



# Hazard Pay Now in Effect For San Francisco Grocery and Retail Pharmacy Workers

Insights

3.22.21

The San Francisco Board of Supervisors unanimously approved San Francisco's COVID Related Hazard Pay Emergency Ordinance, which temporarily requires large grocery and retail pharmacy stores, like drug stores, and the janitorial and security contractors that work on-site at these covered grocery and drug stores to provide an extra \$5.00 of hazard pay per hour to workers (up to a total wage of \$35.00 per hour). This Ordinance was approved by the Mayor on March 19 and becomes operative today, March 22, 2021. The Ordinance will remain in effect until May 19, 2021 (the 61st day following enactment), unless it is reenacted or the COVID-19 Public Health Emergency is terminated. Although this Ordinance is limited to San Francisco, other California cities have already implemented similar hazard or "hero" pay ordinances, including Oakland, San Mateo, South San Francisco, Berkeley, Daly City, San Jose, Santa Clara, Long Beach and Santa Monica. What do San Francisco employers need to know about this new law?

## Who Is a Covered Employer?

The Ordinance only applies to certain large employers that employ 500 or more employees worldwide and have at least 20 employees that work on-site at a general grocery, specialty grocery or retail location with a pharmacy, like a drug store, as defined in Planning Code section 102 in San Francisco. Non-retail pharmacies, such as a pharmacy that services a hospital, are not covered.

Additionally, property service contractors that provide on-site janitorial or security services for a covered general grocery, specialty grocery or retail location with a pharmacy in San Francisco are also a Covered Employer.

## Who is a Covered Worker?

All workers who provide services or labor for compensation for a Covered Employer and report for work at a physical store location within San Francisco and are paid less than \$35.00 per hour are Covered Workers. This includes non-exempt (hourly), exempt (salary), part-time, and temporary workers.

## What Must Covered Employers do to Comply?

Covered Employers must provide an additional \$5.00 per hour in Hazard Pay to all Covered Workers for every hour that they are paid less than \$35.00. In addition to the \$5.00 Hazard Pay requirement, Covered Employers must also abide by the following obligations:

1. **Notice of Hazard Pay Ordinance:** The Ordinance requires Covered Employers to provide the Office of Labor Standards Enforcement's (OLSE) official notice to workers in a manner calculated to reach all workers. This can be achieved by posting it in a conspicuous place in the workplace, by electronic communication, and/or by posting it in a conspicuous place on a web or app-based platform.
2. **No Retaliation:** Under the Ordinance, Covered Employers are prohibited from discriminating or taking retaliatory action against any worker for requesting Hazard Pay. This likely includes lowering a worker's base wage, premium wages, or reducing work hours. Any adverse action taken within 90 days of the individual exercising their rights under the Ordinance creates a rebuttable presumption of retaliation.
3. **Retention of Records:** Covered Employers must retain records related to Hazard Pay and disclose such records upon request by the OLSE. Records include but are not limited to, copies of Hazard Pay policies, including employer-initiated policies; copies of the written notification to workers; and documentation demonstrating Hazard Pay payments were paid.
4. **Update Wage Statements:** In accordance with Labor Code section 226, Covered Employers should update their employees' wage statements to expressly include the Hazard Pay paid to Covered Workers under this Ordinance. Hazard Pay should be defined distinctly as a separate line item labeled "SF Hazard" or "Wage Enhancement." This will satisfy legal requirements under section 226 to avoid costly litigation and also provide a record that the Hazard Pay payments were paid.
5. **Calculate and Provide the Proper Overtime Rate:** While not expressly included in the Ordinance, it is important to remember the regular rate of compensation likely includes the extra Hazard Pay. Mistakenly excluding Hazard Pay from an employee's regular rate calculation can result in costly litigation. Therefore, we recommend calculating an employee's overtime rate with the Hazard Pay included.

## Are There Any Exceptions?

There are two general exceptions to this new obligation.

- **Credit for Employer-Initiated Hazard Pay:** The Ordinance provides a credit for Covered Employers who have already voluntarily implemented their own wage enhancement policies. This allows Covered Employers to offset the amount of Hazard Pay owed by this Ordinance by the amount paid by the Covered Employer's voluntary wage enhancement policy. For example:
  - If a Covered Employer already provides an extra \$4.00 per hour of "COVID incentive pay" to its Covered Worker that is paid \$20.00 per hour, the Covered Employer will only be required to pay an additional \$1.00 per hour to meet the Hazard Pay requirement.

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- If a Covered Employer already provides an extra \$3.00 per hour of “COVID incentive pay” to its Covered Worker that is paid \$32.00 per hour, the Covered Employer does not have to provide additional Hazard Pay because the Covered worker is paid \$35.00 per hour and is therefore exempt under the Ordinance.
- ***Waiver in Collective Bargaining Agreement:*** Any portion of the Ordinance does not apply to workers covered under a collective bargaining agreement where such requirements are expressly waived in the agreement in clear and ambiguous terms.

## What Are the Penalties for Violations?

The OLSE will enforce the Ordinance. There is also a private right of action, which allows individuals to file a lawsuit in court for alleged violations under this Ordinance. This means a worker may be entitled damages such as backpay, the payment of an additional sum as penalties in the amount of \$50 for each day that the violation occurred or continued, and reasonable attorneys’ fees and costs.

## Conclusion

This Ordinance may be relatively limited to large grocery, retail pharmacy stores, and their contracted on-site janitorial or security services, but California employers should keep an eye out for other cities and industries that may be impacted by similar laws. If you are considered a Covered Employer, you should coordinate with your employment counsel as soon as possible to begin developing a strategy plan in response to this Ordinance.

Employers in San Francisco should also ensure they are complying with San Francisco’s other COVID-19 related emergency ordinances, including the [Emergency Public Health Emergency Leave Ordinance](#), [Back-to-Work Ordinance](#) and [COVID-Related Employment Protections \(Retaliation\) Ordinance](#).

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips’ Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [San Francisco office](#), or any member of [our Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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