

Eureka Draft Ordinance Suggestions

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EUREKA AMENDING THE EUREKA MUNICIPAL CODE BY ADDING _____, RELATING TO GROCERY STORE WORKERS IN EUREKA AND ESTABLISHING LABOR STANDARDS REQUIREMENTS FOR PREMIUM PAY FOR GROCERY STORE WORKERS WORKING IN EUREKA; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization (WHO) as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout California and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a "Stay Home - Stay Healthy" proclamation closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. In addition to healthcare, public health and emergency services, the "Stay Home - Stay Healthy" proclamation identified grocery stores as essential business sectors critical to protecting the health and well-being of all Californians and designated their workers as essential critical infrastructure workers; and

WHEREAS, on March 30, 2020, the City Council of the City of Eureka proclaimed a civil emergency in response to new cases of COVID-19, authorizing the City Manager to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering; and

WHEREAS, on December 3, 2020, California Governor Gavin Newsom extended the "Stay Home - Stay Healthy" proclamation; and

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and

WHEREAS, as of March 5, 2021, the World Health Organization Situation Report reported a global total of 116,521,281 cases of COVID-19, including 2,589,548 deaths; California reported 3,501,394 cases of COVID-19, including 54,124 deaths; Humboldt County reported 3,266 cases of COVID-19, including 33 deaths, and Eureka reported 1167 cases of COVID-19; and

WHEREAS, grocery stores are essential businesses operating in Eureka during the COVID-19 emergency making grocery store workers highly vulnerable to economic insecurity and health or safety risks; and

WHEREAS, grocery store workers working for grocery stores are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19 crisis. They work in high-risk conditions with inconsistent access to protective equipment and other safety measures; work in public situations with limited ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease; and

WHEREAS, premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress; and

WHEREAS, grocery store workers working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty due to the significant risk of exposure to the COVID-19 virus. Grocery store workers have been working under these hazardous conditions for months. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection; and

WHEREAS, the availability of grocery store stores is fundamental to the health of the community and is made possible during the COVID-19 emergency because grocery store workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations; and

WHEREAS, establishing an immediate requirement for grocery stores to provide premium pay to grocery store workers protects public health, supports stable incomes, and promotes job retention by ensuring that grocery store workers are compensated for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EUREKA DOES ORDAIN AS FOLLOWS:

Section 1. The Eureka Municipal Code is amended by adding Chapter _____ to read as follows:

CHAPTER _____ PREMIUM PAY FOR GROCERY STORE WORKERS

_____ Purpose.

As a result of the COVID-19 pandemic and the "Stay at Home" order issued by California Governor Gavin Newsom, this Ordinance aims to protect and promote the public health, safety, and welfare during the new coronavirus 19 (COVID-19) emergency by requiring grocery store stores to provide premium pay for grocery store workers performing work in Eureka. Requiring grocery stores to provide premium pay to grocery store workers compensates grocery store workers for the risks of working during a pandemic. Grocery store workers face magnified risks of catching or spreading the COVID-19 disease because the nature of their work involves close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease. The provision of premium pay better ensures the retention of these essential workers who are on the frontlines of this pandemic providing essential services and who are needed throughout the duration of the COVID-19 emergency. As such, they are deserving of fair and equitable compensation for their work.

_____ Short title.

This ordinance shall constitute the "Premium Pay for Grocery Store Workers Ordinance" and may be cited as such.

_____ Definitions. For purposes of this Ordinance:

"Adverse action" means reducing the compensation to a grocery store worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a grocery store worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a covered grocery store worker for any reason prohibited by Sections _____ or _____.

"Adverse action" also encompasses any action by the hiring entity or a person acting on the hiring entity's behalf that would dissuade a grocery store worker from exercising any right afforded by this ordinance.

"Aggrieved party" means a grocery store worker or other person who suffers tangible or intangible harm due to a hiring entity or other person's violation of this ordinance.

"City" means the City of Eureka.

"Covered grocery store worker" means a grocery store worker employed directly by a hiring entity who is entitled to premium pay pursuant to this Ordinance.

"Grocery worker" means a worker employed directly by a hiring entity at a grocery store. Grocery worker does not include managers, supervisors or confidential employees.

"Grocery store" means a retail store that is located within the geographic limits of the City, and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales. For the purposes of this ordinance, "Grocery Store" also means a retail store of any kind located within the geographic limits of the City that devotes 15% or more of its interior space to the sale of household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods.

"Hiring entity" means a grocery store that employs over five hundred (500) grocery store workers nationally and employs more than fifteen (15) employees per grocery store in the City of Eureka, or employs over twenty-five (25) but less than five hundred (500) grocery store workers in the City of Eureka.

"Premium pay" means additional compensation owed to a grocery store worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

"Respondent" means a grocery store, parent company or any person who is alleged or found to have committed a violation of this Ordinance.

_____ Grocery store worker coverage.

For the purposes of this Ordinance, covered grocery store workers are limited to those who perform work for a hiring entity where the work is performed in the City of Eureka.

