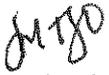


CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: March 18, 2016

TO: Honorable Members of the City Council

FROM: Sharon M. Tso 
Chief Legislative Analyst

Miguel Santana
City Administrative Officer



**FOLLOW-UP POLICY ELEMENTS
FOR A CITYWIDE MINIMUM WAGE**

SUMMARY

On June 3, 2015, the City Council adopted an ordinance to implement a Citywide minimum wage that would require employers to pay their employees a minimum wage of \$15 per hour by 2021, according to an adopted wage rate schedule. As part of those actions and in other Motions, Council instructed the Chief Legislative Analyst (CLA) and City Administrative Officer (CAO) to report on four policy matters for additional consideration: Compensated and Uncompensated Time Off; Collective Bargaining Agreements; Service Charges; and the Definition of Employer and Employee.

This report provides a review of policy options on three of these topics; a report will follow later concerning the fourth. If Council chooses to amend the ordinance to incorporate policy actions on these topics, the City Attorney would need to be requested to prepare and present an ordinance to do so.

In addition, preliminary research and planning has been conducted concerning the periodic economic review of the minimum wage law. The CLA and CAO have met with data experts to identify relevant data sources and to develop plans to build a data warehouse to meet the analytical requirements of the law. City departments should be instructed to participate by providing relevant data for review and inclusion in the data warehouse. A progress report will be provided at a later date.

RECOMMENDATION

That the City Council

1. Instruct all City departments to provide the Chief Legislative Analyst with a report on departmental data sources that provide information on economic and business activity in the City, and

2. If it is determined that amendments to the Citywide Minimum Wage are appropriate, instruct the City Attorney to prepare and present an ordinance that implements the desired policy revisions.

BACKGROUND

On June 3, 2015, the City Council adopted an ordinance to implement a Citywide minimum wage that would require most employers to pay their employees a minimum wage of \$15 per hour by 2021, according to an adopted wage rate schedule. That action, as well as other actions and Motions, instructed the CLA to provide follow-up analysis on several policy matters related to the Citywide Minimum Wage, including:

- Compensated and Uncompensated Time Off
- Collective Bargaining Agreements
- Service Charges
- Definition of Employer and Employee

This report provides information on three of these issues, as well as policy options for Council consideration. A report will be provided at a later date concerning the definition of employers and employees. If the Council chooses to implement policy amendments to the Citywide Minimum Wage, the City Attorney would need to prepare and present an ordinance that implements those new policies.

The first wage increase under the adopted Citywide Minimum Wage will go into effect on July 1, 2016. The full wage implementation schedule is provided in Table 1.

Table 1 Adopted Citywide Minimum Wage Wage Schedule		
Effective Date	Hourly Rate	
	Businesses with 26 or More Employees	Businesses with 25 or Fewer Employees
July 1, 2016	\$10.50	\$10.00
July 1, 2017	\$12.00	\$10.50
July 1, 2018	\$13.25	\$12.00
July 1, 2019	\$14.25	\$13.25
July 1, 2020	\$15.00	\$14.25
July 1, 2021	\$15.00	\$15.00
Note: Permanent or temporary exemptions apply for several types of employees: <ul style="list-style-type: none"> -- Non-profits with transitional employees -- "Learners" under State law -- Governmental payrolls (except the City) 		

The hourly rate will increase automatically beginning July 1, 2022 based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Riverside-Orange County, CA), which is published by the Bureau of Labor Statistics.

