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Tools for Inclusion

family and consumer series

Minimum Wage Increase: What It Means for People with Disabilities

By David Hoff

On July 24, 2009, the federal minimum wage increased to \$7.25 per hour, the final phase of a series of increases resulting from federal legislation passed in 2007. In addition, a number of states have recently increased the minimum wage to a rate higher than the federal level. For people with significant disabilities who either earn the minimum wage or close to it, these changes present a wonderful opportunity to increase their income. At the same, there are some issues that people with disabilities may need to consider regarding the changes in minimum wage. The purpose of this fact sheet is to review how minimum wage increases are relevant for people with disabilities and provide guidance on how to deal with the impact of the minimum wage on benefits and other issues. Updated information on the current minimum wage can be found at www.dol.gov/dol/topic/wages/minimumwage.htm

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www.communityinclusion.org

This publication will be made available in alternate formats upon request.

Why are there national and state minimum wages and which applies to me?

The federal government establishes the national minimum wage, which is the minimum pay rate for hourly employees nationally. In addition, states can establish their own minimum wage rates. When the federal and state laws have different minimum wage rates, the higher rate applies. Some states have minimum wage rates that are significantly higher than the national rate. (For example, the highest state minimum wage in 2009 is \$8.55 per hour in Washington State.) A list of state minimum wages can be found at www.dol.gov/esa/minwage/america.htm

Do all employers have to pay the federal minimum wage?

The federal law that contains the requirements for minimum wage is called the Federal Labor Standards Act (FLSA). While many employees are covered by the FLSA and subject to the federal minimum wage requirements, there are some employees who are not. The categories of employees not covered by the federal minimum wage are narrowly defined (i.e., employers cannot just arbitrarily decide that an employee is in a category not covered by the minimum wage). Examples of employees exempt from both the minimum wage and overtime pay requirements include: executive, administrative, and professional employees and outside sales employees. Additional categories and details regarding employees who are covered and not covered are available at: www.dol.gov/compliance/guide/minwage.htm. If you have questions regarding whether you are covered under the minimum wage law, contact your local U.S. Department of Labor Wage and Hour Division office (listing available at www.dol.gov/esa/contacts/whd/america2.htm).

Note: Even if you are not covered under the federal minimum wage law, you may be covered under your state's minimum wage law.

What about the sub-minimum wage?

The federal government allows certain individuals to be employed at wage rates below the minimum wage. This includes individuals with disabilities, whose "earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury." Employers must obtain a special certificate from the federal government, and comply with a variety of requirements in order to pay sub-minimum wage. Details on sub-minimum wage for people with disabilities are at www.dol.gov/esa/whd/regs/compliance/whdfs39.htm

People with disabilities receiving sub-minimum wage are typically employed by a disability agency, and work in a sheltered workshop, or in enclaves or work crews. If you are receiving a sub-minimum wage, the increase in minimum wage will result in a similar increase in your wage rate.

How will the changes in the minimum wage impact me?

If you are currently earning less than the new minimum wage, the most obvious change is that your income is going to increase. Generally this is good news. However, since many people with disabilities rely on public benefits (such as Medicare and Medicaid for medical insurance coverage), you may have concerns about how your increase in income will impact these benefits. There is a great deal of misinformation and misunderstanding regarding how income impacts benefits. It is important that you accurately understand how increases in income affect your public benefits. In most cases, an increase in income can be managed so that you are able to maintain the public benefits you need.

Don't forget to report income changes

If your income increases as a result of the minimum wage increase, do not forget to report your income change to Social Security and any other public benefit programs that require you to report income changes. Do not mistakenly assume that if you don't report changes in income, Social Security and other public benefit programs will not find out. Although they may not become immediately aware of changes in income, via the federal government wage reporting systems, public benefit programs do eventually receive information on your wage increases. If you fail to report changes in income, you could end up having to pay back money for benefits to which you were not entitled.

Should I decrease my hours to keep my benefits?

