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“Important Mid-Year Employment Law Review

“What has changed and what has not.”

May, 2016

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The attached material must not be considered legal advice. The sample forms and policies are for educational purposes only. We strongly recommend that you consult with legal counsel before adopting or implementing any of the attached sample forms and policies to avoid potential liability.

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New Regulations Require Updates to Discrimination Policies and Harassment Training

The California Department of Fair Employment and Housing ("DFEH"), which enforces the state's anti-discrimination laws, has issued new regulations that take effect April 1, 2016. The updated regulations provide new details about implementing several aspects of the state laws prohibiting discrimination and harassment in employment. Most notably, companies should closely examine their anti-discrimination policies to insure they include specific language mandated by the regulations and will need to adjust their mandatory anti-harassment training programs and record retention practices related to those training programs. The new regulations also incorporate other recent laws passed by the legislature.

New language to include in your anti-discrimination policies and requirements relating to how to distribute policies to your employees

In addition to distributing the DFEH 185 brochure to all new employees, employers must also have separate written anti-discrimination policies listing every single protected category under the law. Currently, these protected categories are: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and military and veteran status. In the future, when the legislature deems it appropriate to add new categories, policies will likely have to be updated. Companies must also include all of the following information in their anti-discrimination policies:

- Language stating coworkers and third parties with whom the employee comes into contact, as well as supervisors and managers, are prohibited from discriminating against, retaliating against, or harassing employees.
- A description of the company's complaint process for reports of discrimination, harassment, or retaliation.

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- An alternate way for employees to file complaints other than filing a complaint with their direct supervisor. This could be: a designated human resources manager, EEO officer, or other supervisor, a complaint hotline, an ombudsperson, or a statement in the policy that the employee can file a complaint with the DFEH or the EEOC. (We highly recommend designating a company representative to address complaints, but the person chosen must be reliable enough to handle the complaints competently.)
- A requirement that supervisors report any complaints of misconduct they receive to a designated company representative, such as a human resources manager. (Employers with 50 or more employees are also required to include this as a topic in anti-harassment training.)
- Language that indicates that when the company receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and will reach a reasonable conclusion based on the evidence collected.
- Language that states that the company will maintain confidentiality to the extent possible, but does not require that the investigation be completely confidential.
- A statement that if misconduct is found, appropriate remedial measures shall be taken.
- Language that makes clear that employees shall not be exposed to retaliation as a result of filing a complaint or participating in any workplace investigation.

The complaint process must allow for verbal as well as written complaints, and must ensure the employee who files a complaint receives:

- Confidentiality, to the extent possible,
- A timely response to the complaint,
- An impartial and timely investigation by qualified personnel,
- Documentation and tracking of the progress of the investigation,
- Appropriate options for remedial actions and resolutions, and
- Timely completion of the investigation.

The regulations require that this comprehensive written anti-discrimination policy be distributed to employees in one or more of the following ways:

- Providing a copy to all employees with an acknowledgment form for the employee to sign and return,
- Sending the policy via e-mail with an acknowledgment return form,
- Posting current versions of the policies on a company intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies,
- Discussing policies upon hire and/or during a new hire orientation session, and/or
- Any other way that ensures employees receive and understand the policies.

The regulations also require that policies be distributed in every language spoken by at least 10% of the workforce, if those employees' "spoken language" is not English. The regulations do not define "spoken language" and this portion of the rule was changed from "primary language" to "spoken language", which in our view makes it vague, but it is probably safe to use "primary language" as the standard for this requirement.

New requirements for anti-harassment training

The regulations impose the following additional documentation requirements for mandatory sexual harassment training, which companies should ensure are being followed even if they use outside vendors:

- For computer based training, the trainer must retain all written questions received during the training.
- For webinars, the company shall maintain the webinar, all written materials used, all questions asked during the webinar and all responses provided, for two years.
- Companies should retain sign-in sheets, certificates of attendance or completion issued, and written or recorded materials used in the training for two years, as well as documentation of the date, and type of training and the name of the training provider.

The training should also include the following material, in addition to the requirements already listed in prior regulations:

- Pre- or post-training quizzes, small group discussion questions or scenarios, hypothetical fact scenarios, or any other activity that ensures interactive participation of the attendees. (Interactive elements were already required in training, but the new rules provide these specific examples of what can be utilized to encourage attendee participation.)
- A "meaningful" discussion of the negative effects of abusive conduct, including a review of the definition of abusive conduct (this is also required by a recent law),
- Information on potential employer and individual liability, including the fact that individuals as well as employers can be held responsible for their harassing conduct,
- Discussion about a supervisor's obligation to report discrimination, retaliation and harassment, and
- Remedial steps to correct harassing behavior.

Other new regulations regarding gender identity, pregnancy, religious creed, and service animals

The new regulations include broad new definitions of gender expression and gender identity. Employers need to be sensitive to employees who fall under these protected characteristics.

The new regulations include more details about employees' rights when they are pregnant or new mothers. First, the prohibition against discriminating based on pregnancy includes a prohibition of discriminating against mothers who are breastfeeding. Also, pregnant women are entitled to four months of unpaid pregnancy leave per pregnancy, not per year. That leave need not be taken all at one time. Employers are now required to include in their pregnancy disability leave notices information about employees' rights to reasonable accommodations of pregnancy, including job transfer (at the employee's option), and the right to take unpaid leave, in a conspicuous place on the premises, or electronically "in a conspicuous place or a place where employees would tend to view it." This notice must also include the employee's obligation to give the company reasonable advance notice of the need to take leave, and the employer's requirement for medical certification, if any. The posting can be electronic as long as it is in a "conspicuous place." The company's next revision of its handbook must also include policies addressing reasonable accommodation of pregnancy, the right to job transfers, and the right to take unpaid leave. The policy, like the general anti-discrimination policy, must be distributed to employees in every language that is a "spoken language" of at least 10% of the workforce.

The new regulations also incorporate new changes to the laws prohibiting religious discrimination. Because of those changes, companies are required to grant reasonable accommodations for religious creed. "Religious creed" encompasses "all aspects of religious belief, observance, and practice." A reasonable accommodation is one that "eliminates the conflict between the religious practice and the job requirement." The new regulations explicitly state (as did a recent bill passed by the legislature) that these protections include reasonable accommodations of religious dress and grooming. The regulations prohibit employers from refusing to hire someone simply to avoid granting a reasonable accommodation of the applicant's religious creed. They also specifically note that segregating an employee from customers or other employees is not a reasonable accommodation. The new rules also require a company's "dress and grooming standards", in other words, the dress policy, be "flexible enough to account for religious practices." Also, the changes in the rules reinforce the requirement to not discriminate against an employee for requesting a reasonable accommodation of religion, even if the accommodation is denied.

The new rules also include changes regarding service animals. The DFEH removed the requirement that a service animal be "trained." The new rules also provide that a reasonable accommodation of disability can include, in certain circumstances, allowing an employee to have a "support animal" for traumatic brain injury or mental disability. The interactive process required in response to requests for disability accommodation should be used for requests from employees to use service animals. This new regulation in particular appears ripe for abuse, and companies are going to have to be very cautious in handling employee requests to use service animals.

Additional new regulations

The new regulations state temporary employment agencies can be held jointly liable for prohibited conduct, as well as the contracting company. They also state that the protections under the

law apply to all employees working within California even if the company is located outside California. The rules explicitly state an employer can be liable for harassment directed towards its volunteers, interns, and persons providing services pursuant to a contract, as well as employees (this incorporates a recent amendment to the law).

