



City of Emeryville

INCORPORATED 1896

1333 Park Avenue

Emeryville, California 94608-3517

Tel: (510) 596-4300 | Fax: (510) 596-4389

MINIMUM WAGE ORDINANCE REGULATIONS

Pursuant to Emeryville Municipal Code Section 5-37.06(a), the City hereby promulgates regulations to implement and enforce the City's Minimum Wage, Paid Sick Leave and Other Employment Standards codified as Chapter 37, of Title of the Emeryville Municipal Code, referred to herein as "Ordinance". All citations to a section refer to a section of the Emeryville Municipal Code unless otherwise stated.

1. Eligibility for Payment of Minimum Wage under the Ordinance:

1.1 "Employee" shall mean any person who:

(a) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City for an Employer, and meets any of the following criteria:

(i) Is entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

(ii) Qualifies as an intern, if the Employer would be required to pay the intern minimum wage under federal or state law.

(iii) Qualifies as a Learner, as defined by the California Industrial Welfare Commission.

(iv) A domestic worker, such as a housekeeper or caregiver, unless the domestic worker is a bona fide independent contractor.

(v) Is provided for temporary work through a temporary services or staffing agency.

(vi) Is otherwise qualified under state or federal law to receive minimum wage.

1.2 A properly classified independent contractor shall not be entitled to coverage as an Employee for purposes of the Ordinance.

1.3 An Employee who meets any of the criteria listed in section 1.1(a) (i-iv) is eligible under the Ordinance regardless of age or city of residence.

2. Employer Classification

2.1 Calculation of Business Size:



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(a) Employers shall calculate the size of their business as set forth below on a quarterly basis to ensure compliance with Section 5-37.

(b) In calculating the number of Employees for the purposes of determining the size of a business, the following factors shall be considered:

(i) Each full-time, part time or temporary Employee shall be counted as one Employee.

(ii) Only workers working within the City are counted for purposes of determining the size of the Employer.

(iii) The total number of persons made available to work through the services of a temporary services or staffing agency, as opposed to the number of positions filled, shall each be counted as one Employee.

(iv) For Employers with multiple locations within the City, the total number of Employees within the geographic limits of the City, as opposed to the number of Employees at each location, shall be used.

(c) In cases where the number of Employees may fluctuate, such as seasonal workers, determination of the normal number of Employees during a given week as referenced in Section 5-37.01(g) shall be calculated on a quarterly calendar basis (13 week periods beginning with January 1st of the applicable year). Employer size shall be calculated from the weekly average number of persons performing work for compensation during the quarter.

(d) All Employers shall maintain a spreadsheet, database, or similar record indicating date of hire and date of termination for each Employee. That record, and any other payroll records, shall be maintained for three years and be provided to the City upon request.

2.2 For new Employers, an initial determination of size for the current quarter is based upon the average number of persons per week who worked for compensation in the first ninety days after its first Employee commenced work.

2.3 Qualification of Employers outside of City

(a) A business shall be considered an "Employer" subject to the Ordinance if any of its workers physically work within the City limits at least two (2) hours in a calendar week, either on a permanent or temporary basis, even if its place of business is not physically located within Emeryville.

(b) Employers whose Employees who work outside of the City but travel through the City without stopping for the purpose of their work shall be exempted from coverage of Section 5-37.



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2.4 Responsibility of Employers for Employees hired through a "temp" or staffing agency

(a) The size of the Employer for whom a position is being filled by a temporary worker shall determine whether an Employee is entitled to coverage under the Ordinance as an Employee of a Large or Small Business.

(b) The Employer shall obtain confirmation in writing from any "temp" or staffing agency that provides an eligible Employee that said Employee will receive the benefits provided by Section 5-37.

(c) Both the Employer and the temporary services or staffing agency shall be joint and severally responsible for compliance with the Ordinance, and any remedies may be apportioned to them as deemed reasonable.

3. Compensation

3.1 Employees shall be entitled to payment of the minimum wage under the Ordinance for all work-hours performed within the geographic limits of the City.

3.2 Calculation of minimum wage pursuant to Consumer Price Index

(a) Pursuant to Section 5-37.02(c)(5), beginning on July 1, 2020, and then each year thereafter on July 1, the minimum wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index (CPI) for all urban customers for the San Francisco-Oakland-San Jose, California, metropolitan statistical area, using the following calculation:

(i) The City and Employers shall use the March to March change in the CPI to calculate the annual increase, if any, in the City's minimum wage rate.

(ii) If there is a decrease in the CPI, the minimum wage rate shall remain the same as the prior year and shall not decrease.

(iii) Upon release of the CPI data, Employers shall provide notice to Employees of the new minimum wage as soon as practicable, but no later than June 15th of each year.

(iv) Minimum wage increases shall take effect on July 1st of each year.

3.3 A Learner shall be paid no less than 85% of the minimum wage described in the Ordinance.

3.4 The calculation of an Employee's minimum wage shall be exclusive of any tips or gratuity earned by the Employee, and the Employer shall not credit any tips against the minimum wage paid.



