

EMERYVILLE MINIMUM WAGE & PAID SICK LEAVE ORDINANCE

INFORMATION SESSION
JUNE 24, 2015



THE CITY OF
EMERYVILLE

EMERYVILLE HAS NEW LABOR LAWS

Minimum Wage:

- Starting JULY 2, 2015 the City's new minimum wage rates:
 - \$12.25 per hour for small businesses (55 and fewer employees)
 - \$14.44 per hour for large businesses (56 or more employees)

Paid Sick Leave (PSL):

- New state law AB 1522 applies to eligible employees except for:
 - Higher cap: 48 hours (small businesses) 72 hours (large businesses)
 - Ability to designate non-family member and use for service dog
 - No limit on employee PSL usage, subject to caps on banked PSL hours

Service Charges:

- Applies only to Hospitality Employers
 - Business that owns, controls, or operates any part of a hotel, restaurant, or banquet facility within Emeryville
- Hospitality Employers must pay service charges in their entirety to Hospitality Workers who perform the services.

Retaliation barred for exercising rights under new law.

EMPLOYER ADMINISTRATIVE REQUIREMENTS

■ In addition to payment of applicable minimum wage rates, employers are required to:

- 1) Post bulletin(s) at workplace in a location viewed by all employees
- 2) Maintain payroll records for a period of 3 years beginning July 2, 2015
- 3) Provide in writing to each employee with employer's name, address, and telephone number
- 4) Provide written official notices regarding employee rights under ordinance
- 5) Post bulletin(s) and provide notices in all languages spoken by 10% or more of workplace employees.

WHO IS AN “EMPLOYEE” UNDER THE NEW LAW?

Definition

- Any person who performs at least two (2) hours of work during a calendar week within the geographic boundaries of the City for an Employer
- Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law

Employees who should be counted as working for an Employer during a given week

- All persons performing work for the same business enterprise for compensation
- Full time, part-time, or temporary basis
- Includes persons made available to work through the services of a temporary services or staffing agency or similar entity.

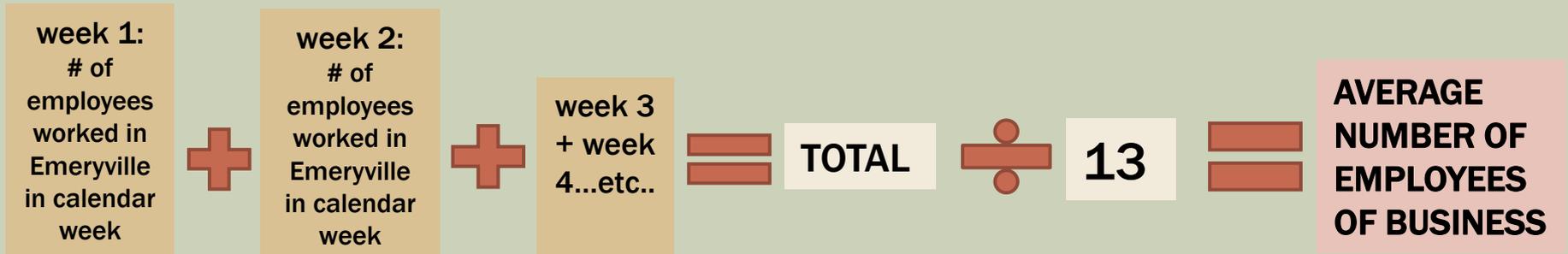
HOW DO I KNOW WHAT A SMALL BUSINESS IS?

■ STEP 1:

Count the number of employees working at your business location **WITHIN THE GEOGRAPHIC BOUNDARIES & WORKING AT LEAST TWO HOURS PER WEEK** in the City of Emeryville.

■ STEP 2:

Count the number of employees who worked each week of a quarter (13 weeks). Add the number for each week together for the entire quarter. Divide the total number by 13. The answer is the average number of employees.



IS THIS NUMBER 55 OR SMALLER?

e.g.:

**AVERAGE
NUMBER OF
EMPLOYEES
OF BUSINESS**



50

IF YES, THEN THE BUSINESS MUST PAY NO LESS THAN THE MINIMUM WAGE RATE FOR SMALL BUSINESSES.

Effective Date	≤55 Employees
July 2, 2015	\$12.25
July 1, 2016	\$13.00
July 1, 2017	\$14.00
July 1, 2018	\$15.00
July 1, 2019	\$16.00 est. (CPI)
July 1, 2020	\$16.42 est. (CPI)

IS THIS NUMBER 56 OR LARGER?

e.g.:

**AVERAGE
NUMBER OF
EMPLOYEES
OF BUSINESS**



58

IF YES, THEN THE BUSINESS MUST PAY NO LESS THAN THE MINIMUM WAGE RATE FOR LARGE BUSINESSES.