Importantly, the new regulations allow the DFEH to impose non-monetary sanctions on employers for failure to prevent discrimination, retaliation, or harassment, even if no such conduct occurs. Such sanctions would most likely include official orders to comply with the regulations.

What to do:

- Update your anti-discrimination policies to include all protected classes and all required language.
- If you distribute your anti-discrimination policy electronically, get confirmations that employees read it, and post it in easy to find places.
- Ensure your record retention for anti-harassment training meets the new requirements.
- If you conduct your own anti-harassment training, update the materials to include interactive quizzes, discussion questions, and/or examples, to prompt audience participation.
- Update (or implement) your religious accommodation policy, if you have not done so already.
- Update your dress code to state that the dress code is not meant to restrict religious dress or grooming.
- Translate your anti-discrimination policy and pregnancy accommodation policy into languages spoken by 10% or more of your employees as their primary language and distribute those policies in every language required.
- Ensure your human resources department/representative is trained regarding the new definitions and requirements.

Our firm is ready to assist you in reviewing your policies to conform to the new DFEH regulations.

By: Brian E. Ewing, Esq.

Landegger Baron Law Group, ALC www.landeggeresq.com

EMPLOYEE RELATIONS POLICY WITH ACKNOWLEDGMENT

A. POLICY AGAINST DISCRIMINATION

_____ (the “Company”) is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the Company maintains a strict policy prohibiting unlawful discrimination and retaliation. This policy applies to all employees of the Company, including supervisors and non-supervisory employees. The policy also prohibits unlawful discrimination and retaliation by non-employees of the Company with whom employees come into contact, including clients, customers, vendors and any other person doing business with the Company.

All aspects of employment with the Company will be governed on the basis of merit, competence and qualifications and will not be influenced in any manner by an individual's race, ancestry, color, religious creed (including religious dress and grooming practices), national origin, marital status, sex (including sexual harassment), sexual orientation, gender, gender identity, gender expression, disability (physical or mental including HIV/AIDS diagnosis), pregnancy (including breastfeeding and conditions related to breastfeeding), medical condition (cancer and genetic characteristics), age (40 or over), military and veteran status, or exercising the right to any legally provided leave of absence in the application of any policy, practice, rule or regulation.

All decisions made with respect to recruiting and hiring, evaluations and promotions for all job classifications will be based solely on individual qualifications as related to the requirements of the position. Likewise, all other personnel matters such as compensation, benefits, transfers, lay-offs, training, educational opportunities and programs will be administered free from any illegal discriminatory practices.

B. POLICY AGAINST HARASSMENT, INCLUDING SEXUAL HARASSMENT

The Company is also committed to providing a work environment that is free of harassment, including sexual harassment.

Sexual harassment includes:

1. Unwanted sexual advances;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;
5. Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes;
6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations;

8. Physical conduct: touching, assault, impeding or blocking movement; and

9. Further, the Company prohibits abusive conduct (“bullying”): Any form of abusive conduct by an employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to the Company’s business interest.

C. COMPLAINT AND INVESTIGATION PROCEDURE

Any form of discrimination, retaliation or harassment, including sexual harassment, is absolutely prohibited. Any incident of possible discrimination, retaliation or harassment should be brought immediately to the attention of the Human Resources Department of the Company, either verbally or in writing, which will thoroughly investigate the matter. Supervisors who receive complaints of discrimination, retaliation or harassment from their employees are required to forward those complaints to the Human Resources Department.

The Company will conduct a fair, impartial, and thorough investigation by qualified personnel that provides all parties appropriate due process. The investigation shall be conducted confidentially to the extent confidentiality is possible. The Company will document and track the progress of the investigation. The Company will make a reasonable determination, after reviewing all the evidence collected, concerning whether misconduct occurred. The investigation will be completed in a timely manner and the employee who filed the complaint will receive a timely response. If misconduct is found to have occurred, appropriate remedial measures will be taken. Disciplinary action, up to and including discharge, will be taken against any employee who is found to have engaged in conduct prohibited by this policy.

No employee shall be subjected to any form of retaliation for reporting any violation of this policy truthfully and in good faith, or for participating in any investigation conducted pursuant to this policy.

HARASSMENT BY NON-EMPLOYEES

In addition, the Company will take all reasonable steps to prevent or eliminate sexual harassment by non-employees including customers, clients and suppliers who are likely to have workplace conduct with our employees.

EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT

I have read and received a copy of the Company’s Employee Relations Policy, including the policies against discrimination, retaliation and harassment, including sexual harassment, and fully understand my obligations and responsibilities as outlined therein.

Signed: _____

Date: _____

Witness: _____

Date: _____

POLÍTICA DE RELACIONES DE EMPLEADOS CON RECONOCIMIENTO

A. POLÍTICA CONTRA LA DISCRIMINACIÓN

La Compañía está comprometida a proveer un ambiente libre de discriminación. Para cumplir con este compromiso, la Compañía mantiene una política estricta prohibiendo la discriminación y las represalias ilegales. Esta política se aplica a todos los empleados de la Compañía, incluyendo supervisores y empleados que no son de supervisión. La política también prohíbe la discriminación y las represalias de parte de personas que no son empleadas por la Compañía y con las cuales los empleados tienen contacto, incluyendo clientes, suministradores, vendedores y cualquier otra persona que haga negocio con la Compañía.

Todo aspecto de empleo con la Compañía será gobernado a base de mérito, aptitud y capacidad y no será influenciado de ninguna manera por la raza, ascendencia, color, religión (incluyendo vestimenta religiosa y prácticas de acicalamiento), origen nacional, estado civil, sexo (incluyendo acoso sexual), orientación sexual, género, identidad de género, expresión de género, incapacidad (física o mental incluyendo diagnóstico de HIV/SIDA), embarazo (incluyendo lactancia materna y condiciones relacionadas), condición médica (cáncer y características genéticas), edad (40 años o más), estado de militar o de veterano, o por ejercer el derecho a tomar un permiso de ausencia legal, del individuo en la aplicación de cualquier política, práctica, regla o regulación.

Todas las decisiones hechas acerca de reclutamiento y empleo, evaluaciones y promociones para todas las clasificaciones de trabajo serán basadas solamente en las capacidades individuales relacionadas a los requisitos de la posición. Igualmente, todos los demás asuntos del personal como compensación, beneficios, transferencias, despido temporal, entrenamiento, oportunidades y programas educativos serán administrados libres de cualquier práctica discriminatoria ilegal.

B. POLÍTICA CONTRA EL HOSTIGAMIENTO, INCLUYENDO ACOSO SEXUAL

La Compañía también está comprometida a proveer un ambiente de trabajo libre de hostigamiento, incluyendo el acoso sexual.

Acoso sexual incluye:

1. Avances sexuales no deseados;
2. Ofrecer beneficios de empleo a cambio de favores sexuales;
3. Tomar o amenazar de tomar represalias después de recibir una respuesta negativa a un avance sexual;
4. Conducta visual: mirada de reojo lasciva; gestos sexuales; desplegar objetos o retratos, caricaturas o carteles sexualmente sugestivos;
5. Conducta verbal: hacer o usar comentarios, epítetos, calumnias o chistes derogatorios;
6. Avances o proposiciones sexuales verbales;
7. Abuso verbal de naturaleza sexual, comentarios gráficos verbales acerca del cuerpo de un individuo, palabras sexualmente degradantes usadas para describir a un individuo, cartas, notas o invitaciones obscenas o sugestivas;

8. Conducta física: tocar, asaltar, impedir u obstruir el movimiento; y
9. Además, la Compañía prohíbe la conducta abusiva ("bullying"): Cualquier forma de conducta abusiva por un empleado en el lugar de trabajo, con malicia, que una persona razonable encontraría hostil, ofensivo y sin relación al interés de negocio de la Compañía.

