

# CITY OF LOS ANGELES



## RULES AND REGULATIONS IMPLEMENTING THE MINIMUM WAGE ORDINANCE

REFLECTS ALL REVISIONS THROUGH JUNE 20, 2017

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IMPLEMENTING THE MINIMUM WAGE ORDINANCE**

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## **RULES AND REGULATIONS IMPLEMENTING THE MINIMUM WAGE ORDINANCE**

The Department of Public Works, Bureau of Contract Administration, Office of Wage Standards (“OWS”) promulgates these Rules and Regulations as the Designated Administrative Agency (“DAA”) pursuant to Section 187.01 and 187.07 of the Los Angeles Municipal Code (“LAMC”). The OWS may also amend or revise these Minimum Wage Ordinance (MWO) Rules and Regulations from time to time, consistent with applicable law.

### **SCOPE OF OWS AUTHORITY**

Under LAMC Section 188.05(B) and Sections 188.07 and 188.08, the OWS enforces the MWO and imposes restitution, penalties, and administrative fines for the violation of the MWO. When necessary to carry out its function as the DAA, the OWS may conduct inquiries and investigations into areas outside of the MWO to determine compliance with the MWO.

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### REGULATION #1: DETERMINING WHO IS AN EMPLOYEE

#### **OWS Determination of Employee**

The OWS is tasked with making a determination of whether an Employee is subject to the MWO. The OWS shall apply the following guidelines in making the determination if an Employee is covered by the MWO:

An Employee is any individual who in any particular week performs **at least two (2) hours** of work within the geographic boundaries of the City for an Employer. This Employee is covered by the MWO regardless of whether the Employee is full-time, part-time, seasonal, or temporary.

**“Particular Week”** means any seven (7) consecutive days, starting with the same calendar day each week. “Week” for the purpose of the MWO Employee hour shall be a fixed and regularly occurring period of seven (7) consecutive 24-hour periods which is equivalent to a period of 168 hours.

An Employee who travels through and makes even one stop in the City as a requirement of the Employee’s work (e.g. to transport passengers or patients, make pickups, deliveries, sales, or service calls) is covered by the MWO for all hours worked in the City, including travel time within the City when it would typically occur during paid work time.

An Employee not covered by the MWO is an individual traveling through the City with no employment related stops. Time spent in the geographic boundaries of the City solely for the purpose of traveling through Los Angeles (from a point of origin outside Los Angeles to a destination outside Los Angeles) with no employment-related or commercial stops in Los Angeles except for refueling or the Employee’s personal meals or errands is not covered by the MWO.

An Employee not covered by the MWO is an individual who performs all work outside the City, even if the Employer is based in the City. Hours worked outside the City are not covered by the MWO.

The MWO applies to Employees; however, merely labeling someone as an “independent contractor” does not make it so. California (CA) law will still be applied.

#### **Telecommuting**

An individual who lives in the City and performs work for an Employer from home, including telecommuting, is covered by the MWO. An individual who works from a home that is outside of the City is not covered by the MWO, even if the Employee works for a Los Angeles based company, unless the individual also works at least two hours in any particular week for the Employer within the geographic boundaries of the City.

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### **REGULATION #2: EMPLOYER REQUIREMENTS**

#### **Payment of Minimum Wage Rates (MWR)**

An Employer must pay an Employee at no less than the required MWR for all hours worked within the geographic boundaries of the City pursuant to the schedules in LAMC Section 187.02. By 2021, all Employers will reach the City's MWR of \$15.00/hour. Thereafter, the OWS will calculate future percentage changes to the MWR based on the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area. The CPI is published by the Bureau of Labor Statistics each year, and the OWS will announce the adjusted rate on February 1<sup>st</sup> for the new adjusted rate which will take effect on July 1<sup>st</sup> each year thereafter. The OWS will post the adjusted rate on its website. An Employer is required to post a notice with the increase in a conspicuous place at any workplace or job site where an Employee works pursuant to LAMC Section 188.03, no later than March 1<sup>st</sup> each year. The Employer shall adjust the wage rate paid to an Employee to comply with the new wage rate on July 1<sup>st</sup> each year.

