

**ORDINANCE NO. \_\_\_\_\_**

An ordinance adding Article 5 to Chapter XVIII of the Los Angeles Municipal Code to provide fair work week employment standards for workers of retail employers and amending Article 8 of Chapter XVIII of the Code to implement enforcement measures for the new fair work week employment standards and make various procedural and technical changes.

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 5 is added to Chapter XVIII of the Los Angeles Administrative Code to read as follows:

**ARTICLE 5**

**LOS ANGELES FAIR WORK WEEK ORDINANCE**

**SEC. 185.00. PURPOSE.**

The Los Angeles economy includes over 140,000 Angelenos working in the retail sector. According to a recent University of California at Los Angeles (UCLA) study, eight in ten retail workers have unpredictable, last-minute, and fluctuating work weeks over which they have no control. Approximately seventy-seven percent of retail workers receive less than one week notice of their schedules or changes to their schedules.

The unpredictability of work schedules endemic in the retail industry creates many socioeconomic burdens on workers of large retail establishments. For example, the inability to predict the number of hours retail employees will actually work or the reduction of scheduled work hours leads to income insecurity. Further, unpredictable scheduling makes it difficult for workers to arrange childcare. Forty-five percent of workers who need childcare cannot use childcare services because of erratic work schedules. Unpredictable scheduling also makes it difficult for retail workers to pursue educational goals. Forty-three percent of student retail workers missed classes due to scheduling conflicts.

Retail workers who work a store's closing shift and then work the next day's opening shift work what is known as "clopening" shifts. Workers scheduled for "clopening" shifts often have less than ten hours rest between shifts. At least forty-four percent of retail workers have experienced "clopening" shifts. When workers do not have an adequate time of rest between shifts, they are unable to care for themselves and their families.

Many retail workers are assigned part-time schedules and face underemployment. Large retailers often maintain a 24-hour window of shopping time, which requires additional workers. When retail employers have an increased demand

for work, some retailers choose to hire additional part-time or temporary workers instead of offering the additional hours to their existing part-time workers. The UCLA study found that over 70,000 retail workers desire more hours and the majority of them want to work forty hours or more each week.

Cities and states across the country have responded to a growing call for a more predictable work week. Seattle, San Francisco, New York, Philadelphia, and Oregon have adopted laws that protect working families by ensuring stable and predictable work hours, opportunities for additional work hours, healthier work weeks with adequate rest, and a greater voice in deciding when and how many hours to work.

The City of Los Angeles has consistently championed its workers by adopting laws designed to protect workers' rights and improve their socioeconomic status. For example, the City has adopted the Minimum Wage and the Living Wage Ordinances, the Citywide Hotel Worker Minimum Wage Ordinance, the First Source Hiring Ordinance, and various Worker Retention Ordinances.

The City, as a provider of social services, has a significant interest in the promotion of improved working conditions and better wages for retail workers. This ordinance seeks to promote the health, safety, and welfare of retail workers in the City by providing them with a more predictable work schedule that ensures stability for themselves and their families and the opportunity to work more hours. Retail workers that are rested, able to plan for childcare, and rely less on the City's social services benefit the City.

#### **SEC. 185.01. DEFINITIONS.**

The following definitions shall apply to this article:

A. **“City”** means the City of Los Angeles.

B. **“Designated Administrative Agency”** means the Office of Wage Standards (OWS) of the Bureau of Contract Administration, which shall bear administrative responsibilities under this article.

C. **“Employee”** means any individual who:

1. In a particular work week performs at least two hours of work within the geographic boundaries of the City for an Employer; and

2. Qualifies as an employee entitled to payment of a minimum wage from any Employer under the California minimum wage law as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

For purposes of this article, a worker is presumed to be an Employee of an Employer, and an Employer has the burden to demonstrate that a worker is a bona fide independent contractor and not an Employee. An Employee does not include any worker who self-schedules. A self-scheduling Employee selects work shifts without an Employer's pre-approval, pursuant to a mutually acceptable agreement.

D. **"Employer"** means any person, as defined in Section 18 of the California Labor Code, including a proprietorship, joint venture, corporate officer or executive, who:

1. Has 300 or more employees globally;
2. Is identified as a retail business or establishment in the North American Industry Classification System (NAICS) within the retail trade categories and subcategories 44 through 45; and
3. Directly, indirectly or through an agent or any other person, as defined in Section 18 of the California Labor Code, including through the services of a temporary service or staffing agency, exercises control over the wages, hours, or working conditions of any Employee.

