

August 5, 2019

STATE OF MINNESOTA
IN SUPREME COURT

**OFFICE OF
APPELLATE COURTS**

Graco, Inc.,

Appellant,

vs.

City of Minneapolis,

Respondent.

**BRIEF AND ADDENDUM OF *AMICUS CURIAE* STATE OF MINNESOTA
BY ITS COMMISSIONER OF LABOR AND INDUSTRY**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

Whether state law preempts the City of Minneapolis' minimum wage ordinance?

The district court held in the negative. The court of appeals affirmed.

Most apposite authorities:

Minn. Stat. chs. 177, 181

29 U.S.C. § 218

Jennissen v. City of Bloomington, 913 N.W.2d 456 (Minn. 2018)

Mangold Midwest Co. v. Village of Richfield, 143 N.W.2d 813 (Minn. 1966)

STATEMENT OF INTEREST

The State of Minnesota, by its Commissioner of Labor and Industry Nancy J. Leppink, has a compelling interest in ensuring that state labor and employment laws are correctly interpreted to maintain and safeguard workers' health, efficiency, and well-being.¹ The Minnesota Department of Labor and Industry ("DLI"), under the direction of the Commissioner, administers and enforces the State's labor standards statutes, including Minnesota's minimum wage statute, Minn. Stat. § 177.24 (2018).

This case concerns a challenge to a Minneapolis ordinance that regulates the minimum wage rate paid to employees working within the city. *See* Minneapolis, Minn., Code of Ordinances ("MCO") §§ 40.320-.450. Appellant Graco, Inc. sued the City of Minneapolis, requesting a declaration that state law preempts the ordinance and an order enjoining the city from enforcing the ordinance. Graco argues that the Minnesota Fair Labor Standards Act ("MFLSA"), Minn. Stat. §§ 177.21-.35 (2018), preempts the ordinance under two theories: conflict preemption and implied—or field—preemption.

Resolving Graco's challenge requires interpreting and applying the MFLSA and other wage-related statutes the Commissioner administers and enforces. A correct interpretation and analysis of state law and the broader minimum wage regulatory landscape, are important to the Commissioner, DLI, and the citizens of the State, including the citizens that work in Minneapolis. The Commissioner, therefore, offers her views to this Court that local governments such as Minneapolis may institute minimum

¹ No portion of this brief was prepared by counsel for a party, and no monetary contribution was received. *See* Minn. R. Civ. App. P. 129.03.

wage standards that are more protective than the state minimum wage, and respectfully requests that the Court affirm the holding of the court of appeals.

ARGUMENT

Minnesota law does not preempt a local minimum wage ordinance that sets a minimum wage rate higher than the state rate. The Commissioner does not construe state statutes to preempt such local regulation. Rather, an employer must pay a covered employee the highest wage rate required by law—which includes a local minimum wage ordinance. Under the tests used to determine field preemption and conflict preemption, it is clear that state law does not completely occupy the field of wage laws—indeed it has always shared that field with federal law and even allows ordinances to set wage rates—and that Minneapolis’ minimum wage ordinance does not conflict with state law. Before analyzing the relevant preemption tests, however, a review of Minnesota’s wage laws is in order to determine their scope and interplay with the minimum wage laws of other jurisdictions. A review of Minnesota’s wage laws further demonstrates that the Legislature has already expressly recognized that an ordinance can provide a legally enforceable wage rate.

I. MINIMUM WAGE BACKGROUND.

The minimum wage landscape in Minnesota has long been subject to dual regulation by both the state and federal government. As this Court has observed, “[t]he areas of minimum wage and overtime are subject to dual regulation by the state and federal governments,” so an employer subject to both state and federal law “must comply with the law that sets the higher standard.” *Milner v. Farmers Ins. Exch.*, 748 N.W.2d

608, 611 n.1 (Minn. 2008). Under this regulatory landscape, more than one governmental entity regulates the employment relationship between employer and employee. When an employee is covered and protected by more than one minimum standard, the employer must pay the highest of the minimum wage rates required by law. This section addresses this regulatory landscape and Minnesota’s minimum wage. The Commissioner also provides a brief overview of relevant provisions of the Minneapolis ordinance and the guidance that DLI provides to Minnesota employers and workers on the minimum wage.

A. Minnesota’s Minimum Wage And Employment Laws.

To determine if state law preempts a municipal ordinance, it is necessary to determine the scope and substance of the relevant state laws. *See Jennissen v. City of Bloomington*, 913 N.W.2d 456, 460 (Minn. 2018) (“Understanding what is—and is not—within the reach of [the statute] is critical to” the field preemption analysis); *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 313-14 (Minn. 2017) (explaining Minnesota’s conflict preemption test and considering statutory language). Minnesota’s minimum wage law does not operate in a vacuum. It is part of the MFLSA, which contains enforcement mechanisms and recordkeeping requirements, and is administered along with Minn. Stat. ch. 181. The MFLSA provides the Commissioner with administrative, enforcement, and rulemaking authority.

