

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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Issued by:

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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?

A: 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.

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://www.oaklandbac.com> 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?

A: 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?

A: 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?

A: 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 in Oakland the applicable Oakland minimum wage.

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

A: 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.

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

A: Yes.

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

A: 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.

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

A: 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.

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

A: 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.

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

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

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

A: 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 <http://www.oaklandbac.com>.

12. 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?

A: 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.

13. What role does the City of Oakland have in ensuring compliance with Oakland's minimum wage law?

A: 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?

A: Any employee who performs at least two (2) hours of work in a given week 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?

A: 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 without limitation to a temporary services or staffing agency.

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

A: 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.

4. When does the Paid Sick Leave law take effect?

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

5. When do employees start accruing paid sick leave?

A: 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.

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

A: 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.

7. What is a small business?

A: 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.

8. Does paid sick leave carryover into the next year?

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

9. 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)?

A: No. The Measures 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.

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

A: 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.

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

A: 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. For exempt employees, employers must follow state and federal law to determine how much is owed to the employee.

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

A: Employers must allow employees to use paid sick leave 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 partner or a “Designated Person” who is ill, injured, or receiving medical care, treatment or diagnosis.

13. What is a “Designated Person” under Oakland’s Paid Sick Leave Measure?

A: 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.

14. 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?”

A: 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.

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

A: 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.

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

A: 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: 29 Code of Federal Regulations, Section 825.207 and California Administrative Code, Title 2, Section 7297.5.

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

A: 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.

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

A: 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.

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

A: No. However, if an employer is using a PTO 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.

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

A: Yes. Employers can require employees to give reasonable notice of the need to take paid sick leave.

21. What is reasonable notice?

A: 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.

22. 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?

A: Employers may only take reasonable measures to verify or document that an employee's use of paid sick leave is lawful. They cannot require an employee to incur expenses in excess of \$5.00 in order to show his/her eligibility to take paid sick leave.

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

A: 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.

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

A: 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.

25. 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?

A: 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.

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

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

A: 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 <http://www.oaklandbac.com>.

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

A: 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.

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

A: 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 also 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?

A: 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?

A: 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?”

A: 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?

A: The Measure defines a “service charge” as a separately-designated amount collected by a Hospitality Employer from customers that are 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.”

The following are some examples of service charges that must be paid to Hospitality Workers: service charges collected for banquets or catered meetings must be paid to the employees who actually worked the banquet or catered meetings; service charges collected for room service shall be paid to employees who actually deliver food and beverage associated with the charge; and service charges collected for portage service shall be paid to the employee who actually carries the bag associated with the charge.

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

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

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

A: 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.

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

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

8. Does this Measure apply to tips?

A: 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 should continue to follow California law regarding employee rights to tips.

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

A. 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.

FULL TEXT OF THE LAW

OAKLAND MUNICIPAL CODE CHAPTER 5.92. CITY MINIMUM WAGE, SICK LEAVE, AND OTHER EMPLOYMENT STANDARDS

Sec. 5.92.010. Definitions

As used in this Chapter, the following capitalized terms shall have the following meanings:

"City" shall mean the City of Oakland.

"Employee" shall mean any person who:

- a. In a particular week performs at least two (2) hours of work within the geographic boundaries of the City for an Employer; and
- b. Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

"Employer" shall mean any Person who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any Employee.

"Paid Sick Leave" shall mean paid "sick leave" as defined in California Labor Code § 233(b)(4), except that the definition here extends beyond the Employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an Employee for the purpose of providing care or assistance to other persons specified below with an illness, injury, medical condition, or need for medical diagnosis or treatment.

"Minimum Wage" shall have the meaning set forth in Section 5.92.020 of this Chapter.

"Person" means an individual corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

"Small Business" shall mean an Employer for which normally fewer than ten persons work for compensation during a given week, including persons employed outside the City. The City Council is authorized to adopt regulations further defining "small business" for businesses with fluctuating numbers of employees. In determining the number of persons performing work for an employer during a given week, all persons performing work for the same business enterprise for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

Sec. 5.92.020. Minimum Wage.

A. Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.

B. Beginning on the 2nd of March, 2015, the Minimum Wage shall be an hourly rate of \$12.25. To prevent inflation from eroding its value, beginning on the 1st of January 2016, and then each year thereafter on the 1st of January, the Minimum Wage shall increase by an amount corresponding to the prior calendar 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 (or if such index is discontinued, then in the most similar successor index).

Sec. 5.92.030. Paid Sick Leave

A. ACCRUAL OF PAID SICK LEAVE.

1. Paid Sick Leave shall begin to accrue as of the 2nd of March, 2015. For Employees hired by an Employer after March 2, 2015, the Employee shall not be entitled to use Paid Sick Leave until after 90 calendar days of employment with the Employer.
2. For every 30 hours worked after Paid Sick Leave begins to accrue for an Employee, the Employee shall accrue one hour of Paid Sick Leave. Such leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of such leave.
3. For Employees of Small Businesses, there shall be a cap of 40 hours of accrued Paid Sick Leave. For Employees of other Employers, there shall be a cap of 72 hours of accrued Paid Sick Leave. Accrued Paid Sick Leave for Employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned cap. Nothing herein precludes an Employer from establishing a higher cap or no cap on the number of accrued hours.
4. If an Employer has a paid leave policy, such as a paid time off policy, that makes available to Employees an amount of paid leave that may be used for the same purposes as Paid Sick Leave under this Chapter and that is sufficient to meet the requirements for accrued Paid Sick Leave as stated in subsections (a)-(c), the Employer is not required to provide additional Paid Sick Leave.
5. An Employer is not required to provide financial or other reimbursement to an Employee upon the Employee's termination, resignation, retirement, or other separation from employment, for accrued Paid Sick Leave that the Employee has not used.

B. USE OF PAID SICK LEAVE.

1. An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code § 233(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state or local law, or designated person. The Employee may use all or any percentage of his or her Paid Sick Leave to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; steprelationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis. If the Employee has no spouse or registered domestic partner, the Employee may designate one person as to whom the Employee may use paid sick leave to aid or care for that person in lieu of a spouse or registered domestic partner. The opportunity to make such a designation shall be extended to the Employee no later than the date on which the Employee has worked 30 hours after Paid Sick Leave begins to accrue pursuant to this Chapter. There shall be a window of 10 work days for the Employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the Employee on an annual basis, with a window of 10 work days for the Employee to make the designation.

2. An Employer may not require, as a condition of an Employee's taking Paid Sick Leave, that the Employee search for or find a replacement worker to cover the hours during which the Employee is on Paid Sick Leave.

3. An Employer may require Employees to give reasonable notification of an absence from work for which Paid Sick Leave is or will be used.

4. An Employer may only take reasonable measures to verify or document that an Employee's use of Paid Sick Leave is lawful, and shall not require an Employee to incur expenses in excess of five dollars in order to show his or her eligibility for such paid leave.

Sec. 5.92.040. Hospitality Service Charges

A. DEFINITIONS FOR THIS SECTION:

1. "Service Charge" means all separately-designated amounts collected by a Hospitality Employer from customers that are for service by Hospitality Workers, or are described in such a way that customers might reasonably believe that the amounts are for those services, including but not limited to those charges designated on receipts under the term "service charge," "delivery charge," or "portage charge."

2. "Hospitality Employer" means a Person who owns, controls, or operates any part of a hotel or restaurant or banquet facilities within the City, including as a subcontractor thereto, but does not include any governmental agency.

3. "Hospitality Worker" means any individual who works for a Hospitality Employer and who performs a service for which a Hospitality Employer imposes a Service Charge. "Hospitality Worker" does not include a managerial employee.

