



City of Emeryville

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1333 Park Avenue
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Frequently Asked Questions (FAQs) Emeryville's Minimum Wage and Paid Sick Leave Ordinance Effective July 2, 2015 Last Updated: April, 2018

INTRODUCTION

On June 2, 2015, the City Council of the City of Emeryville adopted the City's Minimum Wage and Paid Sick Leave Ordinance (Ordinance) (Chapter 37 of Title 5 of the Emeryville Municipal Code), which establishes a minimum wage, paid sick leave benefits, and payment of service charges to Hospitality Workers.

The Ordinance establishes a minimum wage in the City of Emeryville of \$14.82 per hour for large businesses (56 or more Employees within Emeryville city limits); and \$13.00 per hour for small businesses (55 or fewer Employees within Emeryville city limits), beginning on July 2, 2016. The minimum wage rates thereafter will increase yearly on July 1. The Ordinance also requires that Employers in Emeryville provide paid sick leave benefits to their Employees, and requires that Hospitality Employers who collect service charges from customers pay all service charges to their Hospitality Workers.

The purpose and intent of the Ordinance is to provide standards for minimum wages paid to employees, paid sick leave, and equitable disbursement of hospitality service charges above and beyond the requirements of state law. Note that federal and state laws pertaining to wages and paid sick leave also apply.

This memorandum answers frequently asked questions to help Employers, Employees, and others understand and comply with the law in Emeryville. It is divided into sections: General (concerns that apply to all three key provisions of the Ordinance), Minimum Wage requirements, Paid Sick Leave requirements, and Hospitality Service Charge requirements. **This is a general guide and resource, and does not constitute legal advice.** It may be updated from time to time, as deemed appropriate by the City. The full text of the Ordinance can be found here: <http://www.ci.emeryville.ca.us/DocumentCenter/Home/View/8034>

If you have questions about this guide or questions about the law that are not addressed here, please email: minwage@emeryville.org.



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GENERAL INFORMATION

1. When did Emeryville's new Minimum Wage and Paid Sick Leave Ordinance ("Ordinance") go into effect?

Answer: The Ordinance went into effect July 2, 2015. It has since been amended, and those changes were effective February 2, 2016.

2. What City department is implementing the Ordinance?

Answer: The City Manager's Office is responsible for implementing the Ordinance. The City Manager has designated the responsibilities for implementation to the Economic Development and Housing Division of the Community Development Department.

3. Where can I call with questions?

Answer: Employers, Employees, and others should call (510) 596-4316 or email minwage@emeryville.org with questions.

4. Does the Ordinance protect undocumented workers?

Answer: Workers reporting violations of the Ordinance with the City of Emeryville will not be questioned about their immigration status.

5. What employees are covered by the Ordinance?

Answer: An Employee covered by the Ordinance is a person who:

- 1) Performs at least two hours of work in a calendar week within the geographic boundaries of the City of Emeryville; and
- 2) Qualifies as an employee entitled to payment of minimum wages under California minimum wage law.

6. Does the Ordinance apply to Employers located outside the City but who employ Employees performing work in Emeryville?

Answer: Yes. All Employers, regardless of their location, must pay their Employees the applicable Emeryville minimum wage. They must also allow Employees to accrue Paid Sick Leave for the periods of time performing work within the geographic limits of the City. This includes individuals who work from home, if the Employee lives in Emeryville.

7. What are the Ordinance administrative requirements for Employers?

Answer: In addition to payment of the minimum wage, Employers are required to:



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- 1) Post bulletin(s) at the workplace of the current minimum wage rates, Paid Sick Leave requirements, and all Employees' rights under the Ordinance in all languages spoken by 10% or more of Emeryville workplace Employees;
- 2) Maintain payroll records for a period of three (3) years beginning July 2, 2015; and
- 3) Provide in writing to each current and new Employee at time of hire written official notices and bulletins regarding Employee rights under the Ordinance. Every Employer shall also provide each Employee with Employer's name, address and telephone number to all new and current Employees.

The Ordinance prohibits retaliation or discrimination against any person seeking to exercise their rights provided by the Ordinance.

8. Because requirements for minimum wage rates and Paid Sick Leave accrual caps are based on business size, who should be counted in determining Employer size?

Answer: All qualified Employees who perform at least two (2) hours of work *within the geographic boundaries* of Emeryville for compensation for the Employer should be counted. This includes: All Employees, regardless of their status or classification as seasonal, permanent or temporary, full-time or part-time, contracted (whether employed directly by the Employer or through the services of a temporary services or staffing agency or similar entity) or commissioned. This also includes Employees who work from home within the geographic boundaries of the City.

