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Coalition says it will appeal judge's ruling on minimum wage

By: Lea Kahn , Staff Writer

Stung by a judge's ruling that it cannot take steps to enact a municipal minimum-wage ordinance, the Lawrence Living Wage Coalition has pledged to appeal the decision to the state Appellate Division.

Mercer County state Superior Court Judge Linda Feinberg ruled Aug. 30 that state law does not give towns the power to set a municipal minimum wage. The coalition had sought to place a public question on the Nov. 7 ballot asking Lawrence voters to approve raising the minimum wage for selected employers.

Falk Engel, the attorney representing the coalition, said he would file a notice of intent to appeal to the Appellate Division by Oct. 16. The coalition has 45 days to file from the date Judge Feinberg delivered her ruling.

Though it is too late to put the question on the Nov. 7 ballot, Mr. Engel said he hopes the Appellate Division, if it accepts the case, would rule in time for the November 2007 ballot. The deadline to place it on this year's general election ballot is Friday, Sept. 8.

Mr. Engel said the coalition believes Judge Feinberg made a mistake in applying the concept of pre-emption, which means state law takes priority over a municipal ordinance or law. He said the coalition does not believe the Legislature intended for state law to be "exclusive" in the area of minimum wage law.

The coalition's legal representatives cited several cases during the Aug. 30 hearing that presented legal decisions reached in other states. The attorneys indicated that, through those examples, towns do have the right to set their own minimum wage. But Judge Feinberg rejected those arguments.

State law sets the minimum wage, she said. It does allow towns to set higher minimum wages for vendors, contractors or subcontractors that are hired by the town, but not for people who work for retail businesses.

The judge also said establishing a minimum wage is "a field that reflects a need for uniformity." State law provides that every employer shall pay at least the minimum wage to its workers — but the proposed ordinance would require a higher minimum wage for selected businesses, she said.

Last year, the Legislature created the New Jersey Minimum Wage Advisory Commission, which will evaluate the state's minimum wage every year, the judge said. The Legislature's intent was to create uniformity as it relates to the minimum wage, she said.

Judge Feinberg noted the coalition's argument that allowing towns to determine their own minimum wage would result in a more accurate wage by taking into consideration the cost of living in that town. However, she said allowing each of the 566 towns in New Jersey to set a municipal minimum wage would lead to a "very complex, or even chaotic, minimum wage system."

The judge said the proposed ordinance presents "serious equal protection issues" because it provides for differing minimum wages. Large retailers would be required to pay a higher minimum wage, while smaller businesses would only be subject to the state's minimum wage, she said.

"Clearly a citizens' group dedicated to protecting workers should have an equal concern for all employees that work in the township," Judge Feinberg said. "Perhaps the motive in this case is not to provide fair wages and benefits, but to avoid the location of large retail businesses within the territorial boundaries of the township."