

## **Health Care Minimum Wage Technical Amendments Summary**

It is a common occurrence for the California Legislature to introduce and pass legislation that clarifies recently enacted laws. These changes are coined “technical amendments” because they are not intended to change the underlying policy or make substantive changes to the law, but rather, provide context and meaning to otherwise ambiguous or undefined terms and requirements.

Considering SB 525’s scope and complexity, it is no surprise that the new law required some refinement. Included in SB 159, one of several budget trailer bills, is changes to SB 525 that clarify existing requirements and more clearly define the process by which a clinic as defined, must follow to receive a temporary delay in the wage increase schedule due to financial considerations.

Below is a summary of the technical additions:

### Contracted employees, state hospitals, and FTEs

Under SB 525, contracted employees are subject to the health care minimum wage if the health care facility controls the wages, hours, and working conditions of the contracted employee, or the contracted employees work *primarily* on the health care facility premises. SB 159 defines the term *primarily* to mean more than one-half of the employee’s work time during the workweek.

Although SB 525 excluded stated owned hospitals, SB 159 further refines this exclusion to include any health care facility that is owned, controlled or operated by the state or any state agency of the executive branch. “State agency” is defined to include California State University, or California College. Consistent with SB 525, health care districts or the University of California are specifically not excluded and must comply with the health care minimum wage schedule.

Lastly, SB 159 adds in statute the data used by HCAI to determine the number of full-time equivalent employees (FTEs) for purposes of identifying which health care facilities fall under the accelerated minimum wage schedule. The number of FTEs will be detailed in HCAI’s 2021 Pivot Table – Hospital Annual Selected File (April 2023 Extract) and published on HCAI’s website.

### Updated Wage Order and Employee Notice

Under existing law, all employers must post in a conspicuous location the applicable Wage Order published by the Department of Industrial Relations (DIR). Since the passage of SB 525, the applicable Wage Order has not been updated to reflect the newly enacted minimum wage schedules. SB 159 directs DIR to make the necessary updates, which upon publication, will need to be posted accordingly.

In addition to the wage order posting, SB 159 requires health care facilities to provide written notice to each employee, in the language normally used to communicate employment related information, identifying the applicable minimum wage schedule that applies. This notice must be distributed on the effective date of the earliest minimum wage increase.

### Clinic Waiver Application Requirements (12-month delay)

SB 525 permitted unaffiliated primary clinics, community clinics, rural health clinics, and specified urgent care clinics (“clinic”) to apply for a “temporary pause or alternative phase” (described as a “waiver”) to the minimum wage schedule, but the duration of the “pause” was undefined. SB 159 removes the ambiguity, providing for a 12-month delay in the minimum wage schedule, if a clinic applies for and is granted the waiver. HCAI in conjunction with DIR are charged with administering the waiver process, with HCAI reviewing and determining whether the clinic qualifies for the waiver.

Clinics applying for a waiver must include the following documentation to HCAI:

- Recent audited financial statements: The clinic must provide its and any parent or affiliated company’s most recent audited financial statements and year-to-date internally prepared financial statements no older than 45 days prior to the date of submission;
- CPA Attestation: The clinic must provide an examined level forecast with an attestation from an independent certified public accountant demonstrating that compliance with the waiver requirements would raise doubt about the clinic’s and its parent company’s ability to maintain a positive cash flow over the next 12 months; and
- Financial balance sheets: The clinic must provide balance sheets showing that the clinic and its parent company have less than 45 days cash on hand and a current ratio of current assets to current liabilities of one or less.

In addition to the above, the clinic must provide a declaration signed by an authorized executive officer verifying that the waiver request and accompanying documents are true and correct. The declaration shall be in a form and manner specified by the Department of Health Care Access, however, there is no deadline by which HCAI must provide this form.

If HCAI determines that the clinic meets the waiver requirements, then DIR will issue the waiver and notify the clinic. Within 10 days of receiving notice of approval from DIR (not HCAI), the clinic must post a copy of the waiver, including the applicable minimum wage, in the workplace, consistent with the Wage Order posting requirements. Clinics must also provide each covered employee with written notice indicating that the clinic applied for and received a one-year waiver of applicable minimum wage increase.

Although a facility may apply for and receive a 12-month waiver in consecutive years, after July 1, 2032, waivers will no longer be available, and every clinic will be subject to the scheduled wage then and in effect beginning on July 1, 2033.