

CITY OF SANTA MONICA MINIMUM WAGE

Rules and Regulations

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RULES PURPOSE AND CONSTRUCTION

The Finance Director is authorized to adopt administrative regulations for Santa Monica's Minimum Wage Ordinance (MWO) and Hotel Worker Living Wage Ordinance (collectively, "Wage Ordinances") pursuant to Santa Monica Municipal Code (SMMC) Sections 4.62.090 and 4.63.090. These rules are to assist with the law's implementation.

Violations of administrative regulations shall constitute violations of the Wage Ordinances, and shall subject the violator to the applicable penalties set forth in the law (SMMC Sections 4.62.100 and 4.63.100).

RULE 1: DETERMINING WHO IS AN EMPLOYEE

The City will apply the following guidelines to determine if an Employee is covered by the Minimum Wage Ordinance (MWO):

- The Employee performs at least two hours of work in any particular week within the geographic boundaries of the City for an Employer.
- The Employee 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.

Definitions

"Particular Week" means any seven consecutive days, starting with the same calendar day each week.

Week for the purpose of the MWO Employee hour shall be a fixed and regularly occurring period of seven consecutive 24-hour periods, which is equivalent to a period of 168 hours.

Types of Workers

The Wage Ordinances apply to full-time, part-time, seasonal, and temporary workers.

Exempt Employees

The MWO does not cover exempt employees. For these workers, Employers must follow applicable California and/or federal law.

Independent Contractors.

The MWO does not cover independent contractors. For these workers, Employers must follow applicable California and/or federal law.

Telework

An individual who lives in the City and performs work for an Employer from home, including telework (i.e., telecommuting), is covered by the MWO. An individual who works from a home that is outside the geographic boundaries of the City is not covered by the MWO, even if the individual works for a Santa Monica-based business, unless the individual also works at least two hours in any particular week for the Employer within the geographic boundaries of the City.

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RULE 2: DETERMINING MINIMUM WAGE PAYMENT

Calculating wage payment

Employers shall follow applicable California and federal law and rules and regulations regarding bonuses or other incentive pay, commissions, and tips and gratuities, or other similar payments, for minimum wage calculation purposes.

Franchises

Employers shall calculate the number of Employees as set out in SMMC Section 4.62.015. Franchises are separate entities (individual Employers) for purposes of calculating business size.

RULE 3: WAGE AND TRACKING HOURS

Employees are entitled to Santa Monica wage and other benefits for all hours worked within Santa Monica, in any particular week in which they work at least two hours in Santa Monica. The two hours do not need to be consecutive; work may be performed on an occasional or intermittent basis that accumulates to at least two hours in any particular week.

The MWO does not cover an individual who performs all work outside the City, even if the Employer is based in the City. Hours worked outside the City are not covered by the MWO.

Employers must keep payroll records pursuant to SMMC Section 4.62.015(g) and keep any records in accordance with any applicable local, state, or federal law. This includes, but is not limited to, hours worked each day and total hours worked each workweek. An Employer with Employee(s) who perform work both in and out of City boundaries must determine if an Employee has worked at least two hours in a particular week and how many hours he or she worked within the geographic boundaries of the City.

Travel Time

The MWO covers an Employee for all hours worked in the City. Work in the City includes travel time within the City when it would typically occur during paid work time. For example, hours worked would include the time when an Employee travels through and makes even one stop in the City as a requirement of the Employee's work (e.g., to transport passengers or patients, make pickups, deliveries, sales, or service calls).

The MWO does not cover an individual traveling through the City with no employment-related stops, or time spent in the geographic boundaries of the City solely for the purpose of travelling through Santa Monica (i.e., from a point of origin outside Santa Monica to a destination outside Santa Monica) with no employment-related or commercial stops in Santa Monica except for refueling or the Employee's personal meals or errands.

RULE 4: NONPROFIT DEFERRAL

Nonprofit Corporation Employers with 26 or more Employees may qualify for the deferral rate schedule set forth in SMMC Section 4.62.015(c).

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The deferral requires submission of the [City of Santa Monica Minimum Wage Ordinance Deferral Application](#) along with supporting documents to the City of Santa Monica Finance Department. Supporting documents may include, but are not limited to:

- 501(c)(3) letter
- Payroll records from the most recent three months at the time of the deferral application
- Approval letter from the City of Los Angeles Transitional Job Opportunities Program establishing certification as a Transitional Employer
- Child Care Facility license from the Community Care Licensing Division of the California Department of Social Services
- Return of Organization Exempt from Income Tax Form 990 or 990-EZ with all schedules, forms, and supporting statements as required by and filed with the IRS

The Finance Department may request additional documents to verify the Employer's eligibility criteria for the Nonprofit Deferral.

A Nonprofit Corporation Employer that qualifies for a deferral must continue to comply with all applicable federal, State, and local wage laws and regulations, including any applicable minimum wage requirements. It is the Employer's responsibility to ensure that the Employer is in compliance with any such laws and regulations.