1. The State Minimum Wage.

The MFLSA establishes minimum wage and overtime compensation standards with the aim of maintaining “workers’ health, efficiency, and general well-being.” Minn.

Stat. § 177.22 (2018). The MFLSA strives to safeguard minimum wage standards from unfair standards that do not maintain workers' health, efficiency, and well-being; to sustain purchasing power; and increase employment opportunities for Minnesotans. *Id.*

To accomplish these aims, the MFLSA sets a statewide minimum wage rate. *Id.* § 177.24, subd. 1(b). The Legislature set the minimum wage rate for 2014, 2015, and 2016, and directed the Commissioner to determine and increase the minimum wage rate in each subsequent year beginning January 1, 2018. *Id.*, subd. 1(b)-(f). The Commissioner must determine the percentage increase in the inflation rate, and increase the state minimum wage rate by either 2.5 percent or the percentage increase in the inflation rate—whichever is less. *Id.*, subd. 1(f). This grant of authority to the Commissioner is relatively new. *Compare* Minn. Stat. § 177.24 (2018) *with* Minn. Stat. § 177.24 (2012); *see also* 2014 Minn. Laws ch. 166, § 2 (amending Minn. Stat. § 177.24).

The Commissioner has additional authority if the Commissioner finds a potential for the state economy to take a substantial downturn. Minn. Stat. § 177.24, subd. 1(g); 2014 Minn. Laws ch. 166, § 2. The Commissioner may order that an increase to the state minimum wage not take effect. Minn. Stat. § 177.24, subd. 1(g). To date, the Commissioner has not exercised this authority; the state minimum wage rate increased in 2018 and 2019. *Id.*, subd. 1(b)-(f); Minn. Dep't of Labor & Industry, *Minimum Wage in Minnesota*, available at <https://www.dli.mn.gov/business/employment-practices/minimum-wage-minnesota> (last visited Aug. 2, 2019) (DLI Add. 1-3);² David Berry, Minn. Dep't of

² “DLI Add.” refers to the addendum submitted with this brief.

Labor & Industry, *Minnesota Minimum-Wage Report*, available at <https://www.dli.mn.gov/business/employment-practices/minnesota-minimum-wage-report> (last visited Aug. 5, 2019) (DLI Add. 4-20).

The MFLSA covers employers and employees as defined by section 177.23. Minn. Stat. § 177.23, subd. 1. An employer is “any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.” *Id.*, subd. 6. The definition of an employee is broad, meaning “any individual employed by an employer,” but the statute lists a variety of exceptions. *See id.*, subd. 7. To employ “means to permit to work.” *Id.*, subd. 5.

Section 177.24 differentiates between large employers and small employers based on the “annual gross volume of sales made or business done.” *Id.* § 177.24, subd. 1(a), (b). If the employer has an annual gross volume of sales or business of less than \$500,000, the employer is considered small. *Id.*, subd. 1(a). The MFLSA sets different minimum wage rates for employers who employ: employees under the age of 20 for the first 90 days of work (the training rate); certain employees working for hotels, motels, lodging establishments, or resorts (the J-1 visa rate); and employees under the age of 18 (the youth rate). *Id.*, subd. 1(c)-(e). As of January 1, 2019, the minimum wage rates are \$9.86 an hour for large employers, and \$8.04 an hour for small employers. DLI Add. 1. \$8.04 an hour is also the training rate, youth rate, and the J-1 visa rate. *Id.*

2. MFLSA Enforcement.

DLI is responsible for administering the MFLSA, as well as Minn. Stat. chs. 178 (apprentice training), 181 (employment), 181A (child labor), and 184 (employment agencies). Minn. Stat. § 177.26 (2018). The Commissioner can examine business and employment records, investigate wage claims and complaints, require employers to provide records, fine employers for failing to provide records, issue compliance orders for violations of the MFLSA or other employment laws, and bring civil actions. *Id.* § 177.27 (2018). If an employer violates the MFLSA or a different employment law, the Commissioner shall order the employer to cease and desist from engaging in unlawful practices and to pay aggrieved parties back pay, gratuities, and compensatory and liquidated damages. *Id.*, subd. 7.

The Commissioner does not have sole or exclusive enforcement authority. The MFLSA gives employees the right to bring an action to recover the full amount of wages, gratuities, and overtime compensation owed; liquidated damages; and other appropriate relief. *Id.*, subd. 8. In addition, a recently enacted law gives the Minnesota Attorney General enforcement authority over chapter 177. 2019 1st Special Sess. Minn. Laws. ch. 7, art. 3, § 7 (adding Minn. Stat. § 177.45) (DLI Add. 34).

