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## Minimum Wage Increase Applies to Public Sector Employees

A few weeks ago, CTSI published a technical update about the increase in the Colorado minimum wage, which went into effect January 1, 2018. That update raised a question from one of our members about whether county employees were subject to the minimum wage increases in Amendment 70, Article XVIII, Section 15. In response, CTSI investigated the matter and reached out to state officials and legal counsel. They found that the order does indeed apply to county employees because political subdivisions (e.g., counties) are subject to the Fair Labor Standards Act (FLSA).

### Order 33 and Amendment 70

Colorado's Minimum Wage Order Number 33 applies to the four specific industries of the private sector: retail and service; commercial support service; food and beverage; and health and medical. The Colorado Department of Labor and Employment states that Order 33 does not apply to public sector employees. But, Amendment 70 is broader in its application and applies not only to employer's subject to Colorado's minimum wage, but also to those subject to the FLSA. Because counties are subject to the FLSA, they are, therefore, subject to Amendment 70.

### The Source of the Confusion

The confusion regarding the application of Colorado's Minimum Wage Order likely stemmed from the narrow wording of order. The order specifically mentions four private sector industries, which does not include public sector employees. However, in 1974 the FLSA was amended to apply to government employees.

Furthermore, a wide body of case law also addresses the issue creating a legal precedent that public sector employees are covered under the FLSA. The supreme court in 1974 stated:

The original Fair Labor Standards Act passed in 1938 specifically excluded the States and their political subdivisions from its coverage. In 1974, however, Congress enacted the most recent of a series of broadening amendments to the Act. By these amendments Congress has extended the minimum wage and maximum hour provisions to almost all public employees employed by the States and by their various political subdivisions. *Nat'l League of Cities v. Usery*, 426 U.S. 833; *overruled on other grounds, Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985).

### What This Means for Counties

Even though Order 33 does not specifically mention public sector employees, county employees are subject to the minimum wage increase because they are covered under the expanded FLSA.

CTSI strives to be a valuable resource to our members and welcomes questions like the one posed about the minimum wage increase. If you have a question about county operations, insurance, human resources, safety, or other public entity matters, contact CTSI at (303) 861 0507. 