If a company has Employees outside of Emeryville, these Employees are *not* counted in determining business size.

9. Does the Ordinance apply to full-time, part-time, and temporary Employees?

Answer: Yes. Any qualified Employee is entitled to be paid Emeryville's minimum wage rate applicable to the size of the Employer's business, earn Paid Sick Leave hours, and receive service charges if a Hospitality Employee.

In calculating business size where certain positions may be filled by a temporary worker or staffing agency, the Employer shall use the **number of individuals who filled the position**, as opposed to the number of positions filled. In other words, if three temporary individuals filled one position during the quarter, then the Employer should count three individuals as Employees in its calculations.

10. What if the number of persons performing work changes from week to week or month to month?

Answer: For businesses employing a fluctuating number of persons performing work during a quarter (13 weeks), Employer size is based on the weekly average number of



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persons performing work for compensation during the quarter. (For example: A business that employs 50 persons during the first 6 weeks of the quarter and 65 persons during the last 7 weeks of the quarter would have a weekly average of 58 Employees per week, thus categorizing the Employer as a large business and responsible for paying the large business minimum wage rate for the entire quarter and making available the large business PSL hour requirement: 72 hours):

$$\frac{(50 \text{ Employees/week} \times 6 \text{ weeks}) + (65 \text{ Employees/week} \times 7 \text{ weeks})}{13 \text{ weeks}} = 58 \text{ Employees/week}$$

11. How does a new business determine its size?

Answer: In this situation, businesses should calculate business size for the current calendar quarter based upon the average number of persons per week who worked for compensation for the first ninety (90) days after the first Employee(s) began work.

12. Can an Employee agree to work for less than Emeryville’s minimum wage rates or waive his/her rights to Paid Sick Leave?

Answer: The Ordinance requirements for minimum wage, Paid Sick Leave, and payment of service charges can only be waived through a bona fide collective bargaining agreement that contains clear and unambiguous terms setting forth such waiver.

13. What can an Employee do if an Employer does not pay him/her at least Emeryville’s minimum wage, does not provide Paid Sick Leave, or service charge payments if a Hospitality Worker?

Answer: Employees are first encouraged to contact their supervisor or HR Department to try to resolve the problem directly with the employer. Sometimes, employers may not be aware that an adjustment has been made and the matter can be readily resolved. If the employee is not successful getting resolution from the employer, they can seek advice from an attorney and/or file a lawsuit against their Employer. They may also submit a complaint to the City of Emeryville.

Employees are entitled to all remedies available to correct a violation of this law, including back pay, reinstatement, injunctive relief, and/or attorneys’ fees and witness fees and costs. Additionally, any Employer who violates this law and/or retaliates against an Employee may be liable for civil penalties in the amount of \$500.00 per violation and \$1,000.00 for each Employee retaliated against, with the amount determined by a Hearing Officer.

14. How does an Employee file a complaint with the City of Emeryville?

Answer: Complaints must be initiated by submitting a completed Claim Declaration on the form provided by the City. Copies of the Claim Declaration form are available from the City via email or U.S. mail request; by download from the Minimum Wage and Paid



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Sick Leave Ordinance webpage at <http://www.emeryville.org/1024/Minimum-Wage-Ordinance>; or from City Hall at 1333 Park Avenue, Emeryville, CA 94608, during regular business hours. Email requests for a Claim Declaration form should be directed to: minwage@emeryville.org. Completed Claim Declaration forms may be mailed or submitted in person to the City Hall address above or submitted via email to: minwage@emeryville.org. The Claim Declaration form can also be filled out and submitted directly from the website on the Minimum Wage Ordinance webpage at the above link.

Supporting documents related to the complaint should accompany the Claim Declaration form. (For example: claims regarding wage issues should provide pay stubs, claims regarding Paid Sick Leave should include statement of benefits and/or pay stubs, claims regarding failure of Employer to post notice of rights may include photos, claims regarding retaliation may include emails from Employers and/or contacts of those who may be witnesses).

15. Does an Employer need to provide notice of an Employee's rights under the Ordinance?

Answer: Yes. Employers must give written notice to current Employees and to all new Employees at the time of hire of his/her rights. Notices and bulletins must be in all languages spoken by 10% or more of the Employees and shall be posted prominently in work areas that can be seen by all Employees.

