

Santa Monica, California, Joins Patchwork of Minimum Wage and Paid Sick Leave Laws

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California's City of Santa Monica's City Council has adopted an ordinance that enacts minimum wage and paid sick leave requirements for covered employees as well as new regulations pertaining to service charges and surcharges. [Ordinance Number 2509](#) became effective on February 25, 2016, although its provisions will not be implemented until July 1, 2016.

The City Council authorized the City Manager to establish a working group to review and recommend technical adjustments to the adopted Ordinance.

We discuss key provisions below.

Minimum Wage Rates for Non-Hotel Sector Employees

Employers with at least 26 covered employees shall pay no less than the following hourly wages:

- July 1, 2016 – \$10.50
- July 1, 2017 – \$12.00
- July 1, 2018 – \$13.25
- July 1, 2019 – \$14.25
- July 1, 2020 – \$15.00

Employers with up to 25 employees will have an additional year to satisfy each of these pay rates. Therefore, hourly pay increases for smaller employers will start on July 1, 2017, at \$10.50 per hour, reaching \$15.00 per hour by July 1, 2021.

As of July 1, 2022, and every year after, Santa Monica's minimum wage rates will increase with the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Los Angeles metropolitan area ("CPI").

The Ordinance, however, is not clear whether the employee threshold includes only those employees working in Santa Monica or whether it refers to all company employees.

Minimum Wage Rates for Hotel Sector Employees

The Ordinance also institutes minimum wage rates for hotel workers. Effective July 1, 2016, Santa Monica's minimum wage will be \$13.25 for hotel workers. On July 1, 2017, the minimum wage will increase to \$15.37 per hour. Beginning July 1, 2018, the minimum wage rate for Santa Monica hotel workers will increase in unison with the CPI.

Hotel sector employers include employers who contract, lease, or sublet premises connected to or operated in conjunction with the hotel.

Paid Sick Leave for All Covered Santa Monica Employees

The Ordinance imposes mandatory paid sick leave obligations. Covered employers must comply with both the Ordinance and California law.

Highlights of the Ordinance's requirements are discussed below.

Who Is a Covered Employee?

In general, the Ordinance covers all workers who, in a particular week, perform at least two hours of work within the geographic boundaries of Santa Monica for an employer.

"Hotel workers" (excluding those employed in a managerial, supervisory, or confidential role) whose primary place of employment is at a Santa Monica hotel are covered by the paid sick leave provision of the

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Ordinance, regardless of how many hours they work in Santa Monica in a particular week.

How Much Sick Leave Must an Employer Provide?

Large employers (those having at least 26 covered employees) may cap accrual of paid sick leave at 72 hours. Small employers (those with fewer than 26 covered employees) may cap accrual at 40 hours. *This is not an annual cap or limit on accrual of paid sick leave.* Accrued time carries over year to year, subject to the cap.

The Ordinance, as noted, is not clear as to whether the employee threshold includes only those working in Santa Monica or whether it refers to all company employees.

Can Employers Limit Use of Sick Leave?

The Ordinance does not provide for any limit on the amount of paid sick leave that may be used in a year. However, employers may limit new employees from using paid sick leave until the 90th day of employment.

How May Employers Provide the Benefit?

Employers are to accrue the benefit at a rate of one hour for every 30 hours worked. The Ordinance does not provide employers with the option of frontloading or granting time upfront as allowed under California state law.

Employers may not reduce the pension, vacation, or other non-wage benefits to fund the wages and benefits required under the Ordinance.

What Are the Notice Rules and Permissible Uses of Sick Leave?

Employees are to provide “reasonable notification” of a paid sick leave covered absence. As for permissible uses, the Ordinance allows for use consistent with California state law (*e.g.*, for diagnosis, care, or treatment of the employee’s own or a family member’s existing health condition).

Payment at Termination?

Like California state law, there is no payout at termination of accrued, unused sick leave under the Ordinance if the benefit is accrued separate and apart from a vacation or paid time off plan.

Service Charges, Surcharges

The Ordinance also requires employers to distribute all service charges in their entirety to employees who performed services for the customers from whom the service charges are collected. No part of these amounts may be paid to employees whose primary role is supervisory.

“Service charge” is broadly defined as:

any separately-designated amount charged and collected by an Employer from customers, that is for service by Employees, or is described in such a way that customers might reasonably believe that the amount is for those services or is otherwise to be paid or payable directly to Employees, including those charges designated on receipts, invoices, or billing statements under the term “service charge,” “table charge,” “portage charge,” “automatic gratuity charge,” or similar language.

Specific rules apply to the distribution of service charges for banquets, catered meetings, room service, and portage services. However, service charge pooling arrangements in existence prior to the effective date of the Ordinance may continue as long as supervisory employees are excluded from the pool.

The Ordinance does not prohibit imposition of other surcharges (in addition to or instead of a service charge) if the employer satisfies certain requirements. An employer assessing a surcharge must provide a title or description of the surcharge from which customers will easily deduce the purpose of the surcharge and that such surcharge does not amount to a service charge, gratuity, or tip for employees. If employers apply any benefits surcharge (such as a health care surcharge), the entire amount must go towards employee benefits coverage.

All service and charges and surcharges must be disclosed to consumers in special conspicuous type prior to the time the customer makes a purchase or selection.

Employers further must disclose in writing to each employee their plan of distribution of the charges and surcharges and must report to employees on each payroll date the amount of service charges and surcharges collected and amounts distributed to employees for the pay period.

Exemptions

The Ordinance applies to all employees working in Santa Monica, as described in the Ordinance, unless one of these exemptions is satisfied:

- The employer is a government agency, including school districts.

- There has been a waiver of these provisions under a bona fide collective bargaining agreement, but only if the waiver is set forth in such an agreement in clear and unambiguous terms.
- Certain nonprofit agencies may apply to defer requirements under the Ordinance.
- Employees who are “learners,” as defined by the California Labor Code may be paid at 85 percent of the Ordinance’s minimum wage rates rounded to the nearest nickel during their first 480 hours or six months of employment.

All employers operating in Santa Monica should carefully review the Ordinance, their minimum wage rates, as well as policies and practices related to paid sick leave and surcharge/service charge.

Employers should regularly review their policies and practices with employment counsel to ensure they address specific organizational needs effectively and comply with applicable law. Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

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