C. PROCEDIMIENTO DE QUEJA E INVESTIGACIÓN

Cualquier tipo de discriminación, represalia u hostigamiento, incluyendo el acoso sexual, es absolutamente prohibido. Cualquier incidente de discriminación, represalia u hostigamiento debe ser comunicado inmediatamente al Departamento de Recursos Humanos de la Compañía, ya sea verbalmente o por escrito, el cual investigará el asunto meticulosamente. Supervisores que reciben quejas de discriminación, represalias u hostigamiento de un empleado están requeridos enviar esas quejas al Departamento de Recursos Humanos.

La Compañía llevará a cabo una investigación justa, imparcial y exhaustiva a través de personal cualificado que provee proceso debido (due process) a todas las partes. La investigación será realizada de manera confidencial hasta el punto que la confidencialidad es posible. La Compañía documentará y estará al tanto del proceso de la investigación. La Compañía hará una determinación razonable, después de revisar todas las pruebas, sobre si es que conducta inapropiada ocurrió. La investigación se completará en forma oportuna y el empleado que presento la queja recibirá una respuesta oportuna. Si se determina que conducta inapropiada sucedió, se tomará las medidas correctivas apropiadas. Se tomará medidas disciplinarias, hasta e incluyendo la descarga de empleo, contra cualquier empleado que se determine haber participado en conducta prohibida por esta política.

Ningún empleado será sujeto a alguna forma de represalia por reportar honestamente y en buena fe una violación de esta política, o por participar en una investigación conducida de acuerdo a esta política.

HOSTIGAMIENTO O ACOSO POR MEDIO DE NO-EMPLEADOS

Adicionalmente, la Compañía tomará todos los pasos razonables para prevenir o eliminar el acoso sexual por parte de no-empleados incluyendo clientes, vendedores y suministradores que tengan contacto de trabajo con nuestros empleados.

RECONOCIMIENTO DE LA POLÍTICA DE RELACIONES DE EMPLEADOS

Yo he recibido y leído una copia de la Política de Relaciones de Empleados de la Compañía, incluyendo las políticas en contra de la discriminación, la represalia y el hostigamiento, incluyendo el acoso sexual, y entiendo completamente mis obligaciones y responsabilidades bajo esta política.

Firma: _____ **Fecha:** _____

Testigo: _____ **Fecha:** _____

[YOUR COMPANY]

ANTI-BULLYING POLICY

[YOUR COMPANY] is committed to providing all employees a healthy and safe work environment. [YOUR COMPANY] will ensure that procedures exist to allow complaints of bullying to be dealt with and resolved within [YOUR COMPANY], without limiting any person's entitlement to pursue resolution of their complaint with the relevant statutory authority. [YOUR COMPANY] is committed to the elimination of all forms of bullying.

This policy applies to all employees of [YOUR COMPANY]. It applies during normal working hours, at work related or sponsored functions, and while traveling on work related business. There will be no recriminations for anyone who in good faith alleges bullying.

DEFINITIONS

Bullying is unwelcome or unreasonable behavior that demeans, intimidates or humiliates people either as individuals or as a group. Bullying behavior is often persistent and part of a pattern, but it can also occur as a single incident. It is usually carried out by an individual but can also be an aspect of group behavior (see "mobbing" below). Some examples of bullying behavior are:

Verbal communication

- Abusive and offensive language
- Insults
- Teasing
- Spreading rumor and innuendo
- Unreasonable criticism
- Trivializing of work and achievements

Manipulating the work environment

- Isolating people from normal work interaction
- Excessive demands
- Setting impossible deadlines

Psychological manipulation

- Unfairly blaming for mistakes
- Setting people up for failure
- Deliberate exclusion
- Excessive supervision
- Practical jokes

- Belittling or disregarding opinions or suggestions
- Criticizing in public

Context is important in understanding bullying, particularly verbal communication. There is a difference between friendly insults exchanged by long-time work colleagues and comments that are meant to be, or are taken as, demeaning. While care should be exercised, particularly if a person is reporting alleged bullying as a witness, it is better to be genuinely mistaken than to let actual bullying go unreported.

Mobbing

Mobbing is a particular type of bullying behavior carried out by a group rather than by an individual. Mobbing is the bullying or social isolation of a person through collective unjustified accusations, humiliation, general harassment or emotional abuse. Although it is group behavior, specific incidents such as an insult or a practical joke may be carried out by an individual as part of mobbing behavior.

CONSEQUENCES OF BULLYING

Bullying is unacceptable behavior because it breaches principles of equality and fairness, and it frequently represents an abuse of power and authority. It also has potential consequences for everyone involved.

For those being bullied

People who have been bullied often suffer from a range of stress-related illness. They can lose confidence and withdraw from contact with people outside the workplace as well as at work. Their work performance can suffer, and they are at increased risk of workplace injury.

For the employer

Besides potential legal liabilities, the employer can also suffer because bullying can lead to:

- Deterioration in the quality of work
- Increased absenteeism
- Lack of communication and teamwork
- Lack of confidence in the employer leading to lack of commitment to the job

For others at the workplace

People who witness bullying behaviors can also have their attitudes and work performance affected. They can suffer from feelings of guilt that they did nothing to stop the bullying, and they can become intimidated and perform less efficiently fearing that they may be the next to be bullied.

RESPONSIBILITIES

Managers and supervisors

- Ensure that all employees are aware of the anti-bullying policy and procedures
- Ensure that any incident of bullying is dealt with regardless of whether a complaint of bullying has been received
- Provide leadership and role-modeling in appropriate professional behavior
- Respond promptly, sensitively and confidentially to all situations where bullying behavior is observed or alleged to have occurred

Employees

- Be familiar with and behave according to this policy
- If you are a witness to bullying, report incidents to your supervisor, President or Human Resources Director as appropriate
- Where appropriate, speak to the alleged bully(ies) to object to the behavior

IF YOU THINK YOU HAVE BEEN BULLIED

- Any employee who feels he or she has been victimized by bullying is encouraged to report the matter to his or her supervisor, or with Human Resources.
- Where appropriate, an investigation will be undertaken and disciplinary measures will be taken as necessary.

PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

DISCRIMINATION ALLEGATION/EVENT REPORTING FORM

TO: Attorney Name

FAX NO. (818) 986-5147

COMPANY: LANDEGGER BARON LAW GROUP

FROM: _____

DATE: _____

CC: _____

This form must be completed by the Branch Manager, Supervisor or by the corporate Human Resource Department no later than the next business day after any allegation of harassment or discrimination in the workplace.

1 Please complete the attached First Report of Event or Circumstance. When interviewing the employee, do not feel compelled to ask the questions in the same order. Feel free to ask additional questions. Always be a good listener and take accurate notes. Never label the behavior, statement or allegation as “sexual harassment” or “discrimination”. Document the words used by employee. No further investigation is to take place until instructed to do so by _____ and Landegger Baron Law Group;

2 Attach a copy of the personnel file of the employee making the allegation of harassment or discrimination; and

3 Attach the personnel file of the employee(s) against whom the allegation of harassment or discrimination has been made.

If you have any questions concerning this Discrimination Allegation/Event Reporting Form, or the attached First Report of Event or Circumstance, please contact Alfred J. Landegger, Esq. at (818) 986-7561.

