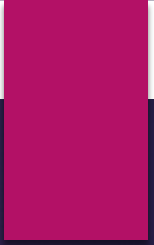




Passenger Service Provider Issues

SEPTEMBER 14, 2019



Passenger Service Provider Issues – Airport Minimum Wages

SEPTEMBER 14, 2019

Overview

- ▶ Living Wage versus Minimum Wage
- ▶ Minimum Wage set at federal level; state and local governments can go higher
- ▶ Local governments may impose minimum wage in the exercise of their Police Power or Proprietary Power
- ▶ Potential preemption issues:
 - ▶ National Labor Relations Act and Railway Labor Act
 - ▶ Airline Deregulation Act

Cases and Secondary Sources

- ▶ *Filo Foods LLC v. City of SeaTac*, 357 P.3d 1040 (Wash. 2015)
- ▶ *Amerijet International v. Miami-Dade County*, 7 F. Supp. 3d 1231 (S.D. Fla. 2014) aff'd 627 Fed. App'x. 744 (11th Cir. 2015)
- ▶ *Johnson v. Sky Chefs, Inc.*, No. 11-CV-05619-LHK, 2012 U.S. Dist. LEXIS 140760 (N.D. Cal. Sept. 27, 2012)
- ▶ TRB ACRP Legal Research Digest 31: *Preemption of Worker-Retention and Labor-Peace Agreements at Airports* (2017)
- ▶ *Airline Service Providers Ass'n. v. Los Angeles World Airports*, 873 F.3d 1074 (9th Cir. 2017) cert. denied June 2019 (labor peace agreements)

Key Aspects of Minimum Wage Rules

- ▶ Jurisdiction-wide or airport-specific
- ▶ Scope of covered employers/employees
- ▶ Exclusive versus inclusive approach
- ▶ Wage level and escalation
- ▶ Implementation and enforcement
- ▶ Prospective versus retroactive application
- ▶ Treatment of subcontractors
- ▶ Extraterritorial application
- ▶ Application to collectively-bargained workforce

Passenger Service Providers

- ▶ Called out explicitly or implicitly
 - ▶ Ex. Denver, Washington DC, Miami, Port Authority of NY & NJ, Seattle
- ▶ Captured in definition of "contractor"
 - ▶ Ex. Austin, Los Angeles, Oakland, Philadelphia, San Francisco, San Jose, St. Louis
- ▶ Passenger services providers seldom excluded
 - ▶ Exceptions – omitted from list, exclusion for airline employees, exclusion for collectively-bargained workforce

Denver's Recent Experience

- ▶ Labor union sponsored minimum wage ballot initiative
- ▶ Mayor and City Council moved forward with ordinance
 - ▶ Applies to City contractors and employers working on City property, including DEN
 - ▶ Includes seven specific categories of "covered services"
- ▶ City adopted ordinance in Spring 2019 and union withdrew ballot measure
- ▶ Shortly after, Colorado state legislature granted cities and counties a "local option" to impose a "jurisdiction-wide" minimum wage

SFO Passenger Service Providers

- ▶ Airline subcontractors perform passenger services.
- ▶ The providers operate at SFO under an airport permit.
- ▶ The permit incorporates the San Francisco Minimum Compensation Ordinance (MCO) and the Health Care Accountability Ordinance (HCAO).
- ▶ The MCO rate is \$17.66/hour plus an annual 12 paid days off and 10 unpaid days off.
- ▶ The HCAO requires a compliant health plan or payment of \$5.40/hour to the San Francisco Department of Public Health.

