

e-Alert

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West Hollywood, CA Round-Up Service Charge, Local Minimum Wage, and Leave Updates

Background

West Hollywood, CA recently passed [Ordinance 21-1168](#) which provides multiple compliance provisions for **all** employers operating within the city's geographical limits. The provisions include clarifying how businesses can administer service charges, establishing a local minimum wage, and requiring paid and unpaid leave for employees.

Summary

This mandate applies to all employees, except for those who are not eligible for the state minimum wage requirements (i.e., executive professionals, administrative professionals, outside sales employees, etc.), however certain provisions will be enforced gradually on a specific schedule. Employers are directed to use their pre-pandemic average quarterly number of employees within the 2019 calendar year to determine which category they fall into. It is important to note that employees may not opt-out of the ordinance's provisions, unless they are covered by a collective bargaining agreement which explicitly and clearly waives a provision, or the law entirely.

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Service Charges

Effective December 15, 2021, service charges must be passed along to an employee in full, and employers cannot include service charges for the purposes of calculating minimum wage. Employers cannot subtract a credit card or payment processing fee when paying the employee, the service charge amount. Service charges include (but are not limited to): table charges, portorage charges, automatic gratuity charges, benefit surcharges, and healthcare surcharges. However, service charge provisions do **not** apply to tips or gratuities over and above the amount due for the service. Employers are required to disclose the nature of their service charge distribution plan.

If an employer chooses to have these line items in their service, the amount collected from the charge must be passed along to the employee(s) who provided the service on the next scheduled payday. If the amount of the service charge is paid on cash, the employer must present the funds to the employee by the close of business on the day the charge was collected. The amount of the service charge paid to any employee must be supplemental wages; the employee's minimum wage may not be offset by any service charge.

Minimum Wage

Effective January 1, 2022, the [city's minimum wage](#) will increase to \$17.64 per hour for hotel employees, \$15.50 per hour for non-hotel employees working for an employer with 50 or more employees, and \$15.00 per hour for non-hotel employees working for an employer with 49 or fewer employees. These rates will increase periodically in accordance with the chart below. All covered employees will reach the same minimum rate of \$18.77 per hour on July 1, 2023. All employers may continue to pay a training rate equivalent to 85% of the applicable minimum wage during the first 160 hours of employment.

Effective Date	Hotel Employees	Employers with ≥50 Employees	Employers with ≤49 Employees
1/1/2022	\$17.64	\$15.50	\$15.00
7/1/2022	\$18.31	\$16.50	\$16.00
1/1/2023	No change	\$17.50	\$17.00
7/1/2023	\$18.77	\$18.77	\$18.77

It is important to note that the ordinance includes an expansive definition of a “hotel” as

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a “commercial facility” ([as defined within the regulation](#)), which broadens the list of covered employers beyond a traditional hotel operator. Similarly, a hotel worker may now include other qualified employees based on the expanded “hotel” definition.

If an employer finds that complying with this ordinance will result in a reduction of staff by 20% or more, or a reduction of current staff’s hours by 30% or more, or would force the business to close or file bankruptcy, the employer may request a waiver from the [City Manager](#). Approval of that waiver will grant the business a one-year grace period to comply.

Paid & Unpaid Leave

All non-exempt employees working for an employer in West Hollywood, CA will be eligible for both paid and unpaid time off.

- The amount of both leaves will be accrued over time, in accordance with the number of hours the employee works.
- Paid time off will accrue at a rate of 1.85 hours for each 40+ hour work week (96 hours per year divided by 52 weeks per year). This paid time off can be rolled over from year to year up to a total of 192 hours.
- Unpaid time off will accrue at a rate of 1.53 hours for each 40+ hour work week (80 hours per year divided by 52 weeks per year). The law does not include any rollover provisions for unpaid time off.
- Employees who work less than 40 hours per week will accrue proportionate amounts. *For example, an employee working 30 hours per week would accrue paid time off at a rate of 1.38 hours per week (up to 72 hours per year) and unpaid time off at a rate of 1.15 hours per week (up to 60 hours per year).*

Employees are eligible to start using their leaves after they have been employed for at least six months. Although employees may accrue up to 192 hours of paid leave, the law sets a 96-hour cap of paid leave per year. Employees may choose to cash out or rollover their remaining balance of paid leave at the end of the year. When an employee accumulates 192 paid leave hours, employers must provide a cash payout once every 30 days for accrued leave that exceeds the “cap,” paid at the payrate at the time of cash-out. Employees who end their employment relationship with their employer are entitled to a pay out of their accrued paid leave time.

The effective date for these paid and unpaid leave provisions will vary based on

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employer category. On January 1, 2022, hotel workers are eligible to accrue and use their paid and unpaid leave. On July 1, 2022, all other employees will become eligible.

Employer Next Steps

- Employers should audit their payroll records to ensure they are compliant with the local minimum wage(s).
- Employers must provide notice of this ordinance to each employee. [Hotel employers](#) and [non-Hotel employers](#) have separate notices.
- Employers should acquaint themselves with West Hollywood's generous leave amounts and determine the impact on their business.
- Should an employer be faced with hardship because of this ordinance, a waiver may be requested from the [City Manager](#).
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your leave policies, please [email us](#).

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