You may access the City's official notices and bulletins at the following webpage: <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance>

The City has supplied bulletins and notices in English, Spanish, Simple Chinese, and Farsi. If you need bulletins or official notices in additional languages, please contact City staff for translations at minwage@emeryville.org

16. Does the Ordinance apply to Employees covered by an existing collective bargaining agreement?

Answer: The Ordinance is a minimum labor standard and a law of general application that applies to all Employees who are eligible under the law. However, the requirements of the Ordinance may be waived by a bona fide collective bargaining agreement. The waiver must be expressed in clear, unambiguous language that the parties' intent to waive all or a specific portion(s) of the Ordinance.

17. Can an Employer take any adverse action against an Employee for requesting to be paid Emeryville's minimum wage, Paid Sick Leave and/or filing a complaint for any non-compliance with the Ordinance?

Answer: No, retaliation is barred. An Employer may not retaliate against an Employee and it is unlawful to take adverse action against an Employee who asserts his/her rights to receive Emeryville's minimum wage rates or Paid Sick Leave. Retaliation may include,



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but is not limited to, discouraging complaints regarding noncompliance with the Ordinance, reducing vacation/PTO hours or other non-wage benefits, or increasing expenses for non-exempt Employees for items such as parking, meals, and/or uniforms. A "non-exempt Employee" means an Employee who is non-exempt under federal or state laws. The prohibition against retaliation applies regardless of whether the City ultimately finds the Employer to be out of compliance with the Ordinance.

18. **What role does the City of Emeryville have in ensuring compliance with the Ordinance regarding minimum wage rates, Paid Sick Leave, and service charge payments?**

Answer: The City may investigate complaints of possible violations of the Ordinance. The Ordinance requires Employers to permit authorized City representatives access to worksites and relevant records, which may include the production of records, to monitor compliance with this law, and investigate Employee complaints or non-compliance. The City may attempt to remedy any case through informal resolution. The City may also pursue administrative compliance orders and impose administrative fines for non-compliance. In addition, the City may initiate a civil judicial action for injunctive relief, damages, and penalties for non-compliance.

19. **Can an Employer dispute a compliance order issued by the City?**

Answer: Yes. A compliance order shall become final unless a complete written request for an administrative hearing before the City is received within fourteen (14) days of service of the compliance order. The date of service of the compliance order shall be the postmark date. The request for a hearing shall be submitted on a form provided by the City. If an Employer does not submit a complete written request within the above timeframe, the Employer shall waive any right to an administrative hearing.

20. **If an Employer submits a written request for a hearing, when will it be scheduled?**

Answer: If a written request for an administrative hearing is filed with the City within the timeframe described in Question 19, the City Clerk shall set a hearing date before a Hearing Officer that is 15 to 45 days from the date of filing. A notice of the scheduled hearing shall be mailed to the Employer and the affected Employee(s) at least ten (10) days before the date of the hearing. If multiple citations are being appealed, these appeals may be consolidated into one hearing. The decision of the Hearing Officer shall be final, and may uphold or dismiss the compliance order in its entirety or in part, including the assessment of fines.

MINIMUM WAGE REQUIREMENT

1. **What is Emeryville's current minimum wage?**

Answer: As of July 1, 2016, Emeryville's minimum wage is \$14.82 per hour for large businesses (56 or more Employees within Emeryville city limits) and \$13.00 per hour for small business (55 or fewer Employees within Emeryville city limits).



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2. Will the minimum wage rate change in future years?

Answer: Yes. Emeryville's minimum wage is adjusted once per year, every July 1. For large businesses (56 or more Employees), Emeryville's minimum wage will increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index (CPI) for urban consumers for the San Francisco-Emeryville-San Jose, CA metropolitan statistical area. For small businesses (55 or fewer Employees), the new rate will increase by \$1.00 increments until 2018. Beginning in 2019, the wage rate for small businesses will match the rate of large businesses and be subject to annual CPI increases as well. The initial wage and escalation schedule is summarized in the following table (note: CPI increase amounts are estimates):

Effective Date	≤55 Employees	56+ Employees
July 1, 2015	\$12.25	\$14.44
July 1, 2016	\$13.00	\$14.82 est. (CPI)
July 1, 2017	\$14.00	\$15.20 est. (CPI)
July 1, 2018	\$15.00	\$15.69 (CPI)
July 1, 2019		\$16.00 est. (CPI)
July 1, 2020		\$16.42 est. (CPI)

Emeryville uses the March-to-March change in CPI to calculate the annual increase, if any, in Emeryville's minimum wage rate.