Applicable Wage Requirements at Chicago O'Hare and Midway International Airports

There are a few different wage rates that apply to parties operating at Chicago's airports, and generally the employer is required to pay whatever is the highest applicable rate. These wage rates include:

1. Chicago Minimum Wage Ordinance
2. Mayoral Executive Order 2014-1
3. Chicago Base Wage Ordinance
4. Certified Service Provider Program Wage Requirement

Chicago Minimum Wage Ordinance

- ▶ The **Chicago Minimum Wage Ordinance** (Chicago Municipal Code Chapter 1-24) applies to all workers within the City of Chicago, including those at the airports, whether employed by City contractors or not.
- ▶ When passed in 2014, this ordinance specified a minimum wage of \$10.00/hour effective July 1, 2015, with a \$0.50 increase for 2016 and 2017, followed by a \$1.00 increase for 2018 and 2019.
- ▶ It is currently **\$13.00/hour**, effective July 1, 2019. Beginning July 1, 2020, any annual increases are tied to inflation.
- ▶ By contrast, the federal minimum wage is currently set at \$7.25/hour.
- ▶ The Lifting Up Illinois Working Families Act amends the Illinois Minimum Wage Law to raise the state minimum wage in stages until it reaches \$15.00/hour in January 1, 2025. As of January 1, 2020, it will be \$9.25/hour; then, \$10/hour on July 1, 2020, followed by \$1/hour more every January 1st until 2025.

Chicago's Mayoral Executive Order 2014-1

- ▶ **Mayoral Executive Order 2014-1** requires employees working on City contracts or for City concessionaires, including at the airports, to be paid a certain minimum wage.
- ▶ This wage rate began at \$13.00/hour in 2014 and has been adjusted for inflation each year since on July 1st. The EO rate is currently **\$14.10/hour**, effective July 1, 2019.
- ▶ Under EO 2014-1, employers are allowed to pay tipped employees a minimum wage of **\$7.60/hour** (as of July 1, 2019) if these employees receive the difference between this hourly rate and the non-tipped employee minimum wage rate in gratuities.

Chicago Base Wage Ordinance

- ▶ The more limited **Chicago Base Wage Ordinance** (Chicago Municipal Code Section 2-92-610) provides for a base wage to certain types of workers on City contracts, some of which may be at the airport—non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers, and clerical workers.
- ▶ As of July 1, 2019, the Base Wage is **\$12.88/hour**, adjusted annually for inflation.

Chicago's Certified Service Provider Program ("CSPP") Wage Requirement

- ▶ This newer wage requirement applicable to service providers at the airports took effect on October 1, 2018.
- ▶ The wage requirement is part of the City's **Certified Service Provider Program** at Chicago's airports and mirrors the executive order rate; so, it is **\$14.10/hour** as of July 1, 2019.
- ▶ Employers may also apply an allowance for gratuities to tipped employees, resulting in a minimum wage rate for these employees of **\$7.60/hour**, provided that those employees earn the difference between \$7.60/hour and \$14.10/hour in actual gratuities.
- ▶ This wage rate is imposed through the Certified Service Provider License Agreement ("CSPLA"), which was authorized by City Council in 2017.
- ▶ Certified Service Providers include companies providing services to airlines (or other tenants) such as baggage handling, wheelchair services, passenger/terminal services, aircraft maintenance, cargo handling, etc.

Potential Challenges to Chicago's CSPP Wage Requirement

- ▶ Some CSPP service providers have objected to the City's imposition of the new CSPP wage requirement on various grounds, although the City has not had any formal litigation.
- ▶ For example, at least one company that has employees who work in a facility outside of Chicago's city limits has objected to the applicability of the wage rate to any of its non-Chicago-based employees on the grounds that (1) Chicago cannot apply its wage rate extraterritorially and (2) the City's wage requirement may be preempted by federal labor law.
- ▶ However, these objections are misplaced. The City is not seeking to enforce its more general minimum wage ordinance outside of the City, but enforcing a contractual term – the CSPP wage requirement, in the CSPLA. Further, the City is acting as a market participant in operating its airports, a well-recognized exception to federal preemption.

Potential Challenges to Chicago's CSPP Wage Requirement (continued)

▶ Extraterritoriality

- ▶ *Int'l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 682 (1992) (finding that states and their subdivisions operate airports as commercial, profit-driven enterprises that “must provide services attractive to the marketplace” and whose purpose is “efficient air travel”).
- ▶ “[In] contrast to the exercise of governmental authority outside of its territorial limits, a municipality may, in its business or proprietary capacity, exercise extraterritorial powers, such as the power to contract.” *Vill. of Orland Hills v. Citizens Utilities Co. of Illinois*, 347 Ill. App. 3d 504, 521 (2004) (finding that a municipality was not limited by jurisdictional restrictions when enforcing a valid contract provision).

