

# CITY OF OAKLAND

## RULES AND REGULATIONS FOR THE ENFORCEMENT OF OAKLAND'S MINIMUM WAGE LAW (MEASURE FF)

**Issued by:** City Administrator

**Effective:** May 4, 2016

**Revised:**

In November 2014, the Oakland voters passed Ballot Measure FF, an ordinance commonly referred to as the Minimum Wage Law. Measure FF (referred to herein as the "Ordinance"), codified as Oakland Municipal Code Chapter 5.92 *et seq.* established a minimum wage in the City of Oakland of \$12.25 per hour, commencing March 2, 2015. The Ordinance requires that the minimum wage rate 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. The City of Oakland uses the August-to-August change in the Consumer Price Index to calculate the annual increase, if any, in Oakland's minimum wage rate. The current minimum wage rate shall be posted at [www.oaklandnet.com/minimumwage](http://www.oaklandnet.com/minimumwage).

The Ordinance also requires that employers provide paid sick leave to their eligible employees beginning on March 2, 2015, in addition to requiring that hospitality employers who collect service charges from customers pay the charge to their hospitality workers who provide the service. The City of Oakland declared the results of the general municipal election that approved the Ordinance through Oakland City Council Resolution No. 85423 C.M.S.

The following regulations shall govern the enforcement of the Ordinance:

### REGULATION #E1: DEFINITIONS

The following definitions shall apply in these Enforcement Regulations:

- A. "City" shall mean the City of Oakland.
- B. "Contract Compliance" shall mean the City's Contracts & Compliance Division of the Office of the City Administrator, which is responsible for monitoring compliance with the Ordinance including the investigation of claimed violations from complainants and Employees.
- C. "Designated Person" If an employee has no spouse or registered domestic partner, he/she may designate one individual that they will aid or care for under the Paid Sick Leave Measure.
- D. "Employee" shall mean any person who:
  - i. In a particular week performs at least two (2) hours of work within the geographic boundaries of the City for an Employer; and
  - ii. Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197

of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

E. "Employer" shall mean any Person who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any Employee.

F. "Minimum Wage" shall have the meaning set forth in Oakland Municipal Code Chapter 5.92.020.

G. "Paid Sick Leave" shall mean paid "sick leave" as defined in California Labor Code § 233(b)(4), except that the definition here extends beyond the Employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an Employee for the purpose of providing care or assistance to child, parent, legal guardian or ward, sibling, grandparent, grandchild, spouse, registered domestic person or Designated Person with an illness, injury, medical condition, or need for medical diagnosis or treatment.

H. "Person" means 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.

I. "Service Charge" means all separately-designated amounts collected by a Hospitality Employer from customers that are charged for services provided by Hospitality Workers, or are described in such a way that customers might reasonably believe that the amounts are for those services, including but not limited to those charges designated on receipts under the term "service charge," "delivery charge," or "portage charge."

J. "Small Business" is defined in accordance with Oakland Municipal Code section 5.92.010 and Interpretive Regulation #2 and shall mean an Employer for which normally fewer than ten persons work for compensation during a given week, including persons employed outside the City. In determining the number of persons performing work for an employer during a given week, all persons performing work for the same business enterprise for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

**REGULATION #E2: RECORD KEEPING BY EMPLOYER AND CITY ACCESS**

A. Each Employer shall comply with California and federal law regarding the maintenance of employee records and shall maintain, for at least three (3) years for each Employee, a record of his or her name, hours worked, pay rate, including Minimum Wage rate if applicable, Paid Sick Leave accrual and usage, and Service Charge collection and distribution, if applicable.

