

West Hollywood Establishes Citywide Minimum Wage and Guaranteed Leave Provisions

The West Hollywood City Council unanimously approved a draft Ordinance establishing a citywide minimum wage and guaranteed leave during a November 3, 2021 City Council meeting that ended on November 4, 2021. The draft Ordinance can be found [here](#) and the City also issued a [press release](#) detailing the draft Ordinance. The draft Ordinance sets forth the following phased minimum wage schedule:

Effective Date	01.01.2022	07.01.2022	01.01.2023
Hotel Employees	\$17.64	Determined by Cost of Living Adjustment Estimated to be: \$18.31	No Change
Employers of 50 or More	\$15.50	\$16.50	\$17.50
Employers of Less than 50	\$15.00	\$16.00	\$17.00

The draft Ordinance further requires employers to provide full-time employees a minimum of 96 hours of paid time off for sick leave, vacation, or other personal necessity. Part-time employees should receive a proportional level of paid time off. Employers must allow employees to utilize this paid time off after the first 6 months of employment. Additionally, employers must allow employees to accrue unused paid time off until they reach 192 hours. If an employee reaches 192 accrued hours, the employer must pay the employee once every 30 days for accrued time off over the 192-hour threshold. Alternatively, employers may allow employees to cash out accrued time off. Besides paid time off, the City's draft Ordinance requires employers to provide full-time employees with 80 hours of unpaid time off to take care of themselves or an immediate family member. Part-time employees should accrue uncompensated time off in proportional increments. Employers cannot count the leave set forth in the draft Ordinance as an absence for disciplinary purposes. Employers should provide unpaid time off for employees after they have worked for 6 months. Employees can accrue unused and unpaid time off up until they reach 80 hours. Furthermore, the draft Ordinance requires employers to disclose to employees a plan for the distribution of service charges. Service charges may be distributed to all nonmanagerial employees who performed services for customers that paid the service charges. Service charges must be paid by the next payroll period. However, cash service charges must be paid to employees on the same day they are collected, and healthcare-related charges must be deposited within 7 days. Service charges must be disclosed to consumers prior to a customer's purchase. Employers cannot deduct credit card payment processing fees from the amount employees receive. Records related to service charges must be maintained for at least 3 years. If employers fail to comply with the draft Ordinance, employees are entitled to back wages, the payment of sick leave that the employer withheld, reinstatement, reasonable attorneys' fees and costs, and penalties of up to \$100 per worker per day. The California Restaurant Association (the "Association") challenged the draft Ordinance, arguing that the Ordinance imposes an unnecessary burden on workers whose total compensation equals more than the draft Ordinance's proposed minimum wage. The City Attorney noted the Association's request to limit the application of the Ordinance to workers whose total compensation equals more than the Ordinance's minimum wage may warrant further study. However, the City Council still voted in favor of the draft Ordinance without an exemption for workers with a higher total compensation. Notwithstanding the Association's argument, the City's draft Ordinance does allow employers to request an exemption from following the minimum wage Ordinance if the employer can demonstrate that compliance would force the employer to reduce its workforce by 20% or more to avoid a bankruptcy or a shutdown. Similarly, employers can request a waiver if the Ordinance cuts employees' hours by 30% or more. An employer must have its financial condition audited to demonstrate a need

for the waiver. Additionally, employers must notify their employees if they apply for a waiver. Employers must also provide written notice of the City's determination within 3 days of receiving the City's decision regarding the waiver. The City Council must conduct a second reading of the draft Ordinance for it to be officially enacted. The City Council anticipates conducting the second reading on November 15, 2021.

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