Employers are not relieved of the obligation to adjust wage rates because an individual notice was not received from the City. The Employer may contact the OWS to determine the wage rate adjustment, if any.

Employers and Employees may not reach an agreement to waive the MWO obligations.

An Employer may not use tips or gratuities earned by an Employee to offset the amount that the MWO requires the Employer to pay an Employee. See CA Labor Code Section 351.

An Employer may not use the cost of medical benefits paid to Employee to offset the amount the MWO requires the Employer to pay an Employee.

An Employer must still comply with the CA minimum wage law.

#### **Paid Sick Leave**

On July 1, 2016, all Employers, except small business Employers, shall begin providing Sick Time Benefits. The DAA, with assistance of the Office of City Attorney, advises that small businesses, defined as Employers with 25 or fewer Employees, are obligated to provide Sick Time Benefits on July 1, 2017. The City Council acted to provide this one-year delay to small businesses in accordance to LAMC Section 187.02(C).

#### **Prohibition Against Retaliation**

On July 1, 2016, regardless of deferral status, an Employer must comply with LAMC Section 187.06 prohibiting retaliation for activities related to the MWO.

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### **Maintenance of Records**

Employers are required to maintain payroll records and any other documentation for a period of four (4) years to demonstrate compliance with the MWO. The types of documents recommended by OWS are incorporated in the specific regulations to follow. If an investigation is initiated by OWS, these documents will be requested. The Employer may also use these documents to prove compliance when challenged. Absent complete and accurate supporting payroll documents, the City will assume non-compliance with the MWO's record-keeping requirements and for purposes of determining a violation of the MWO.

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**REGULATION #3: WAGE AND TRACKING HOURS**

**Suggested Methods of Tracking Hours for Employees**

**Employer with Employee(s) Performing Work Only in the City Boundaries**

Employers must keep payroll records pursuant to LAMC Section 188.03(B) and keep any records in accordance with any applicable local, state or federal law. This includes, but is not limited to, hours worked each day and total hours worked each workweek.

**Employer with Employee(s) Performing Work In and Out of the City Boundaries**

An Employer must determine if an Employee has worked at least two hours in a particular week and how many hours he or she worked within the geographic boundaries of the City.

**1) Determining Geographic Boundaries**

Geographic boundaries of the City may be defined using <http://neighborhoodinfo.lacity.org/>.

**2) Tracking Hours Worked in the City Boundaries**

There are various methods to track hours. The OWS requires that any method be accompanied by documentation that will serve as proof in case of audit.

The clock starts when an Employee enters into the City, and the clock stops when the Employee leaves the City.

Example: A delivery person from Orange County needs to make a delivery to Porter Ranch. In order to determine how many hours the Employee needs to be paid the MWR, an Employer must include the driving time. The delivery person leaves Orange County and takes the 5 freeway towards the City of Los Angeles. Once the delivery person reaches Boyle Heights, part of the City of Los Angeles, the clock will start.

Orange County to Boyle Heights takes 35 mins  
Boyle Heights to Porter Ranch takes 45 mins  
Delivery takes 45 mins  
Porter Ranch to Boyle Heights takes 35 mins  
Returning to Orange County from Boyle Heights takes 20 mins.

In this example, the delivery person has worked 125 minutes (2 hours and 5 minutes) in the City. The Employee shall be paid the applicable MWR prorated to the minute. An Employer may choose to round up if the Employer has a method of rounding.

