Airline Industry Alert: Washington State Supreme Court Finds SeaTac Ordinance Increasing Minimum Wage to $15 an Hour Enforceable at Airport

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Executive Summary: In a 5-4 decision, the Washington State Supreme Court has held that Proposition 1 – an ordinance which increased the minimum wage within the city of SeaTac for employees in the hospitality and transportation industries to $15 an hour – is also enforceable at the Sea-Tac Airport. *Filo Foods, LLC v. City of SeaTac*, (Wash. Aug. 20, 2015). This means that Proposition 1 may now be applicable to employees of airline service providers and, in certain circumstances, to employees of air carriers themselves, at the airport.

Background

In June 2013, a group supporting an increase in the minimum wage for hospitality and transportation workers at Sea-Tac Airport circulated a petition among the voters in the city of SeaTac (within which the airport is located) to put Proposition 1 on the ballot. In addition to increasing the hourly minimum wage, Proposition 1 would require covered employers to provide paid sick leave, offer additional hours to part-time employees before hiring new staff, and ensure that tips were retained by the workers performing the services. It also would impose obligations on successor employers to retain certain workers for a period of time. Proposition 1 would apply to employees of airline service providers but not employees of certificated air carriers to the extent that the airline was performing services for itself.

Proposition 1 narrowly passed, and several affected employers subsequently challenged the law, claiming it was preempted by state and federal law. Although the trial court upheld Proposition 1 generally, it held that the ordinance could not be enforced at the airport because, under state law, the city could not exercise jurisdiction or control over the airport. The trial court also found that one aspect of Proposition 1, relating to penalties for retaliating against employees for exercising rights under the ordinance, was preempted by the National Labor Relations Act. The parties appealed different aspects of the trial court's decision. On August 20th, the Washington Supreme Court reversed the trial court on these two points, but otherwise affirmed the trial court's ruling.

The High Court's Decision

First, the court held that Proposition 1 **could** be applied at the airport, and was **not** in conflict with state law concerning the Port of Seattle's jurisdiction over the airport, because the Port had not shown that Proposition 1 would "interfere with airport operations." The court then rejected the argument that Proposition 1 was preempted by federal labor law (in whole or in part) under the *Machinists* or *Garmon* doctrines. The court further held that Proposition 1 was not preempted by the Airline Deregulation Act because it was not sufficiently related to airline

services and prices, finding that Proposition 1 was a "generally applicable" law rather than one directly targeted at the airline industry. Finally, the court found that Proposition 1 did not violate the dormant Commerce Clause. The dissent disagreed with the majority's conclusion that Proposition 1 could be applied at the airport under state law, as it felt that the Port had exclusive jurisdiction over the airport.

The Bottom Line:

Although the majority stated that it was "upholding" Proposition 1 in its entirety, it did not address the practical impact of its decision, such as whether and to what extent employers would have to comply with the requirements of Proposition 1 retroactively, to the ordinance's January 1, 2014 effective date. The majority's decision also made some statements regarding the scope of the Port's authority that could have an impact on currently pending litigation involving a challenge to the Port's own efforts to increase wages and benefits at the airport. We will monitor the case with respect to these and any other developments.

If you have any questions regarding this decision or other labor or employment issues impacting employers in the airline industry, please feel free to contact the author of this Alert, Doug Hall, dhall@fordharrison.com, who is a partner in our Washington, DC office and a member of our Airline Industry practice group. You may also contact the FordHarrison attorney with whom you usually work.