

# AMERICAN PAYROLL ASSOCIATION

September 26, 2018

The Honorable Robert DeLeo  
Speaker of the House  
Massachusetts House of Representatives  
24 Beacon Street, Room 356  
Boston, MA 02133

Re: Massachusetts H. 4640, An Act relative to minimum wage, paid family medical leave and the sales tax holiday

Dear Representative DeLeo:

The American Payroll Association (APA) requests a delay in implementation of Section 27 of House Bill 4640, signed into law on June 28, 2018, for one year as a transition year. Payroll management software, processes, and procedures cannot easily accommodate calculating wages and tip pay on a per shift basis. Without additional time to adequately address these new requirements, Massachusetts businesses will face significant additional costs and liabilities.

## **About APA**

Established in 1982, APA is a not-for-profit association serving the interests of more than 20,000 payroll professionals nationwide. APA's primary mission is to educate its members and the payroll industry about best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages for their employers.

## **Understanding Payroll Systems**

Payroll management systems are designed for Fair Labor Standards Act (FLSA) compliance in which minimum wages and overtime payments are calculated for each workweek, not each shift. Many employers in the hospitality industry use a point-of-sale (POS) system to track time and attendance, sales, and tips reported. The collected data is transmitted to a central payroll system on a pay period basis.

The payroll system applies the appropriate FLSA minimum wage calculations to determine if the cash wage plus tips reported fall below the minimum wage calculation. If an employee's wages fall below the minimum wage, additional makeup pay is calculated and added to the employee's cash pay. In a given shift, an employee's wages may be below minimum wage if tips were less generous; however, the payroll management system will ensure that the employee's pay for the workweek will be at least minimum wage.

### **Difficulties in Implementing Section 27**

Section 27 requires that employers calculate the minimum wage shortfall at the end of each shift during which an employee works. As described above, payroll calculations for determining minimum wage are performed in a separate system. This combination of shift and pay period management creates significant difficulties for employers. The complexity lies with making changes within existing payroll applications to perform the calculations in real time on a daily basis or make modifications to existing POS systems to perform these calculations. Accommodating the new Massachusetts requirements will require extensive changes to one or both of these management systems, which can take 9 to 12 months, far beyond the effective date of the act.

We understand that no hearings were held regarding the Section 27 provision and there was consequently no opportunity for public input. Given an opportunity, the APA and others would have informed the legislature that changes of this magnitude generally require at least a year for orderly reprogramming to occur. The following describes in detail some of the difficulties with calculating the minimum wage owed for each shift, which further underscores the need for a transition period:

- It is a common practice in the hospitality industry for employees to perform services in both tipped and nontipped jobs during the same workday/workweek.
- Employers face additional challenges when workers perform services in multiple locations, especially if the POS system in each location is not linked to the central payroll system.
- For employers using separate time and attendance systems to track time worked and POS systems for reported tips, the payroll system would need to manage data coming from multiple sources.
- Employers were not provided with a definition of "shift" for purposes of H. 4640. For example, how should the new requirement apply to employees that work on a

split-shift basis, such as an employee who works a few hours in the morning and a few hours in the evening? Is this now one shift or two?

- Changes to POS, payroll, and time-keeping software systems will require separate analysis, design, software development, and testing before delivering software to customers. Customers will need to integrate and test the systems and provide training before applying the changes to their production systems. This will take significant time to ensure accuracy.

In closing, we note that inadequate lead time for significant changes in effect unfairly punishes all businesses, which may be unavoidably out of compliance despite their best efforts. Businesses face significant additional costs to undertake programming initiatives on an emergency basis and to take whatever steps are possible on a manual basis to try to comply without systemic support. Businesses may also face additional liability for penalties or lawsuits that may arise if they are unable to comply. Such harsh treatment of Massachusetts businesses is undoubtedly an unintended consequence. We urge the commonwealth's policymakers to act to facilitate the transition.

Thank you for consideration of APA's concerns. Again, APA requests more time to implement Section 27 of H. 4640 for one year.

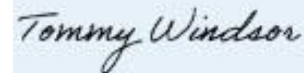
Sincerely,



Pete Isberg  
Cochair, State and Local  
Topics Subcommittee



Bruce Phipps, CPP  
Cochair, State and Local  
Topics Subcommittee



R. Tommy Windsor, CPP  
Cochair, State and Local  
Topics Subcommittee



Alice P. Jacobsohn, Esq.  
Senior Manager, Government Relations  
American Payroll Association