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Suggested methods of tracking hours include, but are not limited to:

- i) Reasonable estimate done based on itineraries with date, time, purpose of visit, and place of visit. Maps, time, and mileage tracking applications may be helpful supporting documents.
- ii) Real time logs that are supported with dates, purpose of visit, place of visit, time entered the City boundaries, and time left the City boundaries. The log may exclude non-work time.
- iii) Calendar system that documents designations of City work hours. Calendar entries should include location, time spent working at the location, and travel time to and from location (with an indication of when the Employee entered and left the City boundaries).
- iv) Date and time stamped emails sent by the Employee to the Employer identifying work performed in City boundaries with time worked, location, and travel time within the City boundaries. These emails are to be maintained by the Employer.
- v) Global Positioning System (GPS) tracking device that can produce a report of the location and time the Employee worked in the City boundaries. If non-working hours are included, the Employer will need to provide supplemental documentation to account for a reduction of the non-working hours. Absent supporting documents, OWS will presume all hours on the GPS tracking device are hours worked under the MWO.

Example: GPS tracker shows Employee in City boundaries for four (4) hours, but the Employee took a half hour lunch and ran a personal errand for another half hour. The Employer submits the tracking record along with an Employee request or an email received from the Employee that requests one (1) hour to run errands and have lunch while in the City boundaries. The Employer would be responsible to pay for three (3) hours worked under the MWO rate that is applicable to the Employer.

### **Documents to prove Employee's hours include, but are not limited to:**

- 1) Logs signed by both Employee and Employer.
- 2) Employer may make a reasonable estimate of an Employee's time spent working in the City for purposes of determining Employee eligibility and rate of pay according to the MWO, provided that the Employer consistently uses one option to serve as the tracking mechanism for all Employees and the document is confirmed for accuracy by the Employee. No Employer shall utilize the tracking method as a mechanism to prevent eligibility or reduce the number of an Employee's hours. Documentation of how the reasonable estimate was derived



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may include but is not limited to dispatch logs, itineraries with delivery addresses and estimated travel times, date and time stamped emails from the Employee, or historical averages.

- 3) Employer may delegate tracking of time worked in Los Angeles to an Employee assuming the Employer is in compliance with all applicable MWO requirements and the Employer provides the Employee with a reasonable system and/or training for tracking time. A copy of all tracking documents prepared by the Employee should be provided to the Employer at least monthly.
- 4) To avoid discrepancies between the Employee and Employer, it is in the best interest of both parties to maintain and keep all documents. These documents may be requested by OWS from either the Employer or Employee.

The above list includes suggested methods for documentation. However, it is solely the Employer's responsibility to keep and maintain these time records.

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**REGULATION #4: SICK LEAVE POLICY**

On July 1, 2016, Employers may select one of the two methods of providing Sick Time Benefits as follows:

- 1) Front-loading the entire 48 hours for the year (referred to as the front-loading method); or
- 2) Accruing one (1) hour of sick time for every thirty (30) hours worked within the geographic boundaries of the City (referred to as the accrual method).

This is applicable for an Employee who has been working in the City for the same Employer for 30 days or more within a year from the start of employment.

An Employee may meet the 30-day threshold requirement by working for 30 days or more in the City for an Employer during any 12-month period which occurs after commencement of employment. A “day” can be any increment of time worked within a 24-hour period in the City and may be non-consecutive.

If an Employee has met the 30-day threshold requirement, that Employee is entitled to paid sick leave under the MWO for the duration of his or her employment, and he or she shall not be required to meet the 30-day threshold again during his or her continued employment.

**(A) Methods:**

Employers may select either the front-loading method or accrual method and may switch between the front-loading method and the accrual method only on an annual basis. Whichever method an Employer chooses to adopt, an Employee may use sick leave on or after 90 days of employment or July 1, 2016, whichever is later.

**i) Front-Loading Method:**

An Employer who chooses to provide sick leave based on the front-loading method must select one type of anniversary, either at the beginning of each year of employment, calendar year, or 12-month period. At each anniversary date, an Employer shall provide all 48 hours to an Employee.