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4. Paid Sick Leave

4.1 The purpose of the Ordinance is to provide paid sick leave benefits above and beyond those provided by state law.

4.2 Eligibility of Employees for paid sick leave

(a) All Employees who physically perform work in the geographic boundaries, including on a part-time or temporary basis, shall accrue sick leave for those hours worked in the City, regardless of where their Employer is located.

(b) Eligibility of Employees whose Employers are not within the geographic limits of the City:

(i) For an Employer who has no place of business within the geographic boundaries of the City, an Employee shall accrue paid sick leave based on the hours that the Employee works within the boundaries of the City.

(ii) For an Employer who has a place of business both within the geographic boundaries of the City, and outside the geographic boundaries of the City, only Employees that work within the geographic boundaries of the City are entitled to paid sick leave under the Ordinance.

4.3 Accrual of Paid Sick Leave

(a) An Employer may make paid sick leave hours available to its Employees in the following ways:

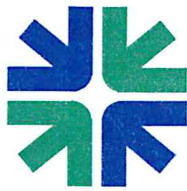
(i) Provide or "frontload" an Employee the total number of annual hours based on the business size after the Employee becomes eligible to accrue the sick leave. Once received by the Employee, the amount of sick leave hours frontloaded shall not be decreased in the event a Large Business later qualifies as a Small Business.

(ii) Allow an Employee to accrue paid sick leave hours at a rate no less than the rate as specified in California Labor Code section 246, et seq.

(iii) A combination of the methods specified in subsections(a)(i) and(a)(ii) of this regulation.

(b) For Employers who utilize a Paid Time Off ("PTO") system of combined sick time and vacation leave, the PTO policy must meet the minimum requirements stated herein.

(c) Employees eligible for payment of overtime under either federal or state law accrue sick leave on all hours worked, including overtime hours worked within the City.



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(d) Employees exempt from payment of overtime wages under both federal and state law shall accrue sick leave based on a forty (40) hour workweek absent clear and convincing evidence that the exempt Employee regularly works less than forty (40) hours in a workweek; in such instances, paid sick leave will accrue based on the regular workweek for that Employee.

(e) An Employer may, but is not obligated to, cap the amount of paid sick leave an Employee accrues on an annual basis based on the size of the Employer. If an Employee reaches the accrual cap and then uses some of his/her paid sick leave, the Employee shall commence accruing additional paid sick leave in accordance with Section 5-37.03(b) until s/he again reaches the accrual cap.

4.4 Use of Paid Sick Leave

(a) Employees shall be entitled to use accrued paid sick leave beginning on the 90th calendar day of their employment.

(b) Employees shall be entitled to use accrued paid sick leave only for hours worked or scheduled to be worked within the boundaries of the City.

(c) An Employer may adopt reasonable, written policies pertaining to the use of accrued paid sick leave:

(i) An Employer may adopt a policy of allowing Employees to use accrued paid sick leave for hours worked or scheduled to be worked outside the boundaries of the City. If an Employer chooses not to adopt such a policy, those hours shall be available for use should the Employee work or be scheduled to work within the boundaries of the City at any time in a given year or twelve month period, depending on the Employer's accrual calendar as described in Section 5-37.03(b).

(ii) An Employer may adopt a policy setting a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

(iii) An Employer may require Employees to give reasonable notification of an absence from work for which paid sick leave may be used, but may not require such advance notice or notification practices that would deter the Employee from using paid sick leave hours. An Employer requiring reasonable notification must establish a reasonable procedure for an Employee to communicate absences to the Employer.

(iv) An Employer may adopt a policy of verifying and/or documenting that the Employee's use of accrued paid sick leave is lawful. If the Employer adopts such a policy, it need not pay sick leave for the time in question until the Employee has complied with the verification requirement. Any policy must comply with federal and state confidentiality and privacy protections.

(d) Subject to the Employer's verification requirements, if any, Paid sick leave must be paid to the Employee no later than the payday for the next regular payroll period after the sick leave was used.



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(e) Identification of a Designated Person:

(i) An Employer may utilize the City's form for identification of a designated person, in which case the form shall be provided to the Employee at the same time as official notices required by the Ordinance.

(ii) An Employer shall provide a new Employee an opportunity to make a designation pursuant to Section 5-37.03(c)(1) no later than thirty (30) days after s/he begins to accrue paid sick leave, and shall afford the Employee fourteen (14) days to make said designation.

(iii) An Employer shall provide to existing Employees the opportunity to make or change a designation pursuant to Section 5-37.03(c)(1) on an annual basis by January 31st of each year, affording the Employee fourteen (14) days to make or change said designation.

(iv) An Employee shall not be entitled to designate an individual as specified in Section 5-37.03(c)(1) if the Employee has a spouse or a registered domestic partner.

(f) Employees who are victims of domestic violence may utilize paid sick leave for time spent receiving medical attention and psychological counseling, obtaining social services, relocating, seeking legal assistance, and otherwise taking actions to protect herself/himself from further domestic violence. To the extent required by law, the Employer shall maintain the confidentiality of any Employee requesting leave as a result of domestic violence. Employers may require verification as set forth in Labor Code section 230 and 230.1.