Upon approval of a deferral application, the City will issue a Deferral Approval Letter to the Nonprofit Corporation Employer. The Employer must pay the City-required minimum wage until the City approves its deferral application.

In the event of any changes that will affect the status of the deferral, it is the Employer's responsibility to inform the City of such changes via email at minimum.wage@smgov.net within seven calendar days of such change and immediately comply with the minimum wage rate, effective from the time of change. Failure to communicate such changes as required herein may result in loss of deferral status.

As a condition of deferral or continued deferral, the City is authorized to re-evaluate the eligibility of an Employer's nonprofit deferral qualifications or to request any additional information from an Employer as may be deemed relevant to verify its deferral status. Failure to respond to requests for such documentation shall result in loss of deferral status.

If the City determines that an Employer does not meet the deferral eligibility standards, it will issue a Deferral Denial letter, and the Employer must comply with the current minimum wage rate applicable to Employers with 26 or more Employees.

RULE 5: TRANSITIONAL EMPLOYER EXEMPTION

Transitional Employers may pay less than the required minimum wage during the first 18 months of employment for Employees holding a Transitional Job, which is defined under SMMC Section 4.62.010(i) as short-term, wage-paying, subsidized employment in a Nonprofit Corporation that combines actual work, skill development, and Supportive Services to help

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participants overcome barriers to employment and transition to unsubsidized competitive employment.

A Transitional Employer must still comply with applicable state and federal minimum wage laws, rules and regulations, and all other provisions of the MWO.

Certification

An Employer may apply to be certified as a Transitional Employer through the nonprofit deferral form, indicating Transitional Employer status and providing required documentation. The Employer will submit the completed form to the Finance Department.

A business entity shall qualify as a Transitional Employer if:

- (a) It is incorporated in the State of California or its principal place of business is located in the State of California;
- (b) It has requested classification as a transitional employer and has been approved as such by the City. To be so approved, a business entity shall set forth, under penalty of perjury, such information as requested by the City on either electronic or hardcopy forms supplied by the City and submit the necessary certification forms to the City; and
- (c) It meets the following criteria:
 - a. The Employer is a Nonprofit Corporation as defined in the MWO;
 - b. The profile of the program participants (e.g. homeless individuals, individuals with addictions, at-risk youth, etc.); and
 - c. The components of the Employer's Transitional Job Program, including Supportive Services, are designed to help program participants transition towards unsubsidized competitive employment.

Any Employer that is certified as a Transitional Employer through the City of Los Angeles Transitional Job Opportunities Program can provide proof of that certification to qualify for the Transitional Employer exemption provided under the MWO.

RULE 6: PAID SICK LEAVE

As of January 1, 2017, Employers (including Hotel Employers for purposes of this rule) may select one of the following two methods of providing Paid Sick Leave to its Employees (including Hotel Workers for purpose of this rule) as follows:

- 1) Front-loading the entire hours required under the Wage Ordinances at the beginning of each calendar year, fiscal year, or year of employment (referred to as the front-loading method); or
- 2) Accruing one hour of sick time for every 30 hours worked within the geographic boundaries of the City up to the required amount of hours (referred to as the accrual method).

An Employer can switch between the front-loading and accrual methods only on an annual basis.

An Employee begins to earn sick leave at the start of employment with an Employer. If an Employee continuously works for an Employer with only sporadic work time within the

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geographical boundaries of Santa Monica, “commencement of employment” means the initial start date by the Employee for the Employer.

Accrual Method

Employees accrue paid sick leave pursuant to SMMC Sections 4.62.025 and 4.63.025 for all hours worked in Santa Monica. An Employee’s work hours in the City must be tracked.

Employers must keep records pertaining to sick time in accordance with applicable local, state, and federal law.

Any accrued, unused paid sick leave will carry over to the following calendar, fiscal, or anniversary year and may be capped at the minimum number of hours applicable according to the number of Employees the Employer has, as set forth in SMMC Section 4.62.025. An Employer may set a higher cap or no cap at all.

Front-loading Method

An Employer must select one type of anniversary (i.e., calendar year, fiscal year, or year of employment). At each anniversary date, the Employer must provide the applicable number of hours specified in SMMC Section 4.62.025 to each Employee.

There is no required carryover for Employers who provide sick leave using the front-loading method.

Paid Sick Leave and Reinstatement

If an Employee is rehired by an Employer within one year of the date of separation from employment, previously accrued and unused paid sick leave time must be reinstated. However, if an Employer compensates an Employee for accrued and unused sick leave upon separation from employment, the Employer is not required to reinstate the Employee's paid out sick time if the Employee is subsequently rehired.

Vacation and Other Types of Paid Leave

Paid leave in the form of vacation time, or paid leave that employees may use for either vacation or sick leave, does not satisfy the MWO paid sick leave requirement.

RULE 7: REINSTATEMENT

Employers must immediately reinstate any Employee who is discharged from employment as prohibited under SMMC Sections 4.62.060, 4.62.070, and 4.63.070.