

OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND

Frequently Asked Questions (FAQs)

Oakland's Minimum Wage Law, Effective March 2, 2015 (Voter- approved ballot initiative, Measure FF, November 2014 election)

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I. INTRODUCTION

In November 2014, Oakland voters overwhelmingly passed Measure FF, an amendment to the Oakland Municipal Code establishing a minimum wage, requiring payment for accrued sick leave and requiring payment of service charges to hospitality workers.

The measure establishes a minimum wage in the City of Oakland of \$12.25 per hour, beginning on March 2, 2015. The minimum wage rate would increase yearly on January 1 based on increases in the cost of living. The measure also requires that employers in Oakland provide paid sick leave to their employees beginning on March 2, 2015, and requires that hospitality employers who collect service charges from customers pay all service charges to their hospitality workers.

Prior to the passage of this measure, existing state and federal law required employers to pay a minimum hourly wage to employees. However, there was no minimum wage requirement under local law. Existing law did not require employers to provide paid sick leave to their employees.

This memorandum answers frequently asked questions to help business owners, employees and others understand and follow the law in Oakland. Like other FAQs issued by this Office, this is a general guide and resource, and does not constitute legal advice. The full text of the law starts on page 15. If you have questions about this guide, or questions about the law that are not addressed here, please email info@oaklandcityattorney.org.

II. MINIMUM WAGE REQUIREMENT

1. What is Oakland's current minimum wage?

Answer: As of March 2, 2015, Oakland's minimum wage is \$12.25/hour, which is subject to a yearly increase. Oakland's minimum wage is adjusted once per year. Every January 1, Oakland's minimum wage will increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.

Oakland uses the August-to-August change in the Consumer Price Index ("CPI") to calculate the annual increase, if any, in Oakland's minimum wage rate.

You may access CPI data at <http://www.bls.gov/regions/west/california.htm>

You can also locate the current Oakland minimum wage at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451> or you can call Contracts and Compliance, Office of the City Administrator at (510) 238-6258 or email at minwageinfo@oaklandnet.com.

2. When does Oakland's new minimum wage go into effect pursuant to the passage of Measure FF?

Answer: March 2, 2015. Thereafter, if there is an increase in minimum wage, the increased rate shall go into effect January 1 of each year.

3. What is the difference between the federal, state (California) and Oakland minimum wage laws?

Answer: Oakland employers are subject to the federal, state and Oakland minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard. In the case of minimum wage, Oakland employers must pay employees the rate that is most beneficial to the employee. Thus, since Oakland's current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in Oakland who are subject to the laws must pay at least the City's minimum wage rate.

4. Does Oakland's minimum wage apply to employers outside the city but who employ employees who perform work in Oakland?

Answer: Yes. All employers, regardless of where they are located, must pay their employees who perform at least two hours of work in a particular week (also referred to as a "workweek") in Oakland the applicable Oakland minimum wage.

5. What is a "workweek?"

Answer: An employer may implement or use its current definition of "workweek" to determine employees' eligibility under Measure FF as long as this definition is not designed to make employees ineligible for Oakland's minimum wage.

6. Does Oakland's minimum wage apply to full time and part time employees?

Answer: Yes. Any person who performs at least two (2) hours of work in a particular week in Oakland is entitled to be paid Oakland's minimum wage.

7. Is Oakland's minimum wage the same for both adult and minor employees?

Answer: Yes.

8. Does Oakland's minimum wage cover employees who work in Oakland but are not City residents?

Answer: Yes. Any person who performs at least two hours of work in a particular week and within the geographic boundaries of the city of Oakland is entitled to receive compensation pursuant to Oakland's minimum wage. If an employee is eligible for Oakland's minimum wage, an employer must pay the employee Oakland's minimum wage for all hours worked in the geographic limits of Oakland.

9. Does an employer need to pay Oakland's minimum wage when an employee performs work outside the City of Oakland.

Answer: No. Oakland's minimum wage law only applies to work performed within the geographic limits of the City of Oakland.