You may access CPI data at:

<http://www.bls.gov/regions/west/california.htm>

3. What is the difference between the federal, state and Emeryville minimum wage laws?

Answer: Emeryville Employers are subject to the federal, state and Emeryville minimum wage laws. When there are conflicting requirements in the laws, the Employer must follow the stricter standard, the higher minimum wage rate for those employees working within the Emeryville city limits. In the case of minimum wage, Emeryville Employers must pay Employees the rate that is most beneficial to the Employee.

4. If a business property is located on multiple city boundaries, which minimum wage is an Employer subject to pay?

Answer: The Employer must follow the stricter standard and pay which ever rate is most beneficial to the Employee, the highest minimum wage rate.



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5. Under what circumstances can employers pay less than Emeryville's minimum wage?

Answer: State minimum wage law allows that "learners" may be paid no less than 85% of the state minimum wage **for the first 160 hours** of employment. As defined by the California Industrial Welfare Commission, "learners" are persons who have no previous similar or related experience in a given occupation. A learner may be of any age. As it pertains to the Emeryville Ordinance, an Employee who is a "learner" shall be paid no less than 85% of the applicable minimum wage (i.e. for small employer would be \$11.05 and \$12.59). Additionally, consistent with California Labor Code Section 3352(a), individuals who are the parents, spouses or children of the Employer are not covered by the Emeryville minimum wage.

6. Do interns fall under the regulations of the Ordinance?

Answer: The City of Emeryville does not make a determination whether an intern is eligible for minimum wage under state law. If an Employer deems an intern eligible under state minimum wage law and the intern works at least 2 hours per calendar week within the city limits of Emeryville, then the intern is subject to provisions under the Ordinance.

The U.S. Department of Labor has created a list of factors to help Employers determine if an intern is exempt or not. That list can be found at the following link:

<http://www.dol.gov/whd/regs/compliance/whdfs71.html>

7. Is Emeryville's minimum wage the same for both adult and minor Employees?

Answer: Yes. Minimum wage rates do not vary based on whether an Employee is an adult or minor.

8. Does Emeryville's minimum wage cover persons who work in Emeryville but are not City residents?

Answer: Yes. Any qualified Employee is entitled to receive compensation pursuant to Emeryville's minimum wage.

9. Does Emeryville's minimum wage cover persons who work from home in Emeryville if their Employer does not have its business within the geographical limits of the City?

Answer: Yes. Any qualified Employee is entitled to receive compensation pursuant to Emeryville's minimum wage for those hours performing work within the City limits.



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10. Does an Employer need to pay Emeryville's minimum wage when an Employee performs work outside the City of Emeryville?

Answer: No. Emeryville's Ordinance only applies to work performed within the geographic limits of the City of Emeryville.

11. Does an Employer need to pay Emeryville's minimum wage rates to individuals that are exempted from California's state minimum wage?

Answer: No. The Ordinance applies to persons defined as Employees (Emeryville Municipal Code Section 5-37.01(c)). An Employee is someone qualified to payment of minimum wage under state minimum wage law and who works at least two hours in a calendar week within the City. Certain categories of workers are not entitled to state minimum wage. For additional information on these classifications of workers, please consult the Industrial Wage Commission ("IWC") Wage Orders (<http://www.dir.ca.gov/iwc/wageorderindustries.htm>) and/or the Division of Labor Standards and Enforcement (<http://www.dir.ca.gov/DLSE/dlse.html>).

12. What wage must an Employer pay to a salaried Employee who is exempt from overtime under state law? In other words, must the Employer pay twice the state minimum wage rate or Emeryville's minimum wage rate?

Answer: The City of Emeryville does not advise Employers on how to comply with California law, including state law governing pay for salaried Employees exempt from overtime. Please contact the Division of Labor Standards and Enforcement, California's Labor Commissioner. See <http://www.dir.ca.gov/dlse/>.

Commented [CS1]: Should this be updated in light of the recent discussion on this topic?

13. Can an Employer use tips as a credit towards its obligation to pay Emeryville's minimum wage rates?

Answer: No. An Employer may not take a tip credit towards its obligations to pay Emeryville's minimum wage rates.

14. Does an Employer need to provide notice of an increase in the minimum wage?

Answer: Yes. By April 1 of each year the City will publish and make available to Employers a bulletin announcing the adjusted minimum wage rates that will take effect on July 1 of that year. Bulletins suitable for required posting by Employers at worksites will be available by May 1 each year on the City website and through mail if requested or pick up from City Hall.



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PAID SICK LEAVE REQUIREMENT

1. Who is entitled to Paid Sick Leave (PSL)?

Answer: Any qualified Employee (see Question # 5 under General Information) is entitled to PSL. The PSL requirement does not apply to properly classified independent contractors.

