

COMPARISON OF KEY TERMS AND PROVISIONS

MINIMUM WAGE ORDINANCES; COMPARISON

(Revised June 2, 2015)

1. RICHMOND, CALIFORNIA – June 2014
2. BERKELEY, CALIFORNIA – June 2014
3. SAN FRANCISCO, CALIFORNIA – November 2003; November 2014
4. SEATTLE, WASHINGTON – June 2014
5. SAN JOSE, CALIFORNIA – November 2012
6. MONTGOMERY COUNTY, MARYLAND – November 2013
7. ALBUQUERQUE, NEW MEXICO – December 2006; November 2012
8. BERNALILLO COUNTY, NEW MEXICO – May 2013
9. LOS ANGELES, CALIFORNIA – Draft May 2015 (Vote Anticipated on June 3)
10. OAKLAND, CALIFORNIA – Nov 2014

(Note: Las Cruces, New Mexico was not included because the code was not available in a searchable format and SeaTac was excluded because it is applicable to a limited number of employers. Other cities that have adopted minimum wage legislation applicable to non-governmental employers include San Diego, Chicago, and Washington D.C.)

1. COMMON PROVISIONS: The Following list represents the provisions that are found in the above sample of minimum wage ordinances:

- A. FINDINGS
- B. AUTHORITY
- C. PURPOSE
- D. DEFINITIONS
- E. MINIMUM WAGE REQUIRED
- F. TIPS/SERVICE CHARGES
- G. REPORTING REQUIREMENTS
- H. WAIVERS; EXEMPTIONS; EXCEPTIONS
- I. NOTICE/POSTING
- J. RETALIATION
- K. IMPLEMENTATION; ENFORCEMENT; VIOLATIONS
- L. RELATIONSHIP TO OTHER REQUIREMENTS
- M. WELFARE TO WORK PROGRAMS
- N. FEES
- O. OUTREACH
- P. SEVERABILITY

2. MATERIAL PROVISIONS; COMPARISON

A. Definitions. The definition of employee and employer will affect the persons and entities to which the minimum wage requirements will apply. Accordingly, it may be useful to understand how other jurisdictions have defined these terms.

- i. Employee: All jurisdictions more or less defined employee as those persons who were entitled under state law to payment of minimum wage. However, in some instances, the definition included additional exclusions rather than setting forth the exclusions in a separate section of the ordinance. Those exclusions will be discussed later in this memorandum.
- ii. Employer: All but Seattle generally defined employer in the same manner, (a person who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee) or were required to have a local business license. However, in some instances, the definition included additional exclusions rather than setting forth the exclusions in a separate section of the ordinance. Those exclusions will be discussed below.

B. Minimum Wage Required. The following is a summary of the effective dates of the minimum wage increase(s) for the sample ordinances:

CITY	DEDUCTIONS; DELAY; EXCEPTIONS; OTHER	DATE OF INCREASE	MINIMUM WAGE \$
Richmond, CA – June 2014		Minimum Wage Prior to increase – (State min wage increased from \$8 to \$9 in July 2014)	9.00
		Oct 2014	10.00 (11.1% increase)
		Oct 2015	11.00 (10% increase)
		Oct 2016	12.50 (13.6% increase)
	<u>Medical</u> – Allows a deduction of up to \$1.50 for employers providing medical benefits		

	<u>Intermediate Minimum Wage</u> – Applies an intermediate minimum wage for employers shipping goods outside the city		
	<u>Exemption:</u> Persons employed through YouthWORKS (City of Richmond) program. (see definition of employer)		
	<u>Exemption:</u> Persons receiving income from government grants, reimbursement programs or vouchers that specify the amount of funding for the employee’s compensation. (see definition of employee)		
	<u>Small Business:</u> Exemption for small business below threshold number of labor hours (800/2 week period) (see definition of employer)		
	<u>Collective Bargaining:</u> Exemption to the extent required by law and waived in a collective bargaining agreement.		
Berkeley, CA – June 2014		Minimum Wage Prior to increase – (State min wage increased from \$8 to \$9 in July 2014)	9.00
		90 days after Ordinance was certified	10.00 (11.1% increase)
	<u>Delay</u> – Increase was delayed for non-profits	Oct 2015	10.00 (11.1% increase)
	<u>Collective Bargaining:</u> Exemption to the extent required by law and waived in a collective bargaining agreement.		
	<u>On-Call:</u> Exempts Employees who are on-call or stand-by under FLSA (but only while on-call or stand-by).		