Minimum Wage in Other Jurisdictions

Since passage of the Los Angeles Citywide Minimum Wage, several other jurisdictions have taken action on minimum wages, including:

- The County of Los Angeles adopted a minimum wage program that is substantially similar to the City's program, including the same wage schedule. This minimum wage program applies to all unincorporated areas of the County and will be effective July 1, 2016.
- On January 12, 2016, the City of Santa Monica adopted a minimum wage program that is similar to the City's program, including the same wage schedule. The Santa Monica law includes an exemption for collective bargaining agreements and controls over service charges and will be effective July 1, 2016.
- On January 19, 2016, the Long Beach City Council adopted an instruction to direct their city attorney to prepare an ordinance to implement a minimum wage policy in the City of Long Beach.
- On February 1, 2016, the Pasadena City Council adopted an instruction to direct their city attorney to prepare an ordinance to implement a minimum wage policy in the City of Pasadena.
- Two State initiatives have been approved for circulation that would increase the State minimum wage to \$15 by 2021. Advocates seek to place these measures on the November 2016 State General Election ballot. One measure, which would simply increase the State minimum wage by \$1 per year until 2021, is pending signature verification by the Secretary of State. Signatures for the other initiative, which would increase the State minimum wage in a manner similar to the City's policy and adjust the State paid sick leave law to provide six days instead of three, are due July 5, 2016; proponents of this measure have reported, as required by State law, that they have reached the 25% signature threshold.

Evaluation of Minimum Wage Policy

The Citywide Minimum Wage ordinance adopted by the Council and Mayor requires that the CLA, with assistance of the CAO, conduct an evaluation of the impact of the law every three years on the City's economy and on specific sectors within the economy. Further, the CLA and CAO are required to collect data every year on jobs, earnings, and sales taxes.

To ensure that this evaluation can be conducted with meaningful data, all of the researchers involved in the minimum wage studies recommended that data be collected on an annual basis, and that the City be compared to another geographic area as a control to gauge impacts.

The CLA and CAO have begun to prepare for this requirement of the law, with assistance from economists and other experts in socio-demographic data collection and analysis. The current effort is focused on identifying relevant data sources and development of a methodology to test the relevance of these data sources. This will be followed by the collection and processing of full data sets and the development of a data warehouse that can be used to evaluate effects of the law.

The initial focus is on the identification of available data from local, State, and federal resources, as well as private vendors. More than 20 data sources related to demographics, wages, prices, business characteristics, taxes, and other related subjects have been identified. Staff will prioritize these databases, process data into relevant geographic and subject areas, and test the relevance of the data. Additional data sources will be regularly added to ensure the most comprehensive data warehouse possible. This process will also be focused on the identification of gaps in the available data and solutions to fill those gaps.

Two gaps have been identified already: data on prices and data on direct household impacts. One of the concerns expressed in the evaluation of minimum wage policies is the impact of wage increases on prices. Detailed data on prices for goods and services are not currently available. Research is on-going to determine whether it is possible to address this data need. With regard to household impacts, one option would be to contract with a firm that conducts longitudinal surveys. Such a survey would seek to understand changes and impacts on individual households as a result of the minimum wage implementation, such as whether the minimum wage has affected employment status, quality of life, and other relevant factors. Staff are evaluating the viability of such an approach and will report at a later date concerning relevance and associated costs.

As the data collection phase gets underway, cooperation from many City departments will be essential. Databases from several City departments will be needed to support the analysis. An instruction from Council would provide clear direction to City departments that their participation and cooperation in this project is essential for compliance with the minimum wage law.

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A. COMPENSATED AND UNCOMPENSATED TIME OFF

On June 16, 2015, the Economic Development Committee considered a report from the CLA concerning compensated and uncompensated time off policies. That report reviewed the newly implemented State paid sick leave law; paid sick leave laws in other cities; and the City's existing compensated time off laws. Following discussion, the Committee requested that additional issues be addressed. This section incorporates information from the previous report, with additional information as requested, and updates actions in other cities and the State.

Policy Options

Five policy options have been identified for Council consideration with regard to compensated and uncompensated time off:

1. No Action – this, in effect, establishes the default policy for compensated and uncompensated time off as the State requirement for paid sick leave.
2. Add time – in this case, the City could incorporate all of the provisions of the State paid sick leave law and require that employers provide additional time. For example, the State law requires employers to provide at least three sick days to employees. The City could require that employers provide additional days.
3. City Hotel Workers Ordinance – The City's Hotel Worker's Minimum Wage law provides hospitality employees with compensated and uncompensated time off. The Council could choose to expand this law to all employees in the City.
4. Another City Model – Council could select the provisions adopted by another city as the model ordinance for paid sick leave.
5. Custom Model – the City could formulate a model that is suited specifically to the City, with a custom set of provisions that are unique and not necessarily aligned with any other jurisdiction or any other City ordinance.