FIRST REPORT OF EVENT OR CIRCUMSTANCE

Date: _____

1. Name of Employee Being Interviewed: _____
2. Name of Interviewer: _____
3. Name Facility or Location: _____
4. Tell Me What Happened: _____

5. Who was involved? _____
6. When did the incident(s) happen? _____
7. Where did the incident(s) happen? _____
8. Were there any other incident(s)? _____

9. How did this incident make you feel? _____

10. Was your work affected? _____
11. Was this the first time this had happened? _____

(NOTE: Attach additional documentation as necessary.)

FIRST REPORT OF EVENT OR CIRCUMSTANCE

Page 3

12. Were there any previous incidents of inappropriate behavior? _____

13. Have you kept any records, such as written notes, tape recordings or anything else?

(If so, please attach.)

14. Do you know of any other employee(s) who had similar experiences? _____

Who: _____

When: _____

15. Have you discussed this with anyone at work? _____

Who: _____

When: _____

16. Have you discussed this with anyone outside of work? _____

Who: _____

When: _____

17. Did you participate in the incident? _____

(NOTE: Attach additional documentation as necessary.)

FIRST REPORT OF EVENT OR CIRCUMSTANCE

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18. If yes, tell me how you participated: _____

19. How would you describe your relationship with the employee about whom you are complaining?_____

20. Are there any other issues we should discuss?_____

21. Were any other facts or other information that you think I should know?_____

22. Who do you think I should talk to?_____

(NOTE: Attach additional documentation as necessary.)

FIRST REPORT OF EVENT OR CIRCUMSTANCE

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23. Do you have any suggestions as to how best to resolve the situation? _____

Type/Print Name of Person
Conducting Interview

Signature of Person Conducting Interview

Date: _____

(NOTE: Attach additional documentation as necessary.)

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The Importance of Reviewing Employees' Wages

Minimum Wage

Conducting periodic reviews of the wages you pay to your employees is important, and even more so this year. Initially, you will want to make sure that all of your employees' pay rates are at or above the correct state and local minimum wage. The California minimum wage is now \$10.00 per hour. It will increase to \$10.50 per hour on January 1, 2017 for companies with more than 25 employees and on January 1, 2018 for companies with 25 or fewer employees. There are subsequent increases required by the state law every January 1 afterward, until it reaches \$15 per hour on January 1, 2022 for companies with more than 25 employees and on January 1, 2023 for companies with 25 or fewer employees. After that, this minimum wage will be adjusted for inflation each year, and new rates will be published by the State at http://www.dir.ca.gov/dlse/faq_minimumwage.htm.

Many cities have higher minimum wages either at this time, or set to go into effect in the near future. For example, the City of Los Angeles is incrementally raising its minimum wage until it reaches \$15.00 per hour in 2020, 18 months earlier than the State. L.A.'s minimum wage ordinance requires payment of the local minimum wage to employees who work two or more hours per week within the city limits, for all hours worked within the city limits, regardless of where the employer is located and regardless of whether the employee is a city resident. The next increase is to \$10.50 per hour, which will occur on July 1, 2016, for employers with over 25 employees and July 1, 2017, for employers with 25 or fewer employees. There are subsequent increases required by the city ordinance every July 1 thereafter, until it reaches \$15 per hour on July 1, 2020 for companies with more than 25 employees and on July 1, 2021 for companies with 25 or fewer employees. After that, the L.A. minimum wage will be adjusted for inflation each year, and new rates will be published by the City. A newly created Office of Wage Standards will enforce the L.A. minimum wage, and also requires employers to post a notice to its employees. The Office has already published this notice on its website at <http://wagesla.lacity.org/>. Certain nonprofits can apply for a deferral under the ordinance.

The County of Los Angeles is following a similar minimum wage increase schedule that applies in unincorporated areas of Los Angeles County, like Calabasas, Marina del Rey, or Universal City. Other cities have their own minimum wage laws, for example, San Francisco's minimum wage rate is currently \$12.25 per hour, increasing to \$13.00 per hour on July 1, 2016.

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(818) 986-7561
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751 Daily Drive
Suite 325
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(805) 987-7128
Fax (805) 987-7148

Cities might also have living wage ordinances or minimum wage laws targeted at specific industries or workers. For example, L.A.'s living wage ordinances applicable to contractors with the City and airport employees, and the L.A. minimum wage ordinance applicable to hotel employees, are still in effect. Employers must follow whichever law applicable to them is more generous to its employees. California and the U.S. Government have wage regulations applicable to federal or state contractors, for example, state prevailing wage laws. Companies usually become aware of these requirements when they contract with the government. For workers on those jobs, the requirements of the contract must be followed.

Salary levels for exempt employees

The California minimum wage is important not just for hourly employees, but also indirectly applies to salaried employees to whom employers wish to avoid paying overtime pay. For workers to be considered exempt from overtime pay, several requirements must be satisfied, one of which is that the employee's salary must equal or exceed two times the state minimum wage. As of today, exempt employees must be paid a salary of at least \$41,600.00 per year to qualify for any overtime exemption, and that minimum salary amount will change every time the state minimum wage changes. This salary test is not affected by local minimum wages.

There is a strong possibility that the salary threshold described above for exempt employees will soon change because new federal regulations governing overtime exemptions are being written. The Obama administration has not yet released the final regulations, but we expect they will be released by July.

The new regulations will change the salary test for overtime exemption under federal law, in all likelihood increasing it to \$50,440.00 per year. (The exact salary level for federal overtime exemption is not yet determined and will be contained in the final regulations.) Employers subject to the Fair Labor Standards Act will have to satisfy this higher federal standard if they want to continue to have their employees be exempt from overtime requirements.

Gender pay gap

Employers must conduct wage analyses not just to make sure they comply with applicable minimum wage laws and meet the minimum salary requirements for exempt employees, but also to determine whether any pay inequities exist between employees of different genders. Last year, California passed a tough new Fair Pay Act, which requires that women earn equal wages as men for "substantially similar work" (not necessarily the same job) when viewed as a composite of skill, effort, and responsibility and when performed under similar working conditions. If wage differences exist, employers must be able to show that the differences are based on factors such as seniority, merit, quantity or quality of production, or other bona fide factors other than sex. Employers should closely review their current pay practices and identify and correct any wage differentials that exist between women and men that cannot be justified by clear business realities. When conducting such an analysis, do not rely on job titles alone, or on job descriptions that do not accurately reflect the position's actual day-to-day duties.

In summary, periodically review your pay practices to ensure you satisfy all of the following:

- Federal, state and local minimum wages and living wage or prevailing wage regulations, if applicable to you.
- Salary tests for exemptions from overtime.
- Equal pay between the genders.

Our firm is ready to assist you in reviewing your pay practices in order to determine if you meet the requirements of the new, wide reaching Fair Pay Act, as well as ensuring that you are complying with all federal, state and local minimum wage laws that apply to you.

By: Brian E. Ewing, Esq.



OFFICIAL NOTICE

**California
Minimum Wage**

MW-2014

Minimum Wage - Every employer shall pay to each employee wages not less than the following:

\$8.00 \$9.00 \$10.00

per hour beginning January 1, 2008 per hour beginning July 1, 2014 per hour beginning January 1, 2016

To employers and representatives of persons working in industries and occupations in the State of California:

SUMMARY OF ACTIONS

TAKE NOTICE that on September 25, 2013, the California Legislature enacted legislation signed by the Governor of California, raising the minimum wage for all industries. (AB10, Stats of 2013, amending section 1182.12 of the California Labor Code.) Pursuant to its authority under Labor Code section 1182.13, the Department of Industrial Relations amends and republishes Sections 2, 3, and 5 of the General Minimum Wage Order, MW-2007. Section 1, Applicability, and Section 4, Separability, have not been changed. Consistent with this enactment, amendments are made to the minimum wage, and the meals and lodging credits sections of all of the IWC's industry and occupation orders.