	<u>Job Training</u> : Participates up to 25 years of age in youth job training programs operated by non-profit or government.		
San Jose, CA – Nov 2012 (Voter approved initiative)		Minimum Wage Prior to increase -	8.00
		90 days after ordinance became effective	10.00 (25% increase)
	<u>CPI</u> : Prior year’s increase, in any, as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for all Items) or its successor . . . rounded to the nearest multiple of five cents.	Jan 2014	Annual CPI increase
	<u>Collective Bargaining</u> : Exemption to the extent required by law and waived in a collective bargaining agreement.		
Los Angeles – Ordinance not yet adopted (Vote anticipated June 3, 2015)		Minimum Wage Prior to probable increase-	9.00
	<u>26 or more Employees</u>	July 2016	10.50 (16.7% increase)
		July 2017	12.00 (14.3% increase)
		July 2018	13.25 (10.4% increase)
		July 2019	14.25 (7.5% increase)

		July 2020	15.00 (5.3% increase)
	<u>CPI</u> : The minimum wage will increase based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Riverside-Orange County, CA), which is published by the Bureau of Labor Statistics.	July 2022	Annual CPI increase
	<u>25 or fewer employees</u>	July 2017	10.50 (16.7% increase assuming minimum wage remains at 9.00)
		July 2018	12.00 (14.3% increase)
		July 2019	13.25 (10.4% increase)
		July 2020	14.25 (7.5% increase)
		July 2021	15.00 (5.3% increase)
	<u>CPI</u> : The minimum wage will increase based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Riverside-Orange County, CA), which is published by the Bureau of Labor Statistics.	July 2022	Annual CPI increase
	<u>Non-Profits</u> : Deferral program for qualifying non-profits.		
San Francisco – Nov 2003		Minimum Wage Prior to Increase	6.75

		90 days after ordinance became effective	8.50 (25.9% increase)
	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.	January 2005	Annual CPI increase
	<u>Delay</u> – Increased delayed for small business and non-profits	January 2005	7.75 (14.9% increase)
		January 2006	Same as all others
	<u>Collective Bargaining:</u> Exemption to the extent required by law and waived in a collective bargaining agreement.		
San Francisco – Nov 2014 (Voter approved initiative)		Minimum Wage Prior to Increase	11.05
		May 2015	12.25 (10.9% increase)
		July 2016	13.00 (6.1% increase)
		July 2017	14.00 (7.7% increase)
		July 2018	15.00 (7.1% increase)
	<u>CPI:</u> 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.	July 2019	Annual CPI increase
Bernalillo County, New Mexico – May 2013		Minimum Wage Prior to Increase	7.50
		July 2013	8.00 (6.7% increase)

		January 14	8.50 (6.25% increase)
	<u>CPI</u> : The increase in the cost of living shall be calculated based on the percentage increase, if any, of the Consumer Price Index or its successor index as published by the U.S. Department of Labor or its successor agency.	January 2015	Annual CPI increase
	<u>Exceptions</u> : Persons employed by a parent, spouse or a sibling; person performing babysitting services; employees under 16 years of age		
	<u>Tips</u> : Minimum wage remains same as federal minimum wage if employee customarily receives tips but is supplemented by employer if it does not raise wage to minimum wage under the City Code.		
	<u>Medical/Childcare</u> : Reduces minimum wage by \$1/hr. for benefits exceeding annualized \$2,500/year	April 2013	Minimum wage less \$1.00/hr.
Albuquerque – Dec 2006		Minimum Wage Prior to Increase	5.15
		Jan 2007	6.75 (31% increase)
		Jan 2008	7.15 (5.9% increase)
		Jan 2009	7.50 (5.2% increase)
	<u>Medical/Childcare</u> : Reduced minimum wage by \$1/hr. for benefits exceeding annualized \$2,500/year	Jan 2007	5.75 (11.7% increase)
		Jan 2008	6.15 (7% increase)
		Jan 2009	6.50 (5.7% increase)

