

City of West Hollywood

Minimum Wage Ordinance Administrative Regulations

Updated July 2024



The City Manager of the City of West Hollywood has adopted these administrative regulations to guide implementation and enforcement of the City’s Minimum Wage Ordinance codified in Chapter 5.130 of the West Hollywood Municipal Code. All citations to a code section refer to a section of the West Hollywood Municipal Code unless otherwise stated. These administrative regulations should be read in conjunction with the Minimum Wage Ordinance.

Guidance for Payment of Citywide Minimum Wage

“Employee” means any person who performs at least two (2) hours of work per week 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. Any domestic worker, as defined by State law, who is entitled to payment of a Minimum Wage from any Employer under the California Labor Code, is considered an Employee. Employees who are considered “Exempt Employees” pursuant to state law are not subject to the provisions of the West Hollywood Minimum Wage Ordinance, but are subject to applicable State and Federal laws.

“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.

Qualification of Employers Outside the City

An Employee is subject to the Citywide Minimum Wage if the Employee physically works within the City limits for at least two (2) hours per week, either on a permanent or temporary basis, even if the Employer’s place of business is not physically located within the City. An Employee of an Employer outside the City shall only be paid the West Hollywood Minimum Wage for time worked within the City of West Hollywood. Employees who work outside the City but travel through the City without stopping for the purposes of their work are not subject to the West Hollywood Minimum Wage.

An Employee who lives in the City and performs work for an Employer from home, including telecommuting, is subject to the Citywide Minimum Wage.

Calculation of Consumer Price Index

Beginning July 1, 2024, the minimum wage rates for hotel businesses and non-hotel businesses are no longer on the same annual increase schedule. See Section 5.130.020 *Minimum wage payment requirements* and City Council Ordinance 24-13 for how the rates are calculated.

Rates for non-hotel businesses will be posted annually by October 1 to become effective January 1 of the following year.

Rates for hotels will be posted annually by April 1 to become effective July 1 of each year.

Visit the City of West Hollywood's Minimum Wage webpage at www.weho.org/wage for current Minimum Wage rates.

Guidance for Compensated and Uncompensated Leave

Employers shall provide at least 96 hours of Compensated Leave each year for full-time Employees. "Compensated Leave" means Employer paid time off for sick, vacation, or personal necessity leave. For purposes of the Ordinance, Employers may provide Compensated Leave for sick, vacation, or personal necessity leave separately, as long as the total combined number of Compensated Leave hours is greater than or equal to 96 hours for full-time employees. Employers must ensure that, when combined with any existing paid leave policies, the total Compensated Leave provided to full-time Employees meets or exceeds the minimum requirement of 96 hours as stipulated by the Ordinance. At least 50% of the required hours, or at least 48 hours for full-time Employees, must be designated vacation or personal necessity leave, unless otherwise provided in State law. Part-time Employees shall accrue Compensated Leave on a pro-rata basis (based on a proration of the number of hours the part-time employee works). Compensated hours for sick, vacation, and personal necessity are paid at the Employee's current hourly base wage rate which shall not be below the current minimum wage rate, unless the Employer chooses to implement a more generous policy. Employers must ensure that sick leave requirements under State law are met.

Employers shall provide at least 80 hours of Uncompensated Leave each year for full-time Employees. "Uncompensated Leave" is unpaid time off to be used for sick leave for the illness of the Employee or a member of their immediate family, as defined by the California Family Rights Act (CFRA), once Compensated Leave is fully exhausted. All unpaid time off provided by the Employer shall be referred to as Uncompensated Leave. Part-time Employees shall accrue Uncompensated Leave on a pro-rata basis (based on a proration of the number of hours the part-time Employee works).

Full-time Employees are defined as Employees who work at least 40-hours per week. Part-time Employees are defined as employees that work less than 40 hours per week on a regular basis. Temporary Employees are defined as employees that work for an employer for a limited duration.

Methods for Distribution of Compensated and Uncompensated Leave

Employers are required to provide an Employee with up to 96 hours of Compensated Leave per year, subject to a pro-rata basis for part-time Employees (based on a proration of the number of hours the part-time Employee works). For Compensated Leave classified as vacation or personal necessity leave, the Employer may either accrue or front-load the hours each year. Compensated leave classified as vacation or personal necessity leave must be at least 50% of the required hours; which would be at least 48 hours per year for full-time Employees, unless otherwise provided by State law.