B. Each Employer shall permit Contract Compliance to have access to their worksites and relevant records, including but not limited to Employee personnel files, Employee wage records, Employee schedules, sign-in and sign-out records, handbooks, and/or written policies, postings, and procedures for the purpose of monitoring compliance and investigating

employee complaints of noncompliance with the Ordinance, including production for inspection and copying of any such employment records.

i. An Employer shall have fourteen (14) calendar days to comply with the City's written request to inspect and copy records and produce a written statement in response to the Ordinance violation complaint.

ii. Contract Compliance has discretion to grant additional time to an Employer to comply with a request to inspect and copy records upon a written request demonstrating good cause for the need of additional time.

iii. An Employer's failure to comply with Contract Compliance's request(s) will result in the issuance of a subpoena pursuant to City Charter section 1207, in addition to the assessment of fines and penalties in accordance with the Ordinance.

C. Contract Compliance retains the right to conduct an investigation *sua sponte* (of its own accord) in accordance with Enforcement Regulation #E4 upon review of the Employer provided information and documents.

### **REGULATION #E3: CITY COMPLAINT PROCEDURE AND EMPLOYER RESPONSE**

A. Contract Compliance shall determine, in consultation with Oakland's City Attorney, whether an Employer violated the requirements of the Ordinance, and may investigate complaints whether on referral or on its own initiative. Contract Compliance shall make findings of fact and shall consult with the City Attorney's Office in making any conclusions or findings of law. Contract Compliance's investigation is limited to Ordinance claims. Employees seeking to redress state and federal employment claims, including wage and hour claims, should contact the appropriate enforcement agency, including the Division of Labor Standards and Enforcement, Department of Fair Employment and Housing, Equal Employment Opportunity Commission, and/or Oakland's City Attorney's Office.

B. Any Employee or complainant who alleges violation of the Ordinance may file a written complaint with the City through Contract Compliance.

i. These Enforcement Regulations shall not be construed to limit an Employee's right to bring legal action against his/her Employer for a violation of any other laws concerning wages, hours, or other standards or rights nor shall the exhaustion of remedies under these Enforcement Regulations be a prerequisite to the assertion of any right.

ii. If the Employee proceeds with the filing of a complaint with the City, the Employee and/or complainant must file a complaint in writing with Contract Compliance. The City encourages use of its complaint form which can be found at <http://www.oaklandnet.com/minimumwage> or 250 Frank Ogawa Plaza – 3<sup>rd</sup> Floor, Oakland, California ("Contracts & Compliance Division"). Contract Compliance shall provide the complaint forms in English, Spanish, Chinese and Vietnamese and will strive to provide translated complaint forms in other preferred languages.

iii. Whether an Employee or complainant uses a complaint form or other method to document a complaint, an Ordinance violation complaint must be in writing and must contain the following:

- a. Date;
- b. Name of Employee or complaining party, unless anonymous complaint;
- c. Address;
- d. Phone number;
- e. Name, address, and phone number of Employer that is the subject of the complaint;
- f. Date when employment began;
- g. Date of termination (if applicable);
- h. Name of manager/supervisor, employees or witnesses;
- i. Description of the alleged violation(s) of the Ordinance;
- j. Rate of pay;
- k. Description of payroll period and how Employee(s) are paid;
- l. Average number of hours worked per week; and
- m. Copies of pay stubs or other evidence of payment;
- n. Records of hours worked; and
- o. Attestation by the Employee or complaining party that the complaint is true and accurate to the best of their knowledge.

iv. During Contract Compliance's investigation, the Employee may be requested to provide additional information and failure to comply with additional Contract Compliance requests may hinder the investigation and may result in a dismissal of the complaint.

v. The written complaint must be delivered to Contract Compliance via any of the following means:

- a. US Mail:  
City of Oakland  
Attn: Contracts & Compliance  
250 Frank H. Ogawa Plaza, Suite 3341  
Oakland, CA 94612
- b. Hand delivery to the aforementioned address and/or
- c. Electronic submission:  
[minwageinfo@oaklandnet.com](mailto:minwageinfo@oaklandnet.com)

vi. Copies of the complaint may be emailed to:  
[bjparker@oaklandcityattorney.org](mailto:bjparker@oaklandcityattorney.org)

