



## City of West Hollywood

# Minimum Wage Ordinance Administrative Regulations

The City of West Hollywood hereby promulgates administrative regulations to implement and enforce the City's Minimum Wage Ordinance codified in Chapter 5.130 of the West Hollywood Municipal Code. All citations to a code section refer to a section of the West Hollywood Municipal Code unless otherwise stated. These administrative regulations should be read in conjunction with the Minimum Wage Ordinance.

### **Guidance for Payment of Citywide Minimum Wage**

"Employee" means any person who performs at least two (2) hours of work per week within the geographic boundaries of the City for an Employer; and qualifies as an Employee entitled to payment of a Minimum Wage from any Employer under the California Labor Code and wage orders published by the California Industrial Welfare Commission. Employees that are considered "Exempt Employees" pursuant to state law are not subject to the provisions of the Minimum Wage Ordinance. Any domestic worker, entitled to payment of a Minimum Wage from any Employer under the California Labor Code and as defined by State law, is considered an Employee.

"Employer" means any person, including a corporate officer or executive, association, organization, partnership, business trust, and limited liability company or corporation, who directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any Employee.

### **Calculation of Number of Employees**

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

1. Every Employee regardless of whether they are a full-time, part-time, or temporary Employee shall be counted as one (1) Employee.
2. Every individual made available to work through the services of a temporary services, staffing agency, or similar entity shall be counted as one (1) Employee.
3. For Employers with multiple locations, the total number of Employees shall be calculated based on the total number of all Employees employed by the Employer in the United States.
4. Franchises are separate entities (individual Employers) for the purposes of calculating business size. The total number of Employees shall be calculated based on the total number of all Employees employed by the individual franchise owner in the United States. If the Employer owns more than one of the same franchise (i.e. McDonald's locations), the total number of Employees shall be based on the total number of Employees within all of those

franchise locations that are owned by the Employer, not the total number of Employees of the corporate franchisor.

For existing Employers, the number of Employees shall be calculated based on the average number of Employees employed per quarter during the most recent calendar year to account for any fluctuations of Employees throughout the year. Employers should use IRS Form 941 as a reference to determine quarterly Employee counts.

For new Employers, an initial determination of size is based upon the actual number of hires at the time of the business' opening. After the business has opened the Employee count shall be determined by the average number of Employees per week who worked for compensation in the first ninety (90) days.

### **Qualification of Employers Outside the City**

An Employee is subject to the Citywide Minimum Wage if the Employee physically works within the City limits for at least two (2) hours per week, either on a permanent or temporary basis, even if the Employer's place of business is not physically located within the City. An Employee of an Employer outside the City shall only be paid the West Hollywood Minimum Wage for time worked within the City of West Hollywood. Employees who work outside the City but travel through the City without stopping for the purposes of their work are not subject to the West Hollywood Minimum Wage.

An Employee who lives in the City and performs work for an Employer from home, including telecommuting, is subject to the Citywide Minimum Wage.

### **Calculation of Consumer Price Index**

Beginning July 1, 2022, and annually thereafter, the Minimum Wage rate will be based on the Non-Seasonally Adjusted, All Items Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (CPI-W) that includes the Los Angeles metropolitan area. The current name of the data set that includes the Los Angeles metropolitan area is the Los Angeles-Long Beach-Anaheim, CA area. The CPI is published by the Bureau of Labor Statistics.

By April 1st of each year, the City will announce and publish a notice with the adjusted minimum wage rates that take effect each July 1st. The Minimum Wage rate shall increase each year based on the CPI-W, however, the increase shall be no less than 1.00% (minimum increase) and no more than 4.00% (maximum increase). In the event there is a decrease or negative CPI, the Minimum Wage Rate shall be increased by 1.00%.

The City approved a phase-in of the Minimum Wage rate for Employees at Large Businesses and Employees at Small Businesses. The phase-in will occur from January 1, 2022, through July 1, 2023. Visit the City of West Hollywood's Minimum Wage webpage at [www.weho.org/wage](http://www.weho.org/wage) for current Minimum Wage rates.

### **Guidance for Compensated and Uncompensated Leave**

On an annual basis, Employers shall provide at least 96 hours of Compensated Leave for full-time Employees. "Compensated Leave" means Employer paid time off for sick, vacation, or personal necessity leave. For purposes of the Ordinance, Employers may provide Compensated Leave for sick, vacation, or personal necessity leave separately, as long as the total combined number of Compensated Leave hours

is greater than or equal to 96 hours for full-time employees. At least 50% of the time, or at least 48 hours, must be provided to employees for the purpose of vacation or personal necessity leave. Part-time Employees shall accrue Compensated Leave on a pro-rata basis.

