

GENERAL SERVICES AGENCY
OFFICE OF LABOR STANDARDS ENFORCEMENT
DONNA LEVITT, MANAGER



Minimum Wage Ordinance
Chapter 12R Administrative Code

Frequently Asked Questions
Updated December 1, 2008

1. Q: Where can I find the current San Francisco minimum wage?

A: The current San Francisco minimum wage is posted at www.sfgov.org/olse/mwo. You can also call the Office of Labor Standards Enforcement (OLSE) at (415) 554-6292.

The San Francisco minimum wage is adjusted once per year. Every January 1, the San Francisco minimum wage increases by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.

The City uses the August-to-August change in the Consumer Price Index to calculate the annual increase, if any, in the San Francisco minimum wage rate.

2. Q: Does the San Francisco minimum wage apply to all employers that have employees who perform work in San Francisco?

A: Yes! All employers, regardless of where they are located, must pay their employees who perform work in San Francisco the San Francisco minimum wage.

3. Q: Does the San Francisco minimum wage apply to full time and part time employees?

A: Yes! Any person who performs at least two hours of work in a particular week for an employer within the geographic boundaries of the City is entitled to be paid the San Francisco minimum wage.

4. Q: Is the San Francisco minimum wage the same for both adult and minor employees?

A: Yes!

5. Q: Does the San Francisco minimum wage cover employees who work in San Francisco but are not City residents?

A: Yes! Any person who performs at least two hours of work in a particular week for an employer within the geographic boundaries of the City is entitled to be paid the San Francisco minimum wage.

6. Q: What is included in the definition of "wages" under the San Francisco minimum wage?

A: Wages include compensation that is received in the form of salary, hourly pay, piece rate, commissions, and non-discretionary performance bonuses. In addition, the City also permits employers to offset a portion of the San Francisco minimum wage for housing and meal costs. The City offsets for housing and meal costs are the same as those offsets available

under state minimum wage law. The offsets will only be recognized if there is a prior voluntary written agreement between the employer and employee. Wages do not include tips.

- 7. Q: Does the San Francisco Minimum Wage Ordinance protect undocumented workers?**
- A:** *Yes. All workers in San Francisco -- whether or not they are legally authorized to work in the United States—are protected. The City’s Office of Labor Standards Enforcement will process a wage claim without regard to a worker’s immigrant status. Workers filing a claim with City will not be questioned about their immigration status.*
- 8. Q: What is the difference between the Federal, State and San Francisco minimum wage laws?**
- A:** *San Francisco employers are subject to the Federal, State and San Francisco minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard; that is, the one that is most beneficial to the employee. Thus, since San Francisco’s current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in San Francisco who are subject to the laws must pay the City’s minimum wage rate unless their employees are exempt under California law*
- 9. Q: Do I need to pay the San Francisco minimum wage to individuals exempt from the state minimum wage?**
- A:** *No! The Minimum Wage Ordinance section 12R3 requires that employers pay the San Francisco minimum wage to employees who are entitled to receive the state minimum wage. Certain categories of workers, including independent contractors, learners and certain disabled workers, are not entitled to the state minimum wage. For further information on these categories of workers, please consult the Industrial Welfare Commission wage orders (<http://www.dir.ca.gov/IWC/iwc.html>) and/or the Division of Labor Standards Enforcement (<http://www.dir.ca.gov/DLSE/dlse.html>).*
- 10. Q: May an employee agree to work for less than the San Francisco minimum wage?**
- A:** *The San Francisco minimum wage is an obligation of the employer and cannot be waived by an employee except through a bona fide collective bargaining agreement.*
- 11. Q: What can I do if my employer doesn’t pay me at least the San Francisco minimum wage?**
- A:** *You can either file a wage claim with the City’s Office of Labor Standards Enforcement or file a lawsuit in court against your employer. If an employee chooses to file a claim alleging the non-payment of the San Francisco minimum wage by his or her employer, the employee must file a claim either by mail or in person.*
- 12. Q: What can I do if my employer retaliates against me because I question her about not being paid the San Francisco minimum wage?**
- A:** *Under this ordinance, it is unlawful for an employer to retaliate against employees who assert their right to receive the San Francisco minimum wage. There is a rebuttable presumption of retaliation if any adverse action is taken against a person within ninety days of the person exercising his or her rights protected under the law. If you are subjected to retaliation, you can either file a claim with the City’s Office of Labor Standards Enforcement or file a lawsuit in court against your employer.*
- 13. Q: What wage must an employer pay to a salaried employee who is exempt from overtime under state law? Must the employer pay twice the state minimum wage rate or twice**