▶ Federal preemption

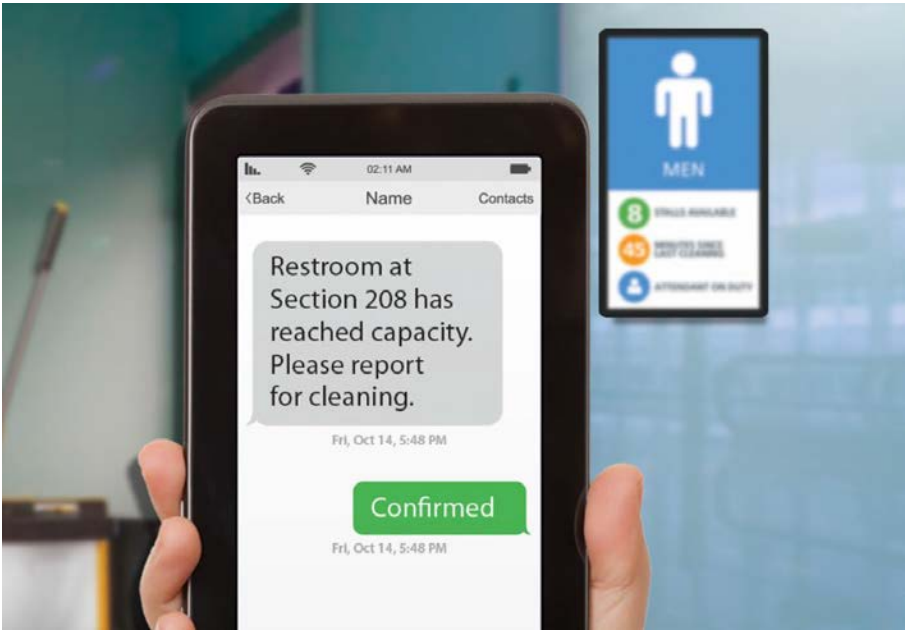
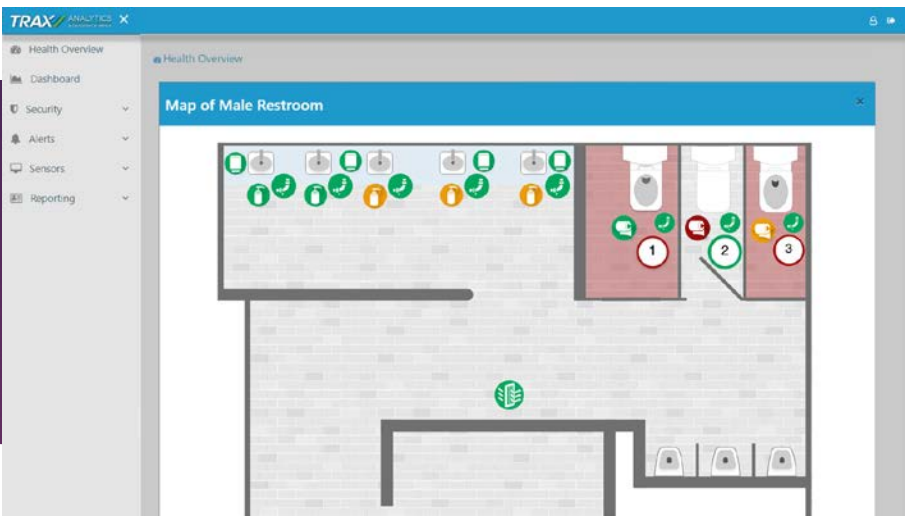
- ▶ *Airline Service Providers Ass'n v. Los Angeles World Airports*, 873 F.3d 1074 (9th Cir. 2017), cert denied, __ U.S. __ (June 24, 2019) (recognizing the City of Los Angeles' licensing of service providers by contract as a commercial action taken by a market participant).



