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NEVADA SETS STRICTER HEALTH BENEFIT STANDARD, HIGHER MINIMUM WAGE

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Beginning Jan. 1, 2020, Nevada employers that opt to pay a lower minimum wage to workers in the state will need to review the health coverage provided to those employees. A new law ([SB 192](#)) clarifies what type of health benefits an employer must offer to pay the lower minimum wage (currently \$7.25 per hour) under Nevada's [Minimum Wage Amendment](#) (MWA) to the state constitution. The legislation effectively sets aside a recent Nevada Supreme Court ruling addressing how much health benefits must cost an employer to qualify for paying the lower minimum wage.

Another bill ([AB 456](#)), approved by the legislature and headed for the governor's desk, raises the minimum wage for all Nevada employers. The lower minimum wage for employers that offer qualified health benefits will increase to \$8 per hour in July 2020, then annually rise to reach \$11 per hour in 2024. Employers that don't provide health coverage as outlined in the new law will pay an additional \$1 per hour.

CONSTITUTIONAL AMENDMENT

Nevada's voter-approved MWA requires employers that don't offer "qualified health coverage" for employees and their dependents to pay \$1 per hour higher than the base minimum wage, which is currently \$7.25 an hour. Under the MWA, qualified health coverage for an employee and dependents cannot cost the employee more than 10% of his or her gross taxable income from the employer.

CURRENT REGULATIONS

To satisfy the MWA under the existing regulation ([Nev. Admin. Code § 608.102](#)), employers paying the lower minimum wage must offer those employees and their dependents a health insurance plan covering medical and/or dental expenses that generally would qualify as deductible under federal tax law ([26 USC § 213](#)). However, the state regulation doesn't specify whether the health insurance plan has to cover all or only a subset of benefits that would qualify for a federal tax deduction.

STATE HIGH COURT RULINGS

In 2018, the Nevada Supreme Court issued a decision addressing what health benefits justify paying employees the lower minimum wage ([MDC Rests., LLC v. 8th Jud. Dist. Ct.](#), No. 71289 (Nev. Sup. Ct. May 31, 2018)). In that case, the high court concluded that the lower minimum wage requires offering health

insurance that costs the employer the equivalent of at least an additional dollar per hour in wages. Beyond setting this cost threshold, the state supreme court did not specify any types of health benefits that an employer must offer to qualify for the lower minimum wage. SB 192 appears to reverse this Nevada Supreme Court ruling.

Other Nevada Supreme Court rulings on the MWA remain in place and are unaffected by the new legislation. In prior MWA decisions, the court held that an offer of health coverage is sufficient even if the employee doesn't enroll; tips do not count as income from the employer when calculating an employee's share of the premium; and employees' right to sue for MWA violations is subject to a two-year statute of limitations.

NEW REQUIREMENTS ENACTED

Under SB 192, employers can pay the lower minimum wage rate only if the health plan offered to employees and their dependents meets an actuarial value of 60% and covers services and items in each of the following categories:

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance use disorder services (including behavioral health treatment without limitation)
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services (other than oral and vision care)
- Any other healthcare service or coverage level required for individual or group health benefit plans, including Nevada group health insurance mandates ([Nev. Rev. Stat. § 689B](#))

Alternatively, an employer can pay the lower minimum wage rate by providing health benefits through a Taft-Hartley trust that qualifies as an employee welfare benefit plan under either ERISA or the Internal Revenue Code.

SB 192 further provides that offering just a hospital or fixed indemnity insurance plan does not qualify for the lower minimum wage rate. Hospital or other fixed indemnity insurance will not be considered “qualified health benefits” for purposes of the MWA.

EMPLOYER ACTIONS

Companies paying Nevada workers the lower minimum wage will need to review whether the health benefits offered to those employees will suffice to continue paying the lower minimum wage rate after 2019. In addition, employers will need to evaluate upcoming costs related to the overall minimum wage increases taking effect in 2020–2024.

RELATED RESOURCES

Non-Mercer Resources

- [AB 456](#) (Nevada Legislature, June 3, 2019)
- [SB 192](#) (Nevada Legislature, May 21, 2019)
- [Nevada Minimum Wage Amendment](#) (Nevada Constitution, art. 15, § 16)
- [Nev. Admin. Code § 608.102](#) (Nevada Legislature)
- [MDC Rests., LLC v. 8th Jud. Dist. Ct.](#), No. 71289 (Nev. Sup. Ct. May 31, 2018)

Mercer Law & Policy Resources

- [Roundup of Selected State Health Developments — First-Quarter 2019](#) (May 8, 2019)
- [2019 Outlook for State Health and Leave Initiatives](#) (Feb. 6, 2019)
- [Healthcare Compliance Services](#)

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