E. **"On-Call Shift"** means any Shift for which an Employee must, less than 24 hours in advance of the start of the Shift, either contact the Employer or Employer's designee, or wait to be contacted by the Employer or Employer's designee, for the purpose of determining whether the Employee must report to work.

F. **"Predictability Pay"** means the compensation paid to an Employee for changes made by an Employer to an Employee's Work Schedule as described in Section 185.06. Predictability Pay shall be calculated on an hourly basis at the Employee's regular rate of pay. This compensation is in addition to any wages earned for work performed by that Employee.

G. **"Shift"** means the consecutive hours an Employee is required to work including meal and rest periods.

H. **"Work Schedule"** means the schedule of the hours, days, and times, including On-Call Shifts, when an Employer requires an Employee to work or be on-call to work.

## **SEC. 185.02. GOOD FAITH ESTIMATE.**

A. Before hiring an Employee, an Employer shall provide each new Employee a written good faith estimate of the Employee's Work Schedule.

B. The good faith estimate shall notify a new Employee of their rights under this article. In the alternative, the Employer may provide the new Employee with a copy of the poster required by Section 185.10.

C. An Employer shall provide a written good faith estimate of an Employee's Work Schedule within 10 days of an Employee's request.

D. A good faith Work Schedule estimate shall not constitute a binding, contractual offer. However, if an Employee's actual work hours substantially deviate from the good faith estimate, an Employer must have a documented, legitimate business reason, unknown at the time the good faith Work Schedule estimate was provided to the Employee, to substantiate the deviation.

### **SEC. 185.03. RIGHT TO REQUEST CHANGES TO WORK SCHEDULE.**

An Employee has a right to request a preference for certain hours, times, or locations of work. An Employer may accept or decline the request, provided that the Employer notify the Employee, in writing, of the reason for any denial.

### **SEC. 185.04. WORK SCHEDULE.**

A. An Employer shall provide an Employee with written notice of the Employees' Work Schedule at least 14 calendar days before the start of the work period by any one of the following:

1. Post the Work Schedule in a conspicuous and accessible location where Employee notices are customarily posted and visible to all Employees; or
2. Transmit the Work Schedule by electronic means or another manner reasonably calculated to provide actual notice to each Employee.

B. Changes to the Work Schedule.

1. An Employer shall provide written notice to an Employee of any Employer initiated changes to the Work Schedule that occur after the advance notice required under Section 185.04.A.

2. An Employee has a right to decline any hours, Shifts or work location changes not included in the Work Schedule. If an Employee voluntarily consents to work hours or Shift changes not included in the Work Schedule, the consent must be in writing.



**SEC. 185.05. ADDITIONAL WORK HOURS OFFERED TO CURRENT EMPLOYEES BEFORE HIRING NEW WORKERS.**

A. Before hiring a new Employee or using a contractor, temporary service or staffing agency to perform work, an Employer shall first offer the work to current Employees if:

1. one or more of the current Employees is qualified to do the work as reasonably determined by the Employer; and
2. the additional work hours would not result in the payment of a premium rate under California Labor Code Section 510.

B. An Employer shall make the offer for additional work hours contemplated by this section to each current Employee either in writing or by posting the offer in a conspicuous location in the workplace where notices to Employees are customarily posted.

C. An Employer shall make the offer for additional work hours contemplated by this section to current Employees at least 72-hours prior to hiring any new Employee, using a contractor, temporary service or staffing agency. Upon receipt of the offer, an Employee shall have 48-hours to accept the offer of additional hours in writing. Upon the expiration of the 48 hour period, the Employer may hire new Employees or retain the services of a contractor, temporary service or staffing agency to work any additional hours not accepted for work by current Employees. At any time during the 72-hour period, if the Employer receives written confirmation from all its Employees that they are not interested in accepting additional hours of work, the Employer may immediately proceed with hiring new Employees or retain a contractor, temporary service or staffing agency. If more current Employees accept the offer to work than hours are available, the Employer shall award the hours using a fair and equitable distribution method or as specified in the Rules and Regulations.

D. An Employee who accepts additional hours pursuant to this section shall not be entitled to Predictability Pay for those additional hours if it results in a schedule change from the Work Schedule.