3. Minnesota Recordkeeping Requirements.

The MFLSA and Minnesota Statutes chapter 181 contain recordkeeping and posting requirements. An employer subject to sections 177.21 to 177.44 must keep a record of the rate of pay and amount paid each pay period to an employee, the hours worked each day and workweek, and other information the Commissioner finds

necessary to enforce chapter 177. Minn. Stat. § 177.30 (2018). A recently enacted law meant to combat wage theft requires an employer to maintain additional records and make them readily available for the Commissioner to inspect. 2019 1st Special Sess. Minn. Laws. ch. 7, art. 3, § 5 (amending Minn. Stat. § 177.30) (DLI Add. 32-33). The Commissioner can penalize an employer for recordkeeping violations. *Id.*; Minn. Stat. §§ 177.27, subds. 1-2, 177.30. Employers must also keep a summary of chapter 177 and copies of relevant rules or a summary of the rules, and must post summaries at the place of employment. Minn. Stat. § 177.31.

These recordkeeping and posting requirements are vital so workers can know what they are being paid, what they are owed, and what their rights are. The recordkeeping requirements are also important to the Commissioner's enforcement efforts. As this Court recognized, an employer's failure "to maintain records is an obstacle for employees" who try to pursue claims under chapter 177, and "[w]hen employers do not maintain the required records, it becomes difficult for employees to meet their burden of proof with respect to compensatory damages." *Milner*, 748 N.W.2d at 619.

Minnesota Statutes chapter 181 requires employers to provide earning statements to employees, which must include the hourly rate of pay, the total number of hours worked (unless exempt from chapter 177), and additional information. Minn. Stat. § 181.032 (2018). The Legislature recently amended this statute to require the earnings statement to include the rate "or rates" of pay "and basis thereof." 2019 1st Special Sess. Minn. Laws. ch. 7, art. 3, § 11 (amending Minn. Stat. § 181.032) (DLI Add. 34-35). The new law also requires employers to provide written notice of information to employees at

the start of employment, including “the rate or rates of pay and basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other method, and *the specific application of any additional rates*” and “the employee’s employment status and whether the employee is exempt from minimum wage, overtime, and other provisions of chapter 177, and on what basis.” *Id.* (emphasis added).

4. DLI’s Rulemaking Authority.

The Legislature gave the Commissioner authority to adopt rules to promote the MFLSA’s purposes and safeguard the minimum wage rates. Minn. Stat. § 177.28 (2018). The promulgated rules are contained in chapter 5200. The rules affirm that “[t]he minimum wage must be paid for all hours worked,” specify what “hours worked” includes, and state that the workweek period is used to determine compliance with the minimum wage rate. Minn. R. 5200.0120, subp. 1, 5200.0170, subp. 1 (2017). The rules refine some of the MFLSA exemptions. *See* Minn. R. 5200.0080, 5200.0121, 5200.0180-.0242, 5200.0260-.0270 (2017). The Commissioner can enforce violations of DLI’s rules through section 177.27. Minn. Stat. § 177.27, subd. 4.

B. The Federal Fair Labor Standards Act.

The federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 203, *et seq.*, establishes a federal minimum wage rate. The federal minimum wage rate, \$7.25 an hour, has not changed since 2009. 29 U.S.C. § 206(a)(1); DLI Add. 6. Unlike the MFLSA, the FLSA does not tie the general minimum wage rate to inflation. *Compare* 29 U.S.C. § 206(a) *with* Minn. Stat. § 177.24, subd. 1(b)-(f).

The FLSA defines employer as “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency,” with an exception for labor organizations. 29 U.S.C. § 203(d). Employee means “any individual employed by an employer,” with several exceptions. *Id.* § 203(e). The federal minimum wage rate has broad application, but the FLSA contemplates different rates in certain contexts. *See id.* § 206. The FLSA finds that “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers” harms and burdens commerce in a variety of ways, and thus endeavors “to correct and as rapidly as practicable to eliminate” such conditions “without substantially curtailing employment or earning power.” *Id.* § 202.

The FLSA states, “[n]o provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or *State law or municipal ordinance* establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter.” *Id.* § 218(a) (emphasis added). The FLSA’s express language allows both state and local governments to set higher minimum wage rates than the federal standard. The substance of this provision has been in the FLSA since its inception—well before the enactment of the MFLSA. *See* Fair Labor Standards Act of 1938, Pub. L. No. 75-718, ch. 676, § 18, 52 Stat. 1060, 1069, available at <https://www.loc.gov/law/help/statutes-at-large/75th-congress/session-3/c75s3ch676.pdf> (last visited Aug. 5, 2019); *see also* 1973 Minn. Laws ch. 721 (enacting Minnesota Fair Labor Standards Act and adding section 177.24).