This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained by ordering on-line at www.dir.ca.gov/WP.asp, or by contacting your local Division of Labor Standards Enforcement office.

1. APPLICABILITY

The provisions of this Order shall not apply to outside salespersons and individuals who are the parent, spouse, or children of the employer previously contained in this Order and the IWC's industry and occupation orders. Exceptions and modifications provided by statute or in Section 1, Applicability, and in other sections of the IWC's industry and occupation orders may be used where any such provisions are enforceable and applicable to the employer.

2. MINIMUM WAGES

Every employer shall pay to each employee wages not less than eight dollars (\$8.00) per hour for all hours worked, effective January 1, 2008, not less than nine dollars (\$9.00) per hour for all hours worked, effective July 1, 2014, and not less than ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016.

3. MEALS AND LODGING

Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

	Effective January 1, 2008	Effective July 1, 2014	Effective January 1, 2016
LODGING			
Room occupied alone.....	\$37.63 per week	\$42.33 per week	\$47.03 per week
Room shared.....	\$31.06 per week	\$34.94 per week	\$38.82 per week
Apartment – two thirds (2/3) of the ordinary rental value, and in no event more than:.....	\$451.89 per month	\$508.38 per month	\$564.81 per month
Where a couple are both employed by the employer, two thirds (2/3) of the ordinary rental value, and in no event more than:.....	\$668.46 per month	\$752.02 per month	\$835.49 per month
MEALS			
Breakfast.....	\$2.90	\$3.26	\$3.62
Lunch.....	\$3.97	\$4.47	\$4.97
Dinner.....	\$5.34	\$6.01	\$6.68

4. SEPARABILITY

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Order should be held invalid, unconstitutional, unauthorized, or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

5. AMENDED PROVISIONS

This Order amends the minimum wage and meals and lodging credits in MW-2007, as well as in the IWC's industry and occupation orders. (See Orders 1-15, Secs. 4 and 10; and Order 16, Secs. 4 and 9.) This Order makes no other changes to the IWC's industry and occupation orders.

These Amendments to the Wage Orders shall be in effect as of July 1, 2014.

Questions about enforcement should be directed to the Division of Labor Standards Enforcement. Consult the white pages of your telephone directory under CALIFORNIA, State of, Industrial Relations for the address and telephone number of the office nearest you. The Division has offices in the following cities: Bakersfield, El Centro, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, and Van Nuys.



Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees

In 2014, President Obama directed the Department of Labor to update and modernize the regulations governing the exemption of executive, administrative, and professional (“EAP”) employees from the minimum wage and overtime pay protections of the Fair Labor Standards Act (“FLSA” or “Act”). The Department published a notice of proposed rulemaking on July 6, 2015, and received more than 270,000 comments. On May 18, 2016, the Department announced that it will publish a Final Rule to update the regulations. The full text of the Final Rule will be available at the Federal Register Site.

Although the FLSA ensures minimum wage and overtime pay protections for most employees covered by the Act, some workers, including bona fide EAP employees, are exempt from those protections. Since 1940, the Department’s regulations have generally required each of three tests to be met for the FLSA’s EAP exemption to apply: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (“salary basis test”); (2) the amount of salary paid must meet a minimum specified amount (“salary level test”); and (3) the employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (“duties test”). The Department last updated these regulations in 2004, when it set the weekly salary level at \$455 (\$23,660 annually) and made other changes to the regulations, including collapsing the short and long duties tests into a single standard duties test and introducing a new exemption for highly compensated employees.

This Final Rule updates the salary level required for exemption to ensure that the FLSA’s intended overtime protections are fully implemented, and to simplify the identification of overtime-protected employees, thus making the EAP exemption easier for employers and workers to understand and apply. Without intervening action by their employers, it extends the right to overtime pay to an estimated 4.2 million workers who are currently exempt. It also strengthens existing overtime protections for 5.7 million additional white collar salaried workers and 3.2 million salaried blue collar workers whose entitlement to overtime pay will no longer rely on the application of the duties test.

*** Key Provisions of the Final Rule ***

The Final Rule focuses primarily on updating the salary and compensation levels needed for EAP workers to be exempt. Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South, which is \$913 per week or \$47,476 annually for a full-year worker;
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally, which is \$134,004; and

3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level. The Final Rule makes no changes to the duties tests.

Effective Date

The effective date of the Final Rule is December 1, 2016. The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

Standard Salary Level

The Final Rule sets the standard salary level at the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week, equivalent to \$47,476 per year for a full-year worker).

The standard salary level set in this Final Rule addresses our conclusion that the salary level set in 2004 was too low given the Department's elimination of the more rigorous long duties test. For many decades the long duties test—which limited the amount of time an exempt employee could spend on nonexempt duties and was paired with a lower salary level—existed in tandem with a short duties test—which did not contain a specific limit on the amount of nonexempt work and was paired with a salary level that was approximately 130 to 180 percent of the long test salary level. In 2004, the long and short duties tests were eliminated and the new standard duties test was created based on the short duties test and was paired with a salary test based on the long test.

The effect of the 2004 Final Rule's pairing of a standard duties test based on the short duties test (for higher paid employees) with a salary test based on the long test (for lower paid employees) was to exempt from overtime many lower paid workers who performed few EAP duties and whose work was otherwise indistinguishable from their overtime-eligible colleagues. This has resulted in the inappropriate classification of employees as EAP exempt who pass the standard duties test but would have failed the long duties test.

The Final Rule's salary level represents the most appropriate line of demarcation between overtime-protected employees and employees who may be EAP exempt and works appropriately with the current duties test, which does not limit non-EAP work.

The Department also is updating the special salary level for employees in American Samoa (to \$767 per week) and the special "base rate" for employees in the motion picture industry (to \$1,397 per week).

HCE Total Annual Compensation Requirement

The Final Rule sets the HCE total annual compensation level equal to the 90th percentile of earnings of full-time salaried workers nationally (\$134,004 annually). To be exempt as an HCE, an employee must also receive at least the new standard salary amount of \$913 per week on a salary or fee basis and pass a minimal duties test. The HCE annual compensation level set in this Final Rule brings this threshold more in line with the level established in 2004 and will avoid the unintended exemption of large numbers of employees in high-wage areas who are clearly not performing EAP duties.

Automatic Updating

The Final Rule includes a mechanism to automatically update the standard salary level requirement every three years to ensure that it remains a meaningful test for distinguishing between overtime-protected white collar workers and bona fide EAP workers who may not be entitled to overtime pay and to provide predictability and more graduated salary changes for employers. Specifically, the standard salary level will be updated to maintain a threshold equal to the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region. Similarly, the Final Rule includes a mechanism for automatically updating the HCE compensation level to maintain the threshold equal to the 90th percentile of annual earnings of full-time salaried workers nationally. The Final Rule will also automatically update the special salary level test for employees in American Samoa and the base rate test for motion picture industry employees. The Department will publish all updated rates in the Federal Register at least 150 days before their effective date, and also post them on the Wage and Hour Division's website.

Regularly updating the salary and compensation levels is the best method to ensure that these tests continue to provide an effective means of distinguishing between overtime-eligible white collar employees and those who may be bona fide EAP employees. Experience has shown that these earning thresholds are only effective measures of exempt status if they are kept up to date.