2. Who must provide an Employee PSL?

Answer: All Employers with qualified Employees must provide PSL hours to Employees.

3. If an Employer is located outside of Emeryville but has Employees who perform work in Emeryville, are Employees entitled to PSL only when working in Emeryville?

Answer: Yes. Employees are entitled to PSL for the time they perform work within the geographic boundaries of the City of Emeryville. Employers do not need to make PSL available to Employees in accordance with the Ordinance for work performed outside the City of Emeryville but must otherwise comply with state law.

4. How does the Emeryville Ordinance relate to state law requirements for paid sick leave?

California adopted the Healthy Workplaces, Healthy Families Act of 2014, which provides for paid sick leave to workers throughout the state. The purpose and intent of the Emeryville Ordinance is to provide paid sick leave benefits above and beyond the state requirements.

5. How much PSL must an Employer provide to its Employees?

Answer: The purpose and intent of the Emeryville law is to offer Employees PSL benefits beyond those required by the state. Small businesses shall make available no less than 48 hours of PSL each year to their Employees. Large businesses shall make available no less than 72 hours of PSL each year to their Employees.

6. How does an Employer make PSL available to its Employees?

Answer: Employers may choose from 3 methods:

- Provide, or "frontload," an Employee the total annual hours: (48 hours for small businesses or 72 hours for large businesses) of PSL at the beginning of each year.
- Allow an Employee to accrue PSL hours at a rate no less than that stated in Healthy Workplace, Healthy Families Act of 2014



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- A combination of the 2 methods. (For example: “frontload” 24 hours and after that allow Employees to accrue up to 24 more hours for a small business).

Note that in the rare event that a business is reclassified from Large to Small, Employees who were frontloaded annual PSL hours shall retain any remaining “frontloaded” PSL hours for that given year despite the decreased minimum required for that size business.

7. How should employers properly document paid sick leave?

Decide how you'll calculate, track, and report each employee's sick leave balance. Payroll services can help by automatically calculating and reporting your employees' sick leave balance on their pay stubs.

Provide a written copy of your sick leave policy to employees at time of hire (example document).

Display a poster explaining your sick leave policy.

Show how many days of sick leave employees have available, either on their pay stub or a document issued the same day as their paycheck (use this template or check out Square Payroll).

Keep records of hours earned and used for a period of three years.

8. When are Employees entitled to PSL?

Answer: Beginning July 2, 2015. Employees who are hired after July 2, 2015 are to have PSL made available for accrual through one of the above methods on their first day of work.

9. Are Employees exempt from overtime entitled to PSL?

Answer: Yes. Employees exempt from payment of overtime wages under both federal and state law accrue sick leave based on a 40-hour workweek, unless there is clear and convincing evidence that the employee's work week is less hours, in which case PSL will accrue on the actual hours worked by the exempt employee

10. When can Employees begin to use PSL?

Answer: An Employee is entitled to use sick leave hours beginning on the 90th day of their employment.



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11. In what time increments can Employees use PSL?

Answer: An Employee may determine how much paid sick leave he or she needs to use, provided that an Employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

12. Can an Employer cap the amount of PSL that an Employee accrues per year during their employment?

Answer: Yes. Employers can cap accrual but at no less than (48 hours) for Small businesses (55 or fewer Employees in Emeryville, and (72 hours) for large businesses (56 or more Employees in Emeryville). If an Employee uses PSL and falls below the cap during the same year, he/she starts accruing PSL again. An Employer may also set a higher cap for PSL or no cap at all.

13. Does unused PSL carryover into the next year?

Answer: Yes, unused PSL carries over into the next year but is limited to the 48 or 72 hour caps if limited by the Employer.

14. If an Employee begins to work at a location in a different city than Emeryville for the same Employer do PSL hours carry over?

Answer: No. The Employee is no longer a qualified Employee as defined under the Ordinance and therefore not subject to its provisions.

15. Are household Employees, such as caregivers and housecleaners, covered by the PSL requirements?

Answer: Yes. Household Employees who perform at least two (2) hours of work in a calendar week in Emeryville for an Employer are covered by the Ordinance unless lawfully classified as independent contractors.

