ML Strategies Alert

Massachusetts Legislature Strikes “Grand Bargain”

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BY JULIE COX, MAX FATHY, AND ANNELIESE THOMAS

On June 20, Massachusetts lawmakers approved legislation aimed at preventing several high profile ballot questions from appearing before voters in November. Commonly referred to as the “Grand Bargain,” the legislation (H.4640) raises the state’s minimum wage, eliminates premium pay for those who work on Sundays and holidays, creates a paid family and medical leave program, and institutes a permanent annual sales tax holiday weekend.

The legislation represents a compromise between labor and progressive groups, led by Raise Up Massachusetts, supporting ballot questions to increase the minimum wage and create a paid family and medical leave program and business groups, led by the Retailers Association of Massachusetts (RAM), pushing for a ballot question to reduce the state sales tax and create a permanent sales tax holiday. By reaching this deal, lawmakers hope to keep the proposed questions regarding these topics off of the November 2018 ballot. Below we detail the components of the compromise:

Minimum Wage

The bill raises the minimum wage from $11 to $15 per hour over a five-year period ($1 increase in 2019 and $0.75 increases per year from 2020 through 2023) and increases the minimum wage of tipped workers from $3.75 to $6.75 per hour ($0.60 increases per year from 2019 through 2023). The original ballot question proposed raising the minimum wage to $15 per hour and the wages for tipped workers to $9 per hour over a four-year period.

Premium Pay

The compromise phases out the premium pay employees receive for work on Sundays and holidays (1.5 times their regular pay) over a five-year period. On Sundays and holidays, workers will receive 1.4 times their regular pay in 2019, 1.3 times their regular pay in 2020, 1.2 times their regular pay in 2021, 1.1 times their regular pay in 2022, and no premium in 2023. The ballot questions did not address premium pay.

Paid Family and Medical Leave

The paid family and medical leave portion of the bill creates a state program that provides workers with 12 weeks of paid family leave and up to 20 weeks of paid medical leave (but no more than 26 weeks per year). When returning from leave, employees must be restored to the same or equivalent positions they previously held. During a period of leave, employees are entitled up to 80 percent of their regular wages up to half of the state’s average weekly wage ($670), then 50 percent of wages up to an $850 per-week cap on gross benefits. The original ballot question proposed up to 16 weeks of paid family leave and 26 weeks of paid medical leave and awarded employees 90 percent of their regular wages with a $1,000 per week cap on benefits.

Funding for these benefits will come from a 0.63 percent payroll tax split between employees and employers, which goes into a state fund. Employers will pay 60 percent of personal medical premiums and 0 percent of family premiums (total premiums were split evenly under the ballot question). Contributions to the program will begin in July 2019, and benefits will go into effect in July 2021 (under the ballot question, benefits were to begin in July 2020).

Employers may opt out of the program if they provide a wage benefit that is equal to or greater than the state benefit for the duration of the leave. Employers with fewer than 25 employees are not required to contribute to premium costs, though employees still must pay the payroll tax. Under the ballot question proposal, employers were unable to opt out of the state program and small employers were required to pay premiums.

Sales Tax

The compromise keeps the state sales tax at 6.25 percent by removing the ballot question reducing the rate to 5 percent and establishes an annual two-day weekend sales tax holiday. The legislature must set the date of the holiday by June 15 of each year. Otherwise, the Department of Revenue will set it by July 1. The ballot question would have required the sales tax holiday to take place each year in August. Proponents of the sales tax ballot question agreed to these changes in exchange for the elimination of premium pay for workers on Sundays and holidays.

While the legislation was the result of months of negotiations, the Massachusetts Supreme Judicial Court's ruling on June 18 removing a “millionaire's tax” that would have imposed higher taxes for those earning over $1 million from the November ballot created additional urgency to strike a deal. Without the passage of the millionaire's tax, a sales tax cut would have resulted in a decline in state tax revenues of over $1 billion annually.

The United State Supreme Court's ruling on June 21 in *South Dakota v. Wayfair*, which held that states can require online retailers to collect and remit state sales tax, may also have implications for the state's revenue outlook. The U.S. Government Accountability Office reported in 2017 that a requirement for remote online sellers to collect state sales tax would generate additional revenues of between $169 million and $279 million annually in Massachusetts. Despite hopes among some policymakers that the decision could deliver some of the revenues that the millionaire's tax was expected to generate, the Massachusetts Department of Revenue said that it does not anticipate that the ruling will significantly alter the state's revenue picture, as the state has already begun requiring internet retailers to collect sales tax on in-state purchases.

Governor Charlie Baker must sign the grand bargain legislation by July 3 for the questions to be kept off the ballot. RAM and Raise Up have said that they will not take the sales tax and paid leave questions to the ballot. Raise Up has not yet decided whether to proceed with the minimum wage question, however, as they are concerned with the compromise's premium pay and tipped wage provisions.

Also of interest to employers, last week the Senate took action on wage theft legislation, which is another item on the top of the legislative agenda for the remainder of the session. The Senate unanimously voted to approve a bill (S.2327) aimed at curbing wage theft in the Commonwealth. The bill empowers the Attorney General to bring wage theft cases to court, creates a trust fund to repay stolen wages, and makes lead contractors liable for wage theft violations committed by subcontractors. The wage theft debate shifts to the House, which has not yet passed its own version of the bill.

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