**SEC. 185.06. PREDICTABILITY PAY FOR WORK SCHEDULE CHANGES.**

A. An Employer shall provide the following Predictability Pay:

1. When an Employee has agreed to a change in their Work Schedule pursuant to Section 185.04.B, an Employer shall compensate the Employee with one additional hour of pay at the Employee's regular rate for each change to a scheduled date, time or location that:

- (a) does not result in a loss of time to the Employee; or

(b) does result in additional work time that exceeds 15 minutes.

2. An Employer shall compensate an Employee at one-half of the Employee's regular rate of pay for the time the Employee does not work if the Employer reduces the Employees work time listed in the Work Schedule by at least 15 minutes.

B. Predictability Pay shall not be required if:

1. An Employee initiates the requested Work Schedule change.

2. An Employee accepts a schedule change initiated by an Employer due to an absence of another scheduled Employee or unanticipated customer need. The Employer must communicate to the Employee that acceptance of the hours is voluntary and the Employee has a right to decline.

3. An Employee accepts additional hours pursuant to Section 185.05.

4. An Employee's hours are reduced due to the Employee's violation of any existing law or of the Employer's lawful policies and procedures.

5. The Employer's operations are compromised pursuant to law or force majeure.

6. Extra hours worked require the payment of an overtime premium under California Labor Code Section 510.

#### **SEC. 185.07. COVERAGE FOR MISSING WORK SHIFT.**

An Employer may not require an Employee to find coverage for a Shift or partial Shift if the Employee is unable to work for reasons protected by law.

#### **SEC. 185.08. REST BETWEEN SHIFTS.**

An Employer shall not schedule an Employee to work a Shift that starts less than 10 hours from the Employee's last Shift without the Employee's written consent. An Employer shall pay an Employee a premium of time and a half for each Shift not separated by at least 10 hours.

#### **SEC. 185.09. RETENTION AND INSPECTION OF RECORDS.**

A. An Employer shall retain all records required by this article, for both current and former Employees, for a period of three years. These records include:

1. Work Schedules for all Employees;

2. Copies of written offers to Employees for additional work hours and written responses from Employees;

3. Written correspondence between the Employer and Employee regarding Work Schedule changes including, but not limited to, requests, approvals, and denials;

4. Good faith estimates of hours provided to new and existing Employees; and

5. Any other records the DAA may require to demonstrate compliance with this article.

B. An Employer shall provide timely access to records to the DAA pursuant to Section 188.03.

#### **SEC. 185.10. NOTICE AND POSTING OF EMPLOYEE RIGHTS.**

Every Employer shall post the notice published each year by the DAA, pursuant to Section 188.03.A, informing Employees of their rights under this article. Every Employer shall post notices in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian and Farsi, and any other language spoken by at least five percent of the Employees at the workplace or job site.

#### **SEC. 185.11. RETALIATORY ACTION PROHIBITED.**

No Employer shall discharge, reduce in compensation or otherwise discriminate against any Employee for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce their rights under this article by any lawful means, or for otherwise asserting rights under this article.

#### **SEC. 185.12. NO WAIVER OF RIGHTS.**

A waiver by an Employee of any provision in this article shall be deemed contrary to public policy and shall be void and unenforceable.

#### **SEC. 185.13. COEXISTENCE WITH OTHER AVAILABLE RELIEF.**

The provisions of this article shall not be construed as limiting an Employee's right to obtain relief to which they may be entitled at law or in equity.

**SEC. 185.14 CONFLICTS.**

Nothing in this article shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

**SEC. 185.15. SEVERABILITY.**

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Sec. 2. Article 8 of Chapter XVIII of the Los Angeles Municipal Code is amended in its entirety to read as follows:

**ARTICLE 8**

**LOS ANGELES OFFICE OF  
WAGE STANDARDS ORDINANCE**

**SEC. 188.00. TITLE AND PURPOSE.**

This article shall be known as the "Los Angeles Office of Wage Standards Ordinance." Wage theft occurs when employees are not paid the wages they are owed by their employers. Studies have concluded that employees in Los Angeles are disproportionately affected by the crime of wage theft in the State of California. The Office of Wage Standards within the Bureau of Contract Administration of the Department of Public Works enforces violations of wage theft and sick time benefits of the Los Angeles Minimum Wage Ordinance. The ordinance also establishes penalties and grants authority to the City of Los Angeles Police Commission to deny, revoke or suspend a police permit issued or requested by an employer found to have committed wage theft.

