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City of Birmingham Raises Minimum Wage, Establishes Severe Employer Penalties in Aggressive Wage and Hour Ordinance

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On August 18, 2015, the Birmingham, Alabama, City Council passed an aggressive wage and hour ordinance that raises the minimum wage to \$10.10 by July 1, 2017. Presently, the minimum hourly wage in Alabama is \$7.25, which is the minimum an employee must be paid under federal law. The State of Alabama does not have any laws that require payment of a minimum wage. Birmingham is the first and only city in Alabama to pass a minimum wage law, and in so doing, it follows the trend of other states and larger cities which have raised the minimum wage above the federally-mandated rate.

But Birmingham's ordinance goes far beyond raising the minimum wage, imposing fines on employers who violate the law and creating private causes of action to allow employees to file lawsuits against their employers for wage violations and retaliation. The key provisions in the ordinance are as follows:

- Minimum wage increases to \$8.50 by July 1, 2016.
- Minimum wage increases to \$10.10 by July 1, 2017.
- Minimum wage increases every year after July 1, 2017, by the cost of living as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) in the Southeast region.
- The ordinance applies to all employers with employees who work in the city limits, regardless of size.
- Employers of tipped employees may apply no more than 50% of the minimum wage as a tip credit and must notify the employee in advance about the tip credit policy.
- Employers who violate the law are subject to a \$100 penalty per day, per employee, for each day the employee(s) do not receive the minimum wage.
- Employers who violate the law may be liable to the City of Birmingham for its costs associated with any investigation and enforcement action.
- Employees may bring a civil cause of action against employers to recover wages and, if successful, may be entitled to receive two times the amount of the unpaid wages plus attorneys' fees and costs.
- Employers are prohibited from retaliating against any employee who complains about or "inform[s] any person" about a suspected violation of the ordinance. A rebuttable presumption of retaliation will be found when an employee is fired within 90 days of exercising his or her rights under the ordinance.