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### *Labor and Employment Alert: Kentucky Cities and Counties May Not Enact Their Own Minimum Wage Laws*

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*"In Kentucky, for better or worse, counties are truly little kingdoms."* ~ Robert Ireland

Spurred by the "Fight for \$15" slogan, cities and counties throughout the United States have enacted laws to increase the minimum wage paid to employees within their jurisdictions. Authority for enacting local wage-hour legislation may come from a state's constitution or statutes or the city or county charter or enabling legislation. In response, some states (like Michigan), have enacted laws to preempt cities from enacting their own minimum wage, while employers in other states face uncertainty as to whether a city or county may legally increase the minimum wage for private employers. In Ohio, for example, the Attorney General, several city attorneys, and at least two appellate courts have concluded that cities do not have the authority to impose a minimum wage that differs from the state's minimum wage. Despite this, several Ohio cities face ballot initiatives in 2016 and 2017 to increase the minimum wage. Recently, this same issue unfolded in Kentucky.

In 2015, the Louisville/Jefferson County Metro Government enacted its own minimum wage ordinance that was set higher than Kentucky's \$7.25/hour minimum. The Kentucky Restaurant Association, Kentucky Retail Federation, and Packaging Unlimited sued Louisville to void the ordinance. Both the circuit court and court of appeals upheld the ordinance, and the organizations appealed to the Kentucky Supreme Court. On October 20, 2016, the Supreme Court reversed and struck down the ordinance.

In Kentucky, as in several other states (such as Ohio), local governments have broad home rule authority. Yet, as the Supreme Court explained, "the sovereignty of the state still rules supreme." Kentucky has enacted a comprehensive, "detailed and thorough regulation of wages." The Court noted that the Louisville ordinance required businesses to pay employees a higher wage than the statutory minimum – "in other words, what the statute makes legal, the Ordinance makes illegal and, thus, prohibits what the statute expressly permits." This conflict is prohibited under the state's Constitution, and therefore the ordinance

was preempted. The Court further noted that “express preemption is not required when the General Assembly has enacted a comprehensive statutory scheme” as it had done with the minimum wage laws. As a result, the Court held that the ordinance was invalid and unenforceable.

While not before the Court, a similar ordinance was enacted in Lexington; the Court’s same reasoning and ruling should apply to that ordinance as well. Kentucky employers are now only required to pay the state minimum wage. But it may be impractical in terms of employee relations and recruiting, to roll back the wages of current employees who are being paid the higher minimum wage to comply with the Louisville and Lexington ordinances. Contact your Vorys lawyer if you have questions about local minimum wage where you have business operations.