For an Employer with 26 or more Employees using the front-loading method on July 1, 2016, and for only the calendar year 2016, the Employer may provide 24 hours for the period covering July 1, 2016 to December 31, 2016. On January 1, 2017, the Employer is required to provide the full 48 hours.

For an Employer with 25 or fewer Employees using the front-loading method on July 1, 2017, and for only the calendar year 2017, the Employer may provide 24 hours for the period covering July 1, 2017 to December 31, 2017. On January 1, 2018, the Employer is required to provide the full 48 hours.

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ii) Accrual Method:

An Employer who chooses to provide sick leave based on the accrual method must provide the Employee one (1) hour of sick leave per every thirty (30) hours worked. An Employee's hours worked in the City must be tracked.

Using the accrual method for example, a full-time Employee working a 40-hour work week within City boundaries (160 hours a month) will accrue 5.33 hours which must be available for use no later than 90 days after the first day of employment.

- (B) Carry Over of Paid Sick Time: Unused paid sick time accrued by an Employee, whether by front-loading method or by accrual method, shall carry over to the following year of employment and may be capped at a minimum of 72 hours. An Employer may set a higher cap or no cap at all.

Example 1: A full-time Employee who begins work on January 1, 2017 will earn 48 hours of sick leave (front-loading method). If the Employee does not use the paid sick leave that was earned in calendar year 2017, the 48 hours are carried over. On January 1, 2018, the Employer front-loads 48 hours as required by the MWO. This will make the total accrued 96 hours. The Employer has the option of implementing a cap and reducing the time by 24 hours to 72 hours of sick leave.

Example 2: A full-time Employee who begins work on January 1, 2017 will earn one (1) hour of paid sick leave for every thirty (30) hours worked (accrual method). If the Employee does not use the paid sick leave that was earned in calendar year 2017, the earned hours are carried over. On January 1, 2018, the Employee continues to accrue paid sick leave hours. The Employer has the option of implementing a cap and limiting the amount of accrued time and/or time carried over to 72 hours of sick leave.

- (C) If an Employee is rehired by an Employer within one year of the date of separation from employment, previously accrued and unused Sick Time Benefits must be reinstated pursuant to LAMC Section 187.04(I). However, if an Employer compensates an Employee for accrued and unused Sick Time Benefits upon separation from employment, the Employer is not required to reinstate the Employee's paid out Sick Time Benefits if the Employee is subsequently rehired.
- (D) Other Paid Time Off Option: If an Employer is already providing paid time off or compensated time off, that is equal to 48 hours or more, no additional time is required. Any paid time off, including but not limited to, vacation, sick, personal or paid time off known as PTO, floating holiday, holiday, or personal days may be considered. The notice requirement for use of the time off should not be unreasonable.
- (E) An Employer may not unreasonably deny an Employee's request to use accrued paid sick leave. An Employee must notify the Employer in advance if the paid sick

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leave is planned, as may be the case with scheduled doctors' visits. If the need is unforeseeable, the Employee need only give notice as soon as practical, as may occur in the case of unanticipated illness or a medical emergency.

- (F) An Employee may determine how much paid sick leave he or she needs to use, provided that an Employer may set a reasonable minimum increment, not to exceed two (2) hours, for the use of paid sick leave.
- (G) Regular Rate of Pay for Used Sick Time: For the purposes of the MWO only, an Employer must calculate the regular rate of pay owed to an Employee for used sick time based upon one of the following methods:
- i) In the same manner as the regular rate of pay for the workweek in which the Employee uses paid sick time, whether or not the Employee actually works overtime in that workweek; or
  - ii) By dividing the Employee's total wages, not including overtime premium pay, by the Employee's total hours worked in the full pay periods of the prior 90 days of employment.
- (H) Providing a More Generous Compensated Time Off Policy: An Employer may choose to provide Employees with a more generous compensated time off policy than is required under the MWO. The OWS, after considering the totality of the circumstances, may determine that the Employer's established policy is more generous than what the MWO requires and allow an Employer's established compensated time off policy to remain in place, even though it does not meet the accrual rate and eligibility requirement in the MWO. If OWS determines an Employer's established policy provides the Employees less benefits, OWS requires the Employer to change its policy to comply with the City's Sick Time Benefits. Determining criteria to qualify and be considered more generous may include, but is not limited to, a combination of factors and each circumstance will require an individual analysis:

### Group 1 – Required

- Access to a combined paid and/or unpaid sick leave totaling 48 hours per year that can be taken with no adverse action.

AND

Group 2 – At least one must be provided; **however, it is not necessarily sufficient to qualify as generous if only one is provided, it will depend on the value of the benefit.**

- Employer pays more than twice the MWR;
- Employer offers paid compensated time off such as holidays, paid vacation

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- days, etc.;
- Employers pay into a Trust Fund to benefit its Employees;

Group 3 – Benefits below will be taken into consideration

- Employer offers a health benefit at no cost to the Employee;
- Employer offers a retirement package;
- Employer offers flexible schedules;
- Deferred Compensation Package including residuals;

To request a determination from the OWS of a compensated time off policy that may be more generous than is required under the MWO per LAMC Section 187.07, a complete MW-7 [MWO Paid Sick Leave Determination Request Form](#) must be submitted to the OWS. After considering the totality of circumstances provided, the OWS will issue a determination. If an Employer is in compliance with LAMC Section 187.04(F), that Employer does not need to complete the MW-7 request form.

- (l) Reasonable Documentation: For the purpose of the MWO only, an Employer may require documentation to substantiate the need for leave only after an Employee has used more than three (3) consecutive days of sick leave. An Employer may not require an Employee to provide a description or explanation of the illness or condition necessitating the Employee's leave. Reasonable documentation is also dependent on the situation; the Employer's policy should never be so difficult that it deters an Employee from taking a legitimate paid sick day.

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### **REGULATION #5: TRANSITIONAL EMPLOYER LIMITED EXEMPTION**

Once certified under Los Angeles Administrative Code (“LAAC”) Section 10.31.1(h), a Transitional Employer can apply to OWS for a limited exemption using the MW-3 [MWR Exemption Application for Non-Profit Transitional Employer](#). A limited exemption allows the Transitional Employer to pay wages less than required under LAMC Section 187.02 during the first 18 months of employment for Employees holding a Transitional Job defined under LAAC Section 10.31.1(g) as short-term, wage-paying, subsidized employment that combines real work, skill development, and supportive services to help participants overcome barriers to employment and transition to unsubsidized competitive employment. For those already employed as Transitional Job Employees on July 1, 2016, the 18 months will begin on July 1, 2016.

A Transitional Employer must still comply with the CA minimum wage law.

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### **REGULATION #6: NON-PROFIT CORPORATION DEFERRAL**

The MWR deferral for a Non-Profit Corporation does not exempt an Employer from complying with any and all federal, State, or local laws and regulations, including any applicable federal or State minimum wage requirement. It is the Employer's responsibility to ensure that the Employer is in compliance with any such laws and regulations. Neither the OWS, BCA, nor the City shall be responsible for the failure of an individual or entity to comply with such laws and regulations.

A Non-Profit Employer that qualifies to follow the City's MWR deferral schedule must also refer to the wage rate for Employees under the CA Minimum Wage law.

