

EARNED SICK LEAVE AND MINIMUM WAGE ORDINANCE FREQUENTLY ASKED QUESTIONS (FAQs)

When does the Ordinance go into effect?

The Earned Sick Leave and Minimum Wage Ordinance is effective as of July 11, 2016

Where can I find the Ordinance language?

<https://www.sandiego.gov/treasurer/minimum-wage-program>

What will the City's minimum wage be upon the measure going into effect?

Employees working within the geographic boundaries of the City are entitled to be paid a minimum wage of at least \$10.50 an hour. Starting January 1, 2017, this minimum wage increases to \$11.50 an hour. Starting January 1, 2019, and each year thereafter, the minimum wage increases by an amount corresponding to the prior year's increase, if any, in the cost of living based on the Consumer Price Index.

Can an employer use tips as credit to satisfy the City's minimum wage?

No. An employer may not use tip credit to satisfy its obligations to pay the City's minimum wage. An employer must pay the full minimum wage. California law prohibits employers and their agents from sharing in or keeping any portion of a gratuity or tip left for or given to one or more employees by a patron. Furthermore it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. The law further states that gratuities are the sole property of the employee or employees to whom they are given.

How will the ordinance be enforced? What office will administer the ordinance?

The Implementing Ordinance, effective September 2, 2016, has designated the Office of the City Treasurer as the Enforcement Office. They will establish a system to receive and adjudicate complaints and to order relief in cases of violations.

What are the notice and posting requirements of the Ordinance?

The Ordinance requires the City to publish and provide notices to employers regarding the law, including:

- a) A bulletin announcing the adjusted minimum wage for the upcoming year and its effective date;
- b) A notice for employers to post in the workplace informing employees of the current minimum wage and of their rights to the minimum wage and earned sick leave, including information about the accrual and use of sick leave, the right to be free from retaliation, and the right to file a complaint with the Enforcement Office or a court of competent jurisdiction;
- c) A template notice suitable for use by employers in compliance with this section.

Listed documents will be available at the following location

<https://www.sandiego.gov/treasurer/minimum-wage-program>

Are there any exemptions for small businesses or non-profits?

No. There are no exemptions for small businesses or non-profits. Employees who perform at least two hours of work within the geographic boundaries of the City in one or more calendar weeks of the year and who are entitled to be paid minimum wage under California law are entitled to the benefits of the Ordinance, with three specific exceptions. Employees not covered are those authorized to be employed at less than the minimum wage under a special license issued under California Labor Code sections 1191 or 1191.5; employees under a publicly subsidized summer or short-term youth employment program, such as the San Diego County Urban Corps Program; and student employees, camp counselors, or program counselors of an organized camp as defined in California Labor Code section 1182.4. Employee does not include any person who is employed as an independent contractor as defined by the California Labor Code.

When does an employee begin accruing sick leave? When can an employee begin using sick leave?

Existing employees must begin to accrue earned sick leave on the effective date of the Ordinance. Employees who start work after the effective date of the Ordinance begin to accrue on their starting date of employment. Employers may limit use of earned sick leave until the employee's 91st day of employment with the employer.

My employee works some hours inside the City of San Diego and some hours outside the City of San Diego. Do I need to provide sick leave for all hours worked?

No. Employers must provide an employee with one hour of earned sick leave for every thirty hours worked by the employee within the geographic boundaries of the City.

How do I know if my business is located within the geographical boundaries of the City of San Diego?

You can visit the link below and enter the business address to determine if it is in the geographical boundaries of the City of San Diego.

<http://www.arcgis.com/home/webmap/viewer.html?webmap=2caf87466f1e427e8151fd67c5af9551&extent=-118.1078,32.3242,-116.0795,33.3224>

Do we need to provide sick leave to salaried employees?

Yes. Employees who are not covered by the overtime requirements of California law or regulations are assumed to work forty hours in each work week for purposes of earned sick leave accrual unless their regular work week is less than forty hours, in which case earned sick leave accrues based upon that regular work week.

My employee works some hours at a higher rate. Do we need to calculate their sick leave at this higher rate?

Employees accrue leave by the hour, not by a specific wage rate. When used, these hours must be paid at the hourly rate the employee earns at the time the employee uses the earned sick leave.

Can an employer cap an employee's accrual of sick leave?

The Implementing Ordinance, once effective on September 2, 2016, will allow employers to cap an employee's total accrual of sick leave at 80 hours.

What happens to unused accrued sick leave at the end of the benefit year?

Unused earned sick leave must be carried over to the following benefit year.

Can an employer “front load” 40 hours of sick leave rather than award it through the accrual method?

The ordinance provides only for the accrual of paid sick time at the rate of one hour of sick time for every 30 hours worked. The ordinance does not provide for any other method of awarding earned sick leave; however, the Implementing Ordinance, once effective on September 2, 2106, will allow employers to front load no less than 40 hours of sick leave to an employee at the beginning of each benefit year. Front loading at least 40 hours of leave each benefit year will excuse an employer from the accrual and carryover provisions of the Ordinance.

What documents am I required to maintain to prove my compliance with the Ordinance?

All employers must maintain records documenting employees’ wages earned and accrual and use of sick leave. These records must be retained for at least three (3) years.

What is the difference between the federal, state (California) and San Diego minimum wage laws?

San Diego employers are subject to the federal, state and San Diego minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard. In the case of minimum wage, San Diego employers must pay employees the rate that is most beneficial to the employee. Thus, since San Diego’s current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in San Diego who are subject to the laws must pay at least the City’s minimum wage rate.