

July 21, 2016

Los Angeles Office Of Wage Standards Issues Rules Implementing New Minimum Wage and Paid Sick Leave Ordinance

On July 1, 2016, the City of Los Angeles Office of Wage Standards (“OWS”) published [rules and regulations](#) intended to clarify employers’ responsibilities under the new Los Angeles Minimum Wage and Paid Sick Leave Ordinance (the “Ordinance”) that went into effect that same day. Here is an overview of the key points covered in the OWS regulations.

One-Year Grace Period For “Small” Employers

While the Ordinance was clear that its minimum wage requirements would not apply to certain “small” employers until July 1, 2017, the Ordinance did not state that small employers could hold off on implementing the Ordinance’s sick leave provisions. The new regulations, however, provide small employers with a one-year grace period, until July 1, 2017, to begin providing paid sick leave.

Determining Who Is A “Small” Employer

Under the Ordinance, “small” employers are those with 25 or fewer employees who work in the City of Los Angeles for a minimum of two hours per week. The new regulations clarify that the size of an employer’s business shall be determined by the average number of employees working a minimum of two hours per week in the City of Los Angeles employed during the previous calendar year (including only pay periods during which the employer had at least one employee working a minimum of two hours per week in Los Angeles). The regulations also provide a worksheet ([MW-2 Small Business Deferral Eligibility Worksheet for Employers with 25 or Fewer Employees](#)) to determine small business deferral eligibility.

Tracking Employee Hours Worked Within City Boundaries

The OWS suggests that, for employees who work both inside and outside the City of Los Angeles, employers track the number of hours worked within City boundaries. In addition, the OWS requires that any method of tracking hours be accompanied by documentation that will serve as proof in case of an audit. Suggested methods for tracking hours include:

111 SUTTER STREET
SUITE 700
SAN FRANCISCO
CA 94104
415 464 4300 T
415 464 4336 F

12121 WILSHIRE BLVD.
SUITE 1375
LOS ANGELES
CA 90025
310 943 8500 T
310 943 8501 F

- Reasonable estimates based on itineraries with date, time, purpose of visit, and place of visit;
- Real time logs supported by dates, purpose and place of visit, and time entered and left City boundaries;
- Calendar entries documenting location, time spent working at the location, and travel time to and from location (with an indication of when the employee entered and left city boundaries);
- Date and time stamped emails from the employee to the employer identifying work performed within City boundaries; or
- Reports produced by a GPS tracking device sufficient to show the number of hours worked within City boundaries.

Employers can consult this [map](#) to confirm whether employees work within City of Los Angeles boundaries.

Front-Loading Sick Leave

Many employers who have already been providing paid sick leave under California's statewide statute have elected to do so by making an employee's entire balance of sick leave for the year available in one lump sum, a method sometimes referred to as "front-loading." Under California state law, employers who offer such front-loaded leave do not need to carry over unused leave into the next year. The new OWS regulations, however, make clear that while the Los Angeles Ordinance allows for front-loading of paid sick leave, unused sick leave must carry over to the next calendar year. Employers who use the front-load method should consider implementing an "accrual cap" of 72 hours (or higher, if the employer so chooses). Employers can also specify that employees may use a maximum of 48 hours of paid sick leave in a 12-month period.

"More Generous" Time Off Policies

Employers are not obligated to provide paid sick leave under the terms set forth in the Ordinance in cases where their existing sick leave policy is "more generous" than the Ordinance requires. The new OWS regulations clarify that, in assessing whether an existing paid time off policy will be considered to be "more generous" than required by the Ordinance, the OWS will look to a combination of these factors:

- Whether the employer pays more than twice the Los Angeles minimum wage;

- Whether the employer offers health benefits at no cost to the employee;
- Whether the employer offers a retirement package;
- Whether the employer offers flexible schedules;
- Whether the employer offers paid compensated time off such as holidays, paid vacation days, etc.; and
- Whether the employer pays into a trust fund to benefit its employees.

Best Practices Going Forward

Although the OWS regulations provide guidance as to how the Ordinance should be interpreted, they are not controlling authority. Thus, Courts tasked with interpreting the Ordinance may consider the regulations persuasive, but may not follow them in every instance. To the extent you have questions about the OWS regulations, the Ordinance, or about how either may impact your business, please contact your Miller Law Group attorney. Click [here](#) to read the new Los Angeles regulations.

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