

November 2, 2023

## Senate Bill 525 and the Health Care Minimum Wage

### Who is Covered by the Health Care Minimum Wage?

**Q:** What health facilities are covered by the health care minimum wage?

**A:** Nearly every single health care facility in California is covered by SB 525. Notable examples include:

- General acute care hospitals and psychiatric hospitals
- Integrated health care delivery systems
- Skilled-nursing facilities owned, operated, or controlled by a hospital
- A patient's home, when health care services are delivered by an entity owned or operated by a general acute care hospital or acute psychiatric hospital
- Dialysis clinics, specialty clinics, surgical clinics, and outpatient clinics.
- Urgent care clinics
- Physician groups

**Q:** What health facilities are NOT covered by the health care minimum wage?

**A:** Senate Bill 525 explicitly excludes hospitals owned, controlled, or operated by the State Department of State Hospitals and tribal clinics. Additionally, stand-alone skilled-nursing facilities are currently outside the scope of SB 525, as there is no patient care minimum spending requirement.

**Q:** What health care employees are covered by the health care minimum wage?

**A:** Broadly speaking, SB 525 covers two categories of employees:

- An employee of a health care facility who provides patient care, health care services, or services supporting the provision of health care
- Contract employees (discussed in greater detail below)

**Q:** What health care employees are covered by the health care minimum wage?

**A:** Examples of health care employees covered by SB 525 include:

- Employees performing work in the occupation of a nurse, physician, caregiver, medical resident, intern, or fellow
- Janitor
- Housekeeping staff person
- Groundskeeper

- Guard
- Clerical worker
- Medical coding and medical billing personnel
- Food service worker
- Laundry worker

**Q:** When are contracted employees covered by the health care minimum wage?

**A:** There are two situations where contracted employees (or employees that work in health care but are NOT employed by the health facility) are covered by a health care minimum wage.

The first is when the health care facility **controls** the wages, hours, or working conditions of a contracted employee. This is known as having a **joint employer relationship**, and in these situations the health facility has joint and several liability for the contracted employee's wages. Examples include registry nurses, employees contracted through a temporary services employer, security guards, and on-site laundry services.

The second situation includes situations where the contracted employee spends half or more of their time at the health facility. This provision is essentially reinforcing the first – it is unlikely that a contracted employee could spend more than half of their professional time at a health facility without developing a joint employer relationship with the health facility.

**Q:** What employees are exempted from the health care minimum wage?

**A:** SB 525 explicitly excludes the following employees from the health care minimum wage:

- Employment as an outside salesperson
- Any work performed in the public sector (government) where the primary duties performed are not health care services, such as county ambulance workers or county waste collectors
- Delivery or waste collection work on the premises of a covered health care facility, provided that the delivery or waste collection worker is not an employee of any person that owns, controls, or operates a covered health care facility
- Medical transportation services in or out of a covered health care facility, provided that the medical transportation services worker is not an employee of any person that owns, controls, or operates a covered health care facility

## What is the Health Care Minimum Wage?

**Q:** How many minimum wages are created in SB 525?

**A:** SB 525 creates **four** distinct minimum wages for health care facilities. They are:

- An accelerated minimum wage for health care facilities that employ 10,000+ full time equivalent employees (FTEs)
- A delayed minimum wage for rural independent hospitals and hospitals with a high or elevated governmental payor mix
- A specific minimum wage for clinics
- A graduated minimum wage for all other health care facilities

**Q:** What is the accelerated minimum wage?

**A:** For health facilities with 10,000+ FTE employees, the health care minimum wage is as follows:

- June 1, 2024, to May 31, 2025: \$23 per hour
- June 1, 2025, to May 31, 2026: \$24 per hour
- June 1, 2026, to Dec. 31, 2027: \$25 per hour

Starting on Jan. 1, 2028, the minimum wage will annually increase at the lesser of 3.5% or the Consumer Price Index (CPI).

**Q:** Under SB 525, how are health facilities determined to have 10 thousand or more FTE employees? And who determines if a health facility has 10 thousand or more FTE employees?

**A:** Under SB 525, the number of FTE employees employed by a health facility is determined solely by the number of FTEs reported to HCAI and recorded in the annual financial disclosure report. FTE employees who do not need to be reported to HCAI are not included in the FTE employee count under SB 525.

Under SB 525, HCAI determines if a health facility has 10 thousand or more FTE employees. HCAI must publish the list of health facilities that have 10 thousand or more FTE employees on or before Jan. 31, 2024. This list is static and will not change over time, even if a facility hires additional employees.

**Q:** Does CHA know which health facilities have 10 thousand or more FTE employees?

**A:** While only HCAI can develop the official list of health facilities with 10 thousand or more FTE employees, CHA has an [unofficial list](#).

**Q:** What is the graduated minimum wage for rural independent hospitals and hospitals with a high governmental or elevated payor mix?

**A:** For rural independent hospitals, independent hospitals with a high governmental payor mix, or a hospital with an elevated governmental payor mix, the minimum wage is as follows:

- June 1, 2024, to May 31, 2033: \$18 per hour, with 3.5% increases annually
- June 1, 2033, to Dec. 31, 2034: \$25 per hour

Starting on Jan. 1, 2035, the minimum wage will annually increase at the lesser of 3.5% or the CPI.

**Q:** Under SB 525, how is it determined which facilities are rural independent hospitals and hospitals with a high governmental payor mix, or independent hospitals with an elevated governmental payor mix? And who makes this determination?

