

West Hollywood Minimum Wage Ordinance

5.130.010 Definitions.

As used in this chapter:

1. "City" means the City of West Hollywood.
2. "Clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that is clearly visible in context and clearly calls attention to the language.
3. "Employee" means any person who in a particular week performs at least two hours of work within the geographic boundaries of the city for an employer; and qualifies as an employee entitled to payment of a minimum wage from any employer under the California [Labor Code](#) and wage orders published by the California Industrial Welfare Commission.
4. "Employer" means any person, including a corporate officer or executive, association, organization, partnership, business trust, and limited liability company or corporation, who directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any employee.
5. "Hardest to employ" means persons who have been out of the workforce for an extended period of time and who face considerable barriers when trying to re-enter the mainstream workforce.
6. "Service charge" means any separately-designated amount charged and collected by an employer from customers, that is for service by employees, or is described in such a way that customers might reasonably believe that the amount is for those services or is otherwise to be paid or payable directly to employees, including those charges designated on receipts, invoices, or billing statements under the term "service charge," "table charge," "portage charge," "automatic gratuity charge," "healthcare surcharge," "benefits surcharge," or similar language. Service charge does not include a tip or gratuity as defined under state or federal law.
7. "Supportive services" includes, but is not limited to, counseling services, individual case management, pre-employment job readiness training, daily monitoring of participants while on the job, provision of unsubsidized competitive employment opportunities, and assistance in applying for, obtaining, and maintaining unsubsidized competitive employment.

8. “Transitional employer” means a nonprofit corporation that provides transitional jobs for the long-term unemployed, and that has been certified by the city as a transitional employer.

9. “Transitional job” means short-term, wage-paying, subsidized employment in a nonprofit corporation that combines actual work, skill development, and supportive services to help participants overcome barriers to employment and transition to unsubsidized competitive employment.

5.130.020 Minimum Wage Payment Requirements.

a. On January 1, 2022, the established minimum wage rate in West Hollywood is seventeen dollars sixty-four cents (\$17.64) per hour, as increased in accordance with subsection (c) below.

b. The minimum wage rate goes into effect according to the following schedule:

1. As of January 1, 2022, hotel employers shall pay hotel workers a wage of no less than the established minimum wage rate as set out in subsection (a). The paid sick leave, vacation, or personal necessity time set out in Section [5.130.030](#) goes into effect for these hotel workers on this date. For purposes of this subsection, the following definitions apply:

A. “Hotel” means a commercial facility not approved as a dwelling unit with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other lodging generally not intended to be the guest’s domicile. Also, may include accessory guest facilities such as, but not limited to, swimming pools, tennis courts, indoor athletic facilities, accessory retail uses and meeting facilities. This definition includes private clubs with guest rooms available for overnight lodging. “Hotel” includes any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel’s purpose.

B. “Hotel employer” means any person who owns, controls, or operates a hotel in the city, and includes any person or contractor who, in a managerial, supervisory, or confidential capacity, employs hotel workers to provide services at a hotel in conjunction with the hotel’s purpose. “Hotel employer” includes a person or entity who owns, controls, and/or operates any contracted, leased or sublet premises connected to or operated in conjunction with the hotel’s purpose, or a person or entity who provides services at the hotel.

C. “Hotel worker” means any individual whose primary place of employment is at one or more hotels and who is employed directly by the hotel employer, or by a person who has contracted with the hotel employer to provide services at the hotel. “Hotel worker” includes an employee who works in a restaurant or food and beverage service at a hotel, regardless of whether the restaurant is hotel-owned or operates out of a contracted, leased, or sublet space in a hotel. Except for

purposes of implementing this schedule in Section [5.130.020\(b\)](#), in all other subsections of this section and throughout the rest of this chapter, “hotel employer” is included in the definition of “employer,” and “hotel worker” is included in the definition of “employee”:

2. Employers with Fifty Employees or More.

A. On January 1, 2022, employers with fifty employees or more shall pay employees no less than the hourly wage of fifteen dollars fifty cents (\$15.50) per hour.

B. On July 1, 2022, employers with fifty employees or more shall pay employees no less than the hourly wage of sixteen dollars fifty cents (\$16.50) per hour. The paid sick leave, vacation, or personal necessity time set out in Section [5.130.030](#) does not go into effect for these employees until this date.

