

# **Oakland Minimum Wage and Fair Scheduling Ordinance**

## **Feb. 18, 2016**

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### Section 1. Title & Purpose

- A. This Ordinance shall be known as the “2016 Oakland Minimum Wage and Fair Scheduling Ordinance.”
- B. As poverty in the City of Oakland is a problem that affects the general health and welfare of its citizens, it is incumbent upon the City to take legislative steps to help lift working families out of poverty, decrease income inequality, and boost the economy. Furthermore, a minimum wage increase would reduce labor turnover, improve organizational efficiency, increase worker purchasing power in the local economy, and reduce reliance on social services. Therefore, this ordinance requires that employees are compensated by their employers or respective subcontractors in such a manner as to enable and facilitate their individual self-reliance within the City.
- C. Moreover, formula retail establishments are a major employment base in the City of Oakland. The City has a strong interest in ensuring that the jobs these formula retail establishments provide allow employees to meet their basic needs and achieve economic security.
- D. Erratic and on-call scheduling practices have become pervasive in formula retail establishments, particularly in stores and restaurants and bars. Nationally, almost two-thirds of food service employees and half of formula retail store employees receive their work schedules one week or less in advance. The majority of these employees experience significant fluctuations in their work hours from week to week and month to month. According to a recent survey of employees at chain stores and large stores, only 40% of those surveyed have consistent minimum hours per week, one quarter of the employees are scheduled for on-call shifts,

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and the vast majority find out from a supervisor if they are needed for the on-call shift only two hours before the shift starts.

- E. Erratic scheduling practices also impact janitors and security guards who contract with formula retail establishments. A recent study by sociologists at the University of Chicago indicated that 66 percent of janitors nationwide experience fluctuating schedules, 50 percent report that their employer decides the timing of their work without their input, and 40 percent report schedule changes with less than one-week notice.
- F. Many formula retail establishments use computer software that automatically generates work schedules for their employees. The schedules generated by such software are frequently erratic and unpredictable, and provide employees with minimal notice of their upcoming shifts. Companies seldom encourage managers to adjust those schedules to accommodate the needs of their employees.
- G. Unpredictable work scheduling practices are detrimental to Oakland's employees and their families because they (1) lead to income instability, making it hard for employees to plan their finances and obtain economic security; (2) create work-family conflicts that make it difficult for employees to plan their child care, care giving duties, and transportation; and (3) prevent part-time employees from pursuing educational opportunities or holding a second or third job that such workers may need to make ends meet.
- H. Formula retail employees need more predictable, stable work schedules that are essential to their ability to earn a living and ensure a healthy and decent life for themselves and their families, and to ensure that part-time employees in formula retail establishments are treated fairly and equally compared to their full-time counterparts.

### **Section 2. Authority**

This Chapter is adopted pursuant to the powers vested in the City 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.

### **Section 3. Definitions**

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

- A. "City" shall mean the City of Oakland.
- B. "Agency" shall mean the Oakland Office of Labor Standards Enforcement or its successor Department, as established in Section 7.
- C. "Employee" shall mean any person who:
  - 1. In a particular week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and
  - 2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as

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provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

- D. "Employer" shall mean any person, as defined in Section 18 of the California Labor Code, including corporate officers or executives, who directly or indirectly, or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.
- E. "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.
- F. "Minimum Wage" shall have the meaning set forth in Section 4 of this Chapter.

### **Section 4. Payment of Minimum Wage to Employees**

- A. Employers shall pay Employees no less than the Minimum Wage set forth below for each hour worked within the geographical boundaries of the City, to be effectuated on the following schedule:

Date	Minimum Hourly Wage
January 1, 2017	\$14.00
January 1, 2018	\$16.00
January 1, 2019	\$18.00
January 1, 2020	\$20.00

B. Beginning on January 1, 2021, and each year thereafter, the Minimum Wage shall increase 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, as determined by the City Auditor.