Further, all employees, including full-time, part-time, or temporary employees that work at least 30 days within a year from the commencement of employment for the same employer, must be provided with at least 24 hours of leave time for sick leave purposes that is available to the employee to use by the completion of his or her 90th calendar day of employment in accordance with California Labor Code section 246. If an Employer is already providing Compensated Leave, the Employer is only required to provide additional leave up to 96 hours for full-time employees. Employers must ensure that Compensated Leave requirements under State law are met.

Employers shall provide at least 80 hours of Uncompensated Leave for full-time Employees. "Uncompensated Leave" is unpaid time off to be used for sick leave for the illness of the Employee or a member of their immediate family, as defined by the California Family Rights Act (CFRA), once Compensated Leave is fully exhausted. All unpaid time off provided by the Employer shall be referred to as Uncompensated Leave.

Full-time Employees are defined as Employees who work at least 40-hours per week. Part-time Employees are defined as employees that work less than 40 hours per week on a regular basis. Temporary employees are defined as employees that work for an employer for a limited duration. Compensated Leave classified as vacation or personal necessity leave and Uncompensated Leave shall be based on a proration of the number of hours the part-time employee works.

### **Methods for Distribution of Compensated and Uncompensated Leave**

Compensated and Uncompensated Leave begins January 1, 2022, for Hotels and July 1, 2022, for all other businesses.

For Compensated Leave classified as vacation or personal necessity leave, the Employer may either cause the Compensated Leave to accrue at any rate such that all required hours will be accrued by or before the end of a one year period or choose to front-load the hours each year so long as this leave is not less than 48 hours for the purpose of providing an employee with vacation or personal necessity leave. This leave may be provided to part-time and temporary employees on a pro-rata basis, determined by the employer.

For Compensated Leave classified as paid sick leave, an Employee shall accrue no less than 0.033 hours of Compensated Leave for each hour worked (i.e. 1 hour Compensated Leave classified as paid sick leave for every 30 hours worked) once an employee reaches 24 hours of paid sick leave. Alternatively, an Employer may choose to front-load the hours each year for the purpose of providing its employees with sick leave. Employers must provide a minimum of 24 hours of sick leave for all employees, full-time, part-time, and temporary in accordance with Labor Code section 246. Any hours beyond the requisite 24 hours of leave for sick leave purposes shall be provided on a pro-rata basis to part-time and temporary employees.

If an Employer chooses to provide Compensated Leave on an accrual basis throughout the year, those hours shall be provided each pay period for both full-time and part-time employees.

Employers are required to provide an Employee with up to 80 hours of Uncompensated Leave per year, subject to a pro-rata basis for part-time employees.

Alternatively, Employers may choose to front-load Compensated Leave. Employers who chose to front-load Compensated Leave shall select one type of anniversary, either at the beginning of each year of employment or 12-month period. At each anniversary date, and Employer shall provide all 96 Compensated Leave hours, or the pro-rata rate for part-time employees.

Employees shall start to accrue Compensated and Uncompensated Leave on their first day of employment, however, they are not eligible to use the accrued leave until the dates detailed in the “Use of Compensated and Uncompensated Leave” section below, unless the Employer adopts a more generous policy.

### **Carry Over of Compensated and Uncompensated Leaves**

Compensated Leave accrued by an Employee, whether by accrual method or by front-loading method, shall carry over to up to a maximum of 192 hours, unless the Employer’s policy is more generous. Unused Uncompensated Leave accrues up to a maximum of eighty (80) hours and shall carry over to the following year up to the maximum of eighty (80) hours, unless the Employer’s policy is more generous.

When an Employee reaches the maximum accrued Compensated and Uncompensated Leave (if a cap is set by the Employer), the Employee shall not accrue additional Compensated or Uncompensated Leave until a portion of the Leave is used.

### **Compensated and Uncompensated Leave Upon Separation**

Per California Labor Code 227.3, any portion of Compensated Leave classified as vacation or personal necessity leave shall be paid out at the Employee’s regular wage rate upon termination.

Any portion of Compensated Leave classified as sick leave is not required to be paid to the Employee upon termination. However, if an Employee is rehired by the Employer within one (1) year of the date of separation from employment, any previously accrued and unused Compensated Leave, classified as paid sick leave, must be reinstated. If the Employer’s policy pays out an Employee for accrued and unused Compensated Leave classified as sick leave, upon separation from employment, the Employer is not required to reinstate the Employee’s Compensated Leave classified as paid sick leave if the Employee is subsequently rehired.

An Employee who separates from their Employer is not required to be paid out for any unused Uncompensated Leave. If an Employee is rehired by the Employer within one (1) year of the date of separation from employment, any previously accrued and unused Uncompensated Leave shall be reinstated.

