

January 22, 2021

## MEMORANDUM

**To:** Seattle City Council  
**From:** Karina Bull, Analyst  
**Subject:** Council Bill 119990: Hazard Pay for Grocery Employees Ordinance

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On January 22, 2021, the Finance and Housing Committee will discuss and may act on [Council Bill \(CB\) 119990](#), legislation sponsored by Councilmember Mosqueda. The legislation includes findings to establish the need for emergency legislation that would become effective immediately if authorized by a three-quarter vote of the Council and signed by the Mayor. This memo provides an overview of the legislation.

### Background

Throughout the COVID-19 emergency, grocery businesses have been operating in Seattle and relying upon the work of employees who face health and safety risks as they support the community's access to food during a global pandemic. Deemed "essential workers" by Governor Jay Inslee<sup>1</sup>, grocery employees have been working throughout the pandemic in a business sector that has seen 11.2 percent increase in sales while other types of retail stores have experienced less pronounced sales increases or sales reductions.<sup>2</sup> Grocery employees perform work that can involve substantial interaction with customers and carry an increased risk of catching or spreading the virus.<sup>3</sup> The risks are especially significant for Black, Indigenous, and People of Color (BIPOC) communities because they are overrepresented among the retail frontline workforce, including Black and Latinx employees working in grocery stores,<sup>4</sup> and have been disproportionately impacted by COVID-19.<sup>5</sup>

Employees working in these conditions do not currently have a right to "hazard pay," a type of additional compensation for employees performing hazardous duties or work involving physical hardship. An employee is only entitled to hazard pay through an employment agreement or in specific instances through a legal requirement. Federal statutes establish a right to hazard pay for some jobs, but there are no requirements for hazard pay for employees working for grocery businesses in Seattle.

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<sup>1</sup> See Governor Jay Inslee's "[Stay Home – Stay Healthy](#)" Proclamation 20-25 (March 23, 2020).

<sup>2</sup> See "[Advance Monthly Retail Sales for Retail and Food Services, December 2020, Release Number CB21-05](#)," United States Census Bureau (January 15, 2021) finding that grocery stores experienced an 11.2% sales increase in 2020 and other retail businesses experienced less pronounced sales increases, such as 2.7% for general merchandise stores and 1.7% for health and personal care stores, or reduced sales, such as -26.4% for clothing stores and -14.6% for electronics and appliance stores.

<sup>3</sup> See "[Association between SARS-CoV-2 infection, exposure risk and mental health among a cohort of essential retail workers in the USA](#)," British Medical Journal, Occupational and Environmental Medicine (November 2020) finding that grocery store employees are likely to be at heightened risk of COVID-19 infection.

<sup>4</sup> See "[A Basic Demographic Profile of Workers in Frontline Industries](#)," Center for Economic and Policy Research (April 2020) and [Centers for Disease Control and Prevention](#) on-going reports on COVID-19 Racial and Ethnic Health Disparities.

During the early stages of the pandemic and near the end of 2020, some grocery businesses in Seattle provided employees with additional compensation as a temporary pay increase or bonus. Many of these businesses provided the additional compensation, called “hero pay,” “thank you pay,” and “appreciation pay,” at a rate of two dollars per hour. Some businesses provided bonuses equivalent to four dollars per hour for the average hours worked during a specified time period.

In June 2020, City Council (Council) passed emergency legislation, the Premium Pay for Gig Workers Ordinance ([Ordinance 126094](#)), to require premium pay, which is a form of hazard pay under the ordinance, for gig workers working in Seattle for food delivery companies during the COVID-19 emergency. However, the legislation only covers gig workers hired by food delivery companies as independent contractors and does not cover employees working at retail stores selling groceries.

Within the past month, several California cities including Berkeley, Long Beach, Los Angeles, and San Francisco, as well as Los Angeles County, have announced legislative efforts to require hazard pay of four to five dollars per hour for grocery workers during the COVID-19 emergency.

## Summary

This legislation would declare an emergency in response to COVID-19 and require grocery businesses to provide employees with hazard pay for work performed in Seattle during the civil emergency proclaimed by the Mayor on March 3, 2020. The sponsor of the legislation intends for the hazard pay to compensate grocery employees for the risks of workplace exposure to COVID-19, improve their financial ability to access resources to stay healthy and address the impacts of the virus if they become sick, encourage them to continue their vital work, and support the welfare of the greater community that is depending on grocery employees for safe and reliable access to food.

The legislation would apply to employees covered by Seattle’s Minimum Wage Ordinance, [Seattle Municipal Code \(SMC\) Chapter 14.19<sup>6</sup>](#), working for employers that meet the definition of “grocery business” with 500 or more employees worldwide.

A “grocery business” would include a retail store that is operating in Seattle that is either:

1. Over 10,000 square feet in size and that is primarily engaged in retailing groceries for offsite consumption, including but not limited to the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods, and/or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of groceries sales; or

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<sup>6</sup> “Employee” means “employee” as defined under [SMC 12A.28.200](#). This is the same definition of “employee” in Seattle’s Minimum Wage Ordinance, [SMC 14.19.010](#).

2. Over 85,000 square feet and with 30 percent or more of its sales floor area dedicated to sale of groceries, including but not limited to the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods, and/or prepared foods.

“Grocery business” would not include convenience stores or food marts primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks.

Employers would provide each employee with hazard pay, on top of their other compensation, at a rate of four dollars per hour for work performed in Seattle and would be prohibited from reducing an employee’s compensation in response to hazard pay requirements. The proposed rate of four dollars per hour is within the range of additional compensation provided by grocery businesses during the early stages of the pandemic – although it is higher than the pay provided by most grocery businesses. The rate of four dollars per hour is also in line with the proposed rates of hazard pay in legislative efforts announced by several jurisdictions in California.