### **Section 5. Notice, Postings, and Payroll Records**

- A. By November 1 of each year, the Agency shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate for the upcoming year, which shall take effect on January 1. In conjunction with this bulletin, the Agency shall by November 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of Oakland's workforce, a notice suitable for posting by Employers in the

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workplace informing Employees of the current Minimum Wage rate and of their rights under this Chapter.

- B. Each Employer shall give written notification to each current Employee and to each new Employee at the time of hire, of his or her rights under this Chapter. Every Employer shall also provide each Employee at the time of hire the Employer's name, address, and telephone number in writing. Failure to post such notice will render the Employer subject to administrative citation, pursuant to the provisions of this chapter.
- C. 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 Agency informing Employees of the current Minimum Wage rate and of their rights under this Chapter.
- D. Employers shall retain payroll records pertaining to Employees for a period of three years. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer paid no more than the applicable federal or state minimum wage, absent clear and convincing evidence otherwise.
- E. Employers shall inform Employees of their possible right to the federal Earned Income Tax Credit under Section 32 of the Internal Revenue Code, the California State Earned Income Tax Credit, and their options for obtaining private or public health insurance.
- F. No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the wage rate paid to any other Employee, nor by increasing charges to them for parking, meals, uniforms, or other items, nor by reducing vacation, health benefits or other non-wage benefits of any such Employee, except to the extent such prohibition would be preempted by the federal Employee Retirement Income Security Act.
- G. Inspections: With appropriate notice, the Agency shall have access to all places of labor subject to this ordinance during business hours to inspect books and records, interview employees and investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of this ordinance. If deemed necessary, the Agency shall request the City Attorney to subpoena books, papers, records or other items relevant to the enforcement of this Chapter

#### **Section 6. Retaliation Prohibited.**

- A. It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter and to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within 120 days of the person's exercise of rights

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protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

- B. The Penalty for retaliation is \$1,000.00 per employee. The penalty amounts shall be increased cumulatively by fifty percent (50%) for each subsequent violation of the same provision by the same employer or person within a three (3) year period. The maximum penalty amount that may be imposed by administrative citation in a calendar year for each type of violation listed above shall be \$5,000 or \$10,000 if a citation for retaliation is issued. In addition to the penalty amounts listed above, the Agency may assess enforcement costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Enforcement costs shall not count toward the \$5,000 annual maximum.
- C. In the case of retaliation, the Employee is entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, interest payment on withheld wages, the payment of an additional sum as penalties in the amount of \$50 to each Employee or person whose rights under this Chapter 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. Interest shall be calculated according to the standard legal interest rate.
- D. These prohibitions against retaliation apply equally to all sections in this Chapter.

#### **Section 7. Implementation**

- A. There is hereby created within the Department of Human Resources Management an Oakland Office of Labor Standards Enforcement ("the Agency"). The Office of Labor Standards Enforcement shall enforce the City's Minimum Wage and Fair Scheduling Ordinance, and shall carry out any additional duties and functions as assigned by Charter or ordinance. The Office of Labor Standards Enforcement may enforce the provisions of the California Labor Code to the extent permitted by State law. The Office of Labor Standards Enforcement may impose penalties and take any and all appropriate action to enforce the requirements of such provisions, including but not limited to those set forth in City code, to the extent permitted by State law.
- B. The Office shall be administered by the Labor Standards Enforcement Officer, who shall be appointed by the City Administrator. In appointing the Labor Standards Enforcement Officer, the City Administrator shall consider, among other relevant factors, the individual's experience enforcing labor standards, including prevailing wage requirements, and the diversity of Oakland. The Labor Standards Enforcement Officer shall coordinate his or her activities with federal and state labor standards agencies.
- C. All City departments shall cooperate with the Labor Standards Enforcement Officer and his or her designees. The Labor Standards Enforcement Officer shall have the authority to subpoena the production of books, papers, records or other items relevant to investigations under the jurisdiction of the Office of Labor Standards Enforcement.

