



WHAT IS HAPPENING WITH MINIMUM WAGE IN EMERYVILLE?

Emeryville is one of a number of cities and counties in California to have adopted a local minimum wage ordinance. Although the resident population of Emeryville tops out at less than 12,000 people, the ordinance made and continues to make news because Emeryville's minimum wage rate is the highest in the country.

As originally enacted in 2015, the ordinance set a lower minimum wage rate for small businesses, with all businesses beginning to pay the same CPI-indexed rate as of July 1, 2019. In response to concerns about the burden on local restaurants, earlier this year Emeryville adopted an exception for "small independent restaurants." The exception would set the minimum wage for such businesses at \$15/hour and would cap subsequent annual increases at 93-99% of the rate applicable to other business until 2027 when all businesses would pay the same rate. According to reporting by the San Francisco Chronicle, the exception would apply to less than 50 restaurants in Emeryville.

Labor groups opposed the small independent restaurant exception. These groups quickly organized a petition to place a referendum on the ballot to repeal it. In response to the petition, Emeryville's City Council first suspended, and then voted to

repeal the exception. As a result, the proposed referendum is moot and will not appear on the ballot.

The small independent restaurant exception was briefly in effect for the period July 1 to 9, 2019. For that period, the applicable minimum wage rate was \$15/hour for qualifying businesses. For all other businesses, Emeryville's minimum wage rate became \$16.30 on July 1. Businesses that previously qualified as small independent restaurants began paying the \$16.30/hour rate on July 10, 2019.

When Does The Ordinance Apply?

Even if a business is not physically located within Emeryville's city limits, it may be subject to Emeryville's minimum wage rate. The ordinance is drafted to apply to any employee who performs at least two hours of work within the city limits, even if that work is from home. The rate applies only to the hours worked within the city limits, but could affect an employee's regular rate of pay for the purpose of calculating overtime worked outside of Emeryville. It does not apply to employees covered by a Collective Bargaining Agreement that explicitly waives the ordinance or to employees that are only traveling through the city. Employees to whom Emeryville's rate is applicable must receive notice of the law and of any rate increases. Also, if an employee works within

the city limits for at least two hours in a calendar week, they are also entitled to accrue paid sick leave (PSL) under Emeryville's (more generous than state law) PSL ordinance for the time worked within the city.

Disclaimer: *This article is intended to provide Donahue Fitzgerald clients and contacts with general information. The content of this publication is for informational purposes only and is not legal advice. The law frequently changes and legal matters are fact specific. Readers should obtain legal counsel to provide advice on a particular matter and should not act upon the information contained in the publication without seeking professional counsel. Neither the presentation of the information in this publication nor the receipt of the information creates an attorney-client relationship. Donahue Fitzgerald assumes no liability for the use or interpretation of information contained herein.*

Copyright 2019 ©, Donahue Fitzgerald LLC. All rights reserved.