**A:** Under SB 525, there are three definitions for rural independent hospitals, hospitals with a high governmental payor mix, and independent hospitals with an elevated governmental payor mix:

1. Rural independent hospitals are hospitals that are not owned, operated, or controlled by a parent entity that has two or more separately licensed hospitals and meet one of the following:
  - A hospital located in a county that is not designated as a metropolitan core-based statistical area
  - A small and rural hospital, as defined in Section 124840 of the Health and Safety Code
  - A rural general acute care hospital, as described in Section 1250 of the Health and Safety Code
2. Independent hospitals with an elevated governmental payor mix include both of the following:

- The hospital is not owned, controlled, or operated by any parent entity with two or more separately licensed hospitals
  - The combined Medicare and Medi-Cal payor mix is 75% or greater, as determined by using the adjusted patient days from the Department of Health Care Access and Information annual financial disclosure report
3. Hospitals with a high governmental payor mix are hospitals where the combined Medicare and Medi-Cal payor mix are 90 percent or greater, as determined by using the adjusted patient days from the Department of Health Care Access and Information annual financial disclosure report.
- If the hospital is owned or controlled by a health care system, the hospital qualifies only if the combined payor mix of both the hospital and the health care system to which it belongs is 90 percent or greater

Under SB 525, HCAI determines if a health facility is either a rural independent hospital, an independent hospital with an elevated governmental payor mix, or a hospital with a high governmental payor mix using data recorded and calculated as of Jan. 1, 2022. HCAI must publish the list of eligible health facilities on or before Jan. 31, 2024. This list is static and will not change over time, although a hospital may be added after a successful appeal.

**Q:** Does CHA know who is a rural independent hospital, an independent hospital with an elevated governmental payor mix, or a hospital with a high governmental payor mix?

**A:** While only HCAI can develop the official list of these health facilities, CHA has an [unofficial list](#).

**Q:** Is there an appeals process for a hospital that believes it qualifies as a rural independent hospital, an independent hospital with an elevated governmental payor mix, or a hospital with a high governmental payor mix if it is not included on the HCAI list?

**A:** Yes. A hospital may apply to be included on the HCAI list. While HCAI still needs to develop a process, SB 525 requires that, at a minimum, the hospital submit its physical location and its payor mix, including the percent of uninsured patients and patients covered by Medi-Cal and Medicare. HCAI may request additional information. The hospital must apply by Jan. 31, 2025.

**Q:** What is the minimum wage for unaffiliated primary care clinics, community clinics, rural health clinics, and specified urgent care clinics?

**A:** For unaffiliated primary care clinics, community clinics, rural health clinics, and specified urgent care clinics, the minimum wage is as follows:

- June 1, 2024, to May 31, 2026: \$21 per hour
- June 1, 2026, to May 31, 2027: \$22 per hour
- June 1, 2027, to Dec. 31, 2028: \$25 per hour

Starting on Jan. 1, 2029, the minimum wage will annually increase at the lesser of 3.5% or the CPI.

**Q:** What is the minimum wage for all remaining covered health facilities?

**A:** For all remaining covered health facilities, the minimum wage is as follows:

- June 1, 2024, to May 31, 2026: \$21 per hour
- June 1, 2026, to May 31, 2028: \$23 per hour
- June 1, 2028, to December 31, 2029: \$25 per hour

Starting on Jan. 1, 2030, the minimum wage will annually increase at the lesser of 3.5% or the CPI.

**Q:** How do the above-described minimum wages apply to county-owned facilities?

**A:** *First*, the provisions of SB 525 do not apply to county-owned facilities until Jan. 1, 2025. This is designed to give county-owned facilities additional time to adapt to the new minimum wage, including adjusting existing collective bargaining agreements.

*Second*, the counties are sorted by population.

- County-owned facilities in counties with a population of less than 250,000 are in the same tier as rural independent hospitals
- County-owned facilities in counties with a population of more than 5,000,000 (the County of Los Angeles) are in the same tier as hospitals with 10,000 or more FTE employees
- All other counties fall into the final category of other remaining health facilities, or \$21 per hour

**Q:** How does the minimum wage apply to exempt employees?

**A:** Under SB 525, salaried exempt workers must receive either 200% of the state minimum wage (existing law) or 150% of the state health care minimum wage, whichever is greater.

**Q:** Are all hospitals required to pay the health care minimum wage? Can they pay more than the health care minimum wage?

**A:** Under SB 525, the health care minimum wage constitutes the state minimum wage for the purposes of California labor law. Similar to the state minimum wage, there is no requirement that an employer cannot pay MORE than the minimum wage. The minimum wage is just that – a minimum hourly rate. There is no maximum wage or compensation rate under this legislation.

## Miscellaneous

**Q:** How does SB 525 prevent local governments from creating a higher minimum wage for health care employees?

**A:** Under case law, cities and counties are considered subdivisions of the state. This means that state laws can prevent, or preempt, local governments from passing certain laws. SB 525 preempts local governments from passing initiatives or ordinances on compensation (until Jan. 1, 2030) or a health care minimum wage (Jan. 1, 2034).

If a local government were to pass a higher minimum wage for ALL employees (including non-health care employees), however, the higher local minimum wage would apply.

**Q:** How does SB 525 prevent the state legislature from creating a higher minimum wage for health care employees?

**A:** Under the state constitution, a current legislature cannot tie the hands of a future legislature and restrict its ability to legislate. This means that there is nothing in SB 525 which would prevent the state legislature from seeking a higher health care minimum wage. Noting the scale of the agreement within SB 525, however, it is unlikely that the legislature will revisit the agreement until closer to the end of the preemption period.

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