

MEMO

TO: Interested Parties
FROM: National Employment Law Project
DATE: July 17, 2018
RE: St. Paul Minimum Wage Youth Exemption

Questions:

Would the adoption of a broad, age-based minimum wage exemption in St. Paul violate Minnesota state law? How does such an exemption compare to other cities that have adopted a robust (i.e., above \$12 an hour) minimum wage?

Short answer:

A St. Paul youth exemption would violate the Minnesota Human Rights Act (MHRA) and St. Paul's anti-discrimination ordinances if it allowed employers to pay a lower minimum wage to any worker 18 years or older simply based on age. The one caveat is that the Minnesota Fair Labor Standards Act (MFLSA) provides that for employees under 20 years of age, employers are required to pay no less than a subminimum wage (based on the state minimum wage) for the first 90 days of employment. A St. Paul youth training exception that mirrored or created a narrower subminimum wage than the MFLSA exemption for young workers would be consistent with state law, such as the training exemption in Minneapolis' \$15 minimum wage ordinance.

Of the 24 cities nationwide that have a "robust" minimum wage (i.e. a minimum wage that is currently above \$12/hour or is scheduled to increase to above \$12/hour), a majority has no youth or training carve-out, that is, youth of any age are entitled to the full minimum wage. Cities with ordinances that do include exemptions for youth or training programs either strictly limit the duration of the exemption or the age range subject to the exemption.

Analysis

A St. Paul Ordinance Simply Adopting an Age-Based Minimum Wage Exemption Would Violate the Minnesota Human Rights Act and the City's Anti-Discrimination Laws

Based on the language of the MHRA and St. Paul's anti-discrimination ordinance, a local ordinance allowing employers to discriminate against young workers in pay based on their age would conflict with both anti-discrimination laws.

The MHRA prohibits discrimination on the basis of age.¹ In its section on definitions, the MHRA clarifies that its prohibition against unfair employment practices based on age "prohibits

¹ Specifically, the MHRA makes it an unfair employment practice for an employer, on the basis of age, to "(1) refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or

using a person’s age as a basis for a decision if the person is over the age of majority”² The MHRA also adopts a broad definition of employer, defining the term as “a person who has one or more employees.”³ While the MRHA creates a few exemptions, none of them directly allow for an employer to compensate similarly situated employees disparately solely on the basis of any age above 18.⁴

St. Paul’s city ordinances contain similar anti-discrimination language.⁵ St. Paul’s city ordinances make it unlawful to for an employer “[t]o discriminate against an employee with respect to hire, tenure, referral, apprenticeship, compensation, terms, upgrading, or other conditions or privileges of employment.”⁶ St. Paul’s discrimination protections, like the state’s, apply to “persons who have passed the age of majority, which is eighteen (18).”⁷

A Local Youth Carve-Out May Not Be Broader Than the State’s Minimum Wage Law Allows

A proposed ordinance that would allow employers in Saint Paul to pay different levels of compensation based solely on an employee’s age would conflict with the MHRA by permitting something the statute expressly forbids. The Minnesota Supreme Court has held that “[a]s a general rule, conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other.”⁸ The state’s highest court also has held that when an ordinance permits what the statute forbids, there is a conflict.⁹ The same court has also held that “[a] conflict exists between state law and a municipal regulation when the law and the regulation ‘contain express or implied terms that are irreconcilable with each other.’”¹⁰

(2) discharge an employee; or (3) discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.” Minn. Stat. Ann. § 363A.08.

² Minn. Stat. Ann. § 363A.03.

³ Minn. Stat. Ann. § 363A.03.