An Employee shall accrue Compensated Leave classified as paid sick leave at a rate of 1 hour for every 30 hours worked, up to 48 hours per year and Compensated Leave classified as paid vacation or personal necessity at a rate of 1 hour for every 30 hours worked, up to 48 hours per year. However, no Compensated Leave shall not accrue for hours worked in excess of 40 hours

per week. If the Employer's policy is more generous, those terms apply instead. Alternatively, the Employer may choose to front-load the hours each year. If an Employer chooses to provide Compensated Leave on an accrual basis throughout the year, those hours shall be provided each pay period for both full-time and part-time Employees. Once an Employee reaches 96-hours accrued Compensated Leave within a given year, no additional leave accrues until the restart of the accrual cycle in the next year.

Employers are required to provide an Employee with up to 80 hours of Uncompensated Leave per year, subject to a pro-rata basis for part-time employees (based on a proration of the number of hours the part-time employee works). When providing Uncompensated Leave, the Employer may either accrue or front-load the hours each year.

An Employee shall accrue Uncompensated Leave at a rate of 1 for every 26 hours worked, up to 80 hours per year; however, the Employer may choose to front-load the hours each year. If an Employer chooses to provide Uncompensated Leave on an accrual basis throughout the year, those hours shall be provided each pay period. Uncompensated Leave shall not accrue for hours worked beyond 40 hours a week. Uncompensated Leave is to be used for sick leave for the illness of the Employee or a member of their immediate family, as defined by the California Family Rights Act (CFRA), once Compensated Leave is fully exhausted. Once an Employee reaches 80-hours accrued Uncompensated Leave within a given year, no additional leave accrues until the restart of the accrual cycle in the next year.

If the employer uses the accrual method for Compensated and/or Uncompensated Leave, employees shall start to accrue leave on their first day of employment, however, they are not eligible to use the accrued leave until the dates detailed in the "Use of Compensated and Uncompensated Leave" section below, unless the Employer adopts a more generous policy.

Employers are required to provide Employees with written notice of their Compensated Leave (paid sick and paid vacation/personal necessity) and Uncompensated Leave (unpaid sick leave) balances, accrued leave for that pay period, and accrued leave that is available for immediate use. This notice may be provided either on Employee's itemized wage statement or in a separate written document. Employers must comply with California Labor Code section 246(i).

Carry Over of Compensated and Uncompensated Leaves

Compensated Leave accrued by an Employee, whether by accrual method or by front-loading method, shall carry over to up to a maximum of 192 hours, unless the Employer's policy is more generous. Unused Uncompensated Leave accrues up to a maximum of eighty (80) hours and shall carry over to the following year up to the maximum of eighty (80) hours, unless the Employer's policy is more generous.

When an Employee reaches the maximum accrued Compensated and Uncompensated Leave (if a cap is set by the Employer), the Employee shall not accrue additional Compensated or Uncompensated Leave until a portion of the Leave is used.

Compensated and Uncompensated Leave Upon Separation

Any portion of Compensated Leave classified as vacation or personal necessity leave shall be paid out at the Employee's regular wage rate upon termination, unless otherwise required by state law.

Any portion of Compensated Leave classified as sick leave is not required to be paid to the Employee upon termination. However, if an Employee is rehired by the Employer within one (1) year of the date of separation from employment, any previously accrued and unused Compensated Leave, classified as paid sick leave, must be reinstated. If the Employer's policy pays out an Employee for accrued and unused Compensated Leave classified as sick leave, upon separation from employment, the Employer is not required to reinstate the Employee's Compensated Leave classified as paid sick leave if the Employee is subsequently rehired.

An Employee who separates from their Employer is not required to be paid out for any unused Uncompensated Leave. If an Employee is rehired by the Employer within one (1) year of the date of separation from employment, any previously accrued and unused Uncompensated Leave shall be reinstated.

Use of Compensated and Uncompensated Leave

Employees are entitled to begin using Compensated Leave designated as vacation or personal necessity leave and Uncompensated Leave no later than their 180th day (6th month) of employment or consistent with company policies, whichever allows Employees to use this leave sooner. However, accrued Compensated Leave designated as sick leave, shall be made available to Employees pursuant to State law.

Employees shall use Uncompensated Leave only if they have fully exhausted their Compensated Leave or are ineligible to use accrued Compensated Leave. Uncompensated Leave shall only be used for sick leave for the illness of the Employee or a member of their immediate family as defined by the California Family Rights Act (CFRA).