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- D. The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes consistent with this Chapter.
- E. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter.
- F. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including:
  - 1. Educate and annually notify employers about the city's minimum wage law;
  - 2. Respond to workers' questions, and receive, investigate, and adjudicate complaints for unpaid wages and retaliation;
  - 3. Cite and collect administrative fees and penalties;
  - 4. Conduct proactive audits and investigations targeting employers and industries with high rates of noncompliance;
  - 5. Coordinate with other agencies to leverage business licenses and permits;
  - 6. File liens on behalf of claimants on employer property to secure those assets and prevent them from disappearing before or during investigation;
  - 7. Foster effective partnerships with relevant state and local agencies, and local community groups and legal services organizations; and
  - 8. Conducting a media campaign to educate the public about this ordinance, and publicize enforcement actions to increase the deterrent effect of enforcement.
- D. The Agency shall make every effort to resolve complaints in a timely manner and shall have a policy that the Agency shall take no more than six months to settle, request an administrative hearing, or initiate a civil action. The failure of the Agency to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.
- E. The Agency shall contract with community groups, including those with cultural and linguistic expertise, to conduct targeted outreach and education. In partnership with organizations involved in the community-based outreach program, the Agency shall create outreach materials that are designed for workers in particular industries.
- F. The Agency shall have at least 3 full-time permanent staff members, exclusive of any California Department of Labor Standards Enforcement employees located in the City, and shall have a budget commensurate with its staffing level, its equipment operating needs and overhead, and its duty under section E to contract out outreach and education to community groups. Money for the Agency shall be allocated out of the General Fund.

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### Section 8. Enforcement

#### **Administrative Enforcement**

- A. The Agency is authorized to take appropriate steps to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by an Employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.
- B. Informal Resolution: The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Agency shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.
- C. An Employee, or any other person, may report to the Agency, in writing, any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection 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. Provided, however, that the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or other employee protection laws.
- D. Pursuant to this subsection 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. Provided, however, that the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or other employee protection laws.
- E. In order to further encourage reporting by Employees, if the Agency notifies an Employer that the Agency is investigating a complaint, the Agency may require the Employer to notify its Employees that the Agency is conducting an investigation.
- F. Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued. A violation for unlawfully withholding wages 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. Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action and/or, except where prohibited by state or federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied.
- G. Should the Agency bring charges against an Employer in violation and the Employer is found guilty, the Employer shall reimburse the Agency's administrative expenses.

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### **Civil Enforcement**

- A. The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, 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 or other person violating this Chapter and, 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 back wages unlawfully withheld, the payment of an additional sum as penalties in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Prevailing parties shall be awarded reasonable attorneys' fees and costs. However, any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs.
- B. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Chapter.
- C. The City or other plaintiff shall be entitled to its attorney's fees and costs in any action brought pursuant to this Section where the City or plaintiff is the prevailing party.

### **Section 9. Fees and Violations**

- A. An administrative penalty may be assessed for a violation of the provisions of this Chapter as specified below. The penalty may be assessed by means of an administrative citation issued by the Director of the Office of Labor Standards Enforcement.
- B. The violations and fines for said violations will be as follows:
  - 1. Failure to maintain payroll records or to retain payroll records for three years → **\$500**
  - 2. Failure to allow the Office of Labor Standards Enforcement to inspect payroll records → **\$500**
  - 3. Failure to Post notice of Minimum Wage rate → **\$500**
  - 4. Failure to provide notice of investigation to employees → **\$500**
  - 5. Failure to post notice of violation to public → **\$500**
  - 6. Failure to provide employer's name, address, and telephone number in writing to employees → **\$500**
- C. The penalty amounts shall be increased cumulatively by fifty percent (50%) for each subsequent violation of the same provision by the same employer or person within a three (3) year period. The maximum penalty amount that may be imposed by administrative citation in a calendar year for each type of violation listed above shall be \$5,000 or \$10,000 if a citation for retaliation is issued. In addition to the penalty amounts listed above, the Agency may assess enforcement



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costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Enforcement costs shall not count toward the \$5,000 annual maximum.