10. Does an employer need to pay Oakland's minimum wage to individuals that are exempted from California's state minimum wage?

Answer: No. Oakland's Municipal Code section 5.92.020 and the corresponding interpretive regulations require employers to pay Oakland's minimum wage to employees who are entitled to receive the state minimum wage. Certain categories of workers are not entitled to state minimum wage. For additional information on these classifications of workers, please consult the Industrial Wage Commission ("IWC") Wage Orders (<http://www.dir.ca.gov/iwc/wageorderindustries.htm>) and/or the Division of Labor Standards and Enforcement (<http://www.dir.ca.gov/DLSE/dlse.html>).

11. Can an employee agree to work for less than Oakland's minimum wage?

Answer: No. Oakland's minimum wage is mandatory for any employer who employs an individual who performs work within the geographic boundaries of the city of Oakland. This minimum wage cannot be waived by any employee except through a bona fide collective bargaining agreement that contains clear and unambiguous terms setting forth such waiver.

12. What wage must an employer pay to a salaried employee who is exempt from overtime under state law? In other words, must the employer pay twice (or one and a half times) the state minimum wage rate or Oakland's minimum wage rate?

Answer: The City of Oakland, including its Contracts & Compliance Division, cannot advise employers on how to comply with California state law, including state law governing pay for salaried employees exempt from overtime. Please contact the Division of Labor Standards and Enforcement, California's Labor Commissioner.

13. What can an employee do if an employer does not pay him/her at least Oakland's minimum wage?

Answer: Employees can seek advice from an attorney and/or file a lawsuit in Court against their employer. Employees are entitled to all remedies available to correct a violation of this law, including back pay, reinstatement, injunctive relief, and/or attorneys' fees and expert witness fees and expenses. Additionally, any person who negligently or intentionally violates this law shall be liable for civil penalties for each violation to a maximum amount of \$1,000.00 per violation, the amount to be determined by a court.

Employees may also contact Contracts and Compliance, Office of the City Administrator at (510) 238-6258 or email at minwageinfo@oaklandnet.com.

14. Can an employer use tips as a credit towards its obligations under Oakland's minimum wage.

Answer: No. An employer may not take a tip credit towards its obligations to pay Oakland's minimum wage.

15. Does an employer need to provide notice of an employee's rights under Oakland's Minimum Wage Law?

Answer: Yes. Employers must give written notice to current employees and to new employees at the time of hire of his/her rights. The notice must be in all languages spoken by more than ten percent (10%) of the employees and shall be posted prominently in work areas that can be seen by all employees.

You may access the City's notice at the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451> or you can call Contracts and Compliance, Office of the City Administrator at (510) 238-6258 or email at minwageinfo@oaklandnet.com.

16. Does an employer need to provide notice of an increase in the minimum wage?

Answer: Yes. Upon the release of the CPI date, employers must provide notice of the new minimum wage rate to their employees no later than December 15th of that year. Increases in minimum wage will then take effect on January 1st.

17. Does Measure FF's minimum wage law apply to employees covered by an existing collective bargaining agreement?

Answer: Yes. Measure FF is a minimum labor standard and a law of general application that applies to all employees who are eligible under the law, whether represented by a union or not. However, the requirements of Measure FF may be waived by a legitimate collective bargaining agreement. The waiver must be express and in clear, unambiguous language. The parties to a collective bargaining agreement are free to negotiate any language they desire to expressly set forth such a waiver.

- 18. Can an employer take any adverse action against an employee for requesting to be paid Oakland’s minimum wage and/or filing a complaint for non-compliance with this Measure?**

Answer: No. An employer may not retaliate against an employee and it is unlawful to take adverse action against an employee who asserts his/her rights to receive Oakland’s minimum wage. Retaliation may include, but is not limited to, termination, demotion, reduction in hours or pay, discouraging complaints regarding noncompliance with this Measure FF, reducing vacation/PTO hours or other non-wage benefits, increasing expenses for employees for items such as parking, meals, and/or uniforms.

