

OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND

Frequently Asked Questions (FAQ's) Regarding Oakland's Hotel Workers Protection & Employments Standards Ordinance, Effective December 23, 2018 (Voter-approved ballot initiative Measure Z – Nov. 2018 election)

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I. INTRODUCTION

In November 2018, Oakland voters overwhelmingly passed Measure Z, an amendment to the Oakland Municipal Code (OMC), establishing workplace protections for hotel workers.

The measure requires Oakland hotels with 50 or more guest rooms or suites of rooms to provide employees who work alone in guest rooms with a panic button to report an ongoing crime, threat or other emergency, and support after reporting such violence or threatening behavior. This support includes reassignment and paid time to contact the police and consult with a counselor or advisor.

Additionally, the measure establishes a minimum wage for hotel workers of \$15 per hour with healthcare benefits or \$20 per hour without healthcare benefits, which will increase annually with inflation, starting on January 1, 2020. The measure also establishes workload restrictions and limitations on mandatory overtime, guarantees employees access to records regarding their pay rate, daily workload and overtime, and protects employees against retaliation for exercising their rights under the measure.

Prior to the passage of this measure, existing state, federal and local law (City of Oakland Measure FF, OMC Chapter 5.92) required that employers, including hotels, pay a minimum hourly wage to employees. There was no minimum wage requirement specific to hotel workers nor were there any workload protections for hotel workers.

This memorandum answers frequently asked questions (FAQs) to help hotel owners, employees and others understand and follow the law in Oakland. Like other FAQs issued by this Office, this is a general guide and resource, and does not constitute legal advice. The questions and answers contained in this document are not a substitute for the law and regulations that we anticipate will be forthcoming. Businesses are responsible for complying with all legal requirements.

II. GENERAL INFORMATION

1. **When did the Hotel Workers Protection and Employment Standards ordinance (“ordinance”) go into effect?**

Answer: The ordinance took effect on December 23, 2018, ten days after the vote was declared by the City Council, in accordance with section 9217 of the California Elections Code. The hotel employee minimum wage requirement became effective July 1, 2019.

2. **Where is the ordinance codified in the law?**

Answer: It has been added to the Oakland Municipal Code (“OMC”) as Chapter 5.93, titled “Hotel Minimum Wage and Working Conditions.”

3. **How should hotel employees and employers contact the City with questions, or to file a complaint?**

Answer: Hotel employees and employers can call 510-238-6258 or email minwageinfo@oaklandca.gov.

4. **Will the City of Oakland maintain the confidentiality of hotel workers who contact the office with questions or complaints?**

Answer: Yes. The City will keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information, such as job title, of the employee providing the information and any employee referenced in the City’s investigative report. After obtaining written authorization from an employee, the City may disclose the employee’s identity to enforce the law or for any other appropriate purpose.

III. COVERAGE OF THE HOTEL WORKERS PROTECTION AND EMPLOYMENT STANDARDS ORDINANCE

1. **Does the ordinance apply to workers at all hotels in the City of Oakland?**

Answer: No. The law only covers hotels with 50 or more guest rooms or suites of rooms.

2. **What employers are subject to the ordinance?**

Answer: Hotel employers are subject to the law. A hotel employer is a person who owns, controls, and/or operates a hotel in the City of Oakland, or a person 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, other than a hotel employee, who provides services at the hotel. For purposes of the ordinance, a *person* is an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

3. What is a “hotel” subject to the ordinance?

Answer: A “hotel” is any public or private space or structure for living therein within the City of Oakland, with 50 or more guest rooms or suites of rooms for sleeping or overnight accommodations in exchange for money, such as an inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place within the City. Hotel also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

4. Are employers who contract with hotels subject to the requirements of the hotel workers protection law?

Answer: Yes. Some hotel employers may contract with another person such as another hotel employer, a temporary staffing agency, employee leasing agency or professional employer organization, to obtain the services of hotel employees and the law covers such contractors. For instance, a hotel may contract with employers who provide spa services and food and beverage services; these contractors are hotel employers under the hotel workers law.

5. Who is a “hotel employee” covered by the ordinance?

Answer: A hotel employee is an individual who was hired to work or did work an average of 5 hours/week or more for 4 weeks at one or more hotels located within the City of Oakland with 50 or more guest rooms or suites of rooms. A hotel worker may be employed directly by the hotel or by a person who has contracted with the hotel to provide services at a hotel.

IV. PROVISIONS TO PROTECT HOTEL EMPLOYEES FROM VIOLENCE AND THREATENING BEHAVIOR

A. Panic Button Requirement

1. What is a “panic button?”

Answer: A panic button is a device a hotel employee carries and can use to get immediate on-scene assistance from another employee or a security guard in the event of an ongoing crime, threat, or other emergency.