Though this case does not involve a claim that federal law preempts the ordinance, cases addressing federal preemption are helpful in considering how the FLSA operates and what a federal minimum wage law means. The Ninth Circuit has explained that “the purpose behind the FLSA is to establish a national *floor* under which wage protections cannot drop, not to establish absolute uniformity in minimum wage and overtime standards nationwide at levels established in the FLSA.” *Pac. Merchant Shipping Ass’n v. Aubry*, 918 F.2d 1409, 1425 (9th Cir. 1990) (emphasis in original). According to the Fourth Circuit, “[t]he FLSA is clearly structured to provide workers with specific minimum protections against excessive work hours and substandard wages.” *Monahan v. Cty. of Chesterfield, Va.*, 95 F.3d 1263, 1267 (4th Cir. 1996). *Cf. Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 737, 739 (1981) (noting wage statute was “designed to provide minimum substantive guarantees to individual workers”). By its terms, the FLSA does not preempt higher local or state minimum wage rates, and courts have construed the FLSA as setting a floor to protect workers.

C. Minneapolis’ Minimum Wage Ordinance.

While the Minneapolis ordinance sets a different minimum wage rate than the state minimum wage rate, the ordinance is similar in several respects to the MFLSA. Regarding its scope and coverage, the ordinance uses section 177.23’s definition of employee, and adds two exceptions. MCO § 40.330. Employer is defined in a similar manner, with some additional exceptions. *Id.* The ordinance sets a different wage rate for employees employed by large businesses than those employed by small businesses for

several years. *Id.* § 40.390. In contrast to the MFLSA, the ordinance delineates between large and small employers based on the number of employees. *Id.* §§ 40.330, 40.380.

The enforcement provisions in the ordinance are similar to those in the MFLSA. The Minneapolis Department of Civil Rights Director can issue orders requiring an employer to cease and desist from engaging in an unlawful practice and order relief such as back pay, reinstatement, compensatory damages, liquidated damages, civil penalties, fines, and reimbursement of appropriate costs unless it would result in hardship. *Id.* § 40.410(b). Employees also have the right to bring a private cause of action. *Id.* § 40.410(c). The ordinance requires employers to maintain records “documenting minimum wages paid to each employee,” which must be made available to the Minneapolis Department of Civil Rights and employees. *Id.* § 40.430.

D. DLI’s Outreach To Workers And Employers.

As a state agency responsible for administering and enforcing Minnesota labor and employment laws, DLI provides guidance to Minnesota employers and workers on workers’ rights and employers’ responsibilities, including on the minimum wage. *See* Minn. Dep’t of Labor & Industry, *Worker Rights and Protections*, available at <https://www.dli.mn.gov/workers/worker-rights-and-protections> (last visited Aug. 2, 2019) (DLI Add. 21-23). The minimum wage-related information available on DLI’s website includes fact sheets for employers, workplace posters that must be displayed, a brochure, and a minimum wage report. DLI Add. 1-28. DLI’s website explains that the state minimum wage is higher than the federal minimum wage, so employees covered by both the federal and state laws must pay the higher state minimum wage. DLI Add. 2.

DLI has published on its website a research report dated June 7, 2019 on the minimum wage in Minnesota. DLI Add. 4-20. This report notes that the minimum wage area has become more complex, and understanding the minimum wage involves considering the federal and state minimum wage rates, and the rates in Minneapolis and St. Paul. DLI Add. 4. The report states as follows: “Throughout, it should be kept in mind that at any place and time, the effective minimum wage – the level employers are required to pay to covered employees – is the highest of the federal, the state and any local levels.” *Id.* In the report, DLI highlights the different definitions of small employers in Minnesota, Minneapolis, and St. Paul, but notes that based on data from the U.S. Small Business Administration, “many employers that would be ‘large’ for Minnesota would be ‘small’ for Minneapolis or St. Paul.” DLI Add. 8. In addition, the report contains data on the minimum wage relative to the poverty threshold and the projected percentages of jobs that pay wages at or below the minimum wage. DLI Add. 12-14, 17-19.

II. MINNESOTA’S WAGE LAWS EXPLICITLY ALLOW AN ORDINANCE TO SET A LEGALLY ENFORCEABLE WAGE RATE.

The Legislature has acknowledged, through clear and express statutory language, that an ordinance can set a wage rate higher than the wage rate required by state statute. The Legislature has even provided a mechanism for private parties and DLI to enforce that higher wage rate. This express statutory authority is contained in Minnesota Statutes chapter 181 and in recent amendments to Minnesota statutes.

Minnesota law regulates the payment of wages, in addition to the minimum wage. Minnesota Statutes chapter 181 addresses how and when wages must be paid, among other employment protections. The Commissioner administers and enforces laws in chapter 181. *See* Minn. Stat. §§ 177.26, 177.27, subd. 4. This Court has recognized that the MFLSA and the payment of wages sections of chapter 181 together “provide a comprehensive statutory scheme for wages and payment in Minnesota and should be interpreted in light of each other.” *Milner*, 748 N.W.2d at 617.³ Accordingly, it is appropriate to consider chapter 181 in analyzing the MFLSA.

