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## **Nevada Supreme Court Clarifies What Qualifies a Nevada Employer to Pay Lower-Tier Minimum Wage**

The Minimum Wage Amendment (“MWA”) to the Nevada Constitution allows an employer who offers “health benefits” to pay a minimum wage of one dollar per hour less than an employer who does not provide health benefits. Although the MWA became part of the Nevada Constitution over ten years ago (as a result of a voter initiative), the question of what health benefits an employer must provide to qualify for the privilege of paying the lower-tier minimum wage has been unclear. The MWA expressly provides that employers must offer health benefits in the form of health insurance that covers “the employee and the employee’s dependents at a total cost to the employee for premiums of not more than 10 percent of the employee’s gross taxable income from the employer.” Nev. Const. Art. 15 § 16(A). But the MWA is silent as to what, if any, specific health benefits must be provided. The Nevada Supreme Court finally answered this question in *MDC Restaurants, LLC v. Eighth Judicial District Court*, 134 Nev. Advance Opinion 41 (May 31, 2018).

In *MDC Restaurants*, employees alleged that their employers paid them the lower-tier minimum wage without providing sufficient health benefits under the MWA. Specifically, the employees argued that the “limited benefit plans” offered by their employers did not qualify them to pay the lower-tier minimum wage because the plans did not comply with NRS Chapters 608, 698A, and 689B, which place substantive requirements on health insurance (e.g., that it cover expenses such as hospice care, prescription drugs, cancer treatment, the management and treatment of diabetes, severe mental illness, and alcohol or drug abuse). The district court agreed and granted the plaintiffs’ motion for partial summary judgment on the issue. The employers then filed a petition for a writ of mandamus with the Nevada Supreme Court.

The Nevada Supreme Court granted the employers’ writ petition and held that in order to qualify to pay the lower-tier minimum wage under the MWA, an employer is *not* required to offer health insurance that provides specific benefits or meets the substantive requirements imposed by Nevada statutes. Rather, an employer is qualified to pay the lower-tier minimum wage if it offers health insurance that (1) is of a value greater than or equal to the wage of an additional dollar per hour, and (2) meets the “premiums of not more than 10 percent of the employee’s gross taxable income from the employer” requirement set forth in the MWA. The court reasoned that it is unlikely that, in enacting the MWA, the voters considered or intended to incorporate the entirety

of Nevada's statutory scheme regarding health insurance into the meaning of "health benefits." Instead, the court stated that the purpose of the MWA was simply to provide higher wages to employees or, in the alternative, health insurance; and nothing in the text or purpose of the MWA suggests that the voters intended to create one tier that was inherently more valuable to employees than the other (which would be the case if extensive and costly health benefits were required for the lower-tier). Thus, the court concluded that "the simplest and most straightforward meaning of 'health benefits' is a benefit in the form of health insurance at least equivalent to an additional one dollar per hour in wages."

In light of this ruling, Nevada employers who pay the lower-tier minimum wage should evaluate the health insurance they offer their employees to ensure that it not only meets the "premiums of not more than 10 percent of the employees' gross taxable income from the employer" requirement, but also that the cost of the insurance to the employer is the equivalent of at least one additional dollar per hour in wages.