Unlike the Premium Pay for Gig Workers Ordinance, this legislation would not include prohibitions on reducing areas of service in Seattle or adding customer charges for groceries.

Pursuant to the Wage Theft Ordinance, [SMC Chapter 14.20](#), employers would be required to (1) provide revised written notice of information that includes notice of hazard pay within 30 days of the effective date of the ordinance; (2) provide payment for hazard pay on the employee’s established regular pay day; and (3) provide written itemization of the hazard pay separately from payment for wages and other compensation.

Employers would also be required to display a notice of rights in the workplace within 30 days of the effective date of the ordinance, retain records showing compliance for three years, and comply with anti-retaliation prohibitions.

The Office of Labor Standards (OLS) would implement and enforce hazard pay requirements. As with the City’s other labor standards, OLS would be required to commence any investigation within three years of the alleged violation. Aggrieved parties would also have a private right of action.

The hazard pay requirements would be in effect until the termination of the civil emergency proclaimed by the Mayor on March 3, 2020. However, the recitals state the Council’s intention to consider modifying or eliminating the hazard pay requirement after four or more months of implementation and review of the health, safety, and economic risks of frontline work during the pandemic at that time.

The rest of the legislation (e.g., recordkeeping requirements, enforcement authority) would be in effect for three years after the termination of the civil emergency proclaimed by the

Mayor on March 3, 2020 and then would automatically be repealed without subsequent action by the Council.

### Financial Impacts

This legislation would establish an implementation and enforcement role for OLS and an appeal role for the Hearing Examiner. Central Staff is in the process of gathering information from the Executive to assess the potential impact of this proposed legislation on these offices.

Due to the urgency of this legislation, Central Staff has not had the capacity to address a range of questions on the potential financial impacts of this proposed legislation on Seattle grocery businesses and consumers. In general, studies show that grocery businesses have experienced increased sales and profits during the pandemic. A report issued by the Brookings Metropolitan Policy Program found that the profits of top retail companies in their analysis, including grocery businesses, averaged a 40 percent increase compared to the previous year.<sup>7</sup> More information, including a deeper look into grocery business’ provision of additional compensation during earlier stages of the pandemic, COVID-19 related operating costs (e.g., provision of personal protective equipment, efforts to provide a safe and socially distanced work environment), and fluctuations in supply costs and grocery prices could provide further insight into the potential impacts of this legislation.

### Amendments

As of January 22, there is a substitute bill (“D2”) for the Council’s consideration. The substitute bill contains technical corrections and substantive amendments. See Table 1 for an overview of the amendments. Any additional amendments identified will be distributed as soon as they are available.

Table 1: Substitute Bill

Issue	Description
<b>A. Recitals</b>	The substitute bill would include recitals that (1) encourage employers of essential frontline workers to support the distribution of vaccines for their employees, and (2) reflect additional jurisdictions in California that have announced legislative efforts to require for hazard pay for grocery employees.
<b>B. Definitions</b>	The substitute bill would clarify that a “grocery business” does not include farmers markets and “hazard pay” is not included in an employee’s compensation for paid sick and paid safe time.
<b>C. Employee Coverage</b>	The substitute bill would clarify that covered employees must work at a retail location.

<sup>7</sup> See [“Windfall Profits and Deadly Risks: how the biggest retail companies are compensating essential workers during the COVID-19 pandemic.”](#) Brookings Metropolitan Policy Program (November 2020).

Issue	Description
<p><b>D. Employer Coverage</b></p>	<p>The substitute bill would clarify that OLS would consider any number of factors for determining whether a grocery business is covered by the ordinance, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Grocery sales as a percentage of the retail store’s overall sales;</li> <li>• Sales floor area dedicated to grocery sales;</li> <li>• Marketing or promotional materials from the employer; or</li> <li>• Other public statements from representatives of the employer.</li> </ul>
<p><b>E. Hazard Pay Requirements</b></p>	<p>The substitute bill would (1) require employers to keep records of any reductions in employee pay after the effective date of the ordinance, (2) permit a hazard pay offset* for employers already providing additional compensation as of the effective date of the ordinance, and (3) require employers to provide notice of any hazard pay offset in a revised written notice of employment information.</p> <p><b>*Example of a hazard pay offset:</b></p> <p>On the effective date of this ordinance, an employer is paying an employee \$20 per hour in wages plus additional compensation of \$2 per hour for “appreciation pay.” The employer previously (a) provided written notice that the “appreciation pay” was additional compensation for working during the COVID-19 emergency, (b) provided compensation for the “appreciation pay” on the established, regular pay day on which wages are paid, and (c) itemized the “appreciation pay” on the employee’s paychecks.</p> <p>This employer could offset the proposed \$4 hazard pay requirement by \$2 per hour (and must provide the employee with revised notice of employment information that reflects the hazard pay and offset).</p> <ul style="list-style-type: none"> <li>• <b>Appreciation Pay</b> - Employee earns \$20 per hour plus \$2 per hour “appreciation pay” on the effective date of the ordinance.</li> <li>• <b>Hazard Pay Offset</b> - Employee earns \$20 per hour plus \$4 per hour of combined “appreciation pay” and “hazard pay.”</li> </ul>
<p><b>F. Enforcement</b></p>	<p>The substitute bill would allow the Director of the Office of Labor Standards discretion to (1) consider various factors when determining the amount of remedies due and (2) designate a daily penalty of \$50 if a respondent fails to produce records in the course of an investigation.</p>

**Next Steps**

The Committee is expected to take action on this at its meeting on January 22, 2021. Council action could occur at the Full Council meeting on January 25, 2021.

Please contact me if you have questions.

cc: Dan Eder, Interim Director