

To: Interested Parties
Fr: National Employment Law Project
RE: West Virginia Minimum Wage Bill HB 4283
DATE: March 27, 2013

HB 4283, currently awaiting Governor Earl Ray Tomblin's signature, would increase West Virginia's minimum wage from \$7.25 to \$8.75 per hour over 2 years. Importantly, it would also update West Virginia's minimum wage law to ensure that employers are actually covered by the law's requirements. While opponents claim that this revision is "flawed," as the below memo makes clear, HB 4283's provisions are a long overdue and common sense reform.

- **In Stark Contrast to Other States, West Virginia's Minimum Wage Law Currently Excludes Most Employers from Coverage**

West Virginia law currently excludes from coverage employers if 80 percent of the persons employed by the employer are subject to the federal minimum wage law. Since the federal minimum wage law broadly covers most employers, this means that under current West Virginia law, most employers in West Virginia are not subject to the state's minimum wage law requirements.

West Virginia is one of the only states in the country that currently defines its minimum wage law to effectively exclude most employers from coverage. Perversely, under the current structure, when West Virginia raises its minimum wage, only some of the very smallest employers that are not covered by the federal minimum must pay the higher wages. Large companies covered under federal law are effectively let off the hook if West Virginia raises its minimum wage rate above the federal minimum wage rate, and only have to pay the lower minimum wage rate. This bill ends this loophole and brings the state minimum wage law in line with other states by requiring that all employers – and especially large profitable chains – must comply with both the state and federal minimum wage law.

- **Many State Minimum Wage Laws Are More Protective than the Federal Minimum Wage Law**

Opponents of HB 4283 take issue with the fact that the state law's requirements may be more protective of workers than the federal law's requirements. However, the federal minimum wage law explicitly provides that it is intended to be a floor, and that states are free to go higher. 29 U.S.C. §218(a). For this reason, many, many states have stronger worker provisions than the federal minimum wage law, including fewer exemptions, higher minimum wage rates, longer statutes of limitations for workers to bring claims, higher penalties and liquidated damages, and coverage of smaller employers, among other provisions.

- **Opponents' Claims Concerning the Expansion of Overtime Requirements are Misplaced**

West Virginia law – untouched by the HB 4283 – currently contains nineteen exemptions from the definition of “employee” under the Act, which means that workers in these categories are not entitled to minimum wage or overtime under the state’s minimum wage law. WV Code § 21-5C-1(f). HB 4283 does nothing to change these exemptions.

Additionally, opponents cite “companions for the elderly” as a category of workers that would not be exempt from overtime under state law but are exempt under federal law. However, these workers will be covered by federal minimum wage and overtime law as of January 1, 2015, under recently promulgated federal regulations (“the companionship rules”) that will extend minimum wage and overtime rights to virtually all home-care workers, including all home-care workers employed by a third-party employer such as non-profit agencies. See <http://www.dol.gov/whd/homecare/finalrule.htm> (explanation of rule from U.S. Dep’t of Labor); 29 C.F.R. § 552.109.

Finally, the importance of overtime – which requires employers to pay 1.5 times the regular rate of pay for hours worked after 40 hours a week – cannot be overstated. It is well-settled that overtime protections are intended to (1) eliminate substandard labor conditions by ensuring that employers do not overburden workers with extremely long work-weeks and (2) encourage employers to spread employment opportunities among more workers rather than lengthening the work week. *E.g. Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 577-78 (1942) (abrogated on other grounds). By extending overtime protections to more employees in West Virginia, HB 4283 will only further the important purposes underlying these protections.

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The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. For more about NELP, visit www.nelp.org.