State of California

On September 10, 2014, the Governor signed AB 1522, the "Healthy Workplaces, Healthy Families Act of 2014," to require employers to provide paid sick leave to employees who work in California for 30 or more days. Beginning July 1, 2015, eligible employees accrue 1 hour of paid sick leave for every 30 hours worked. Employees are able to use accrued time beginning on the 90th day of employment.

AB 1522, however, provides additional criteria concerning the use and accrual of time. Employers may elect to limit an employee's use of sick days to no more than 24 hours or three days in each year of employment. Accrued sick leave must carry over to the following year. In addition, employees may retain no more than 48 hours or six days of sick time if an employer implements a policy to this effect. Finally, an employer has the option to offer 24 hours or 3 days

of sick leave at the beginning of each calendar year, anniversary date, or twelve months basis instead of the accrual method.

Among the provisions of AB 1522, employers are required to comply with both local and State laws, and are obligated to provide the more generous provision or benefit to employees where there is a difference between the two.

In July 2015, the Governor signed AB 304 which amended and clarified several portions of the State paid sick leave law. Among the revised provisions, it allows an employer to provide sick leave accrual on a basis other than 1 hour for each 30 hours worked as long as the employee receives at least 24 hours of accrued leave by the 120th day of employment; extends the date by which employers in the broadcasting and motion picture industries are required to provide itemized sick time accrual and use on wage statements to employees; and clarifies that employers are not required to provide additional sick leave if the employer's paid time off policy already meets or exceeds State law.

Add Time

If Council seeks to provide more paid sick leave than is required by the State, it would be possible to adopt the provisions of State law, but require an alternate use limit that is higher than the three days provided in State law. State law allows employers under an accrual method to limit the use of paid sick leave to no more than 24 hours per year, though employees may accrue more than this. State law also allows employers the option to use the "up front" method, whereby the employee receives 24 hours at the beginning of the year with no additional accrual. The City could adopt a policy that adds additional time to the number of hours used under either the accrual method or the up front method. This approach may have a lower implementation cost for employers as it would be consistent with State law in nearly every aspect. As noted in public testimony, employers could encounter higher implementation costs when they are required to implement multiple sick leave policies. Employees would also have fewer regulations to understand when seeking their benefits.

Other California Cities

In addition to Los Angeles, 14 other California cities have adopted minimum wage ordinances or passed ballot measures implementing a citywide minimum wage. As noted in the following list, four of these cities require compensated time off or paid sick leave. The laws implementing compensated time off in these cities is summarized below in Table 2. The County of Los Angeles has also implemented a minimum wage law, but has not approved a paid sick leave policy.

The City of Berkeley is considering a proposal to implement a paid sick leave policy. Following deliberations on January 19, 2016, the Berkeley City Council voted to further study the matter. It will be scheduled for consideration on April 26, 2016. The proposal under consideration in Berkeley is substantially similar to the paid sick leave law in Emeryville and San Francisco.

The City of San Diego adopted a minimum wage ordinance with paid sick leave, but it has been placed on hold pending voter approval. The San Diego minimum wage referendum will be considered by voters on the June 2016 State Primary Nominating ballot.

The City of Santa Monica recently adopted a minimum wage ordinance with a paid sick leave requirement. The ordinance is consistent with many components of ordinances adopted in other California cities, but differs on one key issue. The Santa Monica law does not allow employer compensated time off policies to qualify as meeting the city's paid sick leave policy.