⁴ The only exemption that would allow some type of youth wage carve-out is contained in Subdivision 10 of Minn. Stat. Ann. § 363A.20, exempting the state’s summer youth employment program administered by the commissioner of employment and economic development. Minn. Stat. Ann. § 363A.20. Other exemptions included a limited allowance for physical exams as a condition of employment, the allowance of certain mandatory retirement ages and seniority systems, and the establishment of a minimum age to be a peace officer or firefighter. *Id.*

⁵ St. Paul, Minn., Code of Ordinances § 183.01 (“The council finds that discrimination in employment . . . based on . . . age . . . adversely affects the health, welfare, peace and safety of the community.”).

⁶ St. Paul, Minn., Code of Ordinances § 183.03(2)(c).

⁷ St. Paul, Minn., Code of Ordinances § 183.02(1).

⁸ *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 816 (Minn. 1966); *see, e.g. Bicking v. City of Minneapolis*, 891 N.W.2d 304 (Minn. 2017) (per curiam) (holding that a city’s denial of a request to put a proposed amendment to the city charter on the ballot was justified because the proposed amendment conflicted with state law and would have been invalidated); *City of Morris v. Sax Inv., Inc.*, 749 N.W.2d 1, 11-12 (Minn. 2008) (en banc) (holding that inspection standards in a municipal renting license were invalid because they conflicted with provisions in the State Building Code); *Northern States Power Co. v. City of Granite Falls*, 463 N.W.2d 541 (holding that a municipal hazardous waste facility ordinance that conflicted with a Minnesota Pollution Control Agency permit was invalid).

⁹ *Mangold Midwest Co.*, 143 N.W.2d at 816.

¹⁰ *Bicking*, 891 N.W.2d at 313 (internal citation omitted).

However, the Minnesota Supreme Court has also held that generally “no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute.”¹¹ Under the MFLSA, employers may pay employees under 20 years old \$7.87 an hour for the first 90 consecutive days of employment.¹² Similarly, an employer must pay an employee under the age of 18 at least \$7.87 an hour.¹³ Thus, state law permits a limited age-based distinction when it comes to wages only for employees under the age of 20 and only for the first 90 consecutive days of employment. Minneapolis’ minimum wage ordinance contains a narrower youth training exemption that allows employers to pay employees under the age of 20 who are employed in city-approved training or apprenticeship programs eight-five percent of the local minimum wage rate.¹⁴

Based on the above, St. Paul may be able to enact a youth wage carve-out, but only one that matches or narrows the MFLSA’s age (under 20) and time (the first 90 consecutive days of employment) limitations for a permissible age-based distinction when it comes to wages without running afoul of state law. Any local youth wage carve-out that broadens those two limitations or parameters would violate state law. For example, a local youth wage carve-out that allowed employers to pay St. Paul workers who are 23 years old a lower minimum wage indefinitely would appear to violate state law because 1) state law only allows a subminimum wage for employees under 20 years of age; 2) the subminimum wage is only allowed for the first 90 consecutive days of employment, and 3) the MHRA prohibits any other type of age-based discrimination in compensation.

A Broad Youth Exemption Is Out of Step with Cities with Minimum Wages Above \$12

An analysis of 24 cities that have adopted minimum wages above \$12 reveals that a majority (thirteen) have no youth or training exemption at all.¹⁵ Furthermore, even the cities that have adopted youth or training exemptions have largely narrow time limits on exemptions, ranging from the first 160 hours of employment to 120 days, and applicable age ranges. This includes Minneapolis, whose youth training wage is limited to the first 90 days of employment and workers under 20. Of those cities that maintain carve-outs, only three exempt workers over the age of 20, with one of these likely to be phased out by 2020. And even among these three cities, only one has what can be described as a broad exemption.¹⁶

¹¹ Mangold Midwest Co., 143 N.W.2d at 817.

¹² Minn. Stat. Ann. § 177.24; Office of Governor Mark Dayton, “New year, new minimum-wage rate as of Jan. 1, 2018,” Dec. 28, 2017, <https://mn.gov/governor/blog/?id=1055-322280>.

¹³ Id.