2. Does the ordinance require employers to provide a panic button to certain hotel employees?

Answer: Yes. Employers must provide a panic button at no cost to any hotel employee assigned to work in a guest room or bathroom without another employee present. This requirement applies regardless of the employee's position or title and may include employees who provide housekeeping services, room service, in-room spa services, or delivery.

3. Who must the panic button notify?

Answer: The panic button must alert someone who is responsible for providing immediate on-scene assistance. This can be a security guard or another employee. The employer must ensure there is always at least one person on site who has been designated and is able to respond immediately to a panic button alert. In addition to designating primary responders, the City recommends that hotel employers designate back-up responders to cover this duty in the event the primary responder is on break, at lunch, fails to monitor their alerts or is otherwise unavailable.

4. Will a whistle or a panic button that emits a loud noise and does not otherwise call for assistance meet the requirements of the hotel workers protection law?

Answer: No. A legally compliant panic button must directly alert a designated responsible individual such as another employee or a security guard that an employee requires immediate assistance. A panic button that merely emits a loud noise would be insufficient to accomplish this purpose.

5. Does the ordinance require hotel employees to use or carry the employer-provided panic button?

Answer: No. However, given that it clearly is in the best interest of hotel employees to carry and use a panic button, the City encourages employers to implement strict policies requiring employees to carry a panic button and to use it as appropriate.

6. Does the ordinance require hotel employers to inform guests that the ordinance protects hotel employees from violence and threatening behavior?

Answer: Yes. Hotels must post a sign on the back of each guest room door written in 18-point font or larger, informing guests of the law. It must include the heading “The Law Protects Hotel Housekeepers and Employees from Threatening Behavior,” a citation to the law, and a notice that the hotel provides panic buttons to hotel employees assigned to work in guest rooms without other employees present.

B. Protections for Hotel Employees Who Report Violence or Threatening Behavior Including But Not Limited to Indecent Exposure, Solicitation, Assault, or Coercive Sexual Conduct

- 1. Is a hotel worker who engages a panic button or otherwise brings to the attention of his or her employer the occurrence of violence or threatening behavior protected against receiving discipline for having done so?**

Answer: Yes. An employer may not discipline a hotel employee who has taken such action unless there is clear and convincing evidence the hotel employee knowingly and intentionally made a false claim of emergency.

- 2. May a hotel worker stop working after activating a panic button?**

Answer: Yes. If a hotel employee encounters threatening conduct or another emergency necessitating use of the panic button, the hotel employee may stop working and remove him or herself from the situation to wait for the arrival of the employee or security guard responsible for providing immediate assistance. The employer cannot discipline the employee for doing so.

- 3. What other protections does the ordinance provide to a hotel employee who has activated a panic button or has otherwise reported the occurrence of violence or threatening behavior, which may include indecent exposure, solicitation, assault, or coercive sexual conduct by a guest?**

Answer:

- If the hotel employee reasonably fears for his or her safety and asks to be reassigned, the hotel employer must move the employee to a different floor. If no work in the employee’s job classification is available on a different floor, the hotel employer must at a minimum reassign the employee to a different work area, away from the person alleged to have engaged in the violence or threatening behavior. The hotel employer must allow the employee to continue working on a

different floor or in a different work area until the guest has checked out of the hotel.

- The hotel employer must immediately allow the affected hotel employee sufficient paid time to contact the police and to provide a statement to the police, and to consult with a counselor or advisor of the employee's choice.
- The hotel employer cannot require the employee to report the incident to law enforcement.
- The hotel employer must cooperate with any investigation of the incident by law enforcement or "any attorney for the complaining . . . employee."

4. Must an employee specifically request reassignment, time off to consult with an advisor or counselor, or time off to call the police and make a statement?

Answer: No. Once an employee has reported violent or threatening behavior through a panic button or otherwise the employee is automatically entitled to paid time to consult with an advisor or counselor and to make a police statement to the police.

5. How much paid time does an employee get?

Answer: A hotel employer must provide "sufficient" paid time for the employee to consult with a counselor or advisor, and contact and provide a statement to the police. The police will determine the amount of time needed to make a statement. The amount of time needed to consult with an advisor or counselor will vary depending on the circumstances. Generally, the hotel employer must provide the employee with a reasonable amount of time to consult with a counselor or advisor to determine the hotel employee's next steps.

6. Can a hotel employer deduct paid hours used to file a police report, give a statement to police, or consult a counselor or advisor from the employee's paid sick time hours?