C. If an Employee or complainant chooses to file a complaint with Contract Compliance, the complaint must be received no later than **twelve (12) months** after the Employee and/or complainant knew or should have known of the alleged Ordinance violation.

i. Contract Compliance may consider a late-filed complaint if the Employee and/or complainant provides, in writing, good cause for the late submission.

ii. Reasons for good cause may include but are not limited to the following: an employer's failure to comply with the Ordinance's notice requirements as set forth in Oakland Municipal Code section 5.92.050(D) or a reasonable fear of retaliation from the employer.

iii. Nothing herein shall modify the time limits an Employee has to file a complaint with the Division of Labor Standards and Enforcement, Department of Fair Employment and Housing, Equal Employment Opportunity Commission, or any other federal, state, or local agency and/or court of law. In other words, filing a complaint with Contract Compliance does not stop the running of the statutes of limitations for filing such complaints; those time frames are specified in governing state and federal law.

D. Upon receipt of a written Ordinance violation complaint that complies with Enforcement Regulation #E3(B)(III), Contract Compliance shall provide the subject Employer with written notice of the complaint. Contract Compliance's written notice will include a general summary of the allegations in the written complaint, a list of documents and information demanded by Contract Compliance for its investigation as set forth in Enforcement Regulation #E4, and an opportunity to respond to the complaint or investigation.

#### **REGULATION #E4: CITY INVESTIGATION**

A. Upon receipt of the written complaint in compliance with Enforcement Regulation #E3, the assigned Contract Compliance investigator will conduct an investigation that may include the following:

i. Interview, in private, the complaining Employee or other employees who work for the subject Employer;

ii. Request and review Employer's written response or position statement pursuant to the Ordinance violation complaint;

iii. Demand, examine, and analyze the records of the Employer, including but not limited to, personnel files, payroll records, sign-in and sign-out records, schedules, wage records, paid time off records, employee handbooks, and written policies and procedures. Failure to provide requested documents may result in Contract Compliance issuing fines and penalties.

iv. Interview the Employer and/or Employer-provided witnesses;

- v. Request additional document demands and information requests to further investigate complaint; and
- vi. Inspect Employer's premises where the complaining Employee works to interview employee witnesses and/or request and inspect documents and postings.

B. During Contract Compliance's investigation, Employer and Employee may attempt to resolve the Ordinance Violation complaint through settlement discussions facilitated through Contract Compliance. The City encourages the Employer to immediately remedy any Ordinance violations as opposed to waiting for the conclusion of Contract Compliance's investigation.

C. The City will reasonably strive to keep confidential during an investigation, the name and identifying information of the Employee or complainant reporting the violation in light of the City's legal obligations pursuant to the California Public Records Act and Oakland's Sunshine Ordinance, in addition to balancing the need to conduct a thorough and complete investigation and the Employer's due process rights in the investigation. Prior to releasing an Employee's name, Contract Compliance will provide advanced, written notice to the Employee.

- i. Contract Compliance cannot guarantee the confidentiality of Ordinance complaints. Information provided and produced by an Employer, Employee, and/or complainant will be disclosed as required by state and federal law, including the California Public Records Act and Oakland's Sunshine Ordinance.
- ii. Contract Compliance may consult with Oakland's City Attorney's Office throughout its investigation.

D. Employer must provide Contract Compliance access to its records and premises for the purposes of the investigation. If an employer unreasonably fails to produce requested documentation, fails to allow access to the worksite or the employees for interviews, or otherwise unreasonably fails to cooperate with Contract Compliance in any investigation, then Contract Compliance may consider it to be out of compliance with the Ordinance.

E. If Contract Compliance initiates an investigation, the Employer shall not retaliate against Employees for exercising their rights or otherwise asserting their rights under the Ordinance. See Oakland Municipal Code section 5.92.050. An Employee claiming retaliation after filing a written Ordinance violation complaint pursuant to these Enforcement Regulations may report the purported retaliation in accordance with Enforcement Regulation #E3. Contract Compliance will either investigate complaints of retaliation and/or refer the complaint to the Oakland City Attorney, the Division of Labor Standards and Enforcement, Department of Fair Employment and Housing, and/or the Equal Employment Opportunity Commission.