	<u>Tips; Commissions:</u> Counted as wages and credited to satisfaction of minimum wage		
	<u>Interns:</u> Excludes interns working for academic credit or in work-study (see definition of employee)		
Albuquerque – (Initiative approved by voters) Nov 2012		Minimum Wage Prior to Increase	7.50
		Jan 2013	8.50 (13.3% increase)
	<u>Tipped Employees:</u> 60% of applicable minimum wage.	Change effective Jan 2015 (Added a minimum wage for tipped employees)	5.25
	<u>Medical/Childcare:</u> Reduced minimum wage by \$1/hr. for benefits exceeding annualized \$2,500/year	Jan 2013	7.50 (0% increase)
	<u>CPI:</u> Prior year’s increase, if any, as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index (Urban Wage Earners and Clerical Workers)	Jan 2014	Annual CPI Increase.
Montgomery County – Nov 2013		Minimum Wage Prior to Increase	7.25
		July 2014 (the effective date of the ordinance)	11.50 (58.6% Increase)
	<u>Exceptions:</u> Person exempt from minimum wage requirements under state or federal law; persons under 19 years of age working no more than 20 hours/wk.; persons subject to opportunity wage under state or federal act.		

	<u>Tips</u> : Allows a credit for tips with a cap on the credit (credit cannot exceed County minimum wage less 50% of state minimum wage)		
	<u>Government</u> : Includes the County but excludes employees working for the United States, the State of Maryland, and other local governments.		
	<u>Interns</u> : Excludes interns working for academic credit or in work-study (see definition of employee)		
Seattle, WA – June 2014		Minimum Wage Prior to Increase	9.32
	<u>Schedule 1</u> – 501 or more employees in the united states and all franchises associated with a franchisor with more than 500 employees in the united states.	<u>Schedule 1 Employers</u>	
		April 2015	11.00 (18% increase)
		Jan 2016	13.00 (18.2% increase)
		Jan 2017	15.00 (15.4% increase)
	CPI: The Consumer Price Index annual percent change for urban wage earners and clerical workers, termed CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States Department of Labor	Jan 2018	Annual CPI increase
		Schedule 1 employers that pay toward medical benefit plans:	
		2015 State Minimum Wage	9.47

		Jan 2016	12.50 (32% increase over 2015 min wage)
		Jan 2017	13.50 (8% increase)
		Jan 2018	15.00 (11.1%)
		Jan 2019	Equal to Schedule 1 employees
	<u>Commission; Bonus:</u> Credit toward payment of minimum wage for the period in which commission/bonus is earned.		
	<u>Schedule 2</u> – 500 or fewer employees in the united states and excluding franchises associated with a franchisor with more than 500 employees in the united states.	<u>Schedule 2 employers</u> – Pay the lower of the applicable Schedule 1 minimum wage or the rate below:	
		Minimum Wage Prior to Increase	9.47
		April 2015	10.00 (5.6% increase)
		Jan 2016	10.50 (5.0% increase)
		Jan 2017	11.00 (4.8% increase)
		Jan 2018	11.50 (4.5% increase)
		Jan 2019	12.00 (4.3% increase)
		Jan 2020	13.50 (12.5% increase)
		<u>Schedule 2 Employers – Minimum Compensation</u>	
	<u>Tips and medical benefits:</u> Schedule 2 employers must pay a minimum hourly compensation in accordance with this schedule unless the	April 2015	11.00 (Mandatory)

	minimum hourly wage for schedule 1 employees is lower (with the exception of April 2015 – January 2016). Tips, bonus and commissions can be included in the wages for this purpose; provided that, the applicable minimum wage is met.		
		Minimum Wage Prior to Increase	9.47
		Jan 2016	12.00 (26.7% increase)
		Jan 2017	13.00 (8.3% increase)
		Jan 2018	14.00 (7.7% increase)
		Jan 2019	15.00 (7.1% increase)
		Jan 2020	15.75 (5% increase)
		Jan 2021	Equal to Schedule 1 employees
Oakland, CA – June 2014 (Voter approved Initiative)		Minimum Wage Prior to increase	9.00
		March 2015	12.25 (36.1% increase)
	CPI: The Minimum Wage shall increase by an amount corresponding to the prior calendar 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 (or if such index is discontinued, then in the most similar successor index)	January 2016	Annual CPI Increase