Employers shall not unreasonably deny an Employee's request or implement policies that count Compensated or Uncompensated Leave taken as an absence that may result in discipline, discharge, suspension, or any other adverse action.

An Employer may adopt reasonable and clear written policies pertaining to the use of Compensated and Uncompensated Leave. The following are some examples of provisions that could be included in that policy, though an Employer may set a reasonable policy that includes or does not include the examples below:

1. Explaining how Compensated and Uncompensated Leave hours are accumulated and used for businesses with multiple locations inside and outside of the City boundaries.
2. Setting a reasonable minimum increment to use the Leave.
3. Requiring Employees to give reasonable notification of an absence from work for which Compensated or Uncompensated Leave may be used. An Employer requiring reasonable notification must establish a reasonable procedure for an Employee to communicate absences to the Employer.
4. Any policy adopted by the Employer must comply with Federal, State, and local law.
5. Maintaining adequate staffing to continue business operations before non-essential time off is taken.

Guidance for Application of Waiver for Certain Employers

Employers may apply for a waiver of the Minimum Wage Rate and/or the Leave Provisions outlined in the Ordinance.

Application of Waiver for Payment of Minimum Wage Rate

Employers who are able to demonstrate the implementation of the City's Minimum Wage Rate would cause the Employer to declare bankruptcy, shutdown the Employer's business, reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%) may qualify for a one-year waiver for the Minimum Wage Rate, as provided in Section 5.130.080 (A).

Employers must complete the City of West Hollywood Minimum Wage Rate Waiver Application and submit all required documents. Incomplete applications or applications without all required documents will be denied. Employers can only be approved for a waiver for a duration of up to one (1) year from the approval date.

The waiver provided under this section only allows for Employers to defer the Citywide Minimum Wage requirements in Section 5.130.020 (a) through (c). Employers are still required to follow all other provisions of the Ordinance, including, but not limited to, Compensated and Uncompensated Leave (unless the Employer applies for and receives a waiver for those provisions, as provided below), and Service Charges. Employers that are approved for a waiver shall pay at least the wage rate at the State minimum wage that the business is on at the time of applying for a waiver and are encouraged to pay the preceding West Hollywood minimum wage rate prior to the most recent increase. A waiver does not exempt an Employer from complying with any and all Federal, State, or other local laws and regulations, including any applicable state minimum wage requirements.

Submittal of a waiver application does not guarantee approval. The City Manager, or their designee, will review the Employer's waiver application and make a determination.

Application of Waiver for Leave Provisions

Employers who are able to demonstrate the implementation of the Compensated and Uncompensated Leave provisions in the Ordinance would cause the Employer to declare bankruptcy, shutdown the Employer's business, reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%) may qualify for a one-year waiver for the leave provisions, as provided in Section 5.130.080 (b).

Employers who are able to demonstrate the implementation of the Compensated and Uncompensated Leave provisions in the Ordinance would cause a hardship to implement due to the existing payroll and human resources processes and platforms the Employer has in place may qualify for up to two (2) three (3) month waivers (not to exceed a total of six months).

Employers must fill out the City of West Hollywood Leave Provisions Waiver Application and submit all required documents. Incomplete applications or applications without all required documents will be denied.

The total combined length of all waivers provided under the Leave provisions waiver section (Section 5.130.080 (b)) shall not exceed one year. The waiver provided under this section only allows for Employers to defer the Compensated and Uncompensated Leave requirements in Section 5.130.030. Employers are still required to follow all other provisions of the Ordinance, including, but not limited to, payment of the Minimum Wage Rate (unless the Employer applies for and receives a waiver for the Minimum Wage Rate, as provided above), and Service Charges. Employers that are approved for a waiver must provide at least the minimum

Compensated and Uncompensated leave as required by State law. A waiver does not exempt an Employer from complying with any and all Federal, State, or other local laws and regulations, including the City's minimum wage requirements.

Submittal of a waiver application does not guarantee approval. The City Manager, or their designee, will review the Employer's waiver application and make a determination.

Required Notices to Employees

Employers who apply for a waiver are required to notify all of their Employees, in writing, of the Employer's intent to apply for a waiver. The written notice must be provided to all Employees before the Employer submits the waiver application. Within three (3) business days of the waiver determination, the Employer will need to again provide a written notice, to all Employees, of the decision. Approved businesses should include in the notice the beginning and end dates of the waiver. Employers with an approved waiver may have their waiver revoked if they do not provide their Employees a written notice within three (3) business days.