



*San Francisco COVID-Related Hazard Pay Ordinance*  
*Implementation Guidance*

**May 20, 2021**

The COVID-Related Hazard Pay Ordinance (“Ordinance”) requires grocery stores and drug stores with 500 or more employees worldwide, including at least 20 employees in San Francisco, and janitorial and security contractors at these stores, to pay employees an additional five dollars per hour (up to \$35 per hour) during the public health emergency related to COVID-19. The San Francisco Office of Labor Standards Enforcement administers and enforces the Ordinance’s protections.

**Effective, Operative, and Expiration Dates**

**1. Q: When is the Ordinance in effect?**

A: The Ordinance was signed by Mayor Breed on March 19, 2021. It became operative on March 22, 2021, meaning that covered employers must comply with its requirements beginning on that date. As an emergency ordinance, it will expire on June 15, 2021, unless reenacted by the Board of Supervisors, or upon the termination of the Public Health Emergency, whichever occurs first.

**Scope of Ordinance**

**2. Q: Which employers are covered by the Ordinance?**

A: Grocery stores and drug stores with 500 or more employees worldwide, including at least 20 employees in San Francisco, are covered by the Ordinance. This includes an entire store that includes a “General Grocery,” “Specialty Grocery,” or “Pharmacy” as defined in [San Francisco Planning Code Section 102](#). Non-retail pharmacies in healthcare settings (such as a non-retail hospital pharmacy that provides medications for hospital patients) are not included.

In addition, the Ordinance covers janitorial and security services contractors and subcontractors of any size at these locations.

**3. Q: Does the Ordinance cover private sector employers at the San Francisco International Airport (SFO)?**

A: No. The Ordinance covers work performed within the geographic boundaries of San Francisco, which does not include SFO.

**4. Q: Does the Ordinance cover private sector employers at the Presidio?**

A: No. The Ordinance does not cover private businesses located in “federal enclaves” such as the Presidio, Fort Mason, and the Golden Gate National Recreation Area (GGNRA).

**5. Q: Are franchises covered by the Ordinance?**

A: In general, individually-owned franchises are not be covered by the Ordinance unless the number of employees across all businesses owned by the franchise owner is equal to at least 500 employees, including at least 20 employees in San Francisco.

**6. Q: Who is covered by the Ordinance’s employee protections?**

A: Employees, as defined under California Labor Code Section 2775, who are paid less than \$35 per hour and work on-site at a covered employer located in San Francisco are covered by the Ordinance. Covered employees include part-time, temporary, exempt (salary), and non-exempt (hourly) employees.

**7. Q: Does the Ordinance cover undocumented employees?**

A: Yes. All employees in San Francisco – whether or not they are legally authorized to work in the United States – are covered by the Ordinance. OLSE will process claims without regard to the person’s immigration status, and will never ask questions about immigration status.

**Hazard Pay**

**8. Q: What does the Ordinance require of covered employers?**

A: Starting March 22, 2021, covered employers must pay employees a \$5 per hour wage bonus (Hazard Pay), up to \$35 per hour, on top of the employee’s regular hourly wage. (For salaried employees, the hourly wage is calculated based on a 40-hour work week.)

Under certain circumstances, the amount of Hazard Pay may be reduced. Please see FAQs 9 through 12 below.

**9. Q: Is there a cap on the total wages that an employer must pay under the Ordinance?**

A: Yes. Employers are not required to pay a combination of wages and Hazard Pay above \$35 per hour.

For example, if an employee's regular wages are \$20 per hour, the employer would be required to pay an additional \$5 per hour in Hazard Pay. However, if an employee's regular wages are \$32 per hour, the employer would only be required to pay an additional \$3 per hour in Hazard Pay, which is the amount needed to reach \$35 per hour.

**10. Q: What if an employer already provides premium pay in response to the COVID-19 pandemic?**

A: An employer may reduce the hourly amount of Hazard Pay required by the Ordinance by the hourly amount of any premium pay that the employer began to provide to employees on or after February 1, 2020 in response to the COVID-19 pandemic.

This reduction includes premium pay rate provided under a collective bargaining agreement predating February 1, 2020 that clearly and unambiguously requires the employer to pay increased compensation to employees working under hazardous conditions, including conditions that could expose employees to contagious disease.

For example, if, in response to the COVID-19 pandemic, an employer added its own premium pay of \$4 per hour for an employee with regular wages of \$20 per hour, bringing the employee's pay to \$24 per hour, the employer is required to provide only an additional \$1 per hour in Hazard Pay (for a new total hourly wage of \$25 per hour).