No Compensated Time Off Required

1. El Cerrito
2. Mountain View
3. Palo Alto
4. Richmond
5. Sacramento
6. San Jose
7. Santa Clara
8. Sunnyvale

Compensated Time Off Under Consideration

9. Berkeley (pending legislative approval)
10. San Diego (voters to consider a referendum in June 2016)

Compensated Time Off Required (some provisions in local laws default to State law)

11. Emeryville
 - 1 hour of paid sick leave earned for every 30 hours of work
 - 48 hours of paid sick leave for employees in small businesses
 - 72 hours of paid sick leave for employees in all other businesses
 - Unused accrued hours carry over
 - Accrual method, up-front method, or hybrid
12. Oakland
 - 1 hour of paid sick leave earned for every 30 hours of work
 - Cap of 40 hours for employees in small businesses
 - Cap of 72 hours for employees in all other businesses
 - Unused accrued hours carry over
 - Accrual method only
13. San Francisco
 - 1 hour of paid sick leave earned for every 30 hours of work
 - Cap of 40 hours for employees in small businesses
 - Cap of 72 hours for employees in all other businesses
 - Unused accrued hours carry over
 - Accrual method only

14. Santa Monica
- 1 hour of paid sick leave earned for every 30 hours of work
 - Accrual cap of 40 hours for employees in small businesses
 - Accrual cap of 72 hours for employees in all other businesses
 - No use cap
 - Carryover of unused accrued hours
 - Accrual method only

Hotel Worker's Minimum Wage Law

Unlike the policies of other cities and the State, the City's Hotel Worker Minimum Wage law provides for compensated time off rather than paid sick leave. This offers greater flexibility as allowable uses of this compensated time off include illness, vacation, and personal necessity. The Hotel Worker Minimum Wage law includes a definition of part-time and full-time employees, time off accrual procedures, and rules for the use of uncompensated time off. Hotel workers are eligible to use this benefit after six months of employment. Employees may accrue a maximum of 192 hours, after which the employer is required to provide a cash payment for additionally accrued hours. This law may need to be amended to comply with State law to align the beginning of eligibility to accrue hours upon hiring rather than six months, and a 90 day period before sick days could be used. The Hotel Worker's Minimum Wage law also includes a provision of 80 hours of uncompensated time off. Employees accrue this time weekly, it is capped, and up to 80 hours may carry over each year.

Policy Components

At its meeting of June 16, 2015, members of the Economic Development Committee requested additional information on several components of a paid sick leave policy:

- Circumstances for use of paid sick leave
- When employees can begin to use sick leave
- Documentation requirements for the use of sick leave
- Structure of accrual caps

The following section provides information on these matters. Table 2 provides a summary of the paid sick leave laws of other cities.

Circumstances for the Use of Paid Sick Leave

City ordinances and State law allow employees to use their accrued sick time when they are ill or when they need to care for a family member or other designated person. Some ordinances specify family members, such as a child; parent; legal guardian or ward; sibling; grandparent; grandchild; or spouse, registered domestic partner under any state or local law, or other designated person. Other ordinances refer to State law. These ordinances also allow employees to designate someone on an annual basis for whom they provide care and can claim the use of paid sick leave if the employee does not have a spouse or domestic partner. Emeryville allows employees to use paid sick leave to care for a guide dog, service dog, or signal dog.

Table 2

Paid Leave Policies in California: State of California and California Cities with Minimum Wage Ordinances

	State of California	Emeryville	Oakland	San Francisco	Santa Monica	Los Angeles Hotel Worker Min Wage
Form of Leave	Paid Sick Leave	Paid Sick Leave	Paid Sick Leave	Paid Sick Leave	Paid Sick Leave	Comp Time Off
Employee Annual Accrual Rate (including part-time)	1 hour for 30 hours worked*	1 hour for 30 hours worked	96 hours (12 days)			
Maximum Accrual (Cap)	48 hours** (6 days)	72 hours	72 hours	72 hours	72 hours	192 hours
Cap for Small Businesses	48 Hours	48 hours	40 hours	40 hours	40 hours	No
Payment for Unused Hours	No	No	No	No	No	Yes
Carryover	Yes	Yes	Yes	Yes	Yes	Yes
Consideration for CTO Policy	Yes	Yes	Yes	Yes	No	n/a

CTO = compensated time off

*This is the minimum required by AB 1522. An employer may provide 3 days or 24 hours up front, or allow accrual based on the hours worked. The State does not limit annual accrual, though the law states that employers may limit the use of accrued hours to 3 days or 24 hours per year.