¹⁴ Minneapolis, Minn., Code of Ordinances § 40.390, *available at* https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT2AD_CH40WORE_ARTIVMUMIWA_40.380DEBUSI.

¹⁵ NELP analysis (on file). The cities are Berkeley, CA; Cupertino, CA; El Cerrito, CA; Emeryville, CA; Los Altos, CA; Los Angeles, CA; Malibu, CA; Milpitas, CA; Mountain View, CA; Palo Alto, CA; Pasadena, CA; Richmond, CA; San Francisco, CA; San Mateo, CA; Santa Monica, CA; San Jose, CA; San Leandro, CA; Sunnyvale, CA; Chicago, IL; Miami Beach, FL; Minneapolis, MN; Seattle, WA; Washington, D.C.

¹⁶ Of the cities with a robust minimum wage, Chicago has the broadest youth exemption. Chicago exempts anyone who works for a “Subsidized Temporary Youth Employment Program,” which the city defines as “any publicly subsidized summer or other temporary youth employment program through which persons aged 24 or younger are

Metropolitan areas comparable to St. Paul have no or very limited youth carve-outs. San Francisco and Washington, D.C., which have adopted \$15 as a minimum wage, have no youth carve out at all. Other large cities have only limited exemptions. Seattle, described further below, only exempts workers 15 years old and younger. Los Angeles allows 14 to 17 year-old employees to be paid 85 percent of the minimum wage only for the first 160 hours of employment.¹⁷ San Jose only allows a lower wage for workers who are 17 years or younger and employed for 120 days or less in a youth training programs administered by a nonprofit or government entity aimed at “disadvantaged youth.”¹⁸ Similarly, Minneapolis’ minimum wage ordinance allows for employers to pay employees in city-approved training and apprenticeship programs 85 percent of the minimum wage for the first 90 days of employment. Trainee employees must be 19 years of age or younger to be paid this subminimum wage.¹⁹

Only four cities exempt workers over the age of 20 or for a period longer than the first 120 days of employment: Berkeley, San Leandro, Chicago, and Seattle. However, these exemptions are narrower than they seem. Berkeley’s youth job training wage for workers 25 years old and under is in fact a slower phase-in of the full minimum wage for youth.²⁰ It is likely that by July 2020 it will have been phased out. Seattle’s youth exemption has no time limit but only applies to workers 15 years old and under, who must be paid 85 percent of the full wage.²¹ San Leandro’s exemption applies to worker 25 years old and under in job training programs, but only for the first 120 days.²²

If St. Paul adopted a broad youth exemption, it would likely violate state discrimination law as well go against the overwhelming majority of cities across the country that have raised wages beyond \$12 an hour.

employed by, or engaged in employment coordinated by, a nonprofit organization or governmental entity.” Chi., Ill., Code of Ordinances § 1-24-010, *available at*

[http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/title1generalprovisions/chapter1-24thechicagominimumwageordinanc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago_il\\$sanc=JD_1-24-030](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/title1generalprovisions/chapter1-24thechicagominimumwageordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il$sanc=JD_1-24-030).

¹⁷ Los Angeles, Cal., Code of Ordinances § 197.02(e),

[http://library.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:losangeles_ca_mc](http://library.amlegal.com/nxt/gateway.dll/California/lamc/municipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:losangeles_ca_mc).

¹⁸ San Jose, Cal., Code of Ordinances § 4.100.045, <http://www.sanjoseca.gov/DocumentCenter/View/65220>.

¹⁹ Minneapolis, Minn., Code of Ordinances § 40.390,

https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT2AD_CH40WORE.

²⁰ Berkeley, Ca., Code of Ordinances § 13.99.040, <http://www.codepublishing.com/CA/Berkeley/>.

²¹ Seattle, Wash., Code of Ordinances § 14.19.025,

https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.19MIWAMICORAEM_PEWOSE.

²² San Leandro, Cal., Code of Ordinances § 4-35-400, <http://qcode.us/codes/sanleandro/>.