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Legislation Text

File #: O2014-4251, Version: 1

CHICAGO MINIMUM WAGE FOR LARGE EMPLOYERS DRAFT

ORDINANCE May 28, 2014

WHEREAS, the City of Chicago is a home-rule municipality in accordance with the constitution of the State of Illinois of 1970; and

WHEREAS, the city has the authority to adopt ordinances and to promulgate rules and regulations pertaining to its government and affairs in order to protect the health, safety and welfare of its citizens; and

WHEREAS, the city council finds that the growth of low-wage jobs is worsening poverty in Chicago and forcing more working individuals and families to rely on taxpayer-funded programs such as Medicaid, SNAP, and food pantries to make ends meet; and

WHEREAS, the city council finds that the growth of low-wage jobs is also hurting the city's economy, which needs a workforce that can afford to spend to drive economic activity and sustain growth; and

WHEREAS, the city council finds that in particular large employers, such as the city's fast food and retail chains, are some of the top sources of low-wage jobs in the city, despite the fact that many of these companies are highly profitable major corporations; and

WHEREAS, the city council finds that while the state of Illinois is considering raising the state minimum wage, the state is unlikely to raise it to a high enough level to enable low-wage workers to meet their basic needs without relying on taxpayer-funded programs for support; and

WHEREAS, the city council find that because the costs of living and housing in Chicago are much higher than in other parts of Illinois, Chicago needs a higher minimum wage that better reflects the needs of the local workforce and economy; and

WHEREAS, the city council finds that the city of Seattle recently approved phasing its minimum wage up to \$15 and across the country other high-cost cities like New York, Los Angeles and San Francisco are proposing to do the same; and

WHEREAS, city council finds that a \$15 minimum wage would improve the lives of more than 500,000 working Chicagoans, reduce poverty and inequality across the city, and give low-income workers thousands of dollars more each year to meet rising living costs and spend at neighborhood businesses; and

WHEREAS, the city council finds that it is fair to ask employers in the city to do their part by phasing the minimum wage up to \$15; and

WHEREAS, the city council determines that raising the minimum wage to \$15 would promote the public health, safety and welfare, and reduce the burden that low wages are imposing on the taxpayers; now, therefore

BE IT ORDAINED by the city council of the City of Chicago, Cook County, Illinois, that the Municipal Code of the City of Chicago is amended by adding thereto and inserting therein a new chapter 4-404, entitled "Chicago Minimum Wage":

SECTION 1. The foregoing recitals are incorporated herein as the findings of the city council.

SECTION 2. A new chapter of the Municipal Code of the City of Chicago, titled "Chicago Minimum Wage," is hereby created as follows:

4-404-010 Definitions.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- a) "Airport employer" means any employer that operates at the O'Hare International Airport or Midway Airport.
- b) "City" means the City of Chicago.
- c) "Department" means the Department of Business Affairs and Consumer Protection or such other department or entity designated by the mayor to administer this chapter.
- d) "Employer" shall have the meaning set forth in 820 ILCS 105/3(c); an employer can include more than one entity, including in circumstances in which one entity controls, is controlled by, or is under common control with another employer, and including circumstances in which one entity exerts control over the operations of another employer, but shall not include the city of Chicago.
- e) "Employee" shall have the meaning set forth in 820 ILCS 105/3(d), provided however that employee shall include any individual permitted to work in domestic service in or about a private home, irrespective of the number of employees employed by that individual's employer. Employee shall not include (1) any person who in a particular week performs less than two hours of work within the geographic boundaries of the city, or (2) any person who is employed by a not-for-profit organization under a summer youth employment program.
- f) "Franchisee" means any employer that operates in the city in the restaurant industry under a franchise agreement with a large employer.
- g) (1) "Large employer" means any employer that has (i) annual gross revenue of \$50 million or more, and (ii) has employees that perform work within the geographic boundaries of the city or has one or more franchisees or on-site contractors with employees that perform work within the geographic boundaries of the city.

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2) An employer shall be deemed to have annual gross revenue of \$50 million or more if it had revenue at or exceeding that level in any of the past three fiscal or calendar years or if it is reasonably expected to have annual revenue equal to or exceeding that level in the current or upcoming fiscal or calendar year.

3) Large employer shall include any franchisee or on-site contractor of a large employer, or airport employer, regardless of the revenue level of the franchisee or on-site contractor of the large employer, or of the airport employer.

4) Large employer shall include any nursing home, management company or other organization that qualifies as a related organization under Illinois Department of Healthcare and Family Services long-term care facility cost report guidelines promulgated pursuant to Public Act 81-223 and related statutes so long as the group of related organizations collectively has annual gross revenue of \$50 million or more.

(h) "Minimum Wage" shall have the meaning set forth in section 4-404-020 of this chapter.

(i) "Mid and Small Sized Employer" means any employer that does not qualify as a large employer.

(j) "On-site contractor" means any employer that provides services or labor in the city on premises controlled by a large employer, including, but not limited to, a staffing, temporary services, building services, or food services contractor.

(k) "Retaliation" means any threat, discipline, discharge, demotion, suspension, reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.

(l) "Tipped Minimum Wage" shall have the meaning set forth in section 4-404-020(d) of this chapter.