### **Use of Compensated and Uncompensated Leave**

Employees are entitled to use Uncompensated Leave and any accrued Compensated Leave no later than the 90th day of their employment or consistent with company policies, whichever is sooner. However Compensated Leave designated as sick leave, shall be made available to the Employee no later than the 90th day of their employment, pursuant to State law.

Employees shall use Uncompensated Leave only if they have fully exhausted their Compensated Leave or are ineligible to use accrued Compensated Leave. Uncompensated Leave shall only be used for sick leave for the illness of the Employee or a member of their immediate family as defined by the California Family Rights Act (CFRA).

Employers shall not unreasonably deny an Employee's request or implement policies that count Compensated or Uncompensated Leave taken as an absence that may result in discipline, discharge, suspension, or any other adverse action.

An Employer may adopt reasonable and clear written policies pertaining to the use of Compensated and Uncompensated Leave. The following are some examples of provisions that could be included in that policy, though an Employer may set a reasonable policy that includes or does not include the examples below:

1. Explaining how Compensated and Uncompensated Leave hours are accumulated and used for businesses with multiple locations inside and outside of the City boundaries.
2. Setting a reasonable minimum increment to use the Leave.
3. Requiring Employees to give reasonable notification of an absence from work for which Compensated or Uncompensated Leave may be used. An Employer requiring reasonable notification must establish a reasonable procedure for an Employee to communicate absences to the Employer.
4. Any policy adopted by the Employer must comply with Federal, State, and local law.
5. Maintaining adequate staffing to continue business operations before non-essential time off is taken.

#### **Guidance for Application of Waiver for Certain Employers**

Employers may apply for a waiver of the Minimum Wage Rate and/or the Leave Provisions outlined in the Ordinance.

#### **Application of Waiver for Payment of Minimum Wage Rate**

Employers who are able to demonstrate the implementation of the City's Minimum Wage Rate would cause the Employer to declare bankruptcy, shutdown the Employer's business, reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%) may qualify for a one-year waiver for the Minimum Wage Rate, as provided in Section 5.130.080 (A).

Employers must complete the City of West Hollywood Minimum Wage Rate Waiver Application and submit all required documents. Incomplete applications or applications without all required documents will be denied. Employers can only be approved for a waiver for a duration of one (1) year from the approval date. Any new waivers would require a new application and approval. The waiver provided under this section only allows for Employers to defer the Citywide Minimum Wage requirements in Section 5.130.020 (A) and (B). Employers are still required to follow all other provisions of the Ordinance, including Compensated and Uncompensated Leave (unless the Employer applies for and receives a waiver for those provisions, as provided below), and Service Charges. Employers that are approved for a waiver shall pay the wage rate at the State minimum wage that the business is on at the time of applying for a waiver. A waiver does not exempt an Employer from complying with any and all

Federal, State, or local laws and regulations, including any applicable state minimum wage requirements.

Submittal of a waiver application does not guarantee approval. The City Manager, or their designee, will review the Employer's waiver application and make a determination.

### **Application of Waiver for Leave Provisions**

Employers who are able to demonstrate the implementation of the Compensated and Uncompensated Leave provisions in the Ordinance would cause the Employer to declare bankruptcy, shutdown the Employer's business, reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%) may qualify for a one-year waiver for the leave provisions, as provided in Section 5.130.080 (B).

Employers who are able to demonstrate the implementation of the Compensated and Uncompensated Leave provisions in the Ordinance would cause a hardship to implement due to the existing payroll and human resources processes and platforms the Employer has in place may qualify for up to two (2) three (3) month waivers (not to exceed a total of six months).

Employers must fill out the City of West Hollywood Leave Provisions Waiver Application and submit all required documents. Incomplete applications or applications without all required documents will be denied.

The total combined length of all waivers provided under this section (Section 5.130.080 (B)) shall not exceed one year. The waiver provided under this section only allows for Employers to defer the Compensated and Uncompensated Leave requirements in Section 5.130.030. Employers are still required to follow all other provisions of the Ordinance, including payment of the Minimum Wage Rate (unless the Employer applies for and receives a waiver for the Minimum Wage Rate, as provided above), and Service Charges. Employers that are approved for a waiver must provide at least the minimum Compensated and Uncompensated leave as required by State law. A waiver does not exempt an Employer from complying with any and all Federal, State, or local laws and regulations, including any applicable state minimum wage requirements.

Submittal of a waiver application does not guarantee approval. The City Manager, or their designee, will review the Employer's waiver application and make a determination.

### **Required Notices to Employees**

Employers who apply for a waiver are required to notify all of their Employees, in writing, of the Employer's intent to apply for a waiver. The written notice must be provided to all Employees before the Employer submits the waiver application. Within three (3) business days of the waiver determination, the Employer will need to again provide a written notice, to all Employees, of the decision.