Inclusion of Nondiscretionary Bonuses and Incentive Payments

For the first time, employers will be able to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level. Such payments may include, for example, nondiscretionary incentive bonuses tied to productivity and profitability. For employers to credit nondiscretionary bonuses and incentive payments toward a portion of the standard salary level test, the Final Rule requires such payments to be paid on a quarterly or more frequent basis and permits the employer to make a "catch-up" payment. The Department recognizes that some businesses pay significantly larger bonuses; where larger bonuses are paid, however, the amount attributable toward the standard salary level is capped at 10 percent of the required salary amount.

The Final Rule continues the requirement that HCEs must receive at least the full standard salary amount each pay period on a salary or fee basis without regard to the payment of nondiscretionary bonuses and incentive payments, and continues to permit nondiscretionary bonuses and incentive payments (including commissions) to count toward the total annual compensation requirement. The Department concludes that permitting employers to use nondiscretionary bonuses and incentive payments to satisfy the standard salary amount for HCEs is not appropriate because employers are already permitted to fulfill almost two-thirds of the total annual compensation requirement with commissions, nondiscretionary bonuses, and other forms of nondiscretionary deferred compensation.

Duties Tests

The Final Rule is not changing any of the existing job duty requirements to qualify for exemption. The Department expects that the standard salary level set in this Final Rule and automatic updating will work effectively with the duties test to distinguish between overtime-eligible workers and those who may be exempt. As a result of the change to the salary level, the number of workers for whom employers must apply the duties test to determine exempt status is reduced, thus simplifying the exemption. Both the standard duties test and the HCE duties test remain unchanged.

For additional information, visit our Wage and Hour Division Website: www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)



City of Los Angeles Minimum Wage Frequently Asked Questions

11/2/15

Los Angeles Minimum Wage Ordinance

1. When does the City of Los Angeles Minimum Wage Ordinance take effect?

The ordinance takes effect on July 1, 2016.

2. Where can I find the Los Angeles Minimum Wage rate?

The wage rates will be posted at bca.lacity.org.

3. What City department is implementing the Ordinance?

The Department of Public Works, Bureau of Contract Administration, is the Designated Administrative Agency (DAA) for the Ordinance and has the administrative responsibilities to implement the guidelines and rules. Information is available at bca.lacity.org.

4. What is the definition of employee?

An employee is an individual who performs at least two hours of work in a particular week within the City of Los Angeles for an employer, and who qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law.

5. Does the Los Angeles Minimum Wage apply to all employers who have employees performing work in the City of Los Angeles?

Yes. Regardless of where an employer's place of business is located, an employer must pay an employee who performs at least two hours of work in a particular week within the City of Los Angeles for all hours worked in the City of Los Angeles.

6. Does the Los Angeles Minimum Wage apply to full time and part time employees?

Yes. Any employee who performs at least two hours of work in a particular week within the City of Los Angeles is entitled to be paid the Los Angeles Minimum Wage.

7. Does the Los Angeles Minimum Wage apply to temporary employees?

Yes. Any employee who performs at least two hours of work in a particular week within the city of Los Angeles is entitled to be paid the Los Angeles Minimum Wage.

8. Does the Los Angeles Minimum Wage cover employees who work in Los Angeles but are not City residents?

Yes, any employee who performs at least two hours of work in a particular week within the City of Los Angeles is entitled to be paid the Los Angeles Minimum Wage regardless of the employee's city of residence.

9. What are the Los Angeles city boundaries? What zip code areas are within the Los Angeles city boundaries?

We recommend visiting <http://zimas.lacity.org/> as a reference.

10. Can tips be counted toward the minimum wage?

No.

11. How will the City enforce the Los Angeles Minimum Wage Ordinance?

The Los Angeles City Council enacted the Wage Enforcement Division Ordinance creating a division to enforce the Los Angeles Minimum Wage Ordinance. Responsibilities will include investigating potential violations, issuing

determinations of compliance or non-compliance, and obtaining restitution, fines, penalties, and/or interest where violations have occurred.

12. What impact will the Los Angeles Minimum Wage Ordinance have on the Living Wage or Citywide Hotel Worker Minimum Wage?

If the Los Angeles Minimum Wage conflicts with Living Wage or Citywide Hotel Workers Minimum Wage, the Living Wage or Citywide Hotel Worker Minimum Wage will supersede the Los Angeles Minimum Wage. However, an employer who is officially exempted from the Living Wage or Citywide Hotel Worker Minimum Wage requirements may still be required to adhere to the Los Angeles Minimum Wage.

Non-Profit Corporations

13. Are non-profits covered by the Los Angeles Minimum Wage Ordinance?

Yes, non-profit employers must abide by the Ordinance. Certain Non-Profit Corporation employers with 26 or more employees may qualify for the deferral rate schedule.

14. What are the requirements for a non-profit corporation to qualify for the deferral rate schedule?

Non-Profit Corporations with a valid 501(c)(3) status and with 26 or more employees may qualify for a year deferral from the July 1st 2016 start date if the non-profit corporation provides satisfactory evidence of one of the following requirements:

- A. The chief executive officer earns a salary which, when calculated on an hourly basis, is less than five times the lowest wage paid by the corporation; or*
- B. It is a Transitional Employer as defined in Section 10.31.1(h) of the Los Angeles Administrative Code; or*
- C. It serves as a child care provider; or*
- D. It is funded primarily by City, County, State or Federal grants or reimbursements*

A deferral application from BCA will be available at BCA.lacity.org.

15. What are the employer wage rate implementation schedules?

Employers with 26 or more employees shall pay a wage of no less than the hourly rates set forth:

1. *On July 1, 2016, the hourly wage shall be \$10.50.*
2. *On July 1, 2017, the hourly wage shall be \$12.00.*
3. *On July 1, 2018, the hourly wage shall be \$13.25.*
4. *On July 1, 2019, the hourly wage shall be \$14.25.*
5. *On July 1, 2020, the hourly wage shall be \$15.00.*

Employers with 25 or fewer employees shall pay a wage of no less than the hourly rates set forth:

1. *On July 1, 2017, the hourly wage shall be \$10.50.*
2. *On July 1, 2018, the hourly wage shall be \$12.00.*
3. *On July 1, 2019, the hourly wage shall be \$13.25.*
4. *On July 1, 2020, the hourly wage shall be \$14.25.*
5. *On July 1, 2021, the hourly wage shall be \$15.00.*

16. How is the size of an employer's business or Non-Profit Corporation determined?

The size of an employer's business or Non-Profit Corporation shall be determined by the average number of employees employed during the previous calendar year.

17. Does the size of an employer's business or Non-Profit Corporation include employees working outside of Los Angeles?

Yes.

Los Angeles Wage Enforcement Division Ordinance

18. What are employees' rights under the Wage Enforcement Division Ordinance?

Employees have the following rights:

- *Right to be provided the employer's name, address, and telephone in writing at the time of hire.*
- *Right to file a complaint or inform any person about any party's alleged noncompliance with the Ordinance.*

- *Right to inform any person of his or her potential rights under the Ordinance and to assist him or her in asserting such rights.*
- *Right against retaliation when the employee mistakenly, but in good faith, alleges noncompliance with the Ordinance.*

Any adverse action against an employee within 90 days of the employee's exercise of protected rights may be construed as retaliation for the exercise of such rights.