#### **REGULATION E5#: CITY DETERMINATION**

Upon completion of its investigation, Contract Compliance will issue a written decision to all affected parties, including the Employee or complaining party and the subject Employer.

A. If Contract Compliance determines that there has been no violation of the Ordinance, the Employer and Complainant will be notified in writing of its determination and the investigation will be concluded and formally closed.

B. If Contract Compliance determines that an Employer violated the Ordinance but said violation was corrected by the Employer during the investigation, Contract Compliance may do the following: issue a written notice advising of the results of its investigation, including a statement that the Employer remedied the Ordinance violation(s); award restitution or penalties due to the previous violation(s); refer the matter to Oakland's City Attorney's Office; and/or follow-up with the Employer to ensure ongoing compliance with the Ordinance.

C. If Contract Compliance determines a violation occurred by the subject Employer, Contract Compliance will issue a written decision in accordance with Enforcement Regulation #E6.

- i. During Contract Compliance's investigation, but prior to issuing a Determination Report, Contract Compliance may refer the matter to Oakland's City Attorney's Office. The City Attorney's Office may, within its full discretion, investigate and/or file a civil action to remedy the Ordinance violation(s) or return the complaint to Contract Compliance for further handling pursuant to Regulations # E6.
- ii. If the City Attorney foregoes filing a civil action over the Ordinance violation, Contract Compliance may refer the complaint to the Division of Labor Standards Enforcement or any other appropriate state or federal agency for further investigation and adjudication.
- iii. If the Division of Labor Standards Enforcement declines the Ordinance complaint or fails to respond within a timely manner, Contract Compliance may proceed with issuing the Determination Report pursuant to Regulations # E6.

#### **REGULATION #E6: DETERMINATION REPORT**

A. Upon conclusion that the Employer violated the Ordinance, Contract Compliance shall issue a written Determination Report which will include the following:

- i. Complaint number;
- ii. Date of violation;
- iii. Identification of the Ordinance section the Employer violated;
- iv. Location where the violation occurred, including full address;
- v. Amount of restitution Employer owes and other corrective action Contract Compliance is seeking, including a deadline and location where the restitution shall be paid; and

vi. Notice of the Employer's right to a review process by filing an appeal pursuant to Enforcement Regulation #E7 and the filing deadline.

vii. Contract Compliance will issue the Determination Report to the Employer with a copy of the Determination Report to Oakland's City Attorney's Office. The City Attorney's Office shall have fifteen (15) calendar days from the date of the Determination Report to evaluate, within its sole discretion, as to whether it will initiate a civil action to remedy the Ordinance violation(s), in addition to any other state and federal law claims.

(a) If the City Attorney's Office chooses to pursue a civil lawsuit, the Office will give written notice to the Employer and Employee(s) of such intention within the timeframe set forth above in Regulation #E6(A)(vii).

(b) If the City Attorney's Office does not issue written notice of its intent to pursue a civil action against the Employer, the Employer may appeal the Contract Compliance's Determination Report as set forth in Regulation #E7.

B. Once Contract Compliance has notified an Employer of a Measure FF Ordinance violation and the City Attorney's Office foregoes issuing written notice of its intent to initiate a civil action, the Employer correct the Ordinance violation, in addition to providing back pay or restitution to the Employee(s), and any other lawful remedy set forth in the Determination Report.

i. If an Employer is ordered to pay restitution, it shall remit payment to Contract Compliance within forty-five days (45) calendar days of the date of the Determination Report. Contract Compliance will ensure payment to the affected Employee(s). Employers shall ensure all proper payroll deductions are withheld from wages paid to Employee(s).

ii. Contract Compliance has the discretion to grant the Employer additional time to comply with the Determination Report if the Employer makes a written request demonstrating the following: good cause for the need for additional time; a written declaration under attestation that it will come into compliance with the Ordinance; and a verified statement that it will remedy the Ordinance violation, and ensure payment of restitution to affected Employee(s).