#### **Section 10. Waiver through CBA**

This Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

#### **Section 11. Relationship to other Requirements**

This Chapter provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

#### **Section 12. Application to Welfare-to-Work Programs**

The Minimum Wage established pursuant to Section 4 of this Chapter shall apply to the City's Welfare-to-Work Programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Minimum Wage. Where state or federal law would preclude the City from reducing the number of work hours required under a given Welfare-to-Work Program, the City may comply with this Section by increasing the cash benefits awarded so that their value is no less than the product of the Minimum Wage multiplied by the number of work hours required.

#### **Section 13. Reports**

- A. It is the policy of the City of Oakland that all employees be compensated fairly according to the law and that Employers who engage in wage theft be held accountable. Towards that end, the Agency shall collect economic data, including jobs, earnings and sales tax for inclusion in an annual report to the City Council on the state of the economy. The report shall review the impact of the minimum wage and fair scheduling ordinance on various sectors of the local economy and on the incidence of wage theft. The report shall be presented at a public meeting, no less frequently than once per year. When such reports are presented, the City Council shall reach a formal determination on whether additional measures are necessary to support workers, given the state of the local economy, or whether no additional measures are necessary.
- B. The City Council shall study and review the feasibility of enacting additional measures consistent with state law to enhance the Agency's enforcement tools and the City's efforts to combat wage theft and to promote worker self-sufficiency, and to ensure optimal collaboration among all City agencies and departments, as well as between the City and state and federal labor standards agencies, in the enforcement of this Chapter.

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### **Section 14. Fair Scheduling Provisions**

#### **Section 14.1. Definitions**

For purposes of Section 14, the following definitions apply:

"Agency" and "City" shall have the same meanings as in Section 3 of this Chapter.

"Employee" shall have the same meaning as the definition of "Employee" in Section 3 of this Chapter, except that Employee shall also mean any Person who, in a particular week, is scheduled for an On-Call Shift for at least two hours for an Employer within the geographic boundaries of the City, regardless of whether the person is required to report to work for such shift.

"Employer" shall mean any Person that owns or operates a Formula Retail Establishment with 20 or more Employees in the City, including corporate officers or executives, who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any individual. For the purpose of calculating the 20-employee threshold referenced herein, Employees performing work in other Formula Retail Establishments in the City that are owned or operated under the same trade name by the same Employer shall be counted. Notwithstanding the foregoing definition, "Employer" does not include a Nonprofit Corporation or a governmental entity.

"Formula Retail Establishment" shall mean a business located in Oakland that falls under the Planning Code's definition of "Formula Retail Use," as amended from time to time, except that the business must have at least 40 retail sales establishments located worldwide.

"Full-time" shall mean 35 or more hours of work in each work week.

"On-Call Shift" shall mean any shift for which an Employee must, less than 24 hours in advance of the start of the shift, either contact the Employer or wait to be contacted by the Employer to learn whether the Employer requires the Employee to report to work for the shift.

"Person" shall mean an individual, proprietorship, corporation, partnership, limited partnership, limited liability partnership or company, trust, business trust, estate, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

"Part-time" shall mean fewer than 35 hours of work in each work week.

"Property Services Contractor" shall mean any contractor or subcontractor of an Employer that provides janitorial and/or security services to the Employer at a Formula Retail Establishment in Oakland covered by this Chapter.

#### **Section 14.2. Advance Notice of Work Schedules and Changes in Work Schedules**

##### **(a) Initial Estimate of Minimum Hours.**

(1) Prior to the start of employment, an Employer shall provide a new Employee with a good faith estimate in writing of the Employee's expected minimum number of scheduled shifts per month, and the days and hours of those shifts. This estimate shall

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include On-Call Shifts. The estimate shall not constitute a contractual offer and the Employer shall not be bound by the estimate.

(2) Prior to the start of employment, the Employee may request that the Employer modify the proposed work schedule provided under subsection (a)(1) of this Section. The Employer shall consider any such request, and in its sole discretion may accept or reject the request, provided that the Employer shall notify the Employee of its determination prior to the start of employment.