5. Hospitality Service Charges

5.1 The protections provided by Section 5-37.04 of the Ordinance are limited to Hospitality Employees employed by facilities, hotels, restaurants and similar venues providing "in-house" services.

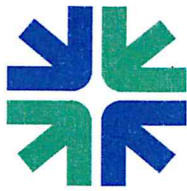
5.2 Chain of Service Policies

(a) Where permitted under the Ordinance, an Employer may define "Service Charges", in which case it must adopt a written Chain of Service policy for its Employees that contains, at a minimum, the following:

(i) A complete definition of "service," including a reasonable and thorough description of why and for what the Hospitality Employer is charging the service charge;

(ii) Each Hospitality Worker position that is included in the Chain of Service;

(iii) The percentage that each Hospitality Worker shall receive from the service charge, which shall be equitably based on their contribution in the Chain of Service;



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(iv) Written notice that supervisors shall not receive a portion of the service charge unless they perform nonsupervisory work in the Chain of Service;

(v) A statement that service charges will be paid to Hospitality Workers no later than the next payroll following the work or collection of the service charge from the customer, whichever is later and

(vi) Written notice, including the identity of an individual or employment position, to whom Employees may direct questions or complaints regarding the payment (or nonpayment) of service charges.

(b) If an Employer elects to define "Service Charge" pursuant to a Chain of Service Policy as described above, the Employer must provide adequate, written notice of that policy to customers. That notice must include, but is not limited to, the amount of the service charge, the purpose of the service charge, and who shares in the service charge.

(c) Where an Employer has elected to define "Service Charge" pursuant to a Chain of Service Policy as described above, the Employer may subsequently modify or terminate said policy so long as it provides written notice to:

(i) Hospitality Employees fifteen (15) calendar days in advance, and

(ii) Customers concurrently with the implementation of the modified policy or discontinuance of the policy.

6. Administration of Ordinance

6.1 Authority to implement Ordinance

(a) The City Manager's Office shall be authorized to implement the Ordinance, and may delegate such authority to appropriate departments and staff.

6.2 Notification to Employees

(a) Employers shall provide in writing to each current and new Employee at the time of hire:

(i) Written official notices and bulletins regarding the Employee rights under the Ordinance.

(ii) Employer's name, address and telephone number.

(b) Notices shall be posted in all languages spoken by 10% or more of its Employees and shall be posted prominently in work areas seen by all Employees.



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6.3 Investigation

(a) An investigation may be initiated by the City independently to monitor compliance with the Ordinance or pursuant to a complaint filed by an Employee.

(b) The City may investigate complaints of possible violations of the Ordinance.

(i) To initiate a complaint and investigation, an Employee shall submit a completed Claim Declaration form provided by the City with supporting documentation.

(ii) Any Employee who files a complaint against an Employer shall cooperate with the City's requests for additional information or documentation. If the Employee fails to cooperate with the City's requests, the City may consider the complaint abandoned and may, in its own discretion, determine whether to pursue an investigation.

(c) An Employer who is the subject of an investigation shall permit authorized City representatives access to worksites and Employees. Pursuant to the City's request, the Employer shall produce requested records.

6.4 Enforcement

(a) The City may issue compliance orders, administrative fines, or any other remedy described in Section 5-37.07(a), without a hearing unless the Employer timely requests one by filing an Appeal.

(b) Appeal

(i) Any Appeal filed by the Employer shall contain the following information:

(1) The name, address, and signature of the Employer appealing the Compliance Order;

(2) A brief statement in ordinary and concise language of the specific item that is contested, together with any supporting facts;

(3) A brief statement in ordinary and concise language of the relief sought and the reason why the Compliance Order should be rescinded, modified, or otherwise set aside; and

(4) Any supporting documentation or evidence supporting the appeal.



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(ii) Any request for a hearing with an Appeal form that fails to provide all of the information described above is incomplete. The Employer who filed the incomplete appeal form shall be notified of defects in writing and shall have an opportunity to amend the appeal form. The Employer shall have 10 days after service of the notification to submit an amended Appeal form.

(iii) Failure of an Employer to appeal the Compliance Order or submit a complete Appeal request within the timeframe provided for by this section shall result in a waiver of any right to administrative hearing, and failure to exhaust administrative remedies. In that case, the Compliance Order shall serve as a final determination and conclusive evidence of the Employer's liability for violation of the Ordinance.

(c) Hearing Officers

(i) Hearing officers shall be appointed by the City Manager.

(ii) The decision of the hearing officer shall be final, and may uphold, modify, or dismiss the compliance order, including assessment of fines, in whole or in part.

7. No waiver of rights

7.1 Employees may not waive their rights under Chapter 37 of Title 5 of the Emeryville Municipal Code unless such waiver is through a bona fide collective bargaining agreement with clear and unambiguous terms regarding waiver of such rights.

8. Employee rights under the Ordinance

8.1 Employees may seek advice from an attorney and/or file a lawsuit against their Employer independent of filing a complaint with the City.

**APPROVED AND FORWARDED TO THE EMERYVILLE
CITY COUNCIL**

Carolyn Lehr, City Manager

