

5.48.020 – Initiative ordinance.

AN INITIATIVE ORDINANCE
REQUIRING MINIMUM COMPENSATION
AND SICK DAYS TO HOTEL WORKERS

THE PEOPLE OF THE CITY OF LONG BEACH DO ORDAIN AS FOLLOWS:

Payment of minimum compensation and sick days to hotel workers.

(a) Each hotel employer shall pay hotel workers a wage of not less than the hourly rates set forth in this section. The rate upon enactment shall be thirteen dollars (\$13.00) per hour worked. This rate shall be adjusted by the amount of increases in the federal minimum wage over the amount in effect on December 31, 2011, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2011 of the Consumer Price Index (All Urban Consumers, Los Angeles-Riverside-Orange County) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. If in any calendar year there is no increase in the federal minimum wage and the increase in the Consumer Price Index is less than two percent (2%), then the rate shall be adjusted by an increase of two percent (2%). The mayor or the city agency designated by the mayor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all hotel employers and to any other person who has filed with the mayor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An hotel employer shall provide written notification of the rate adjustments to each of its hotel workers and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by hotel workers and service charges or commissions shall not be credited as being any part of or offset against the wage rates required by this section.

(b) Service charges shall not be retained by an hotel employer but shall be paid in the entirety by the hotel employer to the hotel worker(s) performing services for the customers from whom the service charges are collected. No part of these amounts may be paid to supervisory or managerial employees. The amounts shall be paid to the hotel worker(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the hotel employer to the customers. The amounts shall be paid to the hotel worker(s) in the next payroll following collection of an amount from the customer. Without limitation of the foregoing:

- (1) Amounts collected for banquets or catered meetings shall be paid equally to the hotel worker(s) who actually work the banquet or catered meeting; and

(2) Amounts collected for room service shall be paid to the hotel worker(s) who actually deliver food and beverage associated with the charge.

(3) Amounts collected for portage service shall be paid to the hotel worker(s) who actually carry the baggage associated with the charge.

This subsection does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an hotel worker by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

(c) An hotel employer shall pay every hotel worker sick pay out of the employer's general assets as follows:

(1) at least five compensated days off per calendar year for sick leave at the hotel worker's request. The hotel worker need not present certification of illness to claim compensated time off, provided that such hotel worker has accrued the requested days of compensated time at the time of the request. An hotel worker shall be paid his or her normal daily compensation for each compensated day off;

(2) an hotel worker shall accrue 5/12 of a day of compensated time for each full month in a calendar year that the hotel worker has been employed by the hotel employer. An hotel worker is entitled to use any accrued days of compensated time as soon as those days have accrued;

(3) If any hotel worker has not utilized all of his or her accrued compensated time by the end of any calendar year, the hotel employer shall pay that hotel worker a lump sum payment at the end of the calendar year equivalent to the compensation due for any unused compensated time.

(d) The provisions of this section may not be waived by agreement between an individual hotel worker and an hotel employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An hotel employer shall not discharge, reduce the compensation of or otherwise discriminate against any hotel worker for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section.

(e) An hotel worker claiming violation of this section may bring an individual or class action against his or her employer in Superior Court to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to lost compensation, damages, reinstatement or injunctive relief. An hotel worker who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

(f) If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining provisions or portions of the provisions of this section.

(g) Definitions:

"*Compensation*" includes any wages, tips, bonuses, and other payments reported as taxable income paid by the hotel employer to the hotel worker.

"*Hotel*" means a residential building that is designated or used for lodging and other related services for the public, and containing 100 or more guest rooms, or suites of rooms.

"*Hotel*" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

"*Hotel employer*" means a person who owns, controls, and/or operates a hotel in the City of Long Beach, or a person who owns, controls, and/or operates any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel's purpose, or a person, other than a hotel worker, who provides services at the hotel.

"*Hotel worker*" means any individual (1) whose primary place of employment is at a one or more hotels and (2) who is employed directly by the hotel employer or by a person who has contracted with the hotel employer to provide services at the hotel.

"*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.

"*Service charge*" means all separately-designated amounts, regardless of name or label, that are added to the base charge for food or beverages, banquets, portorage or parking services and collected by a hotel employer from customers, except taxes and fees levied by federal, state or local government.