- 19. What role does the City of Oakland have in ensuring compliance with Oakland’s minimum wage law?**

Answer: Under the Measure, employers must permit authorized City employees access to worksites and relevant records (which may include the production of records) to monitor compliance with this law, investigate employee complaints or non-compliance.

Oakland may bring suit on behalf of an aggrieved employee against an employer who is in non-compliance with this law. Moreover, the City of Oakland, to the maximum extent permitted by law, may consider an employer’s record of noncompliance with this law in making decisions on city contracts, land use approvals, and other entitlements to expand or operate within Oakland. The law also authorizes the City of Oakland to either deny approval or include conditions for approval ensuring future compliance by investigating complaints of noncompliance with this law and rendering City decisions on the merits of such complaints. The City of Oakland is authorized to award the same relief in its proceedings as a court could award.

III. PAID SICK LEAVE REQUIREMENT

- 1. Who is entitled to paid sick leave?**

Answer: Any employee who performs at least two (2) hours of work in a particular week (also referred to as a “workweek”) within the geographic boundaries of Oakland is entitled to accrue paid sick leave. The Paid Sick Leave Measure does not apply to properly classified independent contractors.

- 2. Who must provide an employee paid sick leave?**

Answer: All employers with employees who work at least two hours in a particular workweek in the geographic limits of Oakland must allow employees to accrue paid sick leave. An employer is any person, entity, organization, corporation, etc. who directly or indirectly employs or exercises control over the wages, hours or working conditions of any employee. An employer includes a temporary services or staffing agency.

- 3. What is a “workweek?”**

Answer: An employer may implement or use its current definition of “workweek” to determine employees’ eligibility under Measure FF as long as this definition is not designed to knowingly make employees ineligible for Oakland’s paid sick leave.

4. **Do employers outside the city of Oakland need to provide paid sick leave in accordance with Oakland's paid sick leave law?**

Answer: Employers located outside the city of Oakland must allow employees to accrue paid sick leave if they perform at least two hours of work in a workweek in the City of Oakland.

5. **If an employer is based outside of Oakland but has employees who perform work in Oakland, do employees accrue paid sick leave only when working in Oakland?**

Answer: Yes. Employees accrue paid sick leave when they perform work in the geographic limits of the City of Oakland. Employers do not need to allow employees to accrue paid sick leave in accordance with Measure FF for work performed outside the City of Oakland but must otherwise comply with state law.

6. **How much paid sick leave must an employer provide to their employees?**

Answer: Employees accrue one (1) hour of paid sick leave for every thirty hours (30) hours they work. This includes any overtime hours worked by the employee. Employees accrue paid sick leave in hour-unit increments.

7. **When does the Paid Sick Leave law take effect?**

Answer: The Paid Sick Leave Law (Measure FF) takes effect on March 2, 2015.

8. **When do employees start accruing paid sick leave?**

Answer: March 2, 2015. Employees who are hired after March 2, 2015 commence accruing leave on their first day of work but shall not be entitled to use any accrued paid sick leave until after ninety (90) calendar days of employment.

9. **Can an employer cap the amount of paid sick leave that an employee accrues during their employment?**

Answer: Yes. Small businesses may cap paid sick leave earned by an employee at forty hours (40) hours and seventy-two (72) hours for employees of all other employers. If an employee uses paid sick leave and falls below the cap, even during the same year, he/she starts accruing paid leave again. An employer may also set a higher cap for paid sick leave or no cap at all.

10. **What is a small business?**

Answer: A small business is defined as an employer who normally has less than ten (10) people who work for compensation during a given week. In determining the total number of employees, you must include all workers (full-time, part-time, temporary and those staffed through a staffing agency), including those who work outside of the city of Oakland.

11. How does an employer determine if it is a “small business” if its workforce fluctuates in size?

Answer: If the number of persons who work for compensation fluctuates above and below ten or more per week over the course of a year, businesses should calculate its size for the current calendar year based on the average number of persons who worked for compensation per week during the preceding calendar week.