_____ Hiring entity coverage.

A. For purposes of this Ordinance, hiring entities are limited to those who employ five hundred (500) or more grocery store workers nationally and employ more than fifteen (15) employees per grocery store in the City of Eureka, or employs over twenty-five (25) but less than five hundred (500) grocery store workers in the City of Eureka.

B. To determine the number of grocery store workers employed for the current calendar year:

1. The calculation is based upon the average number per calendar week of grocery store workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) grocery store worker worked for compensation. For hiring entities that did not have any grocery store workers during the preceding calendar year, the number of grocery store workers employed for the current calendar year is calculated based upon the average number per calendar week of grocery store workers who worked for compensation during the first ninety (90) calendar days of the current year in which the hiring entity engaged in business.

2. All grocery store workers who worked for compensation shall be counted, including but not limited to:

- a. Grocery store workers who are not covered by this Ordinance; and
- b. Grocery store workers who worked in Eureka.

_____ Premium pay requirement.

A. Hiring entities shall provide each grocery store worker with premium pay consisting of an additional Four and 00/100 Dollars (\$4.00) per hour for each hour worked if over five hundred (500) grocery store workers nationally and more than fifteen (15) employees per grocery store in the City of Eureka., or Three and 00/100 Dollars (\$3.00) pre hour for each hour worked if over twenty-five (25) but less than five hundred (500) grocery store workers in the City of Eureka.

B. Hiring entities shall provide the pay required by Subsection _____ (A) for a minimum of ninety (90) days from the effective date of this Ordinance.

C. Unless extended by City Council, this ordinance shall expire in ninety (90) days.

_____ Grocery or drug store worker and consumer protections.

A. No hiring entity shall, as a result of this Ordinance going into effect, take any of the following actions:

- 1. Reduce a grocery worker's compensation;
- 2. Limit a grocery store worker's earning capacity.

C. It shall be a violation if this Ordinance is a motivating factor in a hiring entity's decision to take any of the actions in Subsection _____ unless the hiring entity can prove that its decision to take the action(s) would have happened in the absence of this Ordinance going into effect.

_____ Notice of rights.

A. Hiring entities shall provide covered grocery store workers with a written notice of rights established by this ordinance. The notice of rights shall be in a form and manner sufficient to inform grocery store workers of their rights under this ordinance. The notice of rights shall provide information on:

1. The right to premium pay guaranteed by this Ordinance;
2. The right to be protected from retaliation for exercising in good faith the rights protected by this ordinance; and
3. The right to bring a civil action for a violation of the requirements of this Ordinance, including a hiring entity's denial of premium pay as required by this Ordinance and a hiring entity or other person's retaliation against a covered grocery store worker or other person for asserting the right to premium pay or otherwise engaging in an activity protected by this Ordinance.

B. Hiring entities shall provide the notice of rights required by posting a written notice of rights in a location of the grocery utilized by employees for breaks, and in an electronic format that is readily accessible to the grocery store workers. The notice of rights shall be made available to the grocery store workers via smartphone application or an online web portal, in English and any language that the hiring entity knows or has reason to know is the primary language of the grocery store worker(s).

_____ Hiring entity records.

A. Hiring entities shall retain records that document compliance with this Ordinance for covered grocery store workers.

B. Hiring entities shall retain the records required by Subsection _____ for a period of two (2) years.

C. If a hiring entity fails to retain adequate records required under Subsection _____, there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity violated this Ordinance for each covered grocery store worker for whom records were not retained.

_____ Retaliation prohibited.

No hiring entity employing a grocery store worker shall discharge, reduce in compensation, or otherwise discriminate against any grocery store worker for opposing any practice proscribed by this Ordinance, for participating in proceedings related to this Ordinance, for seeking to exercise their rights under this Ordinance by any lawful means, or for otherwise asserting rights under this Ordinance.

_____ Violation.

The failure of any respondent to comply with any requirement imposed on the respondent under this Ordinance is a violation.

_____ Remedies.

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Ordinance is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures. A respondent found to be in violation of this Ordinance for retaliation under Section _____ shall be subject to any appropriate relief at law or equity including, but not limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Ordinance, and liquidated damages in an additional amount of up to twice the unpaid compensation.

_____ Private right of action.

Any covered grocery store worker that suffers financial injury as a result of a violation of this Ordinance, or is the subject of prohibited retaliation under Section _____, may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating this Ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a reasonable penalty payable to any aggrieved party if the aggrieved party was subject to prohibited retaliation.

_____ Encouragement of more generous policies.

A. Nothing in this Ordinance shall be construed to discourage or prohibit a hiring entity from the adoption or retention of premium pay policies more generous than the one required herein.

B. Nothing in this Ordinance shall be construed as diminishing the obligation of a hiring entity to comply with any contract or other agreement providing more generous protections to a grocery store worker than required by this Ordinance.

_____ Other legal requirements.

This Ordinance provides minimum requirements for premium pay while working for a hiring entity during the COVID-19 emergency and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for higher premium pay, or that extends other protections to grocery store workers; and nothing in this Ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nothing in this Section shall be construed as restricting a grocery store worker's right to pursue any other remedies at law or equity for violation of their rights.

_____ Severability.

The provisions of this Ordinance are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the application thereof to any hiring entity, grocery store worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.