(b) **Two Weeks' Notice of Work Schedules.** An Employer shall provide its Employees with at least two weeks' notice of their work schedules by doing one of the following at least every 14 days (on a "Biweekly Schedule"): (1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all Employees, or (2) transmitting the work schedule by electronic means, so long as all Employees are given access to the electronic schedule at the workplace. For new Employees, an Employer shall provide the new Employee on his or her first day of employment with an initial work schedule that runs through the date that the next Biweekly Schedule for existing Employees is scheduled to be posted or distributed; thereafter, the Employer shall include the new Employee in an existing Biweekly Schedule with other Employees. For all Employees, the work schedule shall include any On-Call Shifts, where applicable. If the Employer changes the work schedule after it is posted and/or transmitted, such changes shall be subject to the notice and compensation requirements set forth in subsection (c) of this Section.

**(c) Notice and Compensation For Schedule Changes.**

(1) **Notice Required.** An Employer shall provide an Employee notice of any change to the Employee's schedule that has been posted or transmitted pursuant to subsection (b) of this Section. The Employer shall provide such notice by in-person conversation, telephone call, or email, text message, or other electronic communication, provided the employee regularly uses those methods of communication. This notice requirement shall not apply to any schedule changes that the Employee requests, such as Employee-requested sick leave, time off, shift trades, or additional shifts.

(2) **Predictability Pay For Schedule Changes.** Subject to the exceptions in subsection (e) of this Section, an Employer shall provide an Employee with the following compensation per shift for each previously scheduled shift that the Employer moves to another date or time or cancels, or each previously unscheduled shift that the Employer requires the Employee to come into work:

(A) With less than seven days' notice but 24 hours or more notice to the Employee, one hour of pay at the Employee's regular hourly rate;

(B) With less than 24 hours' notice to the Employee, two hours of pay at the Employee's regular hourly rate for each shift of four hours or less; and

(C) With less than 24 hours' notice to the Employee, four hours of pay at the Employee's regular hourly rate for each shift of more than four hours.

Where the Employee is required to come into work, the compensation mandated by this subsection (c)(2) shall be in addition to the Employee's regular pay for working that shift. This subsection (c)(2) shall apply to On-Call Shifts.

(d) **Pay for On-Call Shifts.** Subject to the exceptions in subsection (e) of this Section, an Employer shall provide an Employee with the following compensation for each On-Call Shift for which the Employee is required to be available but is not called in to work:

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(1) Two hours of pay at the Employee's regular hourly rate for each On-Call Shift of four hours or less; and

(2) Four hours of pay at the Employee's regular hourly rate for each On-Call Shift of more than four hours.

This subsection (d) shall not apply when the Employee is in fact called in for the On-Call Shift.

(e) **Exceptions.** The requirements in subsections (c) and (d) of this Section shall not apply under any of the following circumstances:

(1) Operations cannot begin or continue due to threats to Employees or property, or when civil authorities recommend that work not begin or continue;

(2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system;

(3) Operations cannot begin or continue due to an Act of God or other cause not within the Employer's control;

(4) Another Employee previously scheduled to work that shift is unable to work due to illness, vacation, or employer-provided paid or unpaid time off where the Employer did not receive at least seven days' notice of the absence;

(5) Another Employee previously scheduled to work that shift has not reported to work on time and/or is fired or sent home or told to stay home as a disciplinary action;

(6) The Employer requires the Employee to work overtime (i.e., mandatory overtime); or

(7) The Employee trades shifts with another Employee or requests from the Employer a change in shift(s), hours, or work schedule.

(f) Nothing in this Section shall be construed to prohibit an Employer from providing greater advance notice of Employees' work schedules and/or changes in schedules than that required by this Section.

(g) The requirements imposed by this Section shall apply to Property Services Contractors as to work performed in Oakland at a Formula Retail Establishment covered by this Section, under a contract with an Employer. An Employer shall include in any such contract executed on or after the operative date of this Article, (1) a provision requiring the Property Services Contractor to comply with this Article and (2) a copy of this Article. The Employer shall retain copies of such contracts for a period of not less than three years following the expiration or termination of the contract, and make such copies available to the Agency for inspection upon request. In addition, Sections 14.4, 14.5, 14.6, and 14.7 of this Article shall apply to a Property Services Contractor as if it is an Employer for purposes of notice, record retention, compliance, investigation, and enforcement of the requirements of this Section.

