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Zurich District Council Confirms the Lawfulness of the City of Zurich's Minimum Wage

On 18 June 2023, voters in the cities of Zurich and Winterthur approved municipal bills on minimum wages. Business associations lodged appeals against the respective legislations with the respective District Councils. On 16 November 2023, the Zurich District Council confirmed the lawfulness of the City of Zurich's legislation on minimum wages. This article summarises the expected regulations and shows what employers should be prepared for.

Minimum Wages in the Cities of Zurich and Winterthur



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Last June, voters in the Cities of Zurich and Winterthur approved bills for municipal minimum wages. In a recent ruling, the Zurich District Council confirmed the lawfulness of the City of Zurich's legislation on minimum wages. This brings the implementation of minimum wage legislation in these cities a step closer.

Municipal Minimum Wages as a New Development

Unlike most of our neighbouring countries, Switzerland does not have federal, cross-industry minimum wages. As a tried and tested instrument, employers' organisations and employees' associations bargain collective labour agreements for specific sectors or professions, which usually also contain provisions on minimum wages. At the request of the contracting parties, such a collective labour agreement can be declared generally binding. In the rare case that this social partnership approach should not be effective and wage dumping occurs, the authorities can issue a sector- or occupation-specific minimum wage for a limited period of time in a mandatory standard employment contract. Turning away from minimum wages agreed by dialogue between social partners, a growing number of cantons have introduced statutory minimum wages. However, the cities of Zurich and Winterthur are the first municipalities to introduce minimum wages: On 18 June 2023, the voters of the City of Zurich adopted the government's counterproposal to the popular initiative "Ein Lohn zum Leben" (Ordinance on Minimum Wages). On the same day, the voters of the City of Winterthur approved the popular initiative of the same name (Ordinance on the Socio-Political Protection of Employees). Following appeals by business organisations, the Zurich and Winterthur District Councils have to decide on the lawfulness of the two municipal legislation on minimum

wages. The Zurich District Council has now reached a decision.

The Decision of the Zurich District Council

The Zurich District Council ruled that the City of Zurich's Ordinance on Minimum Wage is lawful. The decision of the Zurich District Council does not prejudice the decision of the Winterthur District Council, which will make its decision independently.

Possible Legal Remedies and Entry into Force

The decisions of both District Councils can be appealed to the Administrative Court of the Canton of Zurich. Such an appeal would have suspensive effect unless the court decides otherwise. At the time of writing, it is unclear whether the decision of the Zurich District Council will be appealed to the Administrative Court. If there is no further appeal to the Administrative Court, or if the Administrative Court were to withdraw the suspensive effect, the City Council can enact the City of Zurich Ordinance on Minimum Wages. From the date of enactment, employers will be obliged to pay the minimum wage to their employees falling within the scope of the ordinance.

Level of Minimum Wages

The City of Zurich Ordinance on Minimum Wages sets the initial minimum wage at 23.90 Swiss francs gross per hour. According to the ordinance, this does not include any surcharge for holiday and

public holiday pay. In exceptional circumstances, if the employee's holiday entitlement is to be compensated through cash payments at the current salary (to mitigate the risk of double payment, employers should thoroughly assess whether the requisite conditions are met), a corresponding supplement must be granted and clearly stated. Except for Swiss National Day, we are of the opinion that public holidays must only be compensated if this has been agreed upon in individual or collective employment contracts. Even if this is not explicitly stated in the ordinance, we believe that any supplements for Sunday and night work are not included in the minimum wage and must be paid in addition. The minimum wage amount may not be immediately evident when remuneration is provided on a monthly rather than an hourly basis. This is due to variations in the number of working days per year, influenced by the location of public holidays. Disregarding public holidays, a monthly gross salary of approximately 4,350 Swiss francs is applicable for a 42-hour work week.

The City Council adjusts the minimum wage annually in line with inflation and the nominal wage index. However, a reduction in the minimum wage is excluded. January 2024 serves as the reference point for calculating any inflation or increase in the nominal wage index.

In Winterthur, the proposed minimum wage of 23.00 Swiss francs gross per hour appears slightly lower. It will also undergo adjustments in accordance with inflation and the nominal wage index; however, the reference point for these adjustments will be November 2019. Due to recent inflation, the minimum wage in Winterthur may consequently surpass that of the City of Zurich. Apart from that, what has been stated about the minimum wage level in the City of Zurich applies to the City of Winterthur as well.

Scope of Application

The minimum wage for the City of Zurich shall apply to all employees who perform "most of their work in the city". On the other hand, the minimum wage for the City of Winterthur applies to employees who "perform their work in the City of Winterthur". This means that employers based outside of Zurich or Winterthur will also be affected. It is hoped that the forthcoming implementing regulations will clarify the criteria for determining when employees perform the majority of their work in the City of Zurich or perform their work in the City of Winterthur.

The ordinances of the cities of Zurich and Winterthur provide exemptions for certain employees. Specifically, both legislations exclude the following employees from their scope of application:

- Employees who are undergoing an educational internship with a maximum duration of twelve months.
- Employees who are apprentices working in recognized training establishments.

Furthermore, the two legislations diverge in the exceptions for certain employees. For details, please refer to the texts of the ordinances.

Monitoring and Enforcement

In order to monitor compliance with the minimum wage legislations, work and business premises may be accessed and the necessary documents inspected. Whether a municipal authority is authorised to enter work and business premises outside its municipal territory remains to be clarified by case law.

Anyone who violates the minimum wage legislation of the cities of Zurich and Winterthur will be fined. The competence of the municipalities of the Canton of Zurich to impose fines is limited to 500 Swiss francs, which therefore represents the upper limit

for fines for violations of the minimum wage legislation. Due to this upper fine limit, convictions for violations of the municipal minimum wage legislations therefore do not result in an entry in the criminal record.

In case of violations of the minimum wage legislations, the implicated employer may be liable for inspection costs.

In the event of repeated and serious offences, the offending employer will be excluded from participating in public tenders for up to five years.

Employees can also sue for the minimum wage respectively the difference to the wage paid before the civil courts.¹

Relationship to Collective Labour Agreements

The ordinance of the City of Winterthur mandates that social partners have one year, starting from the ordinance's entry into force, to align the wage provisions of collective labour agreements with the minimum wage stipulations of the City of Winterthur. In contrast, the ordinance of the City of Zurich lacks a similar provision.

In our opinion, this provision has no effect. Mandatory federal and cantonal legal provisions take precedence over the provision of collective labour agreements, even if these have been declared generally binding. If the social partners do not align the minimum wages in collective labour agreements with the minimum wage of the City of Winterthur (which, in our opinion, they cannot be compelled to do), the minimum wage of the City of Winterthur takes precedence over the provisions in collective labour agreements. In our opinion, the same applies to the City of Zurich.

Some cantons have addressed the competition with generally binding collective labour agreements differently

¹ See Art. 342 para. 2 Swiss Code of Obligations.

in their minimum wage legislation. For instance, the law on minimum wages in the canton of Basel-Stadt excludes employees subject to a generally binding collective labour agreement with minimum wages. The legislation of the Canton of Ticino follows a similar approach.

Conclusion

Until the minimum wage legislation comes into force in the cities of Winterthur and Zurich, several questions still need clarification. Additional answers will have to be determined on a case-by-case basis by the authorities and, if necessary, the courts. Employers are thus well-advised to start preparing for the implementation of municipal minimum wages. Fines, being limited in amount, are likely to be less severe in the event of violations. However, the more significant concern is the potential for damage to the employer's reputation and the risk of exclusion from public tenders.

Employment News reports on current issues and recent developments in Swiss labor law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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