For example, for each of the fifty-two (52) weeks during the previous year, determine the total number of persons who worked for compensation; add these numbers together to obtain the yearly total of persons; then divide this number by fifty-two (52). If the number is below ten (10), the employer is a “small business” for the current calendar year. The employer must perform this calculation each year to ensure it is properly classified as a “small business.”

12. How does a new business determine whether it is a “small business?”

Answer: In this situation, businesses should calculate its business size for the current calendar year based upon the average number of persons per week who worked for compensation for the first ninety days after its first employee(s) began work.

13. If I am a small business, do I need to comply with California’s or Oakland’s paid sick leave law?

Answer: Oakland employers are subject to state and Oakland paid sick leave laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard or the law that is most beneficial to the employee. The City of Oakland, including its Contracts & Compliance Division, cannot advise employers on how to comply with California state law, including state law governing its new paid sick leave law. Please contact the Division of Labor Standards and Enforcement, California’s Labor Commissioner.

14. Does paid sick leave accrue on overtime hours worked by eligible employees?

Answer: Possibly. Whether an employee accrues paid sick leave on overtime hours worked depends on whether the employee is exempt under the Fair Labor Standards Act (FLSA) and California law. For employees who are not exempt from the overtime provisions of the FLSA and California law, paid sick leave accrues on all hours worked, including overtime hours. If an employee is properly classified as exempt from the overtime provisions of the FLSA and California law, paid sick leave accrues based on a forty (40) hours workweek absent clear and convincing evidence that the exempt employee’s regular workweek is less than forty (40) hours. In this situation, paid sick leave accrues based upon the hours worked in that particular workweek.

15. How do exempt employees accrue paid sick leave?

Answer: Employees who are properly classified as exempt under the Fair Labor Standards Act and California law 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 exempt employee.

16. Does accrued, paid sick leave carryover into the next year?

Answer: Yes. Accrued, unused paid sick leave carries over into the next year but is limited if an employer implements a cap.

17. Does the Measure require employers to provide seventy-two (72) hours of paid sick leave per year (forty (40) hours of paid sick leave per year for Small Businesses)?

Answer: No. The Measure states that employees accrue one hour of paid sick leave for every 30 hours worked. The number of hours of paid sick leave that an employee earns is based upon how many hours the employee works and whether the employer implements a lawful cap. Employers may risk a violation of Oakland's Paid Sick Leave law if they simply frontload seventy-two (72) hours (forty (40) hours for small business) of paid sick leave at the beginning of the year.

18. Are household employees, such as caregivers and housecleaners, covered by the Paid Sick Leave Measure?

Answer: Yes. Household employees who perform at least two (2) hours of work in a given week in Oakland for an Employer are covered by the law unless lawfully classified as independent contractors.

19. For what reasons can an employee use paid sick leave?

Answer: Employers must allow employees to use accrued paid sick leave in their "bank" in the following instances:

- When an employee is physically or mentally unable to perform his/her duties due to illness, injury, pregnancy or medical condition;
- To obtain a professional diagnosis or treatment of his/her medical condition or undergo a physical examination; and
- To aid or care for a child, parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, registered domestic person or a "Designated Person" who is ill, injured, or receiving medical care, treatment or diagnosis.

20. What is a "Designated Person" under Oakland's Paid Sick Leave Measure?

Answer: If an employee has no spouse or registered domestic partner, he/she may designate one individual that they will aid or care for under the Paid Sick Leave Measure.

- 21. Do employers have an obligation to take affirmative steps to offer employees without a spouse or registered domestic partner an opportunity to identify a “Designated Person?”**

Answer: Yes. Employers must provide an employee an opportunity to make a designation. The opportunity to designate shall be offered to an employee no later than thirty (30) days after he/she begins to accrue paid sick leave. Employers must provide the employee with no less than ten (10) workdays to make the designation. Thereafter, employees may change a designation or make a designation for the first time on an annual basis with a window of ten (10) workdays.