Answer: No. The paid time a hotel employer must provide under this ordinance are in addition to the hours provided under the City of Oakland's paid sick leave law and other leave, such as paid vacation time.

V. HUMANE WORKLOAD

1. What is the purpose of the humane workload requirements of the ordinance?

Answer: These requirements assure room cleaners and other hotel employees fair compensation when their workload assignments exceed certain limits and allows employees to decline overtime work after a 10-hour shift, except in emergency situations.

2. What is a “room cleaner” under the ordinance?

Answer: A room cleaner is a hotel employee whose principal duties are to clean residential guest rooms and put them in order.

3. What is a “checkout” room?

Answer: This means a room occupied by guests who are ending their stay at the hotel.

4. How many square feet can a room cleaner clean in any one, eight-hour workday before a premium is due?

Answer: A hotel employer cannot require a room cleaner to clean more than 4,000 square feet of floor space in any one, eight-hour workday unless the employee is paid double his or her regular rate of pay for all hours during that day.

5. How many square feet can a room cleaner clean in any workday before a premium is due if the room cleaner works fewer than eight hours?

Answer: If a room cleaner works fewer than eight hours in a workday, the maximum floor space the employer can required the employee to clean without paying double the employee’s regular rate of pay is reduced proportionately. For instance, a hotel employer cannot require a hotel employee who works a six-hour shift to clean more than 3,000 square feet without receiving double his or her regular rate of pay for all hours worked that day.

6. How many square feet can a room cleaner clean in any workday before a premium is due if required to clean any combination of seven or more checkout rooms or additional bedrooms?

Answer: If a hotel employer requires a room cleaner to clean more than six checkout rooms or additional-bed rooms in a workday, the maximum floor space an employer can require a room cleaner to clean before double time is owed for all hours worked that day is reduced by 500

square feet for each additional checkout room or additional bedroom. For instance, if an employee is assigned to clean nine checkout rooms in an eight-hour shift, his or her maximum square footage of 4,000 would be reduced as follows: Since the employee cleaned more than six check-out rooms (i.e. three more), the maximum square footage threshold is reduced by 1,500 square feet (3 x 500 square feet). In this example, the employer could not require the room cleaner to clean more than 2,500 square feet without paying double the employee's regular rate of pay for all hours worked that day.

7. Do the above limitations on the amount of square footage a hotel employee can clean apply only to guest rooms?

Answer: No. The limitations apply to any combination of spaces, including guest rooms and suites, meeting rooms or hospitality rooms, and apply regardless of the furniture, equipment or amenities in any rooms.

8. May a hotel employee refuse to clean additional square footage beyond the limits described above?

Answer: The measure does not provide employees with a right to refuse to clean beyond the maximum square footage limitations so long as the additional work does not exceed ten hours in a workday.

9. When must an employee consent to working overtime?

Answer: A hotel employer cannot "suffer or permit" a hotel employee to work more than ten hours in any workday unless the hotel employee voluntarily consents in writing. To suffer or permit an employee to work means the employer either knows or has reason to know the employee is working.

10. What are the requirements for written consent?

Answer: For a written consent to be valid, a hotel employee must sign the consent or must communicate the consent to the employer electronically through an account or number particular to the hotel employee. Additionally, the hotel employer must have advised the employee in writing within thirty days before the date of the consent that the hotel employee may decline to work more than 10 hours in any workday and that the hotel employer will not take any adverse action against the employee for declining. Hotel employers must provide the notice in each language spoken by more than ten percent or ten hotel employees at the hotel, whichever is less.

11. **Are there any circumstances when a hotel employer can require an employee to work more than ten hours in a workday without providing the notice otherwise required?**

Answer: Yes. A hotel employer can require an employee to work longer than ten hours in a workday in the case of an “emergency situation”, which is a set of circumstances that presents an immediate threat to public safety or a substantial risk of property loss or destruction.

VI. HOTEL EMPLOYEE MINIMUM WAGE

1. **What does the minimum wage provision of the ordinance require?**

Answer: Effective July 1, 2019, hotel employers must pay hotel employees no less than \$15.00 per hour if the employer provides health benefits, not including gratuities, service charge distributions, or bonuses. Alternatively, hotel employers must pay \$20.00 per hour if they do not provide health benefits, not including gratuities, service charge distributions or bonuses.

2. **If a hotel employer chooses to pay the lower hourly rate, what health benefits must the employer provide to employees?**

Answer: An employer that pays the lower hourly rate is not required to pay for the entire cost of the hotel employee’s health benefits. The ordinance only requires the hotel employer to pay \$5.00 per hour toward the employee’s health care benefits.