C. On January 1, 2023, employers with fifty employees or more shall pay employees no less than the hourly wage of seventeen dollars fifty cents (\$17.50) per hour.

D. On July 1, 2023, employers with fifty employees or more shall pay employees the established minimum wage rate under subsection (a).

3. Employers with Less Than Fifty Employees.

A. On January 1, 2022, employers with less than fifty employees shall pay employees no less than the hourly wage of fifteen dollars (\$15.00) per hour.

B. On July 1, 2022, employers with less than fifty employees shall pay employees no less than the hourly wage of sixteen dollars (\$16.00) per hour. The paid sick leave, vacation, or personal necessity time set out in Section [5.130.030](#) does not go into effect for these employees until this date.

C. On January 1, 2023, employers with less than fifty employees shall pay employees no less than the hourly wage of seventeen dollars (\$17.00) per hour.

D. On July 1, 2023, employers with less than fifty employees shall pay employees the established minimum wage rate under subsection (a).

c. On July 1, 2022, and annually thereafter, the minimum wage rate identified in subsection (a) of this section will increase based on the CPI-W, as determined by the applicable location index determined and adopted by City Council resolution. The city shall announce the adjusted rates annually on or before each April 1st and publish a bulletin announcing the adjusted rates, which shall also take effect on July 1st of each year.

d. Employees who are learners, as defined in [Labor Code](#) Section 1192 and consistent with wage orders published by the California Industrial Welfare Commission, shall be

paid not less than eighty-five percent of the minimum wage rounded to the nearest nickel during their first one hundred sixty hours of employment, after which learners shall be paid the applicable minimum wage pursuant to this section.

e. Every employer shall post in a conspicuous place at any workplace or job site where any employee works, the bulletin published each year by the city informing employees of the current minimum wage rate and of their rights under this chapter. Every employer shall post notices in English, Spanish, and any other language spoken by at least five percent of the employees. Every employer shall also provide to each employee at the time of hire, the employer's name, address, and telephone number in writing.

f. Every employer shall retain payroll records pertaining to employees for no less than three years.

g. For purposes of this section:

1. Multiple Employers that form a single integrated enterprise shall be considered a single Employer under this section if so deemed under the Fair Labor Standards Act.

2. The number of Employees shall be determined as follows:

(a) For existing Employers, the number of Employees shall be calculated based on the average number of Employees employed per quarter during the most recent calendar year.

(b) For new Employers, an initial determination of size shall be based upon the actual number of hires at the time of the business' opening. After the business has opened, the Employee count shall be determined by the average number of Employees per week who worked for compensation in the first ninety (90) days.

(c) The number of Employees shall be determined using the Employer's total number of individual employees within the United States, regardless of where those employees work."

5.130.030 Paid Sick Leave, Vacation, or Personal Necessity.

a. Employers shall provide at least ninety-six compensated hours off per year for sick leave, vacation, or personal necessity to full time employees to be made available at the employee's request.

1. A full time employee is classified as someone who works at least forty hours a week or in accordance with the employer's policies, if more generous. A full time employee shall accrue at least ninety-six/fifty-two hours of compensated time off each week in a calendar year that the employee has been employed by the employer.

Compensated time off does not accrue for work in excess of forty hours a week. Full time employees that work less than forty hours a week will receive the compensated time off in proportional increments.

2. A part time employee is classified as someone who works less than forty hours per week or in accordance with the employer's policies, if more generous. A part time employee shall accrue compensated time off in increments proportional to that accrued by someone who works forty hours a week, in accordance with subparagraph (1) of this subsection.

3. General Rules for Compensated Time Off.

A. An Employee must be eligible to use accrued paid compensated time off after the first six (6) months of employment or consistent with company policies, whichever is sooner.

B. An Employer may not unreasonably deny an Employee's request to use the accrued compensated time off.

C. Unused accrued compensated time off will carry over until the time off reaches a maximum of one hundred ninety-two (192) hours, unless the Employer's established policy is more generous.

D. An Employer may not implement any employment policy to count accrued compensated time off taken under this section as an absence that may result in discipline, discharge, suspension, or any other adverse action.

b. Employers shall also permit full time employees to take at least eighty additional hours per year of uncompensated time off to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated time off for that year.