- 22. Is a step-child or foster child included as a family member for whom an employee can use paid sick leave?**

Answer: Yes. Employees may use paid sick leave to aid of care for a child, parent, legal guardian or ward, sibling, grandparent, grandchild and spouse or registered domestic partner under any state or local law. These relationships include not only biological relationships but also relationships resulting from adoption, step-relationships and foster care relationships.

- 23. Can an employer require its employees to use paid sick leave in one hour increments?**

Answer: Yes. Employers, however, may also permit employees to use paid sick leave in less than one hour increments.

- 24. Can an employer prohibit the use of paid sick leave when an employee performs works outside the City of Oakland?**

Answer: The law requires employers to allow employees to use accrued, unused paid sick leave when they are working or scheduled to work in the geographic limits of the City of Oakland. If an employer implements this policy and does not allow the use of accrued, paid sick leave hours when an employee works outside of Oakland, those hours remain “in the bank” for four years from the employee’s last day of work in Oakland. The accrued, unused paid sick leave hours shall be available for use should the employee work or be scheduled to work in Oakland at any time during those four years.

- 25. Can an employer require employees to use paid sick leave while out on a family medical leave under California or federal law?**

Answer: This question involves an interpretation of the Family Medical Leave Act (“FMLA”), the California Family Rights Act (“CFRA”), and in some circumstances California’s Pregnancy Disability Leave Act (“PDL”). Employers and employees should consult with the Federal Department of Labor regarding FMLA issues and with the California Department of Fair Employment and Housing regarding CFRA/PDL issues. Employers and employees can also review administrative regulations implementing these leave laws.

26. Can an employee who is receiving paid sick leave also get State Disability Insurance (SDI) or Workers' Compensation (WC) benefits?

Answer: Possibly. An employee who is receiving paid sick leave may be eligible for SDI and WC benefits at the same time. However, whether an employee is eligible for SDI or WC benefits is governed by the California Unemployment Insurance and California Labor Codes. For more information about SDI benefits, consult the Employment Development Department and for additional information regarding WC benefits, consult the Division of Compensation.

27. Will an employer's Paid Time Off (PTO) or Vacation policy satisfy the requirements of Oakland's Paid Sick Leave?

Answer: Possibly. If an employer has a paid leave policy, such as a PTO or vacation policy, that makes available to employees paid leave that may be used for the same purposes specified in the Measure (or for any purpose) and the policy is sufficient to meet the Measure's requirements for paid sick leave accrual, then an employer is not required to provide additional paid sick leave.

28. Can an employer require an employee to give advanced notice of the need to take paid sick leave?

Answer: Yes. Employers can require employees to give reasonable notice of the need to take paid sick leave. What is reasonable depends on the specific situation. An employer's policies or practices should not be so onerous that they deter employees from legitimate use of paid sick leave.

Policies that require advanced notification "as soon as practicable" for an unforeseeable absence from work for which paid sick will be used are, in principle, reasonable, and thus, presumptively lawful. Employers may define "as soon as practicable" as two hours, or a time period less than two hours, prior to the start of an employee's shift, as long as the employer recognizes that there are instances such as accidents, emergencies, or sudden illnesses, for which such a requirement of advanced notice is unreasonable.

29. What must an employer do if it requires advanced notice of the need to use paid sick leave?

Answer: An employer must establish a reasonable procedure for an employee to communicate absences to the employer. For example, providing employees with a telephone number that has a voicemail box or live person answering the telephone is reasonable.

30. Is an employer allowed to request medical documentation to ensure the time off of work was due to illness or the need to care for a family member or designated person who was ill?

Answer: Employers may take only reasonable measures to verify or document that an employee's use of paid sick leave is lawful. A policy that requires a doctor's note or other

medical documentation for the use of paid sick leave of three or more consecutive work days (whether full or partial days) is presumptively reasonable under Measure FF.

31. Is there a limit on the amount of money that an employee must pay out of pocket to confirm the legitimate use of paid sick leave?

