



Hazard Pay Implemented For Oakland's Grocery Store Workers

Insights

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The Oakland City Council approved this week a Hazard Pay Ordinance requiring certain grocery store employers to pay an additional \$5.00 per hour in hazard pay for all part-time and full-time employees, and comply with other new legal obligations. This Ordinance took effect immediately and is set to expire when Oakland's risk level drops to "minimal" under California's Blueprint for a Safer Economy (defined as an adjusted case rate of less than 1 daily new COVID-19 case per 100,000 people in the county). While there have already been court challenges to the new Ordinance, it currently remains in effect for all covered employers. Although this Ordinance is limited to large grocery store employers in Oakland, other California cities have already implemented similar hazard or "hero" pay ordinances, including Long Beach and Santa Monica. Los Angeles, San Jose, and Berkeley are considering similar proposals in the coming weeks. What do California employers need to know about this new law?

Who Is Covered?

The Ordinance applies to all employers who operate a large grocery store in the city of Oakland and employs 500 or more employees nationwide. The 500-employee threshold includes franchises, and all employees do not have to be located in Oakland. The Ordinance defines large grocery stores as stores that are over 15,000 square feet in size.

All non-exempt hourly employees who report for work at a physical store location within the City of Oakland are covered, regardless of their length of employment. This includes all employees who work on either a full-time or part-time basis.

Employer Obligations

In addition to providing \$5.00 per hour in hazard pay for all employees, employers covered by the new law have the following new obligations.

1. ***Notice of the Hazard Pay Policy***

The Ordinance requires that within three days of the City publishing notice of the new law, employers must provide notice of the law in a manner that is calculated to reach all employees in all languages spoken by more than 10% of employees. This could be achieved by posting in a prominent area in the workplace or sending electronic communications to all employees. Additionally, covered employers must provide contact information for the owner or manager

including their name, address, telephone number and whether the store is part of a franchise. If any changes to this information arise, additional notice is required.

2. ***Notice of the City's Risk Level***

Employers must provide notice to all employees when the risk level in the City of Oakland moves from one tier to another under guidance from the California Department of Public Health. If the city moves from "Widespread" or "Moderate" risk level to "Minimal," or vice versa, the employer must provide notice in a manner that will reach all employees. More information about county risk levels [can be found here](#).

3. ***No Retaliation***

Under the Ordinance, employers are prohibited from discriminating or taking retaliatory action against any employee for requesting hazard pay. This includes lowering an employee's base wage, premium wages, or reducing work hours. Any adverse action taken within 90 days of the person exercising rights under the new law creates a rebuttable presumption of retaliation.

Exemptions

The new law does not require employers who have already implemented hazard pay of any amount for their employees to pay an additional \$5.00 per hour. Employers who have already initiated hazard pay policies will be credited against the \$5.00 per hour increase. For example, employers who have already provided hazard pay of \$4.00 per hour above employee's base wage would only be required to pay an additional \$1.00 per hour to meet the \$5.00 hazard pay requirement. These employers must provide a copy of their Hazard Pay Policy along with documentation reflecting the implementation of the policy to receive credit for their employer-initiated hazard pay.

What Are The Penalties For Violations?

The Oakland Department of Workplace and Employment Standards will enforce the new Ordinance. It may impose penalties and take "any and all appropriate action to enforce the requirements." Any employer who violates the ordinance is liable for civil penalties up to \$1,000 for each violation.

It is important to note that there is also a private right of action entitling an employee to file a lawsuit in court for alleged violations of the law. This means that an employee may be entitled to backpay and a court may award attorneys' fees and expenses.

Conclusion

This Ordinance may be relatively limited to large grocery stores, 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 new development.

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Employers should ensure that they are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in [our San Francisco office](#).

This Legal Alert provides an overview of developing workplace issues. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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