Passenger Service Provider Issues – Innovative Approaches



Restroom availability / next closest restroom details at entrances



Smart Restroom Technology platform and push notifications



Tooshlights over restroom stalls



Automated Floor Cleaner



Autonomous Wheelchairs

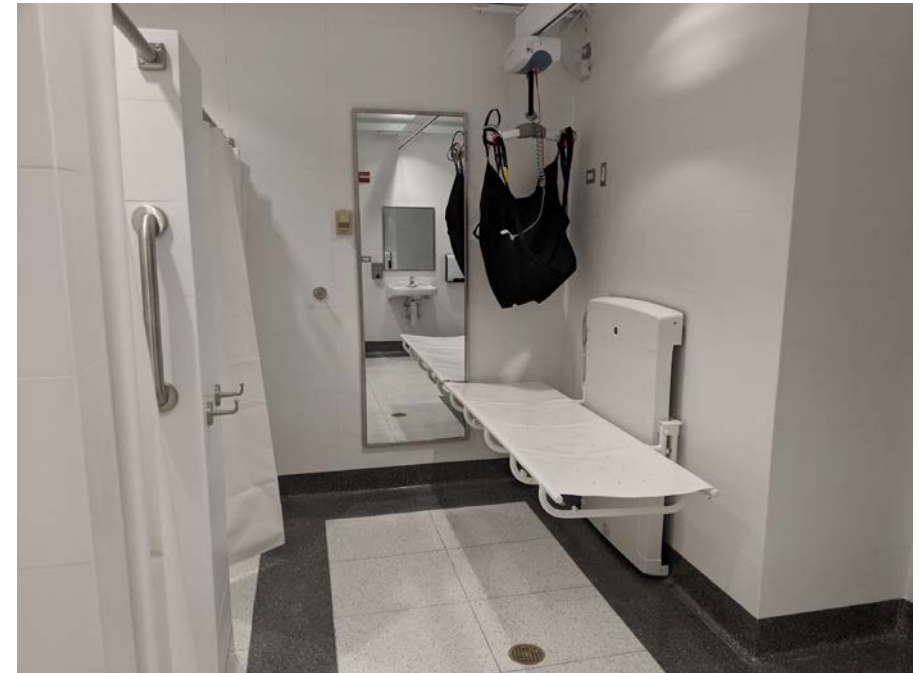
SFO Wheelchair Service Standards

- ▶ Individual wheelchair pushers must receive training in customer service.
- ▶ Pre-arranged wheelchairs must meet passenger within 10 minutes.
- ▶ Requested wheelchairs must meet passenger within 20 minutes.
- ▶ Provider must provide a receipt to passenger with information on making a complaint.
- ▶ Prohibitions against: Solicitation of tips; allowing children to ride on passenger's lap; pushing more than one wheelchair at a time.
- ▶ Enforcement through permits and Rules & Regulations.

A Passenger Service Innovation at O'Hare International Airport

CHANGING PLACES FACILITY: ENHANCING ACCESSIBILITY AT O'HARE

A first-of-its-kind facility has arrived at O'Hare International Airport to better serve all travelers with disabilities. The new Changing Places Facility prototype was unveiled at O'Hare earlier this year and provides a restroom, shower, and multi-use facility for disabled passengers at O'Hare.





Located at O'Hare's Terminal 2, this specialized 110 square-foot facility provides privacy and ample space to maneuver for passengers who cannot stand or walk to use the restroom comfortably.

The CDA designed the groundbreaking Changing Places Facility, with input by the Mayor's Office for People with Disabilities (MOPD), to better serve all travelers with disabilities and limited mobility. It is the first of its kind for any airport in North America.

The facility features a wide range of accessible features that are not only code compliant but exceed federal, state, and city requirements. Changing Places represent the international standard for restroom accommodations for disabled adults. These facilities are widely known throughout the U.K. and Europe.

These features set O'Hare's Changing Places facility apart from many other adult changing rooms found other U.S. airports, including Chicago's Midway.

The project was designed in-house by the CDA Design and Construction program manager. The Mayor's Office for Disabilities Office (MOPD) was consulted on the project and provided feedback on project requirements. A total of \$250,000 was associated with this project.





Thank you.