#### **Section 14.3. Equal Treatment for Part-Time Employees**

(a) **Hourly Wage.** Employers shall provide Part-Time Employees with the same starting hourly wage as that provided to starting Full-Time Employees who hold jobs that require equal skill, effort, and responsibility, and that are performed under similar working conditions, provided that hourly pay differentials between Part-Time and Full-Time Employees are permissible if such differentials are based on reasons other than the Part-Time status of the Employee, such as a seniority system, merit system, system which measures earnings by quantity or quality of production, performance or responsibilities.

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This subsection (a) shall not affect the minimum hourly requirements for receipt of benefits including but not limited to health care benefits.

(b) **Access to Time Off.** Employers shall provide Part-Time Employees with the same access to Employer-provided paid and unpaid time off as that afforded to Full-Time Employees for the same job classification. A Part-Time Employee's eligibility for Employer-provided paid or unpaid time off may be pro-rated based on the number of hours that the Part-Time Employee works.

(c) **Eligibility for Promotions.** Employers shall provide Part-Time Employees with the same eligibility for promotions as that afforded to Full-Time Employees for the same job classification, provided that an Employer may condition eligibility for promotion on the Employee's availability for Full-Time employment and on reasons other than the Part-Time status of the Employee, such as nature and amount of work experience.

(d) The requirements imposed by this Section shall apply to Property Services Contractors as to work performed in Oakland at a Formula Retail Establishment covered by this Chapter, under a contract with an Employer. An Employer shall include in any such contract executed on or after the operative date of this Chapter, (1) a provision requiring the Property Services Contractor to comply with this Chapter and (2) a copy of this Chapter. The Employer shall retain copies of such contracts for a period of not less than three years following the expiration or termination of the contract, and make such copies available to the Agency for inspection upon request. In addition, Sections 14.3, 14.5, 14.6, and 14.7 of this Chapter shall apply to a Property Services Contractor as if it is an Employer for purposes of notice, record retention, compliance, investigation, and enforcement of the requirements of this Section.

#### **Section 14.4. Notice of Employee Rights**

(a) The Agency shall, no later than the operative date of this Chapter, publish and make available to Employers, in English, Spanish, Chinese, and all languages spoken by more than 5% of the Oakland workforce, a notice suitable for posting by Employers in the workplace informing applicants and Employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of Oakland workforce.

(b) Employers shall post the notice described in subsection (a) in a conspicuous place at every workplace, job site, or other location in Oakland under the Employer's control frequently visited by its Employees who perform work at the Employer's Formula Retail Establishment(s). The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the Employees at the workplace, job site, or other location at which it is posted.

#### **Section 14.5. Retention of Records.**

(a) Employers shall retain work schedules and payroll records pertaining to Employees for three years, and shall allow the Agency access to such records, with appropriate notice and during business hours, to monitor compliance with the requirements of this Chapter.

(b) The Director of the Agency or the Director's designee shall have access to all places of labor subject to this Chapter during business hours to inspect books and records,

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interview employees, and investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of this Chapter.

(c) Where an Employer does not maintain or retain adequate records documenting compliance with this Chapter or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer did not comply with this Chapter, absent clear and convincing evidence otherwise.

#### **Section 14.6. Investigation and Administrative Enforcement By the Agency.**

(a) Authority. The Agency is authorized to take appropriate steps to enforce and coordinate enforcement of this Chapter including the investigation of any possible violations of this Chapter.

(b) Determination of Violation and Penalties.

(1) Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation, provided, however, that during the first three months following the operative date of this Chapter, the Agency shall not order any relief but may issue warnings and notices to correct.

