

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

**1. When does the Ordinance go into effect?**

The Earned Sick Leave and Minimum Wage Ordinance, [San Diego Municipal Code \(SDMC\) Chapter 3, Article 9, Division 1](#) was effective as of July 11, 2016.

**2. Where can I find the Ordinance language?**

The Ordinance, as well as other helpful information, can be found at: <https://www.sandiego.gov/treasurer/minimum-wage-program>

**3. 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.

**4. 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.

**5. How will the ordinance be enforced? What office will administer the ordinance?**

The Office of the City Treasurer has been designated as the Enforcement Office. They will establish a system to receive and adjudicate complaints and to order relief in cases of violations.

**6. 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 bulletin announcing the adjusted minimum wage for the upcoming year and its effective date;

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 earned 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;

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>

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- 7. 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. Individuals who do not qualify as employees include 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; individuals 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.
- 8. I have some salaried employees who are exempt from the California minimum wage. Are they entitled to earned sick leave under the City's Ordinance?**  
No. To qualify as an "employee" under the Ordinance, an individual must be entitled to payment of minimum wage from an employer under the California minimum wage law.
- 9. When does an employee begin accruing earned sick leave? When can an employee begin using accrued earned 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 accrued earned sick leave until the employee's 91st day of employment with the employer.
- 10. 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 earned 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.
- 11. How do I know if my employees' work location(s) 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 geographic 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>
- 12. My employee works some hours at a higher rate. Do we need to calculate their earned 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 regular rate of pay/wage the employee earns at the time the employee uses the earned sick leave. As defined by [California Labor Code § 200\(a\)](#), "wage" may include commission.
- 13. Can an employer cap an employee's accrual of earned sick leave?**  
Yes. Employers can cap an employee's total accrual of earned sick leave at 80 hours.

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14. **What happens to unused accrued earned sick leave at the end of the benefit year?**  
Unused accrued earned sick leave must be carried over to the following benefit year, unless an employer front loads at least 40 hours of earned sick leave at the beginning of every benefit year.
15. **Can an employer “front load” earned sick leave rather than award it through the accrual method?**  
Yes. Employers may satisfy the accrual and carry over requirements of the Ordinance if no less than 40 hours of earned sick leave are awarded to an employee at the beginning of each benefit year.
16. **Will an employer’s Paid Time Off (PTO) or Vacation policy satisfy the earned sick leave requirements?**  
Possibly. If an employer has a paid leave policy, such as a PTO or vacation policy, that makes available to employees an amount of paid leave that meets the requirements of this Ordinance and that is used for the same purposes specified in the Ordinance, then an employer is not required to provide additional paid sick leave. If through a contract, collective bargaining agreement, employment benefit plan or other agreement, the employer provides **greater** PTO than required by the Ordinance, the employer may utilize an alternative methodology for the calculation of, payment of, and use of earned sick leave.
17. **How can I determine if my PTO or vacation policy provides greater PTO than required by the Ordinance?**  
A PTO policy provides greater paid time off if the policy meets the minimum accrual, compensation and use requirements of the Ordinance and also (1) accrues at a faster rate, (2) is compensated at a higher rate, or (3) is allowed to be used for more purposes than those specified in the Ordinance. If the PTO policy provides an enhanced benefit in one or more of these three categories and otherwise meets the minimum requirements for the remaining two categories, then the PTO policy will qualify as providing greater paid time off than required by the Ordinance. The [City Attorney’s November 30, 2016 Memorandum of Law](#) provides additional information.
18. **If an employee’s hire date is in the middle of the benefit year, and the employer uses the “front load” method for earned sick leave, can the employer pro-rate earned sick leave hours?**  
No. If an employer decides to satisfy the accrual and carryover requirements of the Ordinance by front loading earned sick leave, no less than 40 hours must be awarded to the employee each benefit year.
19. **What documents are employers required to maintain to prove compliance with the Ordinance?**  
All employers must maintain contemporaneous written or electronic records documenting employees’ wages paid and accrual and use of earned sick leave. These records must be retained for at least three (3) years. Employers must provide these records to employees on a regular basis and allow the Enforcement Office reasonable access to these records in furtherance of an investigation conducted pursuant to the Ordinance.

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**20. Does the City of San Diego Earned Sick Leave and Minimum Wage Ordinance apply to undocumented workers?**

Yes, if they otherwise qualify as an employee under the Ordinance.

**21. 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.

**22. I am an employer and realized I have not been in compliance with the Earned Sick Leave and Minimum Wage Ordinance; I want to self-correct. What steps should I take?**

In general, steps an employer should take to self-correct violations of the Ordinance include immediately remedy any ongoing violation by complying with the ordinance and payment of back wages to impacted employees; both current and former. However, you should contact the Enforcement Office to get more information regarding self-corrective actions based on the specific violations.

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