#### **(A) Deferral Requires Non-Profit Corporation Deferral Approval from OWS**

A Non-Profit Corporation with twenty-six (26) or more Employees that meets the deferral criteria may qualify for the deferral rate schedule specified in LAMC Section 187.02(C) after approval by the OWS. The deferral requires submission of the MW-1 [MWR Deferral Application for Non-Profit Employers](#) along with supporting documents to the OWS for review and approval. Supporting documents may include, but are not limited to:

- 501(c)(3) letter;
- Three (3) months Payroll records;
- Transitional Job Opportunities Program Certification approval letter;
- Child Care Facility license from the Community Care Licensing Division of the California Department of Social Services;
- Return of Organization Exempt from Income Tax Form 990 or 990-EZ

The OWS may request additional documents to verify the firm's eligibility criteria for the MWR Non-Profit Deferral. The organization must pay the MWR unless the deferral is approved by the OWS. If approved by the OWS, a Non-Profit Deferral Letter shall be issued, and an Employer may pay wages based on the deferral rate. In the event of any changes that will affect the status of the MWR deferral, it is the responsibility of the organization to inform OWS of such changes via email at [wagesla@lacity.org](mailto:wagesla@lacity.org) or certified mail to Office of Wage Standards, 1149 S. Broadway, Suite 300, Los Angeles, CA 90015 within seven (7) days of such change and immediately comply with the MWR, effective from the time of change. If the OWS determines an Employer does not meet the deferral eligibility standards for the MWR, a Deferred Denial letter shall be issued, and the Employer shall be required to comply with the MWR applicable to Employers with twenty-six (26) or more Employees at the time.

#### **(B) Non-Profit Corporation Deferral Eligibility Criteria**

In addition to the MW-1, a Non-Profit Corporation (organized under Section 501(c)(3) of the United States Internal Revenue Code) requesting a MWR

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deferral under LAMC Section 187.03 of the MWO must provide a copy of the most recent IRS letter indicating that the applicant has been recognized as a non-profit corporation organized under Section 501(c)(3) of the United States Internal Revenue Code. The corporation must have twenty-six (26) or more Employees and demonstrate compliance to one of the following criteria:

- (1) The Chief Executive Officer (CEO) or highest paid employee makes less than five (5) times the hourly wage of the lowest paid employee. The lowest paid employee refers to the lowest paid worker employed by the 501(c)(3) corporation, regardless of whether the person works in the City. In calculating the salary of the CEO and the wage rate of the lowest paid worker, the corporation may not include items such as cash allowances for car expenses, meals, parking, or the value of pension plan contributions.

In order to qualify for deferral, the applicant must state the hourly wage of the CEO or highest paid employee and lowest paid employee in the organization as of the last completed pay period on the MW-1. The hourly wage of the CEO must be less than five (5) times the hourly wage of the lowest paid employee in the organization, and this condition must be met for the preceding twelve (12) consecutive months. The applicant must submit copies of the most recent three (3) months of payroll records with the MW-1 for review. The OWS in determining eligibility may request additional payroll records.

- (2) The entity must be certified as a Transitional Employer by the Transitional Job Opportunities Program (TJOP) as a prerequisite for a request for deferral. The TJOP application can be found at [http://bca.lacity.org/site/pdf/cca/TJOP\\_Application\\_Form.pdf](http://bca.lacity.org/site/pdf/cca/TJOP_Application_Form.pdf). For further information on TJOP certification, contact the Office of Contract Compliance Central Certification Agency. A Transitional Employer, as defined in LAAC Section 10.31.1(h), is an organization that provides transitional jobs for the long-term unemployed. For the MWR Deferral, the Transitional Employer must submit form MW-1 along with the Certification number and the City of Los Angeles TJOP approval letter.
- (3) The entity is a Child Care Provider. A child care provider may provide either a copy of the Child Care Facility license from the Community Care Licensing Division (CCLD) of the California Department of Social Services (CDSS); or proof that the facility is a license-exempted child care organization under California law must be provided. The State provides information on license-exempt child care facilities at <http://cclld.ca.gov/res/pdf/License-ExemptChildCare.pdf>.
- (4) The entity is funded primarily by City, County, State, or Federal grants or reimbursements. The OWS will require a copy of the most recent Return of Organization Exempt Form Income Tax Form 990 or Short Form Return of



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Organization Exempt Form Income Tax Form 990-EZ with all schedules, forms, and supporting statements as required by and filed with the IRS.