Answer: Yes. If an employer requires an employee, who has not otherwise sought medical care during his/her paid sick leave absence, to obtain medical documentation solely for verification of paid sick leave compliance, the employer shall pay all costs in excess of five dollars (\$5.00).

32. At what rate does an employer pay out paid sick leave when he/she chooses to use it?

Answer: For hourly employees, employers pay out sick leave at their regular hourly rate. Employers should use the rate in existence at the time the employee takes the paid sick leave.

33. What is the sick leave rate of pay for employees who earn an annual salary?

Answer: The sick leave rate of pay for employees who are paid an annual salary is determined as follows:

- Divide the annual salary by fifty-two (52) to obtain the weekly salary;
- Divide the weekly salary by the number of hours the employee is regularly scheduled to work.
 - For employees who are not exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) and California law, the weekly salary must be divided by forty (40) or fewer hours, even if the nonexempt employee regularly works more than forty (40) hours per week;
 - For employees who are exempt from the overtime provisions of the FLSA and California law, the weekly salary should be divided by forty (40) hours unless there is clear and convincing evidence that the exempt employee regularly works less than forty hours in a workweek. In such an instance, the weekly salary should be divided by the number of hours worked during a regular workweek.

34. What is the sick leave rate of pay for an employee who has two jobs at different pay rates (or has a fluctuating pay rate) for the same employer?

Answer: An employer shall reimburse the employee for the use of paid sick leave at a rate of pay equal to the scheduled rate(s) of pay for the job during which the sick leave is taken.

35. Do employers factor in tips when calculating the rate for tipped employees when they use accrued, paid sick leave?

Answer: No. The sick leave rate of pay is based only upon the compensation by to the employee by the employer.

36. When must an employee be paid for the use of paid sick leave?

Answer: Sick leave must be paid to employees no later than the payday for the next regular payroll period after the sick leave was taken by the employee. However, if the employer has a reasonable verification requirement, the employer is not required to pay sick leave until the employee has complied with the verification requirement.

37. What may an employer do if it suspects and employee is or has engaged in paid sick leave abuse?

Answer: If an employer *reasonably* suspects an abuse of its paid sick leave policy, the employer may require a doctor's note for subsequent use of paid sick leave even if the use of paid sick leave was for fewer than three (3) consecutive workdays and even if the cost of obtaining such documentation exceeds five dollars (\$5.00).

If an employer's reasonable suspicions of paid sick leave abuse are not confirmed, the employer shall comply going forward with Oakland Municipal Code section 5.92.030 and Interpretive Regulations Section 8(A). On the other hand, if an employer's reasonable suspicions of paid sick leave abuse are confirmed, the employer may discipline in accordance with state and federal law and its disciplinary policies.

Employers should take caution because if they unreasonably or unlawfully accuse an employee of sick leave abuse, they violate Oakland Municipal Code sections 5.92.030 and 5.92.050.

38. What are some possible examples of a reasonable suspicion of sick leave abuse?

Answer: Examples of suspected sick leave abuse could include but are not limited to the following: a) taking paid sick leave on days when the employee's request for vacation leave was denied; b) a pattern of taking paid sick leave on days when the employee is scheduled to work a shift that may be perceived as undesirable, and c) a pattern of taking paid sick leave on Mondays or Fridays or immediately following a holiday.

39. Does an employer need to pay out accrued, unused paid sick leave to an employee at the time of separation of employment?

Answer: No. However, if an employer is using a PTO (paid time off) or Vacation policy to comply with the Measure, employers need to comply with other applicable laws, such as California law, which would require the payout of PTO or vacation upon separation of employment.

40. May an employee waive his/her right to paid sick leave?

Answer: No. Any request to waive the right to paid sick leave constitutes a violation of Oakland's Paid Sick Leave law. However, employees shall not be barred from entering into a written valid collective bargaining agreement waiving such a right as long as the waiver is set forth in clear, unambiguous terms in the contract.