This ordinance authorizes the Office of Wage Standards to enforce the rights and benefits provided by the Fair Work Week Ordinance. By investigating complaints and holding employers accountable, the City will communicate to employers that wage theft and denial of a fair work week will not be tolerated in Los Angeles. Holding employers accountable further serves as a deterrent to future actions by employers who otherwise would violate California wage and labor provisions within the City's boundaries.

Moreover, imposing penalties and administrative fines for violations of the Los Angeles Minimum Wage Ordinance, the Fair Work Week Ordinance, and the requirements of this article will also serve as a deterrent to employers who choose not

to follow the law. The importance of correctly paying wages due and providing sick time to an employee is one of the highest mandates for the welfare of employees working in the City. Similarly, the welfare of employees working in the City requires that retail employers provide advance notice of work schedules, the right to rest 10 hours between shifts, opportunities for additional hours, and predictability pay for late schedule changes.

#### **SEC. 188.01. AUTHORITY.**

This article is adopted pursuant to the powers vested in the City of Los Angeles under the laws and Constitution of the State of California and the City Charter, including but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law to ensure compliance with the Los Angeles Minimum Wage law, Los Angeles Municipal Code Section 187.00, et seq., and the Fair Work Week law, Los Angeles Municipal Code Section 185.00, et seq.

#### **SEC. 188.02. DEFINITIONS.**

As used in this article, the following capitalized terms shall have the following meanings:

“**City**” shall mean the City of Los Angeles.

“**City of Los Angeles Police Commission**” is defined in Los Angeles Municipal Code Section 103.01.

“**Division**” shall mean the Office of Wage Standards of the Bureau of Contract Administration within the Department of Public Works.

“**Employee**” is defined in Los Angeles Municipal Code Section 185.01.C for purposes of application of the Fair Work Week Ordinance, or Los Angeles Municipal Code Section 187.01.C for purposes of application of the Minimum Wage Ordinance.

“**Employer**” is defined in Los Angeles Municipal Code Section 185.01.D, for purposes of application of the Fair Work Week Ordinance, or Los Angeles Municipal Code Section 187.01.D for purposes of application of the Minimum Wage Ordinance.

“**Los Angeles Minimum Wage**” means a minimum wage adopted by the Los Angeles City Council pursuant to Los Angeles Municipal Code Section 187.00, et seq.

“**Police Permit**” means any permit identified in Los Angeles Municipal Code Section 103.12.

“**Predictability Pay**” is defined in Los Angeles Municipal Code Section 185.01.F.

“**Sick Time Benefits**” is defined in Los Angeles Municipal Code Section 187.04.

“**Work Schedule**” is defined in Los Angeles Municipal Code Section 185.01.H.

### **SEC. 188.03. POSTINGS AND RECORDS.**

A. Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works, the notice published each year by the Division informing Employees of the current Los Angeles Minimum Wage rate, Sick Time Benefits, their rights and benefits under the Fair Work Week Ordinance and of their rights under this article. Every Employer shall post notices in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian and Farsi, and any other language spoken by at least five percent of the Employees at the workplace or job site. Every Employer also shall provide each Employee at the time of hire the Employer’s name, address, and telephone number in writing. If the information the Employer provided to the Employee changes, the Employer shall provide the updated information in writing within ten days of the change.

B. Every Employer shall retain payroll records pertaining to Employees for a period of four years, and shall allow the Division access to such records, with appropriate notice and during business hours, to monitor compliance with the requirements of the Minimum Wage Ordinance. For purposes of the Fair Work Week Ordinance, records must be retained pursuant to Section 185.09.

C. The head of the Division or his or her designee shall have access to all business sites and places of labor subject to the Minimum Wage Ordinance, the Fair Work Week Ordinance, and this article during business hours to inspect books and records, interview employees and any other relevant witnesses, and investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of the Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article.

### **SEC. 188.04. RETALIATION PROHIBITED.**

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any Employee in retaliation for exercising rights protected under this article. Rights protected under this article include, but are not limited to: the right to file a complaint or inform any person about any party’s alleged noncompliance with this article; and the right to inform any person of his or her potential rights under this article and to assist him or her in asserting such rights. Protections of this article shall apply to any Employee who mistakenly, but in good faith, alleges



noncompliance with this article. Taking adverse action against an Employee within 90 days of the Employee's exercise of rights protected under this article shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

#### **SEC. 188.05. ENFORCEMENT.**

A. **Reporting Violations.** An Employee or any other person may report to the Division any suspected violation of the Los Angeles Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article. The Division shall encourage reporting pursuant to this article by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. With the authorization of the Employee or person reporting a violation, the Division may disclose their name and identifying information as necessary to enforce this article or for other appropriate purposes.

