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## Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No.

A growing number of jurisdictions have overturned local minimum wage ordinances and the state of Florida has now waded into the minimum wage waters.

Florida has a long-standing state statute that expressly prohibits municipalities from enacting local wage ordinances. Section 218.007 provides that **“a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage.”** While the statute does permit local wage ordinances for local government employees, a Florida municipality cannot pass legislation that seeks to impose a higher wage upon private employers operating within the city/county.

In 2004, Florida voters approved a state constitutional amendment that established a higher, statewide minimum hourly wage. The constitutional amendment authorized the state of Florida to increase Florida’s minimum wage above the federal minimum wage established by the Fair Labor Standards Act. However, the amendment did not supersede (or even address) Section 218.077 with regard to whether local municipalities could establish their own minimum wage scales. Pursuant to this constitutional amendment, the Florida Department of Economic Opportunity is charged with adjusting the state’s minimum wage rate annually based on the Consumer Price Index. Effective January 1, 2019, the current Florida minimum wage is \$8.46/hour.

In June 2016, the city of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. Attempting to rely on Florida’s constitutional amendment, the city of Miami Beach approved a local minimum wage ordinance for all employers operating with the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of \$10.31/hour and annual increases to \$13.31/hour effective January 2021.

The Florida Retail Federation, Florida Restaurant & Lodging Association, and Florida Chamber of Commerce promptly filed a lawsuit on the grounds that the Miami Beach ordinance was preempted by state statute. Judges in both the Miami-Dade Circuit Court and Florida’s Third District Court of Appeals agreed and that struck down Miami Beach’s local wage ordinance.

Even more interesting is that the Florida Supreme Court initially agreed in August 2018 to exercise jurisdiction and hear the city of Miami Beach’s appeal. However, last month three of the justices who had voted in favor of hearing the case retired. On February 5, 2019, the Florida Supreme Court issued a perfunctory order that stated simply: “Upon further consideration, we exercise our discretion and discharge jurisdiction. Accordingly, we hereby dismiss this review proceeding.” As a result, the Florida appellate court’s decision invalidating Miami Beach’s local wage ordinance stands.

The Florida Supreme Court’s decision does not bar other Florida municipalities from establishing their own respective minimum wages. However, the ruling certainly establishes that any such

ordinances very likely would be struck down on preemption grounds just like the city of Miami Beach.

by Jennifer Williams

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