Minnesota Statutes section 181.13 requires employers to immediately pay a discharged employee wages earned and unpaid upon demand. It provides: “Wages are actually earned and unpaid if the employee was not paid for all time worked at the employee’s regular rate of pay or *at the rate required by law*, including *any applicable statute*, regulation, rule, *ordinance*, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater.”⁴ Minn. Stat. § 181.13(a) (emphasis added). An employee can recover payment even if not party to a contract that requires a rate of pay, “so long as the contract or *any applicable statute*, regulation, rule, *ordinance*, government resolution or policy, or any other legal authority requires payment to the

³ The *Milner* opinion refers to sections 181.01 to 181.171 as the Payment of Wages Act. The opinion compares the penalty provisions in the two Acts. *See id.* at 617-18.

⁴ The Legislature amended sections 181.13 and 181.14, which included adding the language about any applicable statute and ordinance, in 2013. *See* 2013 Minn. Laws ch. 27. The amendments came after the decision in *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826 (Minn. 2012).

employee at the particular rate of pay” and the employee can seek payment “at the highest rate of pay provided in the contract or applicable law.” *Id.* (emphasis added).

Section 181.14 addresses payment of wages earned and unpaid when an employee quits or resigns. It similarly provides that wages are earned and unpaid if an employee has not been paid for all time worked at the regular rate of pay “or *at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater.*” *Id.* § 181.14, subd. 1(a) (emphasis added). The recovery provisions are similar to those provided to discharged employees in section 181.13, and employees can seek payment “at the highest rate of pay provided in the contract or applicable law.” *Id.* § 181.14, subd. 2.

As part of the recent wage theft law, the Legislature amended statutes to provide language similar to the language contained in sections 181.13 and 181.14. Section 181.101, which addresses how often wages must be paid, allows the Commissioner to make a demand for wages. If payment is not timely made, the Commissioner may “collect the wages earned at the employee’s rate or rates of pay or *at the rate or rates required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater.*” 2019 1st Special Sess. Minn. Laws. ch. 7, art. 3, § 12 (amending Minn. Stat. § 181.101) (DLI Add. 36) (emphasis added). The Legislature expressly stated that this statute “provides a substantive right for employees to the payment of wages, including

salary, earnings, and gratuities, as well as commissions, in addition to the right to be paid at certain times.” *Id.*

The Commissioner can enforce sections 181.101, 181.13, and 181.14 under section 177.27. *See* Minn. Stat. § 177.27, subs. 4-5. In addition, the wage theft law provides the Minnesota Attorney General with the authority to enforce chapter 181. 2019 1st Special Sess. Minn. Laws. ch. 7, art. 3, § 13 (adding Minn. Stat. § 181.1721) (DLI Add. 36). The Legislature has also empowered individuals to bring civil actions for violations of sections 181.101, 181.13, and 181.14. Minn. Stat. § 181.171 (2018).⁵

The recent wage theft law also amends the criminal theft statutes to provide that criminal wage theft occurs when an employer with an intent to defraud fails to pay an employee all wages “at the employee’s rate or rates of pay or at the rate or rates *required by law*, including *any applicable statute, regulation, rule ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater.*” 1st Special Sess. Minn. Laws. ch. 7, art. 3, § 14 (amending Minn. Stat. § 609.52, subd. 1) (emphasis added) (DLI Add. 36-38). Thus, it may be a crime for an employer to intentionally not pay an employee wages at the rate required by law, including the rate set by an ordinance, if that required rate is higher than the employee’s rate of pay.

The amendments to sections 181.101 and 609.52 recognize that there may be different rates of pay to which an employee is entitled. Determining the wages owed to

⁵ Section 181.171 defines “employer” to include “any person having one or more employees in Minnesota and includes the state and any political subdivision of the state.” *Id.*, subd. 4.

an employee under these laws requires looking at the employee’s rate or rates of pay and the rate or rates required by any applicable law—which includes an ordinance—and calculating whatever is greater. The wage rates required by law, including the rate required by an ordinance, can be enforced by DLI and private parties. The Legislature did not carve out an exception for a minimum wage ordinance – and indeed the Legislature surely was aware of local minimum wage ordinances during the 2019 special session.

Together, these statutes recognize that employees are entitled to payment for time worked at either their regular rate of pay or the rate (or rates) required by law—whichever is greater. The Legislature expressly provided that both a statute and an ordinance can set the rate of pay required by law. Reading the statutes together, the MFLSA does not exclusively regulate the wage rate that an employer must pay an employee.

III. STATE LAW NEITHER PREEMPTS NOR CONFLICTS WITH A LOCAL MINIMUM WAGE ORDINANCE SETTING A HIGHER MINIMUM WAGE RATE THAN THE STATE MINIMUM WAGE.