B. **Investigation.** The Division shall be responsible for investigating possible violations of the Los Angeles Minimum Wage, Sick Time Benefits, Fair Work Week Ordinance, and this article by an Employer or other person. The Employer shall cooperate fully in any investigation by the Division. The Division shall have access to all business sites and places of labor subject to the Minimum Wage and Fair Work Week Ordinances during business hours to inspect and request copies of books and records, interview employees and any other relevant witnesses, investigate such matters necessary or appropriate and request the Board of Public Works to issue a subpoena for books, papers, records, or other items relevant to the enforcement of this article. The Employer is required to provide to the Division its legal name, address, and telephone number in writing.

#### **SEC. 188.06. NOTICE OF CORRECTION.**

A. **Issuance of Notice of Correction.** After an investigation, if the Division makes a determination that an Employer has violated the Los Angeles Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article, the Division shall issue a written Notice of Correction to the Employer.

B. **Service of Notice.** Service of a Notice of Correction shall be accomplished as follows:

1. The Division or its designee may obtain the signature of the Employer to establish personal service of the Notice of Correction; or
2. The Division or its designee may accomplish substitute service by mailing the Notice of Correction by certified mail to the Employer's address as provided in Section 188.03.A.



C. **Contents of Notice of Correction.** The Notice of Correction shall require the Employer to take corrective action by the date specified and shall include all the following:

1. A description of the violation(s);
2. The date and location of the violation(s);
3. A citation to the provisions of law violated;
4. A description of corrective action required, including reinstatement of employment for retaliation violations;
5. A statement explaining that each day of a continuing violation may constitute a new and separate violation;
6. The amount of wages, Predictability Pay, Sick Time Benefits, or any other amount due and the amount of penalties and administrative fines imposed for any violation(s);
7. A statement informing the Employer that the wages, Predictability Pay, Sick Time Benefits, penalties and administrative fines shall be paid to the City of Los Angeles (or alternatively, to the Employee, if appropriate) within 30 days from the date on the Notice of Correction, the procedure for payment, and the consequences of failure to pay;
8. A description of the process for appealing the Notice of Correction, including the deadline for filing such an appeal; and
9. The name and signature of the head of the Division or his or her designee.

D. **Posting of Notice of Correction.** Employer must, within 24 hours after receipt of a Notice of Correction, post the Notice of Correction by affixing the notice to a surface in a conspicuous place on property that is: (1) the Employer's principal place of business in the City; (2) if the Employer's principal place of business is outside the City, the fixed location within the City from or at which the Employer conducts business in the City; or (3) if the Employer does not regularly conduct business from a fixed location in the City, one of the following: (i) the location where the Employer maintains payroll records if the Notice of Correction is for violation of Section 188.03.B; or (ii) the jobsite or other primary location where the Employees perform services in the City.

E. **Settlement.** The head of the Division or his or her designee may convene an informal meeting with the Employer to resolve the corrective action sought in the Notice of Correction. The compliance period in Section 188.06.C and the accrual of penalties and administrative fines may be temporarily suspended during settlement

discussions. If after meeting the corrective actions are not resolved, the Division may issue a new compliance date to the Employer and reinstate the accrual of penalties and administrative fines.

## **SEC. 188.07. PENALTIES AND REMEDIES PAYABLE TO THE EMPLOYEE.**

**A. Civil Enforcement Action by Employee, City or Third Parties.** Any Employee aggrieved by a violation of the Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article, the City Attorney, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer. An Employee or the City, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of any minimum wages and Sick Time Benefits unlawfully withheld, the payment of penalties in the amount of up to \$120 to each Employee whose rights under this article were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Any other person or entity enforcing the Minimum Wage Ordinance, the Fair Work Week Ordinance or this article on behalf of the public as provided for under applicable state law, upon prevailing, shall be entitled only to equitable, injunctive and/or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this article shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law.

