Nevada Codifies What Constitutes "Health Benefits" for Purposes of Nevada's Minimum Wage Laws

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On May 21, 2019, Nevada Governor Steve Sisolak signed a bill that seeks to clarify what type of health benefits an employer must provide in order to pay its employees the lower-tier minimum wage under the Minimum Wage Amendment (MWA) Act. The enactment of Senate Bill No. 192 appears to be in response to a Nevada Supreme Court decision issued last year that addressed this issue. Although the new law effectively overrules the court decision and codifies a new standard, questions about the range of new benefits that must be provided to qualify as "health benefits" and their resulting cost will likely remain.

Two-Tier Minimum Wage System

In 2006, Nevada's Constitution was amended to establish a two-tier minimum wage dependent on whether an employer provides "health benefits" to its employees. Employers may pay a lower minimum wage rate (currently equal to the federal minimum wage of $7.25/hour) if qualifying health benefits are offered. If such benefits are not offered, employers covered by this law must pay a higher minimum wage equal to one dollar more than the lower minimum wage rate ($8.25/hour). Since then, there has been much debate and litigation regarding what constitutes "health benefits" for purposes of the MWA.

On May 31, 2018, the Nevada Supreme Court issued a unanimous decision in *MDC Restaurants, LLC v. The Eighth Judicial Dist. Court*, 134 Nev. Op. 41 (May 31, 2018) ("MDC II"), answering the question: what health benefits must an employer provide to pay employees the lower-tier minimum wage? The court concluded, "the MWA requires an employer who pays one dollar per hour less in wages to provide a benefit in the form of health insurance at least equivalent to the one dollar per hour in wages that the employee would otherwise receive." In making this finding, the Nevada Supreme Court rejected the MDC II plaintiffs' contention that a health benefit plan under the MWA needed to meet the substantive provisions of Nevada Revised Statutes (NRS) Chapters 689A and 689B regarding individual and group health plans. The court reasoned that because employees offered health benefits may receive one dollar less in wages, "health benefits" must mean the equivalent of one extra dollar per hour in wages to the employee but offered in the form of health insurance as opposed to cash wages. The court further held that the health benefits must also be "at a cost to the employer of the equivalent of at least an additional dollar per hour in wages …." The court stated that this additional dollar per hour in wages was based on the "simple meaning found within the text and purpose of the MWA."

Nevada Legislature Steps In

In an apparent attempt to overrule MDC II, the Nevada Legislature passed—and the governor signed—Senate Bill No. 192, which explicitly states what services must be included in a benefits package in order for it to constitute "health benefits" for purposes of paying the lower-tier rate. Specifically, Senate Bill No. 192 establishes that the lower minimum wage rate may only be paid to an employee in private employment if the employer provides health benefits available to the employee and the employee's dependents a health benefit plan that provides:

- Ambulatory patient services;

- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance use disorder services (including without limitation behavioral health treatment);
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness services and chronic disease management;
- Pediatric services (not required to include oral and vision care); and
- Any other health care service or coverage level required to be included in an individual or group health benefit plan pursuant to any applicable provision of title 57 of NRS, which includes the substantive requirements of NRS Chapters 689A and 689B.

Additionally, Senate Bill No. 192 requires that the level of coverage be actuarially equivalent to at least 60% of the full actuarial value of benefits provided under the plan or be pursuant to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) and qualifying as an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 or provisions of the Internal Revenue Code. Senate Bill No. 192 further states that a hospital-indemnity insurance plan or fixed-indemnity insurance plan alone does not constitute "health benefits."

Senate Bill No. 192 also incorporates the definition of health benefits plan as ascribed in NRS 687B.470.

Problem Solved?

The above provisions defining health benefits for purposes of paying the lower-tier minimum wage do not take effect until January 1, 2020. Given the significant coverages that must be included to constitute "health benefits" as defined in Senate Bill No. 192, the cost will likely exceed the one-dollar-per-hour cost to the employer required by the MWA per MDC II. Accordingly, the debate about what constitutes health benefits for purposes of paying the lower-tier minimum wage may not be over. In the meantime, Nevada employers with employees currently compensated at a rate of less than the upper-tier minimum wage ($8.25 an hour) should review the health benefit plans offered to such employees for compliance with the benefits required by Senate Bill No. 192 and the MWA. If such plans fall short, the employer will need to consider either bringing the plan into compliance or raising employees' minimum pay to the MWA's upper tier.