the San Francisco minimum wage rate?

A: *The City's Office of Labor Standards Enforcement (OLSE) can only advise employers how to comply with the San Francisco Minimum Wage Ordinance. The OLSE cannot advise employers how to comply with state law, including state law governing pay for salaried employees exempt from overtime. Please contact the California State Labor Commissioner for information on compliance with state law.*

14. Q: I work in a restaurant as a waitperson. Can my employer use my tips as a credit toward its obligation to pay me the San Francisco minimum wage?

A: *No! An employer may not use an employee's tips as a credit toward its obligation to pay the San Francisco minimum wage.*

15. Q: Does the Minimum Wage Ordinance apply to employees covered by an existing collective bargaining agreement?

A: *Yes. The Minimum Wage Ordinance (MWO) is a minimum labor standard and a law of general application that applies to all employees covered by the ordinance, whether represented by a union or not. However, under San Francisco Administrative Code Section 12R.8, the provisions of MWO may be waived by a collective bargaining agreement. The MWO requires that the waiver must be in a bona fide collective bargaining agreement, must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement are free to negotiate any language they desire, and the department will not interfere with or participate in the negotiation of such language. There may be many different ways to accomplish an effective waiver in a collective bargaining agreement. (One approach, that the department would recognize for purposes of enforcement, is as follows: "Waiver of San Francisco Minimum Wage Ordinance: To the fullest extent permitted, this agreement shall operate to waive any provisions of the San Francisco Minimum Wage Ordinance, San Francisco Administrative Code Chapter 12R, and shall supersede and be considered to have fulfilled all requirements of said Ordinance as presently written, and or amended during the life of this agreement.")*

16. Q: May commissions be counted toward payment of the San Francisco minimum wage?

A: *Yes! Commissions may be counted toward payment of the San Francisco minimum wage. If the commissions earned and paid, together with other compensation paid to an employee, are equivalent to or greater than the current San Francisco minimum wage, then the City's minimum wage requirement is satisfied. For each pay period, employers must pay the employee an amount that equals or exceeds the hours that the employee worked multiplied by the current San Francisco minimum wage. If the employee's commissions for the pay period, together with other compensation earned, are less than that amount, employers must pay the difference. Whether the employer may thereafter recover any amounts based on commissions that the employee earns in a later pay period, or which are paid at a later date, depends on whether the employer and employee have an enforceable written agreement.*

17. Q: My business is family run business. Do I need to pay my parent, spouse, or child the San Francisco minimum wage?

A: *No. Consistent with California Labor Code, Sec 3352, (a) Individuals who are the parents, spouses or children of the employers are not covered by the San Francisco minimum wage. (Domestic partners would also be excluded under the San Francisco Minimum Wage Ordinance.) However, an employer must pay the required San Francisco minimum wage rate to any other person who performs more than two hours of work in a week and qualifies as an employee entitled to payment of the 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.

Please E-mail further questions to MWO@sfgov.org
Or call (415) 554-6292
www.sfgov.org/olse/mwo

This fact sheet is intended as general information only and does not carry the force of legal opinion.

The City's Office of Labor Standards Enforcement is providing this information as a public service. This information and related materials are presented to give the public access to information on the San Francisco minimum wage law. You should be aware that while we try to keep the information timely and accurate, there would often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. We will make every effort to correct errors brought to our attention.