### **B. Restitution and Penalty Assessments by the Division Payable to the Employee.**

**1. Restitution and Penalties for Minimum Wage and Sick Time Violations.** Every Employer who violates the Minimum Wage Ordinance, this article, or any portion thereof, shall be liable to the Employee whose rights were violated for any and all relief, including, but not limited to, the payment to each Employee of wages and Sick Time Benefits unlawfully withheld and an additional penalty of up to \$120 per day that each of the violations occurred or continued. A violation for unlawfully withholding wages or Sick Time Benefits shall be deemed to continue from the date immediately following the date that the wages or Sick Time Benefits were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages or Sick Time Benefits are paid in full. For retaliatory action by the Employer, the Employee shall be entitled to reinstatement and a trebling of all wages, Sick Time Benefits, and penalties owed.

**2. Restitution and Penalties to Employee for Fair Work Week Violations.** An Employer who violates the Fair Work Week Ordinance shall pay restitution and a penalty as provided in this paragraph to each Employee whose rights were violated. The Division shall impose and collect, on behalf of an

Employee, a one-time penalty for each violation. The violations in this subsection do not continue daily and do not accrue daily penalties.

**VIOLATION AND PENALTY AMOUNT PAYABLE TO EMPLOYEE**

Violation	Penalty
Failure to provide a good faith estimate of work schedule — Municipal Code Section 185.02.	Up to \$500
Failure to compensate Employee at one and one-half times pay for working a Shift that begins less than ten hours from the previous Shift — Municipal Code Section 185.08.	Up to \$500
Failure to provide an Employee with at least 14 calendar days' notice of Work Schedule — Municipal Code Section 185.04.A.	Up to \$500
Failure to provide written notice of Work Schedule changes — Municipal Code Section 185.04.B.	Up to \$500
Failure to comply with prohibitions against requiring an Employee to find coverage for scheduled hours if the Employee is unable to work for a reason covered by other laws — Municipal Code Section 185.07.	Up to \$500
Failure to offer additional hours of work to current Employees before hiring new workers — Municipal Code Section 185.05.	Up to \$500

C. **Grace Period for Fair Work Week Violations.** The provisions of this section shall not apply to violations of the Fair Work Week Ordinance that occur during the first 180 days after the effective date of this ordinance. During this period, the Division shall only issue written warnings to Employers.

**SEC. 188.08. ADMINISTRATIVE FINES AND PENALTIES PAYABLE TO THE CITY.**

A. **Penalties.** An Employer who violates the Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article, or any portion thereof, shall be liable to the City for a penalty of up to \$50 per day that either wages, Predictability Pay, or Sick Time Benefits were unlawfully withheld from an Employee. A violation for unlawfully withholding wages, Predictability Pay, or Sick Time Benefits shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

B. **Administrative Fines.** An administrative fine payable to the City may be assessed for a violation of any provision of the Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article as specified below. The administrative fine may be assessed by means of a Notice of Correction issued to the Employer by the Division.

## VIOLATION AND FINE AMOUNT

Failure to post notice of the Los Angeles Minimum Wage rate, Sick Time Benefits, and Fair Work Week Benefits — Municipal Code Sections 185.10 or 188.03.A.	Up to \$500
Failure to allow access to payroll records — Municipal Code Section 188.03.B.	Up to \$500
Failure to allow access to records required by the Fair Work Week Ordinance — Municipal Code Section 185.09.B or 188.03.C.	Up to \$500
Failure to maintain payroll records or to retain payroll records for four years — Municipal Code Section 188.03.B.	Up to \$500
Failure to maintain records required by the Fair Work Week Ordinance for three years — Municipal Code Section 185.09.A.	Up to \$500
Failure to allow access for inspection of records or to interview employees — Municipal Code Section 185.09.B, 188.03.B or 188.03.C.	Up to \$500
Retaliation for exercising rights under the Minimum Wage and Fair Work Week Ordinances or this article — Municipal Code Sections 185.11, 187.06, or 188.04 — The Penalty for retaliation is up to \$1,000 per employee.	Up to \$1,000
Failure to provide employer's name, address, and telephone number in writing — Municipal Code Sections 188.03.A or 188.05.B.	Up to \$500
Failure to cooperate with the Division's investigation — Municipal Code Section 188.03.C or 188.05.B.	Up to \$500
Failure to submit documents or information to the Division within 30 days of the request — Municipal Code Section 188.05.B.	Up to \$500
Failure to post Notice of Correction to employees — Municipal Code Section 188.06.D.	Up to \$500

**C. Calculation of Administrative Fines.** Each and every day that a violation exists constitutes a separate and distinct violation. Any subsequent violation of the same provision by the same Employer within three years of a prior Notice of Correction may result in a 50 percent increase in the maximum administrative fine allowed.