3. **Will the minimum wage rates be adjusted in the future?**

Answer: Yes. The wage rates will be adjusted for inflation once per year. Every January 1, Oakland’s hotel worker minimum wage will increase by an amount corresponding to the prior year’s increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.

VII. EMPLOYER RECORD-KEEPING

1. **What records must a hotel employer maintain?**

Answer: Hotel employers must keep records of compliance for at least three years. The records must include the following:

- For current and former room cleaners, a daily record of each employee’s name, pay rates received, and the number of rooms

cleaned per day (or at the hotel employer's option, total amount of square footage);

- For current and former employees who worked more than ten hours during a workday, records showing the required notices were provided and informed written consents obtained;
- For current and former hotel employees, a daily record of each employee's name, hours worked, pay rates received, and proof of compliance with the health benefits requirement.

2. Are hotel employees allowed to have access to the records described above?

Answer: Yes. A hotel employer must make an employee's records available to a requesting employee or the employee's representatives for inspection and copying. Upon request, a hotel employer must provide to an employee or his or her representative copies of the pay and consent records of other employees with the other employees' identifying information deleted (i.e., names, addresses, and social security numbers).

VIII. RETALIATION PROHIBITED

1. Does the ordinance prohibit retaliation?

Answer: Yes. A hotel employer cannot retaliate against a hotel employee who asserts his or her rights under the ordinance. Additionally, an employer cannot fire an employee within 120 days of being notified the employee asserted their rights under the ordinance, unless the employer has "clear and convincing evidence of just cause" for discharging the employee. Employee rights under the ordinance include but are not limited to:

- Requesting a panic button or requesting repair or replacement of a broken/lost panic button;
- Reporting violence, threats of violence, or sexual assault or harassment;
- Asking the hotel employer about additional compensation that may be due under the ordinance;
- Not consenting to work for more than 10 hours in a workday.
- Speaking to representatives from the City of Oakland about questions concerning the ordinance and/or making a complaint;

- Participating in an investigation of alleged violations of the ordinance;
- Using civil remedies to enforce his or her rights under the ordinance;
- Informing other employees of their rights under the ordinance.

IX. WAIVER

1. **Can a hotel employee waive his or her rights under the ordinance?**

Answer: No. Individual hotel employees cannot waive their rights under the ordinance.

2. **Can a party to a collective bargaining agreement waive any of the rights under this ordinance on behalf of hotel employees they represent during the collective bargaining process?**

Answer: Yes. The rights provided in the following sections of the ordinance can be waived in a *bona fide* collective bargaining agreement:

- OMC section 5.93.030 (Humane Workload)
- OMC section 5.93.040 (Minimum Wage)

To be valid, the waiver must be set forth explicitly, in clear and unambiguous terms.

X. ENFORCEMENT

1. **Must a hotel employer provide notice of an employee's rights under the ordinance?**

Answer: Yes. Employers must give written notice to current employees and to new employees at the time of hire of their rights. The notice must be in each language spoken by more than ten percent or ten hotel employees at the hotel, whichever is less.

You can access the City's sample notice at

<http://www.oaklandca.gov/minimumwage> or you can call (510) 238-6258 or send an email request to minwageinfo@oaklandca.gov to obtain a copy of the sample notice.

2. **What role does the City have in ensuring compliance with the ordinance?**

Answer: The ordinance authorizes the City to take appropriate steps to enforce it. Under the ordinance, employers must allow authorized City employees access to worksites and relevant records (which may include the production of records) to monitor compliance with this law and investigate employee complaints of non-compliance.

After a hearing that affords an alleged violator due process, the City may order any appropriate relief. Such relief may include but is not limited to reinstatement, the payment of back wages unlawfully withheld, and the payment of an administrative penalty in the amount of \$50 to each employee or person whose rights under the ordinance were violated for each day that a violation occurred or continued.

Where prompt compliance is not forthcoming, the City may take any appropriate action to secure compliance, including bringing a lawsuit and, to the maximum extent permitted by law, revoking or suspending any registration certificates, permits, or licenses held or requested by the employer until the employer remedies the violation(s). In order to compensate the City for the costs of investigating and remedying the violation(s), the City may also order the violating employer to pay to the City a sum of not more than \$50 for each day and for each employee as to whom the violation occurred or continued. The City may also bring suit on its own behalf or on behalf of an aggrieved employee against an employer who has violated the ordinance.

3. Can anyone other than the City bring a lawsuit to enforce the ordinance?

Answer: Yes. Hotel employees harmed by a violation of the ordinance, entities such as labor unions acting on behalf of an aggrieved member, or an individual or entity acting on behalf of the public as provided for under applicable state law, may sue a hotel employer or other person violating this ordinance.