1. A full time employee is classified as someone who works at least forty hours a week or in accordance with the employer's policies, if more generous. A full time employee shall accrue at least eighty/fifty-two hours of uncompensated time off each week in a calendar year that the employee has been employed by the employer. Uncompensated time off does not accrue for work in excess of forty hours a week. Full time employees that work less than forty hours a week will receive the uncompensated time off in proportional increments.

2. A part time employee is classified as someone who works less than forty hours per week or in accordance with the employer's policies, if more generous. A part time employee shall accrue uncompensated time off in increments proportional to that accrued by someone who works forty hours a week, in accordance with subparagraph (1) of this subsection.

3. General Rules for Uncompensated Time Off.

A. An employee must be eligible to use accrued uncompensated time off after the first six months of employment or consistent with company policies, whichever is sooner.

B. An employer may not unreasonably deny an employee's request to use the accrued uncompensated time off.

C. Unused accrued uncompensated time off will carry over until the time off reaches a maximum of eighty hours, unless the employer's established policy is more generous.

D. An employer may not implement any employment policy to count uncompensated time off taken under this section as an absence that may result in discipline, discharge, suspension, or any other adverse action.

5.130.040 Notice of Federal and State Earned Income Tax Credit.

Employers shall inform employees of their possible right to the earned income tax credit under federal and state law.

5.130.050 Service Charges.

a. *Service Charges.* Employers shall distribute all service charges in their entirety to the employee(s) who performed services for the customers from whom the service charges are collected. No part of these amounts may be paid to employees whose primary role is supervisory or managerial. No employer or agent thereof shall deduct any amount from wages or other compensation required by this chapter due an employee on account of a service charge or require an employee to credit the amount of a service charge, in whole or in part, against and as a part of the wages or other compensation required by this chapter due the employee.

1. Amounts collected as service charges shall be paid to employee(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the employer to the customers. Employees whose roles are primarily non-managerial or non-supervisory, and who directly or indirectly contributed to the chain of services performed for the customers from whom the service charge is collected, may share in the distribution of the service charge amounts. Except as otherwise required by law, amounts collected as healthcare-related surcharges shall be: (A) deposited within seven days of their collection into segregated accounts controlled exclusively by Employees, including, but not limited to, Flexible Spending Accounts, Health Savings Accounts, or Premium-Only Cafeteria Plans; or (B) paid to employees in wages. No part of any amount collected as a surcharge for healthcare, or any other employee benefit shall revert to the employer.

2. Notwithstanding the foregoing:

A. Amounts collected for hotel banquets or hotel-catered meetings shall be paid to the employees who actually work at the banquet or catered meeting;

B. Amounts collected for hotel room service shall be paid to the employees who actually deliver food and beverage associated with the charge; and

C. Amounts collected for hotel portage service shall be paid to the employees who actually carry the baggage associated with the charge; provided, however, that employers that had, prior to the effective date of this chapter, an existing practice of pooling and distributing the amounts specified in this subdivision to non-management/non-supervisory employees other than the above-listed employees in subdivisions (a) through (c) may continue such practice to the same extent.

b. All service charges must be disclosed to consumers with clear and conspicuous notice prior to the time that the customer makes a purchase or selection, in such a way that customers might easily and reasonably deduce what the service charge is for.

c. If an employer characterizes and separately designates a service charge as optional, the designation must be written in a manner that requires the customer to affirmatively add the optional payments. The employer shall not automatically add such optional payment amounts to a customer receipt, invoice, or billing statement in a manner that requires the customer to affirmatively opt out of paying such amounts.

d. The employer shall disclose in writing to each employee its plan of distribution of service charges and shall report to employees on each payroll date on the amount of service charges collected and amounts distributed to employees for the pay period in question.

e. The amounts shall be paid to the employees no later than the next payroll following collection of the amounts from customers, except that any amounts collected in cash shall be paid to employees at the close of business on the day the amounts are collected.

f. An employer that permits customers to pay service charges by credit card shall pay the employees the full amount of the service charge that the customer indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company.

g. The employer shall keep records showing compliance with the provisions of this section for no less than three years from the date of collection of service charge amounts from the customer.

h. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to customers.

