

# Implementing Ordinance Clarifies San Diego's New Minimum Wage and Paid Sick Leave

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On August 3, 2016, the San Diego City Council approved the Implementing Ordinance for San Diego's Earned Sick Leave and Minimum Wage Ordinance, which went into effect on July 11, 2016. The Implementing Ordinance designates an Enforcement Office and Enforcement Official, establishes a system to receive and adjudicate complaints and to order relief to cases of violations, amends the remedy for violations and the accrual requirements for earned sick leave, and clarifies the language for many of the provisions in the Earned Sick Leave and Minimum Wage Ordinance. The Implementing Ordinance will take effect on September 2, 2016.

Once in effect, the Implementing Ordinance will, among other things:

- Allow employers to cap an employee's total accrual of earned sick leave at 80 hours.
- Allow employers to satisfy the accrual and carry-over requirement by front-loading no less than 40 hours of earned sick leave at the beginning of each benefit year, regardless of the employee's status as full-time, part-time, or temporary.
- Clarify that employers who provide employees with an amount of paid leave, including paid time off, paid vacation, or personal days, sufficient to meet the requirements of the accrual and carry-over provisions, are not required to provide additional earned sick leave to an employee.
- Clarify that employers who provide greater paid time off than that required by the ordinance are deemed to be in compliance even if the employer utilizes an alternative methodology for calculation of, payment of, and use of earned sick leave.
- Extend the deadline to provide existing employees notice of the employer's name and any fictitious business names, address, and telephone numbers and the employer's requirements under the ordinance to October 1, 2016. The required bulletins and notices will be made available by September 1, 2016, with information for 2016; December 30, 2016, with information for 2017; and October 1 of each year thereafter.
- Create the rebuttable presumption that an employer's adverse action against an employee

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within 90 calendar days of the employee's exercise of rights under the Earned Sick Leave and Minimum Wage Ordinance constitutes retaliation against the employee.

- Allow an employee who has been retaliated against for exercising any right under the Earned Sick Leave and Minimum Wage Ordinance to recover liquidated damages in the amount of the greater of double-back wages, or \$1,000 for each violation not resulting in termination of employment, and the greater of double-back wages or \$3,000 when an employee is terminated.
- Provide that an employer who violates any requirement is subject to a civil penalty of no less than \$500, but no more than \$1,000 per violation. Each and every day an employer fails to pay an employee minimum wage or fails to provide an employee with earned sick leave constitutes a separate and distinct violation.
- Provide that an employer who fails to comply with the notice and posting requirements is subject to a civil penalty of \$500 for each employee who was not given appropriate note, up to \$2,000.
- Provide that an employer who engages in retaliation is subject to a civil penalty of no less than \$1,000, but no more than \$3,000, per violation.
- Provide a limit of \$10,000 for cumulative civil penalties that may be assessed against an employer who violates the minimum wage requirements and has not previously violated any provision of the Earned Sick Leave and Minimum Wage Ordinance. The \$10,000 limitation also applies to employers who violate the earned sick leave requirements but have not previously violated any provision of the Earned Sick Leave and Minimum Wage Ordinance.
- Provide that an employer is deemed to have committed a violation upon the issuance of: (1) a Notice of Satisfaction; (2) an Administrative Enforcement Order; or (3) a final judgment of a court of competent jurisdiction with a finding of a violation.
- Allow for an increase cumulatively of the minimum and maximum civil penalties by 50% for each subsequent violation of the same provision by the same employer within a three year period.
- Allow for successor liability for any unpaid amount of remedies where the employer ceases its business operations, sells out, exchanges, or otherwise disposes of the employer's business.

[Read the entire approved Implementing Ordinance.](#)

The City of San Diego has also published additional versions of the Minimum Wage and Earned Sick Leave notices in Spanish, Chinese, Vietnamese, and Tagalog.

Once the Implementing Ordinance becomes effective, the Earned Sick Leave Notice and Notice to Employee will be modified accordingly.

[Access the current versions of the notices.](#)

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