16. For what reasons may an Employee use PSL?

Answer: An Employee may use PSL in the following instances:

- a. When an Employee is ill or injured, or for the purpose of receiving medical care, treatment, or diagnosis;
- b. To aid or care for a family member who is ill or injured or receiving medical care, treatment, or diagnosis;
- c. If the Employee has no spouse or registered partner, to aid or care for a "Designated Person" who is ill, injured, or receiving medical care, treatment or diagnosis;



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- d. To obtain domestic violence services, including medical and psychological treatment, social services, relocation, legal assistance, and otherwise taking actions to protect the Employee from ongoing domestic violence consistent with state law;
- e. To aid or care for a guide dog, signal dog, or service dog, of the Employee, Employee's family member, or the "Designated Person".

17. What is a "family member" under the Ordinance?

Answer: A "family member" shall have the meaning provided in California Labor Code Section 245.5

18. What is a "Designated Person" under Emeryville's Paid Sick Leave law?

Answer: If an Employee has no spouse or registered domestic partner, he/she may designate one individual that they will aid or care for with PSL hours.

19. May an Employee assign a "Designated Person" if they have a spouse or registered domestic partner?

Answer: No. An Employee may designate someone only if the Employee has no spouse or registered domestic partner.

20. Do Employers have an obligation to take affirmative steps to offer Employees an opportunity to identify a "Designated Person"?

Answer: Yes. Employers must provide an Employee an opportunity to make a designation. The opportunity to designate shall be offered to an Employee no later than thirty (30) days after he/she begins to accrue PSL. Employers must provide the Employee with no less than fourteen (14) calendar days to make the designation. Thereafter, Employers must extend the opportunity to make or change a designation on an annual basis by January 31st of each year with a window of 14 calendar days for the Employee to make the designation.

Although Employers may use any reasonable method to provide this opportunity, the City has prepared a designation form that an Employer may use, available on the City Minimum Wage Ordinance webpage. If used, the form should be provided to the Employee at the same time as official notice(s).

21. Is a step-child or foster child included as a family member for whom an Employee can use PSL?

Answer: Yes. Employees may use PSL to aid of care for a child, parent, legal guardian or ward, sibling, grandparent, grandchild and spouse or registered domestic partner under any state or local law. These relationships include not only biological relationships



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but also relationships resulting from adoption, step-relationships and foster care relationships.

22. Can Employers require Employees to use PSL hours?

Answer: No. The Ordinance does not require Employees to use PSL hours.

23. Can an Employer prohibit the use of PSL when an Employee performs work outside the City of Emeryville?

Answer: The law requires Employers to allow Employees to use PSL when they are working or scheduled to work in the geographic limits of the City of Emeryville. If an Employer implements a policy to not allow the use of PSL hours when an Employee works *outside* of Emeryville, those hours remain “in the bank” of the Employee working in Emeryville. The unused PSL hours shall be available for use should the Employee work or be scheduled to work in Emeryville at any time during a given year or 12-month period.

24. Can an Employer require Employees to use PSL while out on a family medical leave under California or federal law?

Answer: This question involves an interpretation of the Family Medical Leave Act (“FMLA”), the California Family Rights Act (“CFRA”), and in some circumstances California’s Pregnancy Disability Leave Act (“PDL”). Employers and Employees should consult with the Federal Department of Labor regarding FMLA issues and with the California Department of Fair Employment and Housing regarding CFRA/PDL issues. Employers and Employees can also review administrative regulations implementing these leave laws.

25. Can an Employee who is receiving PSL also get State Disability Insurance (SDI) or Workers’ Compensation (WC) benefits?

Answer: Possibly. An Employee who is receiving PSL may be eligible for SDI and WC benefits at the same time. However, whether an Employee is eligible for SDI or WC benefits is governed by the California Unemployment Insurance and California Labor Codes. For more information about SDI benefits, see <http://www.edd.ca.gov/disability/> and for additional information regarding WC benefits, see <http://www.dir.ca.gov/dwc/workerscompensationbenefits.htm>.

26. Will an Employer’s Paid Time Off (PTO) or Vacation policy satisfy the requirements of Emeryville’s PSL requirements?

Answer: Most likely. If an Employer has a paid leave policy, such as a PTO or vacation policy, that makes available to Employees paid leave that may be used for the same purposes specified in the Ordinance, and the policy is sufficient to meet the Ordinance’s hour requirements for making PSL available, then an Employer is not required to provide additional PSL.



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27. Can an Employer require an Employee to give advanced notice of the need to take Paid Sick Leave?

Answer: Yes. Employers can require Employees to give reasonable notice of the need to take PSL. What is reasonable depends on the specific situation. An Employer's policies or practices should not be so onerous that they deter Employees from legitimate use of PSL.

Policies that require advanced notification "as soon as practicable" for an unforeseeable absence from work for which PSL will be used are, in principle, reasonable, and thus, presumptively lawful.

