



Los Angeles Ordinances Will Impact Grocery, Drug, And Food Retail Businesses

Insights

4.03.20

The L.A. City Council just took two steps that will impact many grocery and retail food operations in the city. First, it passed the Grocery, Drug Retail and Food Delivery Worker Protection ordinance, offering workplace protections and creating employer responsibilities that will need to be implemented by affected businesses. Second, it passed an ordinance that requires retail food stores to dedicate certain shopping hours to the disabled, elderly, and operators of licensed residential congregate living facilities. **[Ed. Note: On March 31, 2020, Mayor Garcetti signed this ordinance.]**

Grocery, Drug Retail And Food Delivery Worker Protection Ordinance

The first ordinance covers grocery store employees, drug store employees, and people who work for “food delivery platforms” such as Instacart, Amazon Fresh, Postmates, Uber Eats, Grub Hub and Doordash. For purposes of this ordinance, there is a presumption that a worker is an employee. This ordinance will go into effect once signed by Mayor Garcetti. **[Ed. Note: On April 7, 2020, Mayor Garcetti signed this ordinance.]**

What Are An Employer’s Responsibilities?

Employers have three **[Ed. Note: two]** main requirements: First, store employers must approve a covered employee’s request to change their schedule and food delivery platform shall allow an employee to decline orders without any negative repercussions where the request is:

- To provide daycare for the employee’s own child(ren);
- To care for a sick immediate family member or other household member; or
- Due to the employee feeling ill, exhibiting a symptom of COVID-19, or suspecting having been exposed.

The ordinance is silent regarding any legitimate business reasons the employer could deny such a request.

Second, employers must offer any additional hours of work to current employees before hiring new employees, where (a) the current employees are qualified to do the work, and (b) the additional hours will not result in overtime.

Third, food delivery platforms must provide a “no contact” delivery option, as well as written guidance and detailed instructions on how an employee can safely make a no-contact delivery. **[Ed.]**

guidance and detailed instructions on how an employee can safely make a no-contact delivery. **LEO.**

Note: This requirement was removed from the final signed ordinance.]

What Are The Consequences Of Violating This Ordinance?

An employer may not retaliate against an employee for requesting the protections contained in this ordinance. Doing so will potentially result in legal awards to the employee including:

- Reinstatement
- Backpay, and
- Other legal and/or equitable relief.

Importantly, under this ordinance a court **must** award attorneys' fees to a prevailing employee.

[Ed. Note: Mayor Garcetti's order does not explicitly enumerate consequences for violating these provisions.]

When Does This Ordinance End?

The ordinance will be lifted whenever **both** Mayor Garcetti's Safer at Home and Governor Newsom's Stay at Home Orders are lifted.

Exclusive Shopping Hours For Elderly And Disabled

The Los Angeles City Council also passed an ordinance that requires retail food stores to dedicate certain shopping hours to the disabled, elderly, and/or operators of licensed residential congregate living facilities.

What Stores Are Covered?

The ordinance provides several definitions of retail food stores:

- Stores that are primarily engaged in the retail sale of foods (dry goods, fresh fruits and vegetables, or fresh meats, fish, or poultry) or where food is prepared and served, including a bakery, deli, coffee shop, or meat and seafood counter;
- Stores where the majority of sales is from a pharmacy, if such store also sells canned food, dry goods, and other grocery items; and
- Stores that are membership-only warehouses and sell food.

This ordinance does **not** include restaurants, even if the restaurant is engaged in the sale of dry goods, fresh fruits and vegetables, or fresh meats, fish, or poultry during this emergency period.

When Do The Dedicated Shopping Hours Need To Be?

For those stores open 24/7, they need to provide any hour during the morning for this purpose. For stores not open 24/7, they need to reserve the first hour of the day that the store is open to the public for these shoppers.

How Often Are These Hours Required?

Stores that are over 10,000 square feet are required to offer these hours every day. Stores between 2,500 and 10,000 square feet need only require such hours three times a week. Stores are exempt if they are 2,500 square feet or smaller.

Who Can Shop During These Hours?

- Physically or mentally disabled individuals;
- One assistance provider per disabled individual;
- Elderly individuals, defined as those who are 60 or older; and
- Operators of licensed residential congregate living facilities who are shopping for residents (who must show a copy of the congregate living home's state-issued operating license).

Who Can Be In The Building During These Hours?

Retail food stores must otherwise restrict public access to their buildings during this dedicated hour. It is considered a separate violation for *each* non-permitted person who is present during these exclusive access hours. The ordinance, however, limits other individuals that may be *present* on the premises during the exclusive shopping hours without violating this ordinance. These individuals include:

- Store employees;
- Contractors who are supplying goods and services; and
- Government employees who are within the scope of their official duty including law enforcement, public health inspectors, building and safety inspectors, and fire department officials.

Posted Notice Is Required

Retail food stores must conspicuously post a notice with their designated hours in a place that is visible to the public. Additionally, retail food stores must prominently post the exclusive hours on their website, on the page that is devoted to individual store hours.

What Are The Consequences Of Violating This Ordinance?

While the ordinance states that it is a separate violation for each non-permitted person who enters a store during these exclusive access hours, it is silent as to the specific penalties associated with violations of the ordinance.

When Does This Ordinance End?

The ordinance will be lifted whenever **both** Mayor Garcetti's Safer at Home and Governor Newsom's Stay at Home Orders are lifted.

Conclusion

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 [Los Angeles office](#), or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific city law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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