One reaction people with disabilities may have to the increase in the minimum wage is to reduce the number of hours they are working, in order that their income

doesn't increase and impact their public benefits. While reducing the number of work hours may seem like a simple solution, there are likely to be numerous negative results from such a strategy. First, if you ask your employer to reduce your work hours, the employer may not be willing or able to do so, and you could lose your job completely. Even if your employer is willing to reduce your hours, they are likely to then view you as a less valuable employee, and this could negatively impact both your long-term future with the employer as well as your career. The less you work, the less you will have chances to increase your skills and advance in your career. There are a number of alternative strategies available for making sure that you are able to keep the benefits you need, without reducing your work hours.

How do I figure out how much my increase in income will impact my benefits?

Calculating the impact of income increases on your public benefits can be complicated. The information below is provided as a basic guideline to get you started. However, if you have concerns about the impact of employment on your benefits, it is strongly recommended that you consult with your local Work Incentives Planning and Assistance project (WIPA). These projects are funded by the Social Security Administration, and are located throughout the United States. They have staff available, called Community Work Incentives Coordinators (CWICs), who can assist you in understanding how your benefits are impacted by income from working. In addition to the WIPA projects, you may know of other benefits experts available to help. However, given that benefit issues can be complicated, there is a tremendous amount of misunderstanding and mis-information about benefits. Be sure you are consulting with someone who is truly an expert.

Impact on cash benefits

If you receive cash benefits from SSI: If you receive a check through Supplemental Security Income (SSI), for every \$2.00 increase in monthly income from your job, your monthly SSI check will be reduced by \$1.00. Although your SSI check will be less, your overall monthly income will increase.

If you receive cash benefits from SSDI: If you receive a check through Social Security Disability Insurance (SSDI), you need to determine if your income will increase to more than the Substantial Gainful Activity (SGA) amount, which is \$980 in 2009 (\$1,640 if you are blind). If so, there is a possibility that you will no longer be eligible to receive a Social Security check. However, do not automatically assume that your SSDI check will stop. If the loss of this check is of concern, you should contact your local WIPA program, to determine if and when your SSDI check may stop, and whether there are ways that you can use work incentives (such as Impairment Related Work Expenses – IRWE or Blind Work Expenses - BWE), to keep you eligible for an SSDI check.

Impact on medical benefits

Even if your cash benefits end as a result of increased wages, this does not mean your medical benefits will end.

Medicaid – Most people on SSI are typically covered under Medicaid. Even when you stop receiving an SSI check, you can still keep your Medicaid coverage until your annual income exceeds the “threshold” amount under what is known as 1619(b). This threshold amount varies quite a bit state-by-state, ranging in 2009 from approximately \$23,000 to \$54,000. A full list of state thresholds is available at www.ssa.gov/disabilityresearch/wi/1619b.htm. In addition, many states will allow individuals who earn more than the threshold, to purchase Medicaid for a relatively low cost through what is known as “Medicaid Buy-In”. A chart of the status of Medicaid Buy-In in each state is at www.uiowa.edu/~lhpdc/work/map.html. You should contact your state Medicaid office to be sure that you have the most up-to-date information regarding the Medicaid Buy-In in your state to see if this is an option.

Medicare - If your monthly income increases above the SGA amount so that you no longer receive a SSDI check, you will still continue to be eligible for Medicare medical insurance for 7 years. At the end of this time period, you can then purchase Medicare hospital insurance for a monthly premium. If you cannot afford to pay this premium, you may be eligible for state assistance under the Qualified Disabled and Working Individuals (QDWI) program.

Impact on other benefits

If you receive other public benefits (such as subsidized housing or food stamps), these may be impacted by increases in wages. You can discuss what the impact on these other benefits would be with staff from your local WIPA project, or other benefits experts, as well as personnel at the program from which you receive benefits. Again, be sure the information you are receiving is accurate.

What if my pay doesn't increase?

Most employers will automatically increase the hourly rate for workers earning minimum wage. However, if you notice that your rate of pay has not increased after the date that the change in minimum wage goes into affect, or have other questions about how the change in minimum wage will impact your paycheck, you should talk to your employer. Remember only employees earning below the new minimum wage are impacted by the minimum wage increase.

What if my employer refuses to pay the minimum wage increase?

It is very unlikely, but possible, that your employer may ignore the minimum wage increase or tell you that you are not entitled to it. If this occurs, you should contact the **Wage and Hour Division of the US Department of Labor** at **1-866-4USWAGE**. Local offices for the Wage and Hour Division are located throughout the United States. A listing can be found at www.dol.gov/esa/contacts/whd/america2.htm. You can also contact your state's labor department. A listing of state labor departments is at www.dol.gov/esa/contacts/state_of.htm

What if my employer tells me he needs to lay me off or reduce my hours because of the minimum wage increase?