C. The Determination Report will become the final decision of Contract Compliance unless the Employer appeals in accordance with Regulation #E7.

**REGULATION #E7 – ADMINISTRATIVE APPEAL AND HEARING UPON DETERMINATION FROM THE CITY'S OFFICE OF CONTRACTS & COMPLIANCE.**

A. An Employer may dispute Contract Compliance's investigation determination and Determination Report through an appeal process. The timelines set forth in Regulation #E7 do

not commence running until the expiration of the fifteen (15) calendar day window set forth in Regulation #E6(A)(vii).

- i. If the City Attorney's Office provides written notice of its intent to pursue a civil action against the Employer pursuant to Regulation #E6(A)(vii), the Employer may not pursue an appeal.
  - ii. An Appeal shall involve a hearing conducted by an impartial Hearing Officer.
  - iii. The administrative hearing for violations of the Ordinance will be conducted pursuant to any rules and procedures adopted by the City Administrator.
  - iv. Contract Compliance shall be represented by Oakland's City Attorney's Office.
- B. Appeal Process:

- i. An appeal must be received by Contract Compliance within twenty-one (21) calendar days of the expiration of the fifteen (15) calendar day window set forth in Regulation #E6(A)(vii) or the Employer shall have waived its rights under this Section. If Contract Compliance's decision is served via mail, Employer shall have an additional five (5) calendar days to submit an appeal.
  - ii. All appeals shall be mailed to Contracts & Compliance, 250 Frank Ogawa Plaza, Suite 3341, Oakland, California 94612, Attn: Director of Contracts & Compliance.
  - iii. Upon receipt of a properly and timely submitted appeal, Contract Compliance will give written notice to all affected parties, including a copy of Employer's Request for Appeal and whether the Employer shall post a bond or other security. This is referred to as the Notice of Appeal.
- C. The Employer's Request for an Appeal must be in writing and shall contain the following:

- i. Full Name and address, and telephone number of the appealing party;
- ii. Complaint number;
- iii. A copy of the Notice of Determination;
- iv. Identification of the Employer designee who will attend the administrative hearing;
- v. A written statement setting forth the specific facts and legal arguments supporting the appeal;
- vi. A list of all witnesses and exhibits that will be relied upon at the appeal hearing. The Employer shall not submit any new evidence or documents that it did not provide to Contract Compliance during the initial investigation unless the Employer can

demonstrate to the appointed neutral Hearing Officer good cause why it did not provide the information, evidence or documents during the initial investigation.

D. Within forty-five (45) calendar days of the date of service of the Notice of Appeal, the responding party to the appeal, the City Attorney's Office ("Respondent"), shall submit to Contract Compliance and all affected parties, in writing the following:

ii. A list of all witnesses and exhibits that will be relied upon at the administrative appeal hearing.

iii. If the Notice of Appeal is served via mail, Respondent shall have an additional five (5) calendar days to submit this information.

E. Within ninety (90) calendar days of the receipt of a Request for Appeal that complies with Enforcement Regulation #E7(C), a neutral Hearing Officer will be appointed and will make reasonable attempts to schedule an administrative hearing.

F. Contract Compliance will appoint a neutral Hearing Officer who shall be capable of conducting the administrative hearing and rendering a written decision.

i. The appointed administrative Hearing Officer will be an independent third party and but will not be employed by the City or Contract Compliance.

ii. Contract Compliance will provide written notice of the appointed administrative Hearing Officer.

iii. Contract and Compliance shall provide the Hearing Officer with its Determination Report, the Request for an Appeal, and the Respondent's witness and exhibit lists.

iii. The Hearing Officer will schedule the date, time, and location of the administrative hearing.