In *Mangold Midwest Co. v. Village of Richfield*, the Minnesota Supreme Court set forth the principles a court considers in deciding if state law preempts a municipal ordinance through field or implied preemption, or if a municipal ordinance conflicts with state law, also known as conflict preemption. 143 N.W.2d 813 (Minn. 1966). The Court primarily derived these principles from the common law, drawing from past Minnesota

cases as well as decisions from other state courts and treatises.⁶ See 143 N.W.2d at 815-17, 819-21. The preemption doctrine relates to a city's authority under state law. See *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007).

It is the Commissioner's position that state law does not occupy the minimum wage field and that the field leaves room for supplemental municipal regulation that promotes the MFLSA's purposes. Further, the ordinance is not in conflict with state law but instead complements and furthers the MFLSA's goals.

A. State Law Does Not Preempt The Minneapolis Minimum Wage Ordinance.

Field preemption occurs when state law occupies the field of a particular subject matter and leaves no room for supplemental municipal legislation. *Jennissen*, 913 N.W.2d at 459-60. A reviewing court asks four questions in deciding if the Minnesota Legislature has so comprehensively addressed the subject matter of a regulation such that state law occupies the field:

(1) What is the 'subject matter' which is to be regulated? (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern? (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern? (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

Mangold, 143 N.W.2d at 820. The parties to this appeal agreed that the subject matter to be regulated is the minimum wage rate.

⁶ Federal preemption law derives from the Supremacy Clause of the United States Constitution. See, e.g., *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76-77 (2008); see also *Housing & Redev. Authority of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014) (analyzing whether federal law preempted state statute).

Answering the second and third questions requires careful consideration of state law. *See Jennissen*, 913 N.W.2d at 460, 462. As described above, the MFLSA sets state minimum wage rates and allows the Commissioner to increase the minimum wage rate based on the process outlined in the statute. The MFLSA operates alongside the FLSA, so an employee covered by both laws is entitled to receive the higher minimum wage required by law. Related Minnesota statutes that address how and when an employee must be paid make clear that an employee is legally entitled to the higher of the employee's rate of pay or the rate required by law, which includes not only applicable statutes but also ordinances. *See* Minn. Stat. §§ 181.13-.14; DLI Add. 36. So if an ordinance requires a higher rate of pay than a statute or other legal authority, and is higher than the employee's rate of pay, then an employee is entitled to the ordinance rate. Moreover, the Legislature recently made it a crime for an employer, with an intent to defraud, to fail to pay an employee the higher of the employee's rate of pay or the rate required by law—which includes the rate set by an ordinance. DLI Add. 36-38.

In *Mangold*, the Court considered the lawfulness of an ordinance where state law also addressed the ordinance's subject matter. The Court affirmed that state law did not preempt the ordinance even where the state legislation was “a rather complete policy statement by the legislature which the local municipality should be able to shape to its own needs by supplementary ordinances.” 143 N.W.2d at 821.

The MFLSA is comprehensive, but it does not fully cover the field. First, the MFLSA operates alongside the FLSA, which by its terms does not preempt higher state or local minimum wages. Second, sections 181.13 to 181.14 and the new wage theft

law, which amends sections 181.101 and 609.52, make clear that an ordinance can set a required rate of pay—and indeed can set a rate higher than the rate set by state statute. Employers can be compelled to pay that higher rate, and indeed in some situations may be criminally liable for intentionally failing to do so. Finally, the very nature of the state minimum wage is to set *minimum* standards. The MFLSA protects employees from being paid wages below that floor. Accordingly, the Legislature has not so fully covered minimum wages to demonstrate that minimum wages are solely a matter of state concern. This analysis also answers the third *Mangold* question, about whether the Legislature has partially regulated a subject matter “in a manner that demonstrates that the subject matter is solely one of state concern.” *See Jennissen*, 913 N.W.2d at 462.

Minnesota’s minimum wage law is not of such a nature that local minimum wage ordinances have “unreasonably adverse effects upon the general populace of the state.” *See Mangold*, 143 N.W.2d at 820. If Minneapolis has determined that a higher minimum wage is necessary based on the cost of living and working in the city, then the higher wage promotes the MFLSA’s purpose and benefits those who work, and those who wish to work, in the city by helping them to better afford their lives. It is difficult to see how local regulation of this nature that meets the needs of the city would harm the state’s general populace. *See Jennissen*, 913 N.W.2d at 462 (“The Legislature allowed the process of organizing collection to differ from community to community. It follows that local regulation would not have unreasonably adverse effects upon the general populace of the state.”).

Regarding the argument that the Minneapolis ordinance creates a patchwork or different regulations, the minimum wage is already subject to dual regulations and can vary from state to state and even within the same state, depending if an employee is covered by either or both federal and state laws. Thus, the status quo—absent a local ordinance—already involves different regulations.