It is unlikely but possible that your employer tell you they need to cut back your hours or lay you off as a result of the minimum wage increase. Employers have the right to take such action, but it

is important to ensure that your rights are protected and that you are not being discriminated against as a result of your disability. If you are the only employee who is being laid off or whose hours are being cut, or if only employees with disabilities are having their hours cut or are being laid off, it is recommended that you have a discussion with the employer regarding why you have been specifically chosen for this action. In addition, the following might be helpful:

- » Ask your employer about any written policies regarding layoffs or hour reductions. Check your employee handbook, if you have one. Have all these procedures been followed?
- » If you are a member of a union, contact the union to make sure that the employer is abiding by all rights that you are entitled to as a union member.
- » If it seems possible, attempt to negotiate with the employer regarding how you can avoid being laid off, by increasing your importance to the employer, through rearranging your job duties and job tasks, or increasing your skills.
- » If you have an agency that assists you with your employment needs, be sure to contact them and ask for help in dealing with the situation, and for assistance in finding a new job if that's necessary.

What if I feel I have been discriminated against?

If you feel you have been discriminated against as a result of your disability, you may wish to file a complaint with the **Equal Opportunity Employment Commission** (www.eeoc.gov) or your state labor department, and/or contact legal advocates, such as your local **Protection and Advocacy Organization** (www.ndrn.org). See the resource section for additional contact information. Even if you don't plan to file a complaint, if you are concerned that you may have been discriminated against, it may be at least worth a discussion with a legal advocate for advice and feedback, and to determine potential courses of action. However, it is ultimately your decision on whether you feel filing a complaint or pursuing legal action is worth pursuing.

Conclusion

In order to properly manage the impact of changes in minimum wage, the most important thing is to get access to accurate information and assistance as needed. If you have questions or concerns, use this fact sheet as a guide, and take advantage of the various resources available to ensure that you fully benefit from the increase in minimum wage.

Resource Section

Social Security Administration

Voice: 1-800-772-1213, TTY: 1-800-325-0778

EMPLOYMENT SUPPORT PROGRAMS: www.ssa.gov/work

Changes in wages can be reported by calling Social Security. The website also has extensive information and resources regarding work incentives and impact of income on employment.

WORK INCENTIVES PLANNING AND ASSISTANCE PROJECTS: These projects can provide expert assistance regarding the impact of income on benefits. Listing is available at: <https://secure.ssa.gov/apps10/oesp/providers.nsf/bystate>

Minimum Wage Information

Information on the federal minimum wage is available from the Wage and Hour Division of the US Department of Labor.

1-866-4USWAGE

The following links have information specifically about the minimum wage:

- o www.dol.gov/compliance/guide/minwage.htm
- o www.dol.gov/esa/minwage/q-a.htm

Information on state minimum wage rates is available at:
www.dol.gov/esa/minwage/america.htm

Information on minimum wage for your state should also be available from your state labor departments. A listing is available at: www.dol.gov/esa/contacts/state_of.htm

ADA and Disability Rights

NATIONAL DISABILITY RIGHTS NETWORK

900 Second Street, NE, Suite 211

Washington, DC 20002

Voice: (202) 408-9514

Fax: (202) 408-9520

email: info@ndrn.org

website: www.ndrn.org

Membership organization for Protection and Advocacy (P&A) Systems for individuals with disabilities. Location of the P&A in your local area can be found by contacting NDRN; a listing is also available on the website. P&As can be helpful resources on employment rights and other disability-related legal issues.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

1801 L. Street

Washington, DC 20507

Voice: (800) 669-4000

TTY: (800) 669-6820

Fax: (513) 791-2954

website: www.eeoc.gov

ADA information and information on how to file complaints.

Additional publication on Social Security Benefits:

- » Making It Easier to Go to Work: What the Changes at Social Security Mean to You – A user-friendly guide on Social Security benefits for people with disabilities, Medicare, Medicaid, and related issues, and how income from employment impacts benefits.

www.communityinclusion.org/article.php?article_id=56