Effective Date	56+ Employees
July 2, 2015	\$14.44
July 1, 2016	\$14.82 est. (CPI)
July 1, 2017	\$15.20 est. (CPI)
July 1, 2018	\$15.60 est. (CPI)
July 1, 2019	\$16.00 est. (CPI)
July 1, 2020	\$16.42 est. (CPI)

BUSINESS SIZE QUESTIONS

What if I'm a new Employer and do not have a full quarter of records to count?

- To calculate business size for the current calendar year, count the average number of employees you believe will work for the first 90 days.

What if my business moves around? (ex: food truck) How do I calculate my business size?

- To determine the business size, calculate the average number of employees who work at least two hours within the Emeryville city limits per week.

Do I count independent contractors or consultants?

- No. Independent contractors are exempt by State law and therefore not included in employee count.

EXCEPTION/WAIVER

Learners

- Defined by California Industrial Welfare Commission
- May be paid no less than 85% of the applicable minimum wage for the first 160 hours of employment
- No prior experience in industry
- May be of any age

Ratified collective bargaining agreement

- Any portion of ordinance may be waived by bona fide collective bargaining agreement
- Agreement must have clear language specifically waiving the ordinance

PAID SICK LEAVE

- **New state law AB 1522 applies to eligible employees except as modified by Emeryville law**

- **Paid sick leave caps**

- **Small business: 48 hours (six 8-hour days)**
- **Large businesses: 72 hours (nine 8-hour days)**
- **Does not preclude employer providing more sick leave**
- **Employee may use total amount of sick leave banked**



- **Use of paid sick days**

- **Address employees' own medical needs or those of a sick family member or designated person**
- **May also be used for the care of a guide dog, service dog, signal dog that belongs to the employee, a family member or designated person**

PAID SICK LEAVE QUESTIONS

Will Paid Sick Leave hours roll over from year to year?

- Yes. Paid Sick Leave hours carry over from year to year, limited to caps.

Do the caps also limit the total number of Paid Sick Leave days an employee can take in a year?

- As long as the total number accrued does not exceed the caps, an employee may continue to accrue more hours as they are used throughout the year.

How long does an employee have to designate a person that is not a family member, spouse, or registered domestic partner?

- Employers must give employees notice to designate a person within 30 days of July 2, 2015 (existing employees) or hire date (new employees). Employee then has 14 days to make the designation. Employees may change designation annually.

SERVICE CHARGE LAW

Hospitality Employers who collect service charges from customers must pay the entirety of those charges to the Hospitality Workers who perform the services for which the charge was collected.

Who is a Hospitality Employer?

- A business who owns, controls, or operates any part of a hotel, restaurant, or banquet facility within the geographic boundaries of the City of Emeryville.

Who is a Hospitality Worker?

- An individual who works at least 2 hours per calendar week for a Hospitality Employer and performs services that are billed to customers as “service charges” (or other similar term)

Examples of services performed:

- Delivering food and/or beverage to hotel room
- Carrying luggage to hotel room for guest(s)
- Catering duties at banquets

SERVICE CHARGE LAW

■ Hospitality Employer shall:

- Disclose in writing plan of distribution of service charges
- Report to employees on each payroll date amount of service charges collected and distributed for given pay period
- Not deduct wages from an employee on account of paid service charges

■ Tips and/or gratuities left by customers for employees are not considered service charges

■ No part of the services charges may be paid to managers/supervisors except for their time spent directly providing service to customers

NO RETALIATION

What is retaliation?

- Discharge, reduction in compensation, or other discrimination against Employee for asserting rights under the new law
- Increases in compensation may not be funded by
 - Reducing wages of other employees
 - Charging for parking, uniforms, etc.
 - Reducing non-wage benefits (vacation, medical, etc.) except as pre-empted by federal Employee Retirement Income Act

What if an Employer is notified that retaliation has occurred?

- Employee may not be discharged without just cause for 120 days after the Employer receives notice

HOW DOES AN EMPLOYEE FILE A COMPLAINT?



- 1.) Obtain a Claim Declaration form provided by the City.
 - Request via email from minwage@emeryville.org
 - Download from Minimum Wage and Paid Sick Leave webpage found on www.emeryville.org
 - Request by phone to be mailed: (510) 596-4316
 - Pick up in person from City Hall: 1333 Park Avenue Emeryville, CA 94608
- 2.) Fill out form as completely as possible
- 3.) Attach any documents helpful to determining the claim. (Examples: pay stubs, statement of benefits, communications from employers)
- 4.) Claim Declaration form may be mailed or submitted to: 1333 Park Avenue Emeryville, CA 94608 or submitted via email to: minwage@emeryville.org

PROCESS FOR HANDLING COMPLAINT

1. Complaint submittal: Initial assessment

- Does Ordinance apply? Will City pursue investigation?

2. Investigation

- Notify employer of complaint
- Review of documents/site visit/interviews/etc.

3. Findings/Compliance

- Compliance order
- Appeal

4. Restitution/Corrective Action

5. Confirmation of compliance

Other: Informal resolution, Civil Action, Private Right of Action

THANKS FOR LISTENING!

Any More Questions?



minwage@emeryville.org or (510) 596-4316