19. What are the notice and posting of the minimum wage requirements?

- *Every employer must post in a clearly visible place at any workplace or job site where any employee works, the notice published each year by the Division informing employees of the current minimum wage rate and of their rights under the Ordinance.*
- *Notices must be in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian, and Farsi, and any other language spoken by at least five percent of the employees at the workplace or job site.*
- *Every employer must provide each employee at the time of hire, the employer's name, address, and telephone number in writing.*

20. What are the Notice of Determination posting requirements once it is issued?

Employer must, within 24 hours after receipt of a Notice of Determination, post the Notice of Determination in a clearly visible place on the property that is:

- 1) the Employer's principal place of business in the City;*
- 2) if the Employer's principal place of business is outside the City, the fixed location within the City from or at which the Employer conducts business in the City; or*
- 3) if the Employer does not regularly conduct business from a fixed location in the City, one of the following:*
 - a. the location where the Employer maintains payroll records if the Notice of Determination is for a violation of payroll access and retention requirements; or*
 - b. the jobsite or other primary location where the Employees perform services in the City.*

21. How long must employers retain payroll records?

Payroll records must be retained for a period of four years.

22. Does my employer need to give me a meal break?

Please see <http://www.dir.ca.gov/dlse/>.

23. Does my employer need to give me a rest break?

Please see <http://www.dir.ca.gov/dlse/>.

24. Should I receive overtime pay?

Please see <http://www.dir.ca.gov/dlse/>.

25. Who can report a suspected violation?

An employee or any other person may report a suspected violation of the Ordinance.

26. Will the City allow a complainant to remain anonymous?

To encourage reporting of a violation, the City shall keep confidential, as permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation unless authorized by the employee or person reporting the violation.

27. Do you need a social security number or photo identification to file a claim?

No.

28. Do I need a lawyer to file a claim?

No.

29. Can I file a claim if I don't speak English?

Yes, the BCA will make an effort to provide an interpreter in your language. Be sure to request an interpreter when you file.

30. What can I do if my employer doesn't pay me at least the Los Angeles Minimum Wage?

You may report a violation to the BCA to open an investigation.

31. What can I do if my employer retaliates against me because I question her/him about not being paid the Los Angeles minimum wage?

Retaliation is prohibited under the Ordinance. You may report a violation to the BCA to open an investigation.

32. What if my boss fires or punishes me for reporting a problem?

Retaliation is prohibited under the Ordinance. You may report a violation to the BCA to open an investigation.

33. What type of violation will be investigated?

The BCA will investigate the following violations:

- *Failure to pay the Los Angeles Minimum Wage.*
- *Failure to comply with notice, posting, or payroll records requirements.*
- *Retaliation.*

34. Where else can a wage claim be filed?

The California Department of Industrial Relations, Division of Labor Standards Enforcement, also accepts and investigates wage claims. Please see <http://www.dir.ca.gov/dlse/> for more details.

35. What private right of action is available to an employee?

Any employee or any other person acting on the behalf of the public as provided for under applicable state law may bring a civil action in court against an employer for violations of this Ordinance.

36. If the BCA determines an employer violated the Los Angeles Minimum Wage Ordinance, what relief can the employee receive?

An employer who violates minimum wage requirements is liable to the employee for payment of back wages and an additional penalty of \$100 for each day that the violation occurred or continued. Where retaliation has occurred, the employee is entitled to reinstatement and a trebling of all back wages and penalties.

37. What can an employee do if an employer does not cooperate with the BCA's investigation into the employee's complaint?

An employee may bring a civil action and petition the court for an order requiring the employer to cooperate with the BCA's investigation and seek an order compelling payment of back wages and other amounts owed to the employee.

38. What happens if an employer does not cooperate with an investigation?

The BCA has the authority to issue administrative fines, payable to the City of Los Angeles, by means of a Notice of Determination.

ADMINISTRATIVE FINES

<i>Failure to post notice of the Los Angeles Minimum Wage rate</i>	<i>\$500 per day per employee</i>
<i>Failure to allow access to payroll records</i>	<i>\$500 per day per employee</i>
<i>Failure to maintain payroll records or to retain payroll records for four years</i>	<i>\$500 per day per employee</i>
<i>Failure to allow access for inspections of books and records or to interview employees</i>	<i>\$500 per day per employee</i>
<i>Retaliation for exercising rights under the ordinance</i>	<i>\$1000 per day per employee</i>
<i>Failure to provide employer's name, address, and telephone number in writing</i>	<i>\$500 per day per employee</i>
<i>Failure to cooperate with the Division's investigation</i>	<i>\$500 per day per employee</i>
<i>Failure to post Notice of Determination to employees</i>	<i>\$500 per day per employee</i>

*Maximum administrative fine paid to the City for **each type** of violation will be \$5,000 per employee per year, with the exception of a retaliation violation (\$10,000 per employee per year).*

39. Can undocumented workers file a complaint with the BCA?

Yes, the BCA investigates complaints regardless of an individual's legal status.

This fact sheet is intended as general information only and does not carry the force of legal opinion.

The BCA is providing this information as a public service. This information and related materials are presented to give the public access to information on the Los Angeles minimum wage law. You should be aware that while we try to keep the information timely and accurate, there would often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. We will make every effort to correct errors brought to our attention.

The City of Los Angeles can only advise employers how to comply with the Los Angeles Minimum Wage Ordinance. It cannot advise an employer how to comply with state law. Please contact the California State Labor Commissioner for information on compliance with state law.

Minimum Wage Proposal

City of Santa Monica Minimum Wage

Santa Monica recently adopted a **minimum wage ordinance**. On July 1, 2016, the minimum wage will increase to \$10.50, with additional annual increases until it reaches \$15.00 on July 1, 2020. Smaller businesses (less than 25 employees) and qualifying nonprofits have an additional year to phase in the increased rate.

Hotels and businesses operating on hotel property will phase in more quickly to \$13.25 on July 1, 2016, and will match the Los Angeles hotel wage (\$15.37+ consumer price index increase) on July 1, 2017. In addition, the ordinance includes provisions related to paid sick-leave, service-charges, first-time workers, and enforcement.

To view the **City of Santa Monica Minimum Wage Ordinance**, [click here](#).

Santa Monica Minimum Wage

Minimum wage rates (as of July 1st of each year):

Year	Businesses with 26 or more employees	Businesses 25 or fewer employees	Hotels
2016	\$10.50	*\$10.00	\$13.25
2017	\$12.00	\$10.50	\$15.37+CPI**
2018	\$13.25	\$12.00	TBD**
2019	\$14.25	\$13.25	TBD**
2020	\$15.00	\$14.25	TBD**
2021	\$15.00	\$15.00	TBD**

*CA state minimum wage

**From 2017 and onward, Santa Monica's hotel wage rate will match the Los Angeles (city) hotel wage

Beginning July 1, 2018 (for hotels) and July 1, 2022 (for other businesses), the minimum rate will increase annually by the Consumer Price Index (CPI).

Complying with Other Minimum Wage Laws

The State of California and the City and County of Los Angeles also have minimum-wage laws. Santa Monica employers are responsible for complying with both the Santa Monica ordinance and County and State requirements, where those are more generous.

Details of the Ordinance

General Minimum Wage

Businesses must comply with the local minimum wage starting July 1, 2016. Santa Monica's minimum wage law includes:

- Phased increase to reach \$15 in 2020 for most businesses
- One-year delay (\$15 by 2021) for businesses with 25 or fewer employees
- One-year delay (\$15 by 2021) for qualifying nonprofit organizations
- Limited exemption for transitional employers
- Union supersession
- Hotel wage, sick leave, service charges, first-time worker, and enforcement provisions

Santa Monica shares a general wage rate and schedule, including the one-year small business delay, with Los Angeles City and County.