It does not appear that this Court’s field preemption opinions have considered whether state law occupies the field in the context of the minimum wage specifically, or labor standards more broadly. If this Court looks to other jurisdictions for guidance, the Seventh Circuit issued a decision considering whether federal law preempted a state prevailing wage law that provides a helpful roadmap. In deciding if Congress precluded state law on prevailing wages,⁷ the court noted that “[t]he use of the word *minimum* in the statute, in and of itself, is strong evidence of a congressional intention to have the statute read as complementary to state legislation.” *Frank Bros., Inc. v. Wisconsin Dep’t of Transp.*, 409 F.3d 880, 887 (7th Cir. 2005) (emphasis added). The court rejected the argument that silence about state laws suggests field preemption,⁸ stating “silence on the part of Congress alone is not only insufficient to demonstrate field preemption, it actually weighs in favor of holding that it was the intent of Congress *not* to occupy the field.” *Id.* at 891 (emphasis in original).

⁷ The federal-to-state field preemption doctrine is described in detail in *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), and *Arizona v. U.S.*, 567 U.S. 387 (2012).

⁸ The court noted that the Davis-Bacon Act did not have an express non-preemption clause—unlike the FLSA. *Id.* at 887-88.

In a footnote, the Seventh Circuit recognized that “comprehensiveness does not always justify preemption,” because often modern regulatory legislation and agency actions are by their nature intricate and complex, or comprehensive. *Id.* at 893, n.12. This Court similarly held in *Jennissen* that even a statute containing “detailed procedures” does not necessarily fully cover the field. *See* 913 N.W.2d at 461. And in contrast to the state building code considered in *City of Minnetonka v. Mark Z. Jones Assocs., Inc.*, 236 N.W.2d 163 (Minn. 1975), the MFLSA does not contain a broad uniformity provision and the Legislature expressly contemplated ordinances setting rates of pay in related laws. Though comprehensive, the MFLSA does not occupy the field of minimum wage regulation.

B. The City Minimum Wage Ordinance Does Not Conflict With State Law.

Municipalities may enact regulations consistent with state law and public policy. *See Bicking*, 891 N.W.2d at 312. In Minnesota, conflict preemption applies if an ordinance and statute are irreconcilable with each other, if the ordinance permits what the statute forbids, or if an ordinance forbids what the statute expressly permits.⁹ *Mangold*, 143 N.W.2d at 816. But “no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute.” *Id.* at 817.

⁹ The federal-to-state conflict preemption analysis differs to an extent. *See Lee*, 852 N.W.2d at 687 (explaining that state law is in conflict with federal law, and thus preempted, if a party cannot simultaneously comply with both state and federal law, and if the state law is an obstacle to achieve the federal law’s purpose); *Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267, 276 (Minn. 2017).

Minneapolis' minimum wage ordinance does not conflict with the MFLSA. Section 177.24 establishes a minimum wage floor that employers must pay their employees. Subdivision 1(b) states that large and small employers must pay "at least" what the Commissioner establishes as the minimum wage rate under subdivision 1(f). This language is not permissive; it sets a wage floor that employers are forbidden to go beneath. For example, the American Heritage Dictionary defines "at least" as "not less than." *American Heritage Dictionary* 721, 2d College Ed. (1985). The Minneapolis ordinance sets a wage floor that is "not less than" the minimum wage established by the Commissioner. In other words, the Minneapolis minimum wage does not conflict with the state minimum wage because the MFLSA forbids employers from paying less than the state minimum wage, which the Minneapolis ordinance does not permit.

The Minneapolis ordinance also does not conflict with section 177.24 because an employer can comply with both the Minneapolis ordinance and section 177.24 at the same time. *See Bicking*, 891 N.W.2d at 314-15 (finding proposed charter amendment would conflict with state law where amendment contained provisions that were irreconcilable and not in harmony with state law, and added requirements absent from state law at odds with city's obligations under state law). Minneapolis employers can comply with the ordinance and state law by paying covered employees the higher of the two rates.¹⁰

¹⁰ This is also true for the various portions of section 177.24 that apply to specific classes of employees. Each of these provisions require employers to pay "at least" the amount set by the Commissioner pursuant to section 177.24(f). Complying with the Minneapolis (Footnote Continued on Next Page.)

As to whether the ordinance forbids what the state minimum wage law expressly permits, the *Mangold* Court cited *State v. Nordstrom*, 183 N.W. 967 (Minn. 1921), in setting forth this third conflict preemption principle. The Court noted, “[a] part of the holding of that case was that an ordinance requiring the closing of movie theaters on Sunday was not inconsistent with the state Sunday closing statute since the latter, while not specifically forbidding theaters to open, did not expressly permit them to either.” *Mangold*, 143 N.W.2d at 816-17. In *Mangold*, the Court also considered if the statute specifically authorized something the ordinance forbade, and decided that the ordinance was “a complementary regulation.” *Id.* at 818-19. Therefore, in deciding conflict preemption, it is important to recall that no conflict exists if an ordinance and statute operate in harmony.¹¹

The MFLSA protects workers from being paid wages that do not maintain their general well-being, health, and efficiency. Section 177.24 cannot be read to *require*

(Footnote Continued From Previous Page.)

ordinance does not bring an employer out of compliance with section 177.24 if the city minimum wage is more than the state minimum wage rate.