**D. Payments to City; Due Date; Late Payment Penalty.** Administrative fines and City penalties shall be payable to the City of Los Angeles and due within 30 days from the date of the Notice of Correction. The failure of any Employer to pay an administrative fine or City penalty within 30 days may result in the assessment of an additional late fee. The amount of the additional late fee shall be ten percent of the total amount of the administrative fine or City penalty assessed for each month the amounts are unpaid, compounded to include already accrued late administrative fines and City penalties that remain unpaid.

**E. Penalties and Fines under Section 188.07 and 188.08.** The Division shall base its imposition of penalties and administrative fines for non-compliance with the city's laws after considering factors, including but not limited to: 1) the extent of harm caused by the violation; 2) the nature and persistence of the violation; 3) the length of time over which the violation occurs; 4) the frequency of past violations; 5) any action taken to mitigate the violation; and 6) the financial burden to the Employer.

**F. Grace Period for Fair Work Week Violations.** The provisions of this section shall not apply to violations of the Fair Work Week Ordinance that occur during the first 180 days after the effective date of this ordinance. During this period, the Division shall only issue written warnings to Employers.

#### **SEC. 188.09. ADDITIONAL REMEDIES.**

The City, when enforcing on behalf of an Employee, has the authority to require that payment of wages, Predictability Pay, Sick Time Benefits, and/or penalties found to be due and owing to the Employee, be paid directly to the City for disbursement to the Employee. The City, when enforcing on the behalf of an Employee, has the authority to require that payment of all amounts due under the Minimum Wage Ordinance, the Fair Work Week Ordinance, and this article be paid directly to the City. The failure of an Employer to pay any amounts due under the Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article shall constitute a debt to the City. The City, as plaintiff and/or judgment creditor, may file a civil action on behalf of an Employee and/or the City or, to the extent feasible under state law, create and impose a lien against any property owned or operated by an Employer or other person who fails to pay wages, Predictability Pay, Sick Time Benefits, penalties, and administrative fines assessed by the Division, or pursue other legal and equitable remedies available to the City. The City shall be awarded reasonable attorney's fees and costs associated with pursuing a violation under this article.

The remedies, penalties, and procedures provided under this article are cumulative and are not intended to be exclusive of any other available remedies, penalties, and procedures. The City shall study and review the feasibility of enacting additional measures consistent with state law to enhance the Division's enforcement tools, including, but not limited to, pursuing a memorandum of understanding or referral process to the Chief of Division of Labor Standards Enforcement for the recordation of a certificate of lien on behalf of an Employee, pursuant to California Labor Code Section 98.2(g), for amounts due under this article.

#### **SEC. 188.10. ADMINISTRATIVE APPEAL.**

**A. Deadline for Appeal.** An Employer who receives a Notice of Correction may file with the Division a notice of appeal within 15 days from the last compliance date specified as part of the Notice of Correction. In order to be considered timely, the appeal must be postmarked on or actually received by the Division by the 15<sup>th</sup> day following the service of the Notice of Correction. The appeal must be in writing and



must indicate a return address. The appeal must be filed with the Division and must specify in detail the basis for the appeal.

**B. Hearing Date.** As soon as practicable after receiving the written notice of appeal, the head of the Division or his or her designee shall promptly select a hearing officer to hear and decide the administrative appeal. The hearing officer shall fix a date, time and place for the hearing on the appeal. Written notice of the time and place for the hearing shall be served by First Class mail, at the return address indicated on the written appeal. Service of the notice of hearing on the Employer must be made at least ten days prior to the date of the hearing. The hearing shall be held no later than 30 days after service of the notice of hearing, unless that time is extended by mutual agreement.

**C. Notice of Hearing.** Except as otherwise provided by law, the failure of the Employer or any other person affected by the Notice of Correction to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this article. Service by First Class mail, postage prepaid, shall be effective on the date of mailing.

**D. Stay of Enforcement.** If penalties and administrative fines payable to the City are the subject of administrative appeal or judicial review, then accrual of such penalties and administrative fines shall be stayed until the determination of such appeal or review is final. The payment of the contested amount of wages, Predictability Pay, Sick Time Benefits, and penalties owed to the Employee during the pendency of any appeal shall be stayed, but shall continue to accrue until a determination of such appeal is final.