Hotel Worker Minimum Wage

The hotel-worker wage is based on Santa Monica's commitment to supporting a vibrant and equitable tourism industry in parity with the region/Los Angeles hotel wages.

- Applies to all hotels, apart from Santa Monica's youth hostels
- Includes a one-year hardship waiver provision for hotels that would need to reduce employment by more than 20% or reduce hours by more than 30% to avoid bankruptcy
- Applies to businesses that contract, lease, or sublet on hotel property or provide services on hotel property

Paid Sick Leave

The Santa Monica ordinance requires paid sick leave for full-time, part-time, and temporary employees. Note that paid sick leave benefits are greater than the State **requirements**.

- Employers must comply starting January 1, 2017 (before this date, comply with State law).
- Accrual rate is one hour for every 30 hours worked (matches AB 1522).
- Accrual limits are as follows:
 - Jan. 1, 2017: 32 hours for small businesses (25 or fewer employees); 40 hours for larger businesses (26 or more employees).
 - Jan. 1, 2018: 40 hours for small businesses; 72 hours for larger businesses
- Employees can carry over accrued sick leave annually (calendar year, fiscal year, or hiring date) up to the accrual cap.
- Employers can provide sick leave at the start of the year as a whole rather than by accrual, as long as this provides leave consistent with the required accrual amounts.
- Other sick-leave plans will comply if equal to or more generous than the ordinance.
- Sick-leave use follows AB 1522 **guidelines**.

Service Charges

Santa Monica's ordinance requires that employers who collect service charges from customers must pay the entirety of those charges to the workers who performed those services.

- Service charges can be shared between front and back of house apart from hotel banquet/catering, portage, and delivery charges.
- Healthcare surcharges must be spent entirely on workers and follow specific guidelines.
- Employers must provide clear notice to customers of the charge and its use.
- Employers must share with employees how they distribute service charge proceeds, and must keep records of service charge revenue receipts and spending.

First-Time Workers

Employees working for the first time in an activity in which they have no previous similar or related experience can earn 85% of the minimum wage for the first 160 hours of employment.

- This is the same language as the State “learner” provision.
- City staff can provide further guidance regarding what constitutes similar or related experience, if needed.

Enforcement

The ordinance prohibits retaliation against employees for rights protected under the minimum wage law, and provides that employers cannot reduce employees’ hours or other benefits to directly fund the wage increase. Employees have the right to file civil claims, and employers violating the law can be subject to administrative or criminal penalties.

Minimum Wage Process

Over the course of eight months, City of Santa Monica staff worked with businesses, workers, advocacy groups, community members, and subject experts to hear concerns, conduct research, and recommend minimum wage law provisions to Santa Monica’s City Council.

Business, labor, and community members also participated in a Minimum Wage Working Group to review and recommend technical adjustments to the adopted ordinance. City Council adopted the amended ordinance on April 26, 2016.

The presentations, discussions, and resources below show the collaboration and research that led up to Santa Monica’s minimum wage law.

Minimum Wage Ordinance

To view the **City of Santa Monica Minimum Wage Ordinance**, [click here](#).

Meeting Videos

- [January 12 \(Council Meeting\)](#)
- [November 12 \(Community Meeting\)](#)
- [August 12 \(Business Community\)](#)
- [August 18 \(Business Community\)](#)
- [September 8 \(Nonprofit Organizations\)](#)
- [September 29 \(Council Meeting\)](#)

CITY COUNCIL MEETINGS & REPORTS

Reports / Minutes

- [Council Discussion and Vote](#) - (January 12 - Item 7C)
- [Council Study Session](#) - (Sept. 29 - Item 7A)
- [Council discussion and direction](#) (June 9, Item 13-3, @ 3:05)

- [Information Item on the Los Angeles Minimum Wage](#) (June 5, 2015)
 - [Staff Report: Modifications to the Minimum Wage Ordinance](#) (April 26, 2016)
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RESOURCES

Institute for Research on Labor and Employment (IRLE) Los Angeles Minimum Wage Analysis www.irlle.berkeley.edu

[City of Los Angeles Ordinance](#)

[Los Angeles County Ordinance](#)

Send a comment or question

Contact the [staff liaison](#).

Email [council members](#).

https://www.smgov.net/departments/HED/Economic_Development/Minimum_Wage_Proposal.aspx

NOTICE TO EMPLOYEE
Labor Code section 2810.5

EMPLOYEE

Employee Name: _____

Start Date: _____

EMPLOYER

Legal Name of Hiring Employer: _____

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency; Employee Leasing Company; or Professional Employer Organization [PEO])? ☐ Yes ☐ No

Other Names Hiring Employer is "doing business as" (if applicable): _____

Physical Address of Hiring Employer's Main Office: _____

Hiring Employer's Mailing Address (if different than above): _____

Hiring Employer's Telephone Number: _____

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Name: _____

Physical Address of Main Office: _____

Mailing Address: _____

Telephone Number: _____

WAGE INFORMATION

Rate(s) of Pay: _____ Overtime Rate(s) of Pay: _____

Rate by (check box): ☐ Hour ☐ Shift ☐ Day ☐ Week ☐ Salary ☐ Piece rate ☐ Commission

☐ Other (provide specifics): _____

Does a written agreement exist providing the rate(s) of pay? (check box) ☐ Yes ☐ No

If yes, are all rate(s) of pay and bases thereof contained in that written agreement? ☐ Yes ☐ No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances): _____

(If the employee has signed the acknowledgment of receipt below, it does not constitute a "voluntary written agreement" as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.)

Regular Payday: _____

WORKER'S COMPENSATION

Insurance Carrier's Name: _____

Address: _____

Telephone Number: _____

Policy No.: _____

☐ Self-Insured (Labor Code 3700) and Certificate Number for Consent to Self-Insure: _____**PAID SICK LEAVE**

Unless exempt, the employee identified on this notice is entitled to minimum requirements for paid sick leave under state law which provides that an employee:

- a. May accrue paid sick leave and may request and use up to 3 days or 24 hours of accrued paid sick leave per year;
- b. May not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and
- c. Has the right to file a complaint against an employer who retaliates or discriminates against an employee for
 - 1. requesting or using accrued sick days;
 - 2. attempting to exercise the right to use accrued paid sick days;
 - 3. filing a complaint or alleging a violation of Article 1.5 section 245 et seq. of the California Labor Code;
 - 4. cooperating in an investigation or prosecution of an alleged violation of this Article or opposing any policy or practice or act that is prohibited by Article 1.5 section 245 et seq. of the California Labor Code.

The following applies to the employee identified on this notice: (Check one box)

- ☐ 1. Accrues paid sick leave only pursuant to the minimum requirements stated in Labor Code §245 et seq. with no other employer policy providing additional or different terms for accrual and use of paid sick leave.
- ☐ 2. Accrues paid sick leave pursuant to the employer's policy which satisfies or exceeds the accrual, carryover, and use requirements of Labor Code §246.
- ☐ 3. Employer provides no less than 24 hours (or 3 days) of paid sick leave at the beginning of each 12-month period.
- ☐ 4. The employee is exempt from paid sick leave protection by Labor Code §245.5. (State exemption and specific subsection for exemption): _____

ACKNOWLEDGEMENT OF RECEIPT

(Optional)

(PRINT NAME of Employer representative)_____
(PRINT NAME of Employee)_____
(SIGNATURE of Employer Representative)_____
(SIGNATURE of Employee)_____
(Date)_____
(Date)

The employee's signature on this notice merely constitutes acknowledgement of receipt.

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this Notice within seven calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven days of the changes.

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