¹¹ The court of appeals’ dissenting opinion cites a Kentucky Supreme Court opinion, *Kentucky Restaurant Ass’n v. Louisville/Jefferson Cty. Metro Gov’t*, 501 S.W.3d 425 (Ky. 2016), which held that a local minimum wage ordinance conflicted with the state minimum wage law. The *Kentucky* opinion, however, is at odds with the conflict preemption principle enunciated in *Mangold*—that ordinances and state law generally do not conflict when an ordinance is “additional and complementary to or in aid and furtherance of the statute,” even if the ordinance is different than the statute. See *Mangold*, 143 N.W.2d at 817. The dissenting opinion in the Kentucky case is more in line with this principle, because the dissent recognized that the state minimum wage law set a floor meant to protect workers. See 501 S.W.3d at 431-34 (Wright, J., dissenting). This dissent is also consistent with the Missouri Supreme Court’s decision in *Coop. Home Car, Inc. v. City of St. Louis*, 514 S.W.3d 571 (Mo. 2017).

employers to pay at the minimum wage. Rather, it sets a minimum standard, and thus protects workers from being paid below that minimum standard. Federal law likewise sets a minimum standard, but Minnesota's minimum standard is higher. So if an employee is covered by both federal and state law, that employee is entitled to the higher of the two minimum wage standards. An ordinance that sets a higher minimum standard operates in harmony with this system and complements the state law.

The purpose of the Minneapolis ordinance, therefore, dovetails with the purpose of the MFLSA. Like the MFLSA, the ordinance aims to “promote[] the health, safety, and welfare of those who work within the city’s borders.” MCO § 40.320(b). Minneapolis enacted the ordinance because it determined that the cost of living in Minneapolis is higher than the cost of living in other parts of Minnesota, causing many families subject to only the state minimum wage to live below the poverty line. *Id.* § 40.320(c)-(o). Minneapolis’ effort to recognize and account for its comparatively high cost of living through its ordinance is consistent with the MFLSA.

Interpreting section 177.24 to prohibit local regulation that is more generous toward employees would also create a conflict with other wage laws in Minnesota. For example, sections 181.13 and 181.14 contemplate that any applicable law, including an ordinance, can determine the employee’s required rate of pay. *See, e.g.,* Minn. Stat. §§ 181.13-.14. The Legislature also amended sections 181.101 and 609.52 to reference wage rates set by law, including an ordinance. *See* DLI Add. 36-38. If a general statutory provision potentially conflicts with a special statutory provision, courts interpret the two statutes to give effect to both statutory provisions, if possible. *See* Minn. Stat.

§ 645.26, subd. 1 (2018). When the provisions of two or more laws are in conflict and the laws were passed at different sessions, the law latest in date of enactment prevails. *Id.*, subd. 4. Because section 181.101 was amended in 2019 and explicitly contemplates local regulation of wages, the Court should not read state law to forbid local governments from enacting more protective minimum wage rates.

Similarly, the MFLSA's express purpose is to protect workers in a variety of ways—to establish minimum standards to maintain workers' well-being, to safeguard existing minimum standards that maintain workers' well-being against unfair standards that do not, and to increase employment opportunities and sustain purchasing power. Minn. Stat. § 177.22. The MFLSA thus sets a minimum standard or a floor. To be sure, the minimum standard is higher than the federal minimum standard but it is just that—a minimum standard that protects Minnesota workers from being paid wage rates below a certain level.

The MFLSA's practical effect, therefore, is to prohibit employers from paying employees a wage rate below the state floor. If a city determines that a different, higher wage rate is needed to maintain the health, efficiency, and general well-being of workers in the city, then that furthers the MFLSA's objectives. The ordinance's enforcement structure and recordkeeping requirements are generally consistent with the enforcement provisions and requirements contained in the MFLSA. A more protective municipal ordinance thus complements, and indeed strengthens, Minnesota's minimum wage protections.

CONCLUSION

For the reasons discussed above, the Court should affirm the decision of the court of appeals.

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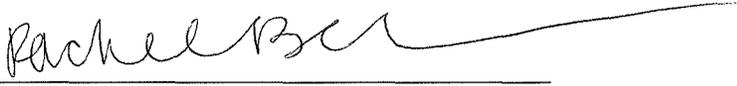
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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. CIV. APP. P. 132.01, SUBD. 3**

The undersigned certifies that the Brief submitted herein contains 6,953 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2010, the word processing system used to prepare this Brief.



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