** Employers may choose to limit employees to 24 hours (3 days) of sick leave use/year

When Can Employees Begin to Use Sick Leave

Oakland provides that employees may use sick leave after 90 days, but begin accruing time on their first day of work. State law provides that accrual begins upon employment and eligibility for sick leave after 30 days of employment, but may not be used until the 90th day of employment. San Francisco and Santa Monica provide that accrual does not begin until 90 days after beginning employment (which conflicts with State law), though Santa Monica provides that an employee may begin to use accrued sick leave after the first 90 days of employment, or earlier if allowed by the employer. Emeryville comports with State law on this subject.

Documentation Requirements

Emeryville and Santa Monica allow an employer to require reasonable notice to use leave, but are silent on requiring confirmation from a doctor in any circumstance or allowing an employer to confirm or document a use of paid sick leave. Oakland and San Francisco also allow an employer to require reasonable notice. These ordinances allow an employer to take reasonable measures to confirm or document that the employee’s use of sick leave was lawful. State law requires the employee to provide reasonable notice when sick leave will be used when the circumstance is foreseeable, and as soon as practical when the circumstance is not foreseeable.

Structure of Accrual and Caps

As noted previously, paid sick leave laws provide hours under one or both of two methods. Employers can provide their employees hours based on time worked, the accrual method, or can provide a full annual allotment at the beginning of each year, the up-front method. The accrual method can include a cap on the total number of hours accrued, as well as a cap on the number of hours used in a year. Each of the city ordinances and State law provide for the accrual of sick leave at a rate of 1 hour per 30 hours worked.

Oakland, San Francisco, and Santa Monica cap the total number of hours that can be accrued at 40 hours for employees of small businesses (not compliant with State law) and 72 hours for all other businesses. Emeryville requires 48 hours for employees of small businesses and 72 hours for all other businesses. State law allows employees to accrue up to 48 hours, but also allows employers to cap the use of accrued hours at 24 hours or 3 days.

In the four city ordinances, unused hours can carry over to the next year provided that they do not exceed the total accrual cap.

ACTION	
A.1	<p>Which paid leave model should the City adopt?</p> <ul style="list-style-type: none"> a. No change. Follow State law. b. State model with additional time requirement c. Another city Model d. A Custom Model

Entertainment Industry

At the Economic Development Committee meeting of June 16, 2015, representatives of the entertainment industry expressed concerns that some elements of a compensated and uncompensated time off policy could create problems maintaining records to comply with multiple paid sick leave policies and that the requirement to provide more time could create economic disadvantages for productions and studios located in the City.

The business model of the entertainment industry is based on skilled specialists who work on multiple productions, possibly for several different production companies, over the course of a year. Unlike a regular work week with established hours, production employees work on the basis of a daily or weekly call and are expected to be available to work consistent with the daily or weekly call. An employee benefit tied to the hours worked for the employer would be difficult to administer, since a production employee may have multiple employers, even within a single pay period. Production employers do provide an alternative to compensated time off through an allowance based on time worked, as a requirement of collective bargaining agreements. In addition to their salary, employees receive additional compensation in lieu of paid time off -- this is additional compensation for vacation and holidays based on a percentage of their straight time earnings. This additional compensation is reported independently on the employee's paystub. For example, in addition to salary earned, the employee will know on separate line items how much additional compensation is provided for vacation and holidays.

A possible solution to accommodate concerns raised by the entertainment industry would be to recognize that employer policies that provide employees who are compensated for vacation hours in addition to earned salary for time worked would be deemed in compliance with the City's paid sick leave policy. If such an allowance exceeds the amount of time required by the City's required paid leave or compensated time off policy, then it would be deemed compliant with the City law. For example, if the City requires five days of paid sick leave, and an employee receives the three paid sick leave days required by State law plus an additional allowance for time off that meets or exceeds five days in total, then the employer would be deemed compliant with the City's law. This approach would not place any additional burden on the entertainment industry employers, and ensures that employees receive a total paid sick leave benefit that equals or exceeds that required by the City.