5.130.060 Exemption.

The requirements of this chapter shall not apply to employers that are government agencies, including federal agencies, state agencies, cities, counties, school districts, and all other public entities.

5.130.070 Limited Exemption for Transitional Employers.

a. Transitional employers that provide supportive services and transitional jobs for the hardest to employ may pay each employee in a transitional job an hourly wage that is below the minimum wage set forth under this chapter during the first eighteen months of the employee's work in the transitional job.

b. The city shall establish a procedure to determine whether an employer may be certified as a transitional employer, including, but not limited to, consideration of the following criteria:

1. The employer's nonprofit corporate status;
2. The profile of program participants (e.g., homeless individuals, individuals with addictions, at-risk youth);
3. The components of the employer's transitional job program, including supportive services, designed to help program participants transition towards unsubsidized competitive employment; and
4. Any other criteria as may be developed in the administrative regulations adopted consistent with this chapter.

5.130.080 One-Year Waiver for Certain Employers.

a. Waiver of requirements in Section 5.130.020 (A) and (B) (payment of Minimum Wage Rate). This chapter is not intended to cause reduction in employment or work hours for Employees. Therefore, the City Manager or their designee may grant a waiver from the requirements of Section 5.130.020 (A) and (B) if an Employer can demonstrate to the City Manager or their designee that compliance with this chapter would force the Employer, in order to avoid bankruptcy or a shutdown of the Employer's business, to reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%). The City Manager or their designee shall reach

a determination only after reviewing and auditing, as necessary, the Employer's financial condition, with such review or audit paid for by the Employer. Any waiver granted by the City Manager or their designee is valid for no more than one year. If a waiver is granted under this section, then the Employer must pay at least the minimum wage as required by State law. Any waiver granted under this section does not exempt Employers from compliance with the remaining sections of this chapter. A determination by the City Manager or their designee to grant or deny a request for waiver may be appealed to an administrative hearing officer pursuant to the procedure set forth in Chapter 1.08 of this Code.

b. Waiver of requirements in Section 5.130.030 (paid sick leave, vacation, or personal necessity). The City Manager or their designee may grant a waiver from the requirements of Section 5.130.030 if an Employer can demonstrate to the City Manager or their designee that compliance with this chapter would; 1) force the Employer, in order to avoid bankruptcy or a shutdown of the Employer's business, to reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%), or 2) it will be a hardship to implement the compensated and uncompensated leave provisions due to the existing payroll and human resources processes and platforms the Employer has in place. If the waiver is related to financial conditions, the City Manager or their designee shall reach a determination only after reviewing and auditing, as necessary, the Employer's financial condition, with such review or audit paid for by the Employer. If the waiver is related to hardship due to existing payroll and human resources processes and platforms, the City Manager or their designee shall reach a determination only after reviewing, as necessary, back-up documentation provided by the Employer showing how the provisions cannot be implemented in a timely manner. The City Manager or their designee may grant up to a one-year waiver based on the first hardship condition (financial hardships). The City Manager or their designee may grant up to two three-month waivers based on the second hardship condition (implementation hardships due to existing payroll and human resources processes and platforms), provided the second three-month waiver shall only be granted if implementation hardships remain and the Employer has made diligent progress towards implementing the provisions. Total waivers granted pursuant to this subsection shall not exceed one year. If a waiver is granted under this section, then the Employer must provide at least the minimum compensated and uncompensated leave as required by State law. Any waiver granted under this section does not exempt Employers from compliance with the remaining sections of this chapter. A determination by the City Manager or their designee to grant or deny a request for waiver may be appealed to an administrative hearing officer pursuant to the procedure set forth in Chapter 1.08 of this Code.

c. An Employer that applies for a waiver under this section must provide: (1) advance, written notice to all Employees of such application for waiver; and (2) written notice to all Employees of the City Manager or their designee's determination within three (3) business days after such determination."

5.130.090 Supercession by Collective Bargaining Agreement.

The provisions of this chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of this chapter.