28. What must an Employer do if it requires advanced notice of the need to use PSL?

Answer: An Employer must establish a reasonable procedure for an Employee to communicate absences to the Employer. For example, providing Employees with a telephone number that has a voicemail box or live person answering the telephone is reasonable.

29. Is an Employer allowed to request documentation to ensure the time off of work was due to illness or domestic violence, or the need to care for a family member or designated person who was ill?

Answer: The ordinance is silent as to the type of documentation that an Employer may request to verify that the time off is subject to paid sick leave, and therefore, employers should follow applicable state and federal law.

30. At what rate does an Employer pay out PSL to an Employee when he/she chooses to use it?

Answer: Employers should follow guidelines from state law, the Healthy Workplaces, Healthy Families Act of 2014, as amended. The Healthy Workplace Healthy Families Act of 2014 as amended provides that an Employee shall be paid at the regular hourly rate for the workweek in which they used the PSL.

31. What is the sick leave rate of pay for an Employee who has two jobs at different pay rates (or has a fluctuating pay rate) for the same Employer?

Answer: An Employer shall reimburse the Employee for the use of PSL at a rate of pay equal to the scheduled rate(s) of pay for the job during which the PSL is taken.

32. Do Employers factor in tips when calculating the rate for tipped Employees when they use PSL?

Answer: No. The sick leave rate of pay is based only upon the compensation to the Employee by the Employer.



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33. When must an Employee be paid for the use of PSL?

Answer: PSL must be paid to Employees no later than the payday for the next regular payroll period after the sick leave was taken by the Employee. However, if the Employer has a reasonable verification requirement, the Employer is not required to pay sick leave until the Employee has complied with the verification requirement.

34. What may an Employer do if it suspects an Employee is or has engaged in PSL abuse?

Answer: The ordinance is silent as to the type of documentation that an Employer may request to verify that the time off is subject to paid sick leave, and therefore, employers should follow applicable state and federal law.

35. Does an Employer need to pay out unused PSL to an Employee at the time of separation of employment?

Answer: No. However, if an Employer is using a PTO (paid time off) or Vacation policy to comply with the Ordinance, Employers need to comply with other applicable State and federal laws which may require the payout of PTO or vacation upon separation of employment.

36. Can an Employer require or an Employee request a “cash out” of unused PSL?

Answer: No. However, Employers and Employees subject to a bona fide collective bargaining agreement are exempt to the extent that the collective bargaining agreement waives such exemption in clear and unambiguous terms.

Commented [CS2]: This seems like it belongs in its own section, similar to the minimum wage reference to waiver by CBA

37. Does an Employer need to retain records regarding Employee use of PSL?

Answer: Yes. Section 5-37.07(f) of the Ordinance requires Employers to retain records for at least three (3) years beginning July 2, 2015, or the new hire date, whichever is later, that document an Employee's name, hours worked, pay rate and PSL hours available and usage. An Employer must provide an Employee a copy of the records upon Employee's reasonable request.

38. Does California's Paid Sick Leave law preempt Emeryville's Paid Sick Leave law?

Answer: Emeryville Employers are subject to both state and Emeryville Paid Sick Leave laws. When California's and Emeryville's Paid Sick Leave laws contain conflicting requirements, the Employer must follow the stricter standard or the law that is most beneficial to the Employee. The City of Emeryville cannot advise Employers on how to comply with California state law, including state law governing its new Paid Sick Leave law. See <http://www.dir.ca.gov/dlse/>



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39. What should I do if I have a question about PSL requirements that is not explained in the Emeryville Ordinance or in these FAQs?

Answer: If your question pertains to an interpretation of the Emeryville ordinance, please email your question to minwage@emeryville.org. Otherwise, you should contact your Human Resources Department or legal counsel.

HOSPITALITY SERVICE CHARGE REQUIREMENT

1. To Which Employers is the Service Charge Law applicable?

Answer: The service charge requirement applies to a “Hospitality Employer” defined as an Employer who owns, controls, or operates any part of a hotel, restaurant or banquet facility within Emeryville city limits.

2. Who is a “Hospitality Worker?”

Answer: A “Hospitality Worker” is an individual who works for a Hospitality Employer that performs a service for which a service charge is imposed. Managerial Employees are excluded from this definition.

3. What does this requirement prohibit and mandate?

Answer: If an Employer charges a “service charge,” it must be paid in its entirety to the Hospitality Worker(s) who performed services for the customers from whom the service charge was collected. Hospitality Employers may not keep any of the service charges.

