if wages are due or if a dispute
11 exists between the parties to the claim.

12 B. Upon completion of its investigation, the department shall notify
13 the parties to the claim of its findings in writing, which may include a
14 finding that a dispute exists which cannot be resolved by the department's
15 investigation. If it is determined that the claim for unpaid wages is valid,
16 the department shall direct that the unpaid wages be paid by the party
17 responsible for their payment.