3. Implementation and Enforcement: All cities either adopted provisions for enforcement or enacted provisions that authorized promulgation of rules and guidelines for implementation and enforcement. The following is an overview of the types of implementation and enforcement provisions adopted:

- i. Authority to Promulgate Rules/Regulations: The Cities of Richmond, Berkeley, San Jose, Albuquerque, Los Angeles, San Francisco, and Seattle, and Bernalillo County granted administrative authority to promulgate rules and regulations to implement and enforce their respective minimum wage ordinances.
- ii. Adoption of Enforcement Provisions: The Cities of Richmond, Berkeley, Seattle, San Jose, and San Francisco and Montgomery County adopted more specific implementation and enforcement provisions which are summarized below:

Common Provisions	Description	Cities
Reporting Violations	Allows an employee or other person to report violations to a designated administrative agency or department	Richmond, Berkeley, San Jose, Seattle, Montgomery County
Investigations	Authorizes a designated administrative agency or department to investigate violations. In instances, the power to inspect, interview witnesses, and issue subpoenas is granted (Note : legal review is required to determine if such authority can be granted under Washington law)	Richmond, Berkeley, San Jose, Seattle, Montgomery County, San Francisco
Confidentiality	Authorizes some level of confidentiality for the person reporting a violation	Richmond, Berkeley, San Jose, San Francisco
Retaliation	Makes it unlawful to retaliate or discriminate against a person for exercising rights protected under the minimum wage code. In some instances, the code authorizes a civil action in the event that the employer engages in unlawful retaliation. (Note : legal review is required to determine if such authority can be granted under Washington law)	Richmond, Berkeley, San Jose, Los Angeles, San Francisco, Montgomery County, Albuquerque (Civil action authorized), Seattle
Civil Action	Authorizes the City Attorney	Bernalillo County (also

	<p>or aggrieved employee to bring a civil action in a court of competent jurisdiction to recover wages owed (Note: legal review is required to determine if such authority can be granted under Washington law)</p>	<p>allows recover of twice the wages owed plus interest); Albuquerque (civil action authorized for claims of retaliation); Richmond (allows attorney’s fees and legal and equitable relief for violations); Berkeley (authorizes recovery of wages and penalties and legal and equitable relief); San Jose (authorizes recovery of wages and penalties and legal and equitable relief); San Francisco (authorizes recovery of wages and penalties and legal and equitable relief):</p>
Criminal Violations	<p>None of the jurisdictions have adopted criminal penalties for violation of the minimum wage laws</p>	
Civil Violations	<p>Authorizes notice and demand to cure a violation. Failure to cure constitutes a nuisance and may be enforced under the nuisance provisions of the City Code.</p> <p>Additionally, authorizes issuance of an administrative citation with penalties.</p>	Richmond
	<p>Authorizes issuance of administrative citations and fines for violation</p> <p>Authorizes issuance of a civil compliance order that may be enforced in a civil action</p> <p>Authorizes revocation of business licenses until a violation is remedied</p>	Berkeley
	<p>Authorizes issuance of administrative citations and fines for violation</p>	San Jose

	<p>Authorizes issuance of a civil compliance order that may be enforced in a civil action</p> <p>Authorizes revocation of business licenses until a violation is remedied</p>	
	<p>Director may order civil penalties and full payment of unpaid wages subject to appeal before hearing examiner</p>	Seattle
	<p>Authorizes conciliation (informal and confidential resolution of sustained complaints)</p> <p>Authorizes a hearing for those cases that cannot be conciliated</p>	Montgomery County
	<p>Authorizes issuance of notice of civil violation, imposition of penalties and an administrative appeal</p>	San Francisco