B. HOSPITALITY EMPLOYERS' RESPONSIBILITIES

1. Service Charges shall not be retained by the Hospitality Employer but shall be paid over in their entirety to the Hospitality Worker(s) performing services for the customers from whom Service Charges are to be collected. No part of these charges may be paid to supervisors except for any portion of their work time spent on nonsupervisory work serving these customers, and then at no higher rate of compensation than the average of what is paid other Hospitality Workers performing similar customer service. The Service Charges shall be distributed to the Hospitality Workers not later than the next payroll following the work or collection of the charge from the customer, whichever is later. Without limitation of the foregoing:

a. Service charges collected for banquets or catered meetings shall be paid to the Hospitality Workers who actually work the banquet or catered meeting;

b. Service charges collected for room service shall be paid to the Hospitality Workers who actually deliver food and beverage associated with the charge; and

c. Service charges collected for portage service shall be paid to the Hospitality Workers who actually carry the baggage associated with the charge.

2. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for a Hospitality Worker by customers over and above the

actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

Sec. 5.92.050. Enforcement

A. RETALIATION BARRED

1. A Person shall not discharge, reduce the compensation of nor otherwise discriminate against any Person for making a complaint to the City, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within 120 days of an Employer being notified of such activity, it shall be unlawful for the Employer to discharge any Employee who engaged in such activity unless the Employer has clear and convincing evidence of just cause for such discharge.

2. No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the compensation of any non-management Employees nor by reducing the pension, vacation, or other non-wage benefits of any such Employees, nor by increasing charges to them for parking, meals, uniforms or other items. If an Employer makes such adverse changes after the filing of the notice to circulate the petition giving rise to this Chapter but before this Chapter has become effective, then upon this Chapter's effective date, such Employer shall restore the conditions of the status quo ante.

B. WAIVER

Any waiver by an individual Employee of any of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Chapter if such waiver is set forth in clear and unambiguous terms. Any request to an individual Employee by an Employer to waive his or her rights under this Chapter shall constitute a violation of this Chapter.

C. RETENTION OF RECORDS

Each Employer shall maintain for at least three years for each Employee a record of his or her name, hours worked, pay rate, Paid Sick Leave accrual and usage, and Service Charge collection and distribution. Each Employer shall provide each Employee a copy of the records relating to such Employee upon the Employee's reasonable request.

D. NOTICE TO EMPLOYEES

Each Employer shall give written notification to each current Employee and to each new Employee at time of hire, of his or her rights under this Chapter. The notification shall be in all languages spoken by a more than 10% of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. The City Administrator is authorized to prepare sample notices and Employer use of such notices shall constitute compliance with this subsection.

E. CITY ACCESS

Each Employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this Chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing social security numbers to become a matter of public record.

F. CITY AUTHORIZED TO CONSIDER COMPLIANCE

City officials are hereby authorized to consider, to the maximum extent permitted by law, an Employer's record of noncompliance with this Chapter in making City decisions on City contracts and land use

approvals and other entitlements to expand or operate within the City. The City is authorized to either deny approval or include conditions for approval ensuring future compliance by investigating complaints of noncompliance with this Chapter and rendering City decisions on the merits of such complaints. The City is authorized to award the same relief in its proceedings as a court may award. Pursuit of such administrative remedy shall not be a prerequisite for pursuing a private action under this Chapter.

8. PRIVATE RIGHTS OF ACTION

Any Person claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to remedy any violation of this Chapter, including but not limited to back pay, reinstatement and/or injunctive relief. Violations of this Chapter are declared to irreparably harm the public and covered employees generally. The Court shall award reasonable attorney's fees, witness fees and expenses to any plaintiff who prevails in an action to enforce this Chapter. Any

Person who negligently or intentionally violates this Chapter shall be liable for civil penalties for each violation with a maximum of \$1000 per violation, the amount to be determined by the court. No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.

9. NO PREEMPTION OF HIGHER STANDARDS

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City or Port of Oakland. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

10. SEVERABILITY

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port or City of Oakland. This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City or Port activities.”