ACTION	
A.2 Should the policy include consideration of the entertainment industry's business model and recognize that the additional payment for compensated time off equal to or in excess of City required paid sick leave be deemed compliant with City regulations? -- No -- Yes	

B. COLLECTIVE BARGAINING AGREEMENTS

Our offices were instructed to report on how other cities address Collective Bargaining Agreements.

Many cities include an exemption from their local minimum wage for employers that have entered into a Collective Bargaining Agreement with a clear and unambiguous waiver. The argument to include an exemption in this instance is that workers covered by a Collective Bargaining Agreement have a negotiating position that allows them to rationally accept a lower wage in exchange for other benefits. The City's hotel minimum wage law includes such an exemption.

The minimum wage ordinances in Berkeley, El Cerrito, Emeryville, Mountain View, Oakland, Palo Alto, Richmond, San Francisco, San Jose, Santa Clara, Santa Monica, and Sunnyvale include exemptions where a Collective Bargaining Agreement with a clear and unambiguous waiver is in place. Outside California, Bangor, ME; Chicago, IL; and Portland, ME include exemptions where a Collective Bargaining Agreement is in place.

Sacramento does not include an exemption for Collective Bargaining Agreements. The San Diego minimum wage referendum to be considered by voters on June 7, 2016, does not include an exemption for Collective Bargaining Agreements. Outside California, Albuquerque, NM; Lexington, KY; Louisville, KY; and Seattle, WA do not exempt collective bargaining agreements.

C. SERVICE CHARGES

California tip law prohibits employers from keeping any portion of the gratuity left for an employee by a patron. It also prohibits employers from making wage deductions from gratuities. A mandatory service charge, based on a clear statement on a menu or a contractual agreement, is not considered a tip under State law but rather an obligation of the patron to the owner of that establishment. The owner may chose to share some or all of the service charge with employees, but this is at the discretion of the employer.

Several cities, as part of their minimum wage law, have obligated employers to distribute all of the service charge to the employees. More significantly, some of these cities have restricted the employer from using the service charge to offset any wage increases associated with a minimum wage law. This includes Emeryville, and, most recently, Santa Monica. There is no standard, yet, with regard to service charge policies.

At this time, it is not recommended that the City adopt restrictions on service charges. Public testimony during consideration of the minimum wage policy, as well as the reports prepared by the three economic analysts, indicated that restaurants especially may have some difficulty adjusting to the higher wages. Preliminary news reports from New York, San Francisco, and Oakland indicate that restaurants are experimenting with many different models for pricing, tipping, and service charges. Restaurants are moving toward service charges or a surcharge model, such as including a surcharge for employee benefits.

Because of the evolving models regarding tips and service charges, we do not recommend a change in the law at this time. Adoption of a policy at this point may produce unintended consequences by forcing a specific economic model on restaurants that may not be viable. But it may be advisable to require any establishment that implements a service charge or surcharge to clearly report on the customer's receipt that such a charge has been imposed and specify the purpose/distribution of the charge. We spoke to several restauranteurs who reported that customers are beginning to accept this model and tend to add a tip on top of surcharges and service charges.

D. DEFINITION OF EMPLOYER AND EMPLOYEE

In its action of June 3, 2015, Council instructed the CLA, CAO and City Attorney to further report on questions concerning the definitions of employer and employee. The instruction states that a report is requested on:

The application of the Citywide Minimum Wage Ordinance's definition of an Employee in various circumstances (such as employees based in other cities that work part of their time in Los Angeles and vice versa), the various challenges with enforcement and the risk of a preemption argument, the basis for the definition of an Employer, and options for definitions of both Employer and Employee other cities have adopted that are present in similar ordinances that would fulfill the best interests of employees and business in the City.

The City Attorney is conducting research on this matter, but additional time is needed to prepare a full response. A report addressing this matter will be provided within 60 days.