(2) After investigating a possible violation of this Chapter, and providing the Employer the opportunity to respond to the allegations, if the Agency determines that a violation has occurred, it may issue a Determination of Violation. The Determination of Violation shall identify the violation and the factual basis for the determination. The Agency shall serve the Determination of Violation on the Employer by United States mail and the date of service shall be the date of mailing. In the Determination of Violation, the Agency may order any appropriate relief, provided, however, that during the first three months following the operative date of this Chapter, the Agency shall issue only warnings and notices to correct. Thereafter, the Agency may order relief including, but not limited to, requiring the Employer to offer payment of lost wages to the Employee or person whose rights under this Chapter were violated, and the payment of an additional sum as an administrative penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued. To compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer to pay to the City an amount that does not exceed its enforcement costs.

(c) Appeal Procedure. An Employer may appeal from a Determination of Violation in accordance with the following procedures:

(1) Any appeal from a Determination of Violation (referred to in this subsection (c) as "Appeal") shall be filed in writing by the party filing the Appeal (referred to as "Appellant") within 15 days of the date of service of the Determination of Violation. Appellant shall file the Appeal with the City Auditor and serve a copy on the Agency. Failure by the Appellant to file a timely, written Appeal shall constitute concession to the violation, and the violation shall be deemed final upon expiration of the 15-day period.

(2) Following the filing of the Appeal and service of a copy on the Agency, the Agency shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible resolution of the Determination of Violation in advance of further proceedings under this subsection (c), with the intention that such meeting occur within 30 days of the date the Appeal is filed if feasible.

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(3) After the expiration of 30 days following the date the Appeal is filed, any party may request in writing, with concurrent notice to all other parties, that the City Auditor appoint a hearing officer to hear and decide the appeal. If no party requests appointment of a hearing officer, the Notice of Violation shall be deemed final on the 60th day after the date the Appeal is filed.

(4) Within 15 days of receiving a written request for appointment of a hearing officer, the City Auditor shall appoint an impartial hearing officer who is not part of the Agency and immediately notify the Agency and Appellant, and their respective counsel or authorized representative if any, of the appointment. The appointed hearing officer shall be an Administrative Law Judge with not fewer than two years experience in labor or employment law and/or wage and hour matters, or an attorney with not fewer than five years' experience in labor or employment law and/or wage and hour matters.

(5) The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the date of the City Auditor's notice of appointment of the hearing officer, and conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial evidentiary hearing in conformance with the time limitations set forth in this subsection (c)(5) and in any applicable rules and regulations, so as to avoid undue delay in the resolution of any Appeal. The hearing officer shall have the discretion to extend the times under this subsection (c)(5), and any time requirements under any applicable rules and regulations, only upon a determination of good cause.

(6) Appellant shall have the burden of proving by a preponderance of the evidence that the basis for the Determination of Violation, and/or the amount of lost wages, interest, or penalty payments at issue in the Appeal, is incorrect.

(7) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the Determination of Violation. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be the final administrative determination.

(8) Appellant may appeal a final administrative determination only by filing in Superior Court a petition for a writ of mandate under California Code of Civil Procedure, section 1094.5, *et seq.*, as applicable and as may be amended from time to time.

(9) Failure to appeal a Determination of Violation shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Employer against the City regarding the Agency's Determination of Violation.

(d) Compliance. Where prompt compliance with a Determination of Violation is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including referring the action to the City Attorney to consider initiating a civil action pursuant to Section 8 of this Chapter.

(e) Reporting Violations. An Employee or any individual who has reason to believe that a violation of this Chapter has occurred may report to the Agency any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection (e) by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the individual reporting the suspected violation; provided, however, that with the authorization of the reporting individual, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

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(f) Report to the City Council. By no later than January 31, 2018, January 31, 2019, and January 31, 2020, and then January 31st of every even-numbered year thereafter, the Agency shall provide a written report to the City Council regarding this Chapter. The report shall include, but not be limited to, a discussion of the implementation and enforcement of this Chapter, including the number of violations and the penalties assessed in the prior year (prior two years, starting with the report due by January 31, 2020). The report may also include recommendations for possible improvements to this Chapter.

#### **Section 15. No Preemption of Higher Standards**

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City of Oakland. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

#### **Section 16. Severability**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.