Adjusting the example above, if the employee's regular wages were \$32 per hour, then the employer's own premium pay of \$4 per hour would raise the employee's pay to \$36 per hour, above the \$35 per hour cap in the Ordinance. The employer would not be required to provide any Hazard Pay.

**11. Q: Can an employer reduce its Hazard Pay obligation based on premium pay provided to employees prior to the operative date of the Ordinance?**

A: No. Employers may not reduce the amount of Hazard Pay required under the Ordinance to account for premium pay owed or paid to employees for hours worked prior to the Ordinance's operative date, March 22, 2021.

**12. Q: How does Hazard Pay apply to overtime hours?**

A: Hazard Pay is calculated based upon the employee's wage rate for each hour worked, which may vary based on wage enhancements in effect, such as overtime.

For example, if an non-exempt (hourly) employee whose regular rate of pay is \$30 per hour worked ten hours in a workday, the employee would receive \$35 per hour for the first eight hours (\$30 regular rate of pay + \$5 Hazard Pay) and \$45 per hour for the last two hours, the overtime (time-and-a-half) rate of pay. The employee is not entitled to Hazard Pay for the overtime hours because the rate of pay during these hours is above \$35 per hour.

Adjusting the example above, if the employee's regular wages were \$20 per hour and the employee worked ten hours in the workday, the employee would receive \$25 per hour for the first eight hours (\$20 regular rate of pay + \$5 Hazard Pay) and \$35 per hour for the last two hours (\$30 time-and-a-half rate of pay + \$5 Hazard Pay).

**13. Q: Is Hazard Pay required when employees use Paid Time Off (PTO), sick leave, or vacation?**

A: No. Hazard Pay is a wage bonus on hours worked. It is not required on hours paid but not worked, such as when employees use PTO, sick leave, or vacation.

*Added April 7, 2021*

**Notice and Posting**

**14. Q: Are employers required to post a notice informing employees of their rights under the Ordinance?**

A: Yes. Employers must provide the notice to employees in a manner calculated to reach all of them: by posting in a conspicuous place at the workplace, via electronic communication, and/or by posting in a conspicuous place in an employer's web-based or app-based employee platform. Every employer shall provide the notice in English, Spanish, Chinese, Filipino, and any language spoken by at least 5% of the employees who are at the workplace or job site.

The notice to employees is available at [www.sfgov.org/olse](http://www.sfgov.org/olse).

**15. Q: Are employers required to list the amount of an employee's Hazard Pay on the employee's pay stub?**

A: To the extent feasible, on the same written notice that employers are required to provide under Section 226(a) of the California Labor Code, employers must list the amount of Hazard Pay paid to the employee under the Ordinance.

Employers may list the amount of Hazard Pay either on the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

## **Waiver through Collective Bargaining**

### **16. Q: Does the Ordinance apply to employees covered by a collective bargaining agreement?**

A: Yes. Generally, the Ordinance applies to persons who perform work in San Francisco, including those employees covered by a bona fide collective bargaining agreement. A bona fide collective bargaining agreement is a written contract concerning wages, hours, and working conditions that is collectively bargained by an employer and a recognized union that represents the employees.

### **17. Q: May a collective bargaining agreement waive some or all of the provisions of the Ordinance?**

A: Yes. The Ordinance permits waiver of some or all of its provisions through a collective bargaining agreement. The waiver must be in a bona fide collective bargaining agreement or side letter to such agreement), must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement may negotiate any language they desire to effectuate a waiver, provided that the language meets the “clear and unambiguous” standard of the Ordinance. OLSE will not interfere with or participate in the negotiation of such language.

There are different ways to accomplish an effective waiver in a collective bargaining agreement. One approach that OLSE recognizes for purposes of enforcement is as follows: “Waiver of San Francisco COVID-Related Hazard Pay Ordinance: To the fullest extent permitted, this agreement shall operate to waive any provisions of the San Francisco COVID-Related Hazard Pay Ordinance, and shall supersede and be considered to have fulfilled all requirements of said Ordinance as presently written, and or amended during the life of this agreement.”

### **18. Q: May an individual employee and an employer waive some or all of the provisions of the Ordinance?**

A: No. The requirements of the Ordinance may not be waived by agreement between an individual employee and an employer. Per FAQ 16 above, it may only be waived through a bona fide collective bargaining agreement.

**Please email further questions to [HazardPay@sfgov.org](mailto:HazardPay@sfgov.org) or call (415) 554-6461**