41. Can an employer require or an employee request a “cash out” of accrued, unused paid sick leave?

Answer: No. However, employers and employees subject to a bona fide collective bargaining agreement are exempt to the extent that the collective bargaining agreement waives such exemption in clear and unambiguous terms.

42. Can an employer take any adverse action against an employee for lawfully taking or requesting paid sick leave?

Answer: No. An employer may not retaliate against an employee. Retaliation includes, but is not limited to, termination, demotion, reduction in hours or pay, discouraging complaints regarding noncompliance with this Measure, reducing vacation/PTO hours or other non-wage benefits, increasing expenses for employees for items such as parking, meals, and/or uniforms.

43. What can an employee do if an employer does not provide him/her with paid sick leave or retaliates against an employee for exercising his/her rights under the law?

Answer: Employees can seek advice from an attorney and/or file a lawsuit in a court of law against their employer. Employees are entitled to all remedies available to correct a violation of this law, including back pay, reinstatement, injunctive relief, and/or attorneys’ fees and expert witness fees and expenses. Additionally, any person who negligently or intentionally violates this law shall be liable for civil penalties for each violation to a maximum amount of \$1,000.00 per violation, the amount to be determined by a court.

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44. Does an employer need to provide notice of an employee’s rights under the Paid Sick Leave Measure?

Answer: Yes. Employers must give written notice to current employees and to new employees at the time of hire of his/her rights. The notice must be in all languages spoken by more than ten percent (10%) of the employees and shall be posted prominently in work areas that can be seen by all employees.

You may access the City’s sample notice at the following website:

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45. Does an employer need to retain records regarding employee use of paid sick leave?

Answer: Yes. Employers must retain records for at least three (3) years that document an employee's name, hours worked, pay rate and paid sick leave accrual and usage. An employer must provide an employee a copy of the records upon a reasonable request.

46. Does California's Paid Sick Leave law trump Oakland's Paid Sick Leave law?

Answer: Oakland employers are subject to state and Oakland paid sick leave laws. When California's and Oakland's paid sick leave laws contain conflicting requirements, the employer must follow the stricter standard or the law that is most beneficial to the employee. The City of Oakland, including its Contracts & Compliance Division, cannot advise employers on how to comply with California state law, including state law governing its new paid sick leave law. Please contact the Division of Labor Standards and Enforcement, California's Labor Commissioner.

47. What role does the City of Oakland have in ensuring compliance with Oakland's paid sick leave law?

Answer: Under the Measure, employers must permit authorized City employees access to worksites and relevant records (which may include the production of records) to monitor compliance with this law, investigate employee complaints or non-compliance.

Oakland also may bring suit on behalf of an aggrieved employee against an employer who is in non-compliance with this law. Moreover, the City of Oakland, to the maximum extent permitted by law, may consider an employer's record of noncompliance with this law in making decisions on city contracts, land use approvals, and other entitlements to expand or operate within Oakland. The law also authorizes the City of Oakland to either deny approval or include conditions for approval ensuring future compliance by investigating complaints of noncompliance with this law and rendering City decisions on the merits of such complaints. The City of Oakland is authorized to award the same relief in its proceedings as a court could award.

IV. SERVICE CHARGE REQUIREMENT

1. Who is covered under the Service Charge Measure?

Answer: The Measure applies to a "Hospitality Employer" which is defined as one who owns, controls, or operates any part of a hotel, restaurant or banquet facility within Oakland.

2. What does this Measure prohibit and mandate?

Answer: If an employer charges a "service charge," it must be paid in its entirety to the "Hospitality Worker(s)" who performed services for the customers from whom the Service Charge was collected. Hospitality Employers may not keep any of the service charge.

3. Who is a "Hospitality Worker?"

Answer: A “Hospitality Worker” is an individual that works for a Hospitality Employer who performs a service for which the employer imposes a service charge. Managerial employees are excluded from this definition.

4. What is a “service charge” under the Measure?

Answer: The Measure defines a “service charge” as a separately-designated amount collected by a Hospitality Employer from customers that is for services rendered by Hospitality Workers. These charges include, but are not limited to, items on receipts labeled as “service charge,” “delivery charge” or “portage charge.”