4. Are Employees of a catering company “Hospitality Workers”?

Answer: No. Section 5-37.04 is only intended to apply to “in-house” service workers, such as Employees of restaurants, hotels, banquet halls and similar venues that provide their own hospitality staff. Employees of a catering company hired on a per-event basis would not be subject to 5-37.04.

5. What is a “service charge” under the Ordinance?

Answer: The Ordinance defines a “service charge” as a separately-designated amount collected by a Hospitality Employer from customers that is for services rendered by Hospitality Workers. These charges include, but are not limited to, items on receipts labeled as “service charge,” “delivery charge” or “porterage charge.”

6. Can a Hospitality Employer define the term “service charge” in the Ordinance?

Answer: Yes. Employers covered under the service charge law may reasonably define the term “service charge” in Emeryville Municipal Code Section 5-37.04; the purpose of a service charge at their establishment; what the service charge includes; and which



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type of Hospitality Workers may share in the service charge (referred to as “Chain of Service”).

However, Hospitality Employers may not further define a service charge or implement a Chain of Service policy in the following instances: a) service charges collected for banquets or catered meetings must be paid to the Employees who actually worked the banquet or catered meetings; b) service charges collected for room service shall be paid to Employees who actually help in the preparation of and delivery of food and beverage associated with the charge; and c) service charges collected for portering service shall be paid to the Employee who actually carries the bag(s) associated with the charge.

7. If a Hospitality Employer chooses to define the term “service charge” what must it do to ensure compliance with the Ordinance?

Answer: An Employer must have a written policy for its Employees that contains, at a minimum, the following: a) a complete definition of “service,” including a reasonable and thorough description of why and for what the Hospitality Employer is charging the service charge; b) each Hospitality Worker position that is included in the Chain of Service; c) the percentage that each Hospitality Worker shall receive from the service charge, which shall be equitably based on their contribution in the Chain of Service; d) written notice that supervisors shall not receive a portion of the service charge unless they perform nonsupervisory work in the Chain of Service; e) a statement that service charges will be paid to Hospitality Workers no later than the next payroll following the work or collection of the service charge from the customer, whichever is later and f) Written notice, including the identity of an individual or employment position, to whom Employees may direct questions or complaints regarding the payment (or nonpayment) of service charges.

Hospitality Employers must also provide adequate, written notice to its customers of its Chain of Service policy. The notice must include, at a minimum, the amount of the service charge, what the service charge is for and who shares in the service charge.

8. May a Hospitality Employer modify or discontinue its Chain of Service policy.

Answer: Yes. The Employer must give at least 15 calendar days advanced, written notice to Hospitality Employees and written notice to its customers concurrently with the implementation or discontinuation of the policy.

9. Are kitchen workers included in service charge distribution?

Answer: Yes. If the service charge involved a service that included prepared food, kitchen staff (i.e., cooks, dishwashers, etc.) are entitled to a percentage of the service charge and should be included in any Chain of Service policy.



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10. Can an Employer use a service charge as a credit towards its obligations to pay Emeryville's minimum wage rates?

Answer: No. An Employer may not take a credit towards its obligations to pay Emeryville's applicable minimum wage rate.

11. Is an Employer obligated to factor in the service charge paid to Employees when calculating their regular rate of pay for overtime purposes?

Answer: The City of Emeryville cannot advise Employers on how to comply with California state law, including state law governing its service law. See <http://www.dir.ca.gov/dlse/> for further information on state law.

12. Can a supervisor or manager share in the service charge?

Answer: No. However, supervisors and managers are entitled to be paid a portion of the service charge for their time spent on nonsupervisory work serving customers. The portion paid to supervisors or managers cannot be higher than the average rate paid to Hospitality Workers performing similar duties.

13. When must an Employer pay the service charge to its Employees?

Answer: Hospitality Employers must distribute the charge no later than the next payroll following the work or collection of the charge from the customer, whichever is later.

14. Does an Employer need to provide notice of an Employee's rights under the service charge law?

Answer: Yes. Employers must give written notice to current Employees and to all new employees at the time of hire of his/her rights. The notice must be in all languages spoken by 10% or more of the Employees and the required bulletin(s) should be posted prominently in work areas that can be seen by all Employees.

You may access the City's Service Charge Law bulletins and notices at the following webpage: <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance>

15. Do the Service Charge requirements apply to tips?

Answer: No. This requirement does not apply to a tip, gratuity, or money that has been paid, given to, or left for a Hospitality Worker by customers over and above the actual amount due for services rendered. Employers must continue to follow California law regarding Employee rights to tips.