4-404-020 Minimum Wage.

a) Employers shall pay employees no less than the applicable minimum wage rate provided for in this chapter for each hour worked within the geographic boundaries of the city.

b) The minimum wage rate shall be an hourly rate as follows:

1. For large employers, the minimum wage rate shall be:

A. Beginning ninety days after the effective date of this chapter, \$12.50 per hour;

B. Beginning one year after the effective date of this chapter, \$15.00 per hour.

2. For mid and small sized employers, the minimum wage rate shall be:

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- A. Beginning one year and ninety days after the effective date of this chapter, \$12.00 per hour;
 - B. Beginning two years after the effective date of this chapter, \$13.00 per hour;
 - C. Beginning three years after the effective date of this chapter, \$14.00 per hour;
 - D. Beginning four years after the effective date of this chapter, \$ 15.00 per hour.
- c) To prevent inflation from eroding the value of the minimum wage, the current minimum wage rate for large employers and the current minimum wage rate for mid and small sized employers shall each be increased annually in proportion to the increase, if any, in the cost of living. For the minimum wage rate for large employers, such annual increases shall begin on January 1 of the year following the first anniversary of the effective date of this chapter, and take place on each January 1 thereafter. For the minimum wage rate for mid and small sized employers, such annual increases shall begin on January 1 of the year following the fourth anniversary of the effective date of this chapter, and take place on each January 1 thereafter. The increase in the cost of living shall be calculated using the twelve-month percentage increase, if any, in the Consumer Price Index for all Urban Consumers, U.S. City Average, All Items (or a successor index, if any) as published by the Bureau of Labor Statistics of the United States Department of Labor, using the most recent twelve-month period for which data is available at the time that the calculation is made. The increased minimum wage rate shall be rounded to the nearest five cents and announced at least ninety days before the January 1 effective date.
- d) The tipped minimum wage rate for large employers and the tipped minimum wage rate for mid and small sized employers shall be an amount equal to 70% of the applicable minimum wage rate for each size of employer provided for in subsection b of this chapter, rounded to the nearest five cents. The tipped minimum wage rate for each size of employer shall be adjusted whenever the applicable minimum wage rate for that size employer increases, and the adjusted minimum wage rates for tipped employees shall be announced at least ninety days before the effective date of the adjusted rates. Employers shall pay an employee who customarily and regularly receives tips a cash wage of no less than the tipped minimum wage rate provided for in this subsection for each hour worked within the geographic boundaries of the city, and shall guarantee that at all times the combination of the cash wage paid by the employer and the tips received by the employee total no less than the regular minimum wage rate for each hour worked within the geographic boundaries of the city. Such calculation shall be made based on the total wages and tips received by the employee over the course of his or her shift.

4-404-030 Retaliation Prohibited.

- (a) No employer or other person shall retaliate against any person for asserting any claim or right under this chapter, for assisting any other person in doing so, or for informing any person about his or her rights under this chapter.

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4-404-040 Implementation and Enforcement.

- a) At least sixty days before the effective date of each increase in the minimum wage the department shall publish and make available to employers a bulletin announcing the new minimum wage rate and the minimum wage rate for tipped employees, and a notice, in English and Spanish, informing employees of the updated rates, which all employers shall post in a conspicuous place at any workplace or job site where an employee works.
- b) Employers shall keep payroll records as provided for under 820 ILCS 105/8.
- c) Employers shall allow the department access to payroll records to monitor compliance with the requirements of this chapter. Employers shall provide reasonable access to any employee and any employee's designated representative to inspect the employer's payroll pertaining to that employee. Where an employer does not maintain or retain adequate records as required under subsection b of this section, or does not allow the department reasonable access to such records, there shall be a rebuttable presumption that the employer has not paid the required minimum wage.
- d) The department is authorized to interpret, implement, and enforce this chapter, including by issuing regulations and administrative findings of violations and instituting legal actions to enforce administrative findings. Civil penalties shall be retained by the department and used to finance activities to enforce this chapter. Any regulations, guidelines, or rules promulgated by the department shall have the force and effect of law and may be relied on by employers, employees, and other parties to determine their rights and responsibilities under this chapter.
- e) An employer that fails to pay the minimum wage required under this chapter shall be required to pay the employee the unpaid compensation together with an additional two times that amount as liquidated damages. An employer that retaliates against an employee in violation of this chapter shall be required to provide equitable relief to the employee, including reinstatement where appropriate, and to pay the employee (1) any unpaid compensation together with an additional two times that amount as liquidated damages for each day from the date of the retaliation until the date that the violation is remedied or (2) \$5,000, whichever is greater.
- f) Any person or organization may file an administrative complaint with the department charging that a large retail employer has violated this chapter as to any employee or other person. The department shall promptly investigate administrative complaints and may interview and review records regarding any or all employees at the employer's worksite in order to determine whether a pattern of violations has occurred and to protect the identity of any employee identified in the complaint. The name of any employee identified in a complaint shall be kept confidential as long as possible, and may be disclosed only with the employee's consent. Where the department determines that a violation has occurred, the department shall issue an administrative order finding a violation and ordering payment of unpaid compensation, liquidated damages, and civil penalties, and may take any other appropriate enforcement action to secure compliance, including initiating a civil action and/or instructing city agencies or departments to

revoke or suspend any registration certificates, permits or licenses held or requested by the employer or person until such time as the violation is remedied.

(g) An employee who is underpaid or who suffers retaliation in violation of this chapter may bring an action against an employer in any court of competent jurisdiction and, upon prevailing, shall be awarded any appropriate legal or equitable relief, including unpaid compensation and an additional two times that amount in liquidated damages, reinstatement, actual damages, and civil penalties. An employee need not exhaust administrative remedies before bringing an action nor shall an investigation of an employer by the department or other law enforcement officer bar a person from bringing an action.

4-404-050 Miscellaneous.

- a) This chapter shall take effect upon enactment.
- b) This chapter shall be liberally construed in favor of its purposes, and shall not be construed to preempt or otherwise limit the applicability of any law, policy or other provision that provides for payment of higher or supplemental wages or benefits.
- c) If any part of this chapter, or the application of the chapter to any person or circumstance, is held invalid, the remainder of this chapter, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this law are severable.