**E. Failure to Appeal.** Failure of an Employer to file an appeal in accordance with the provisions of this section or to appear at the hearing shall constitute a failure to exhaust administrative remedies. The Notice of Correction shall become final and enforceable as a Wage Enforcement Order, as defined in Section 188.10 I.

**F. Submittals for the Hearing.** No later than five days prior to the hearing, the Employer and the Division shall submit to the hearing officer, with simultaneous service by First Class mail on the opposing party, written information, including, but not limited to the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.

**G. Conduct of Hearing.** The hearing officer shall conduct all appeal hearings under this article. The Division shall have the burden of proof by a preponderance of the evidence in each hearing, except the Employer shall have the burden of proof by a preponderance of the evidence with respect to any claim that a worker is an independent contractor rather than an Employee. The hearing officer may accept evidence on which persons would commonly rely in the conduct of their business affairs, including, but not limited to, the following:

1. A Notice of Correction shall be prima facie evidence of the violation(s) specified therein, and those continuing through the date of the hearing.

2. The hearing officer may accept evidence and oral and written testimony under penalty of perjury relating to the violation(s) and the appropriate means of correcting the violation(s).

The hearing shall be open to the public and shall be recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the Division, Employer, or Employee prior to issuing a written decision.

**H. Hearing Officer's Findings and Determinations.** Within 15 days after the conclusion of the hearing, the hearing officer shall make findings based on the record of the hearing. The hearing officer may uphold or reject the violation(s) referenced in the Notice of Correction in whole or in part. The hearing officer also may uphold the Notice of Correction but reduce, waive, or conditionally reduce or waive the penalties and administrative fines stated therein if mitigating circumstances are shown and the hearing officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The hearing officer may impose penalties for any additional violations occurring during the pendency of the appeal. The hearing officer may impose conditions and deadlines for the correction of violations or the payment of outstanding wages, Predictability Pay, Sick Time Benefits, penalties, and administrative fines.

**I. Wage Enforcement Order.** The hearing officer's findings pursuant to Section 188.10.H shall constitute the Wage Enforcement Order, which shall be issued by the hearing officer. The Wage Enforcement Order shall specify the amount of wages, Predictability Pay, Sick Time Benefits, penalties, and administrative fines, if any, owed by the Employer. The Wage Enforcement Order shall be final and shall be served on the Employer, Employee, and Division by certified mail. Pursuant to California Code of Civil Procedure Section 1094.5, the Wage Enforcement Order shall be subject to judicial review in the appropriate superior court.

#### **SEC. 188.11. OTHER REMEDIES NOT AFFECTED.**

The administrative enforcement procedures established in this article shall be in addition to any other criminal or civil remedy established by law that may be pursued to address violations of the Minimum Wage Ordinance, the Fair Work Week Ordinance, or this article. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this article. A Notice of Correction or Wage Enforcement Order issued pursuant to this article shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to prosecute or abate a violation or to seek compensation for damages suffered.



#### **SEC. 188.12. OUTREACH.**

The Division shall establish a community-based outreach program to conduct education and outreach to Employers and Employees. In partnership with organizations involved in the community-based outreach program, the Division shall create outreach materials that are designed for Employers and Employees in particular industries.

#### **SEC. 188.13. REGULATIONS.**

The Division may promulgate rules and regulations and issue determinations and interpretations relating to the Minimum Wage Ordinance, the Fair Work Week Ordinance, and this article. Any rules and regulations promulgated by the Division shall have the force and effect of law, and may be relied upon by Employers, Employees, and other parties to determine their rights and responsibilities under this article. The Division may amend the rules and regulations when necessary to administer and enforce effectively the Minimum Wage and Fair Work Week Ordinances, and this article.

#### **SEC. 188.14. REPORTS.**

The Division shall provide annual reports to the City Council on the implementation of the Los Angeles Office of Wage Standards Ordinances.


#### **SEC. 188.15. SEVERABILITY.**

If any subsection, sentence, clause, or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  \_\_\_\_\_  
DANIA MINASSIAN  
Deputy City Attorney

Date 2/7/20

File No. 19-0229

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR

\_\_\_\_\_

\_\_\_\_\_

Ordinance Passed \_\_\_\_\_

Approved \_\_\_\_\_