5.130.100 No Waiver of Rights.

Except for bona fide collective bargaining agreements, any waiver by an employee of any provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

5.130.110 Unlawful Practices.

a. It shall be unlawful for an employer to reduce the hours or benefits of, refuse to hire, discharge, displace or otherwise discriminate or take adverse action against any employee or other individual in order to pay wages less than the minimums established under this chapter.

b. It shall be unlawful for an employer to directly fund the wages and benefits required under this chapter by reducing the pension, vacation, or other non-wage benefits of any employee or by increasing charges to employees for parking, uniforms, meals, or other work-related materials or equipment.

5.130.120 Retaliatory Action Prohibited.

a. It shall be unlawful for an employer to reduce the hours, wages or benefits of; demote; suspend; discharge; or otherwise discriminate or take adverse action against any person for exercising rights protected under this chapter. Such rights include, but are not limited to, opposing any practice proscribed by this chapter, participating in proceedings related to this chapter, seeking to enforce the person's rights under this chapter by any lawful means, or otherwise asserting rights under this chapter.

b. Taking adverse action against a person within ninety days of the person's exercising rights protected under this chapter shall raise a rebuttable presumption that the adverse action was taken in retaliation for the exercise of such rights.

5.130.130 Administrative Regulations.

The City Manager or their designee is authorized to adopt administrative regulations that are consistent with the provisions of this chapter. Violations of the administrative regulations adopted pursuant to this section shall constitute violations of this chapter, and shall subject the violator to the penalties set forth in this chapter.

5.130.140 Enforcement Access, Remedies, and Penalties.

a. *Records and Interview Access; Cooperation with Investigations.* To monitor and investigate compliance with the requirements of this chapter, every employer shall cooperate with a city enforcement officer or designated investigators, including, but not limited to: accessing records, and allowing an enforcement officer or investigator to interview persons, including employees, during normal business hours.

b. The city may issue and serve administrative subpoenas as necessary to obtain specific information regarding minimum wage and benefits provided to employees pursuant to this chapter, including, but not limited to, records pertaining to each employee that documents the name, address, occupation, dates of employment, rate or rates of pay, amount paid each pay period, the hours worked for each employee, and the formula by which each employee's wages, sick leave, vacation, personal necessity leave, service charge distribution, and benefits, as applicable, are calculated, to determine whether the employer is in compliance with this chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than thirty days from the date of service. A person who has been served with an administrative subpoena may seek judicial review during that thirty-day period.

c. Any person violating any provision of this chapter shall be subject to the administrative penalty procedure provisions set forth in Sections [1.08.030](#) through [1.08.070](#) of this code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, or permitted by such person and shall be punishable accordingly.

d. Any person violating any provision of this chapter or the terms and conditions of any approval issued pursuant to this chapter shall be required to reimburse the law enforcement agency that investigated the violation its full investigative costs.

e. Violation of any provision of this chapter, with the exception of Sections [5.130.110](#) and [5.130.120](#), shall be considered a strict liability offense; accordingly, the prosecution shall not be required to prove criminal intent or that the violator meant to violate any provision of this chapter.

5.130.150 Civil Remedies.

a. Any employee aggrieved by a violation of this chapter or any other person or entity acting on behalf of the public, may file a civil action in a court of competent jurisdiction against the person violating this chapter.

b. Upon prevailing, any aggrieved employee shall be entitled to legal or equitable relief, including, without limitation, the payment of any back wages unlawfully withheld, the payment of any sick leave unlawfully withheld, the payment of penalties up to the amount of one hundred dollars (\$100.00) to each person whose rights under this chapter were violated for each day that the violation occurred or continued, reinstatement in employment, and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. For willful violations, the amount of monies and penalties to be paid under this subdivision may be trebled.

c. Any person or entity enforcing this chapter on behalf of the public, upon prevailing, shall be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. The right to recover reasonable attorneys' fees and costs does not apply to any proceeding initiated by a governmental entity.

d. The remedies set forth in this chapter are cumulative. Nothing in this chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under this code or state law.

5.130.160 Higher Minimum Wage Under State or Federal Law; Conflicts; Relief.

a. If at any time the state or federal minimum wage is scheduled to exceed the minimum wage required under this chapter, employers shall pay the higher minimum wage.

b. Nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with any state or federal law.

c. Nothing in this chapter shall be construed to limit any employee's right to obtain relief to which the employee may be entitled at law or in equity.