“Primarily” for purposes of the Non-Profit Deferral means fifty-one percent (51%) or greater.

Following submission of the request for deferral based on the four criteria listed above, the OWS will provide a written response either approving the MWR deferral (Approval Letter) or denying the deferral (Denial Letter).

The entity shall pay based on the deferral rate as specified in LAMC Section 187.02(C) for a period of five (5) years or until July 2021, whichever comes first, unless OWS finds grounds for denial of deferral status (i.e., Employee complaint, changes in salary structure, non-profit status, the hiring of Employees, or any other reason that may affect deferral eligibility). Changes must be communicated in writing to the OWS within seven (7) calendar days of such change. It is the responsibility of the Employer to comply with the MWR at the time of change and to inform the OWS of such changes via email at [wagesla@lacity.org](mailto:wagesla@lacity.org) or certified mail to the Office of Wage Standards, 1149 S. Broadway, Suite 300, Los Angeles, CA 90015. Failure to communicate such changes as required herein may result in loss of deferral status.

As a condition of deferral or continued deferral, the OWS shall be authorized to re-evaluate the eligibility of Non-Profit Deferral qualifications and/or to request any additional information from an Employer as may be deemed relevant to verify its deferral status. Failure to respond to requests for such documentation shall result in loss of deferral status.

A Non-Profit Employer who qualifies for a Non-Profit Deferral after July 1, 2016 must continue paying its current Employees at their current hourly wage rate until that wage rate is equal to or exceeded by the applicable rate under the MWR deferral schedule. For example, if a Non-Profit Employer is paying its Employees \$12.00/hour when it receives an approval for a Non-Profit Deferral on August 1, 2017, it must continue paying its Employees no less than \$12.00/hour even though the applicable rate under the MWR deferral schedule is \$10.50/hour. On July 1, 2018, when the applicable rate under the MWR deferral schedule rises to \$12.00/hour, the Non-Profit Employer may thereafter pay its Employees based upon the MWR deferral schedule until July 1, 2021.

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### **REGULATION #7: SMALL BUSINESS DEFERRAL**

According to LAMC Section 187.02(C), Employers with twenty-five (25) or fewer Employees may defer providing sick leave benefits and paying the City of Los Angeles MWR by one (1) year, and will pay wages based on the deferred rate schedule outlined in LAMC Section 187.02(C) until an hourly MWR reaches \$15.00 on July 1, 2021. The size of an Employer's business shall be determined by the average number of Employees employed during the previous calendar year. Employees will include but are not limited to:

- Full-time Employees
- Part-time Employees
- Temporary or seasonal Employees

The MWO deferral for a small business does not exempt an Employer from complying with any and all federal, State, or local laws and regulations, including any applicable federal or State minimum wage requirement.

#### **Small Business Eligibility**

An Employer may use the MW-2 [MWO Small Business Deferral Eligibility Worksheet for Employers with 25 or Fewer Employees](#) to determine small business deferral eligibility. The MW-2 provides a worksheet to help an Employer calculate the average number of Employees. The City is not responsible for any business's failure to meet the requirements of the MWO small business deferral eligibility. If determined eligible for the small business deferral, the Employer shall print and retain the worksheet for the records and any supporting documents that may substantiate its eligibility should the OWS require proof. Supporting documents may include, but are not limited to:

- Payroll records;
- Timesheets and/or attendance records;
- Quarterly Contribution Return and Report of Wage (DE 9 and DE 9Cs);
- Report of New Employees (DE 34)

- (A) For existing businesses in operation before January 1, 2016, Employer size shall be determined by the average number of Employees employed during 2015. The average number of Employees calculated based on the MW-2 will determine whether or not an Employer is eligible to pay based on the small business deferral schedule until the MWR reaches \$15.00 in 2021. Any changes in the number of Employees shall not impact the Employer's status as an Employer with 25 or fewer Employees or as an Employer with 26 or more Employees for purposes of the MWO deferral schedule.