G. A party may seek a continuance of a scheduled administrative hearing only for good cause and in the interest of justice.

i. All requests for continuances shall be sent to Hearing Officer.

a. "Good cause" shall include, but is not limited, to the following:

1) The illness of a party, an attorney or other authorized representative of a party, or a material witness of a party;

2) Verified travel outside of Oakland scheduled before the receipt of notice of the hearing;

3) Any other reason that makes it impractical to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans which

cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause."

b. The parties may agree to a postponement at any time upon approval by the Hearing Officer.

c. Requests for postponement of a hearing must be made in writing at the earliest date possible, with supporting documentation attached. The party requesting a postponement should notify the other parties of the request and provide them with any supporting documentation.

ii. Attendance at the administrative hearing by the Appellant and Respondent shall be mandatory. If a party fails to appear at a properly noticed hearing or fails to file a written excuse for non-appearance prior to a properly noticed hearing, the Hearing Officer may, as appropriate: continue the case, decide the case on the record in accordance with these regulations; dismiss the case with prejudice; or proceed to a hearing on the merits.

H. Conduct of Hearing:

i. Oral evidence shall be taken only on oath or affirmation.

ii. Each party shall have the following rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called him or her to testify; and rebut the evidence against him/her. If Respondent does not testify in his/her own behalf he/she may be called and examined as if under cross-examination.

iii. The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence that responsible persons are accustomed to relying upon in conducting serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. In the absence of a timely and proper objection, relevant hearsay evidence is admissible for all purposes. Proffered hearsay evidence to which a timely and proper objection is made is admissible for all purposes, including as the sole support for a finding, if (a) it otherwise would be admissible under the rules of evidence applicable in a civil action or (b) the Hearing Officer determines, in his or her discretion, that, based on all the circumstances, it is sufficiently reliable and trustworthy. The rules of privilege shall be effective to the extent that a statute otherwise requires that they be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.

iv. Stipulations: The parties, by stipulation in writing filed with the Hearing Officer, may agree upon the facts or any portion thereof that are involved in the hearing. The parties may also stipulate as to the testimony that a witness would give if the witness

were present. The Hearing Officer may require additional evidence on any matter covered by stipulation.

v. Record of Proceedings: All proceedings before the Hearing Officer, except settlement discussions, shall be recorded by tape, stenographer or other mechanical means. A party may order a transcript, provided that such party makes a copy for the Hearing Officer and pays the transcript cost.

vi. Personal Appearances, Representation by Lawyer/Agent: In any proceeding before Hearing Officer, both parties are entitled to representation at any stage of the administrative hearing. The Oakland City Attorney's Office shall represent Contract Compliance. Should the Employee(s) and/or the Employer's want representation at the hearing, these representatives need not be attorneys. Each party and/or attorney, appearing at the hearing shall file a written notice of appearance with the Hearing Officer, which notice shall become part of the record.

H. Within ninety (90) calendar days of the close of the administrative hearing, the Hearing Officer shall issue to Appellant and Respondent, including Contract Compliance, a written decision granting or denying the appeal.

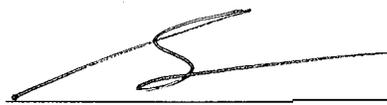
i. The Hearing Officer shall make written findings of fact and a written decision regarding the claimed Ordinance violation.

ii. The decision may be published for review by the public on the City's website and is subject to the requirements of the Public Records Act and Oakland's Sunshine Ordinance.

iii. The decision of the Hearing Officer shall be final and binding except as provided for under state law.

iv. If a party proceeds with a Writ pursuant to California Civil Code section 1094.5 et seq., "[a]ny such petition shall be filed not later than the 90th day following the date on which the decision becomes final."

v. Failure to comply with the Hearing Officer's decision (or Notice of Determination that has not been appealed), may result in Contract Compliance referring the matter to the Office of the Oakland City Attorney which may take any appropriate, lawful enforcement action, including but not limited to the initiation of a civil action, to secure compliance by Employer.

 5/5/16  
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City Administrator / Date

 05/05/2016  
\_\_\_\_\_  
City Attorney / Date