5. Can a Hospitality employer define the term “service charge” in Measure FF?

Answer: Yes. Employers covered under the Service Charge law may reasonably define the term “service” in Oakland Municipal Code section 5.92.040; the purpose of a Service Charge at their establishment; what the Service Charge includes; and which type of Hospitality Workers may share in the Service Charge (referred to as “Chain of Service”).

However, Hospitality Employers may not further define a Service Charge or implement a Chain of Service policy in the following instances: a) service charges collected for banquets or catered meetings must be paid to the employees who actually worked the banquet or catered meetings; b) service charges collected for room service shall be paid to employees who actually deliver food and beverage associated with the charge; and c) service charges collected for portage service shall be paid to the employee who actually carries the bag associated with the charge.

6. If a Hospitality Employer chooses to define the term “service charge” what must it do to ensure compliance with Measure FF?

Answer: A employer must have a written policy for its employees that contains, at a minimum, the following: a) a complete definition of “service,” including a reasonable and thorough description of why and for what the Hospitality Employer is charging the Service Charge; b) each Hospitality Worker position that is included in the Chain of Service; c) 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; d) written notice that supervisors shall not receive a portion of the Service Charge unless they perform nonsupervisory work in the Chain of Service; e) 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 f) 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.

Hospitality Employers must also provide adequate, written notice to its customers of its Chain of Service policy. The Notice must include, at a minimum, the amount of the service charge, what the Service Charge is for and who shares in the Service Charge.

7. May a Hospitality Employer modify or discontinue its Chain of Service policy.

Answer: Yes. The employer must give at least fifteen (15) calendar days advanced, written notice to Hospitality Employees and written notice to its customers concurrently with the implementation or discontinuation of the new policy.

8. Can an employer use a service charge as a credit towards its obligations under Oakland's minimum wage?

Answer: No. An employer may not take a credit towards its obligations to pay Oakland's minimum wage.

9. Is an employer obligated to factor in the service charge paid to employees when calculating their regular rate of pay for overtime purposes?

Answer: The City of Oakland, including its Contracts & Compliance Division, cannot advise employers on how to comply with California state law, including state law governing its new service law. Please contact the Division of Labor Standards and Enforcement, California's Labor Commissioner.

10. Can a supervisor or manager share in the service charge?

Answer: No. However, supervisors and managers are entitled to be paid a portion of the service charge for their time spent on nonsupervisory work serving customers. The portion paid to supervisors or managers cannot be higher than the average rate paid to Hospitality Workers performing similar duties.

11. When must an employer pay the service charge to its employees?

Answer: Hospitality Employers must distribute the charge no later than the next payroll following the work or collection of the charge from the customer, whichever is later.

12. Does an employer need to provide notice of an employee's rights under the Service Charge Law?

Answer: Yes. Employers must give written notice to current employees and to new employees at the time of hire of his/her rights. The notice must be in all languages spoken by more than ten percent (10%) of the employees and shall be posted prominently in work areas that can be seen by all employees.

You may access the City's sample notice at the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451> or you can call Contracts and Compliance, Office of the City Administrator at (510) 238-6258 or email at minwageinfo@oaklandnet.com.

13. Does this Measure apply to tips?

Answer: Typically no. This measure does not apply to a tip, gratuity, or money that has been paid, given to, or left for a Hospitality Worker by customers over and above the actual amount due for services rendered. Employers must continue to follow California law regarding employee rights to tips.

14. Can an employer take any adverse action against an employee for requesting compliance or complaining about non-compliance with the Service Charge Measure?

Answer: No. An employer may not retaliate against an employee. Retaliation includes, but is not limited to, termination, demotion, reduction in hours or pay, discouraging complaints regarding noncompliance with this Measure, reducing vacation/PTO hours or other non-wage benefits, increasing expenses for employees for items such as parking, meals, and/or uniforms.