For example: If an Employer's average number of Employees in 2015 was twenty-five (25) or fewer, it shall pay based on the deferral schedule

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regardless of changes in the number of Employees for the duration of the minimum wage rate schedule.

\* The average number of Employees shall be rounded up to the next whole number.

- (B) For start-up companies that commenced business on or after January 1, 2016, Employer size shall be determined by the number of Employees employed during the first pay period. Any changes in the number of Employees shall not impact the Employer’s status as an Employer with 25 or fewer Employees or as an Employer with 26 or more Employees for purposes of the MWO deferral schedule; therefore, the entity will follow for the remaining term of the MWR schedule until the rate reaches \$15.00 in July 2021.
- (C) In the event of an audit, the OWS shall request Employers to provide completed MW-2, payroll records, timesheets, DE9s, DE9Cs, and other documents as determined by the OWS to substantiate an Employer’s small business deferral eligibility. Proof of a newly established business may include, but is not limited to Articles of Incorporation, Employer Identification Number Certificate, or Business Tax Registration Certificate that can substantiate firm’s commencement date.

The review may include an audit of submitted information for verification and discrepancy, on-site visits and/or review of specific additional information in support of the documents submitted. If the OWS has reason to believe that the small business deferral eligibility is inaccurate or incomplete, the OWS will request the Employer to comply with the MWR schedule for Employers with 26 or more Employees. Knowing and willfully providing false information and/or failure or refusal to provide requested information shall be deemed grounds for disqualification from the deferred schedule and may result in applicable back wages, penalties, and/or administrative fines.

- (D) Whether the Employer’s business qualifies as having twenty-five (25) or fewer Employees, the number of Employees shall be determined using the total number of workers that work within the boundaries of the City of Los Angeles for a minimum of two (2) hours per week.

For example: If claiming a deferral on July 2017 and the Employer had the following number of Employees working in the City in 2015:

Jan 2015	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015	July 2015	Aug 2015	Sept 2015	Oct 2015	Nov 2015	Dec 2015
30	15	15	15	15	30	30	30	30	15	30	30

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This Employer had for the previous calendar year an average of 23.75 Employees, rounded up to 24 Employees, and should be allowed to defer.

Calculating the average number of Employees shall be based on the sum of Employees employed each pay period in 2015, divided by the number of pay periods in operation with at least one Employee during 2015. Pay periods may be based on the Employer's normal pay period and cannot include periods where no Employees worked.

For example: If the Employer had no Employees for the first five (5) months and the eighth (8<sup>th</sup>) month of business, the calculation will be prorated based on the number of months the Employer had Employees, such as the following:

Jan 2015	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015	July 2015	Aug 2015	Sept 2015	Oct 2015	Nov 2015	Dec 2015
0	0	0	0	0	5	10	0	20	50	50	50

In the above example, the average should be based only on six (6) months. The average is 30.83 which will be rounded to 31 Employees.

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**REGULATION #8: ENFORCEMENT**

The enforcement of the MWO is contained in the LAMC Section 188.

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**APPENDIX A**

The forms listed below have been approved by the OWS for use in conjunction with these MWO Rules and Regulations. When the MWO Rules and Regulations refer to the use of a form, only the forms listed in this Appendix may be used. Forms may be revised and updated as necessary in which case the updated forms must be used.

**NO.      FORM NAME**

- MW-1    MWR Deferral Application for Non-Profit Employers
- MW-2    MWO Small Business Deferral Eligibility Worksheet for Employers with 25 or Fewer Employees
- MW-3    MWR Exemption Application for Non-Profit Transitional Employer
- MW-4    MWO Complaint Intake Guide and Form
- MW-7    MWO Paid Sick Leave Determination Request Guide and Form