



SEATTLE CITY COUNCIL
CENTRAL STAFF

Hazard Pay for Grocery Employees Introduced Legislation & Substitute Bill

COUNCIL BILL 119990, SPONSORED BY COUNCILMEMBER MOSQUEDA

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FINANCE AND HOUSING COMMITTEE BRIEFING
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Hazard Pay for Grocery Employees

This legislation would require grocery businesses to provide employees with hazard pay of \$4 per hour for work performed in Seattle during the COVID-19 emergency and would have an immediately effective date.

Hazard Pay for Grocery Employees

- Coverage
- Hazard pay requirements
- Other requirements
- Enforcement
- Duration of legislation
- Next steps

Coverage

- **Employers**

- Grocery businesses operating in Seattle with 500 or more employees worldwide.

- **Employees**

- Employees who are covered by Seattle's minimum wage ordinance and who work in Seattle.

Substitute Bill – Proposed Revision to Employer Coverage

- **Clarify that OLS could consider any number of factors for determining whether a grocery business is covered by the ordinance**
 - E. When determining whether an employer is “primarily engaged in retailing groceries” according to the definition of “grocery business” under Section 100.010, the Agency may consider any number of factors, including but not limited to the following examples: grocery sales as a percentage of the retail store’s overall sales; sales floor area dedicated to grocery sales; marketing or promotional materials from the employer; or other public statements from representatives of the employer.

Substitute Bill – Proposed Revision to Employee Coverage

- **Clarify that covered employees must work at a retail location**

For the purposes of this ordinance:

A. Covered employees are limited to those who perform work for a covered employer at a retail location in Seattle.

Grocery Business

- **A grocery business is a retail store with 500 or more employees worldwide that is either:**
 1. Over 10,000 square feet in size and that is primarily engaged in retailing groceries for offsite consumption; ***or***
 2. Over 85,000 square feet and with 30 percent or more of its sales floor area dedicated to sale of groceries.
- **The definition of grocery business does *not* include convenience stores or food marts** primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks.

Substitute Bill – Proposed Revision to “Grocery Business”

- **Clarify that “grocery business” does not include farmers markets**

“Grocery business” also does not include farmers’ markets as defined by the City’s Multi-Departmental Administrative Rule 09-01 for the Farmers Markets Pilot Program or its successor rule.

Hazard Pay Requirements

- **\$4 for each hour worked in Seattle** on top of the employee's other compensation.
- **Prohibition on reducing an employee's compensation** to provide the hazard pay.
- **Individual notice and compensation**
 1. Revised "notice of employment information" with notice of the hazard pay within 30 days of the effective date of the ordinance;
 2. Provision of hazard pay on the established, regular pay day; and
 3. Separate itemization of the hazard pay on each paycheck.

Substitute Bill – Proposed Revision to “Hazard Pay”

- **Clarify that “hazard pay” is not included in an employee’s compensation for paid sick and paid safe time**

“Hazard pay” means additional compensation owed to an employee on top of the employee’s other compensation, including but not limited to salaries, wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses. For the purposes of compensating an employee for paid sick and paid safe time under Seattle Municipal Code Chapter 14.16, hazard pay is considered a premium rate and is not included in the employee’s normal hourly compensation.

Substitute Bill – Proposed Revision to Hazard Pay Requirements

- **Clarify that employers must keep records of any reductions in employee pay after the effective date of the ordinance**
 - A. Employers shall provide each employee with hazard pay at a rate of four dollars per hour for each hour worked in Seattle.
 1. No employer shall, as a result of this ordinance going into effect, take steps to reduce employee compensation so as to prevent, in whole or in part, employees from receiving hazard pay at a rate of four dollars per hour for each hour worked in Seattle in addition to those employees' other compensation. Employers shall maintain records to establish the reason(s) for any reduction in employee compensation pursuant to Section 100.040.

Substitute Bill – Proposed Revision to Hazard Pay Requirements

- **Permit employers to count existing hazard pay equivalent (e.g., appreciation pay) toward the \$4 hazard pay requirement**
- 2. Employers providing hazard pay, as defined under Section 100.010, on the effective date of this ordinance may use the hourly rate of that hazard pay to offset the amount due under this subsection 100.025.A.
 - a. Employers shall comply with requirements for providing compensation in Section 100.025.B for the entire amount due under Section 100.025.A.
 - b. Employers bear the burden the proof to show that the additional compensation is hazard pay for the purposes of working during the COVID-19 emergency.

Substitute Bill – Proposed Revision to Hazard Pay Requirements

- **Require employers to provide notice of any hazard pay offset in a revised written notice of employment information**
 - A. Employers shall comply with the requirements for providing compensation in the Wage Theft Ordinance, Seattle Municipal Code Chapter 14.20, including but not limited to the following:
 1. Employers shall provide revised written notice of employment information that includes notice of hazard pay pursuant to Seattle Municipal Code subsection 14.20.025.D, provided that such notice is due by 30 days after the effective date of this ordinance; The revised notice of employment information shall include notice of any hazard pay offset available under subsection 100.025.A.2.

Substitute Bill – Example of Hazard Pay Offset

Employers providing a hazard pay equivalent (e.g., “appreciation pay”) on the effective day of the ordinance are not required to provide an additional \$4. Instead, these employers can count the existing hazard pay equivalent toward their hazard pay obligation.

On the effective date of this ordinance, an employer is paying an employee \$20 per hour in wages plus \$2 per hour for “appreciation pay.”

- Employer provided written notice that the “appreciation pay” was additional compensation for working during the COVID-19 emergency,
- Employer itemized the “appreciation pay” on the employee’s paychecks.

This employer could count the \$2 appreciation pay toward the \$4 hazard pay requirement. Employer must provide revised notice of employment information that shows how the employer is meeting hazard pay requirements and provide the entire amount of hazard pay (\$4) on the established, regular pay day for wages.

Other Requirements

- **Poster** – Display of a “notice of rights” poster in the workplace.
- **Recordkeeping** – Retention of records showing compliance for three years.
- **Prohibited retaliation** – Compliance with anti-retaliation provisions.

Enforcement

- **Office of Labor Standards** – Policy development, outreach and investigations.
- **Private right of action** – Individual and class actions.
- **Remedies** – Unpaid compensation (treble damages), penalties payable to aggrieved party, civil penalties, fines.

Substitute Bill – Proposed Revision to Enforcement

- **Provide the Director of OLS with discretion to consider various factors when determining remedies for a violation of the ordinance**
 - A. When determining the [remedies] due under this Section 100.200 for a settlement agreement or Director's Order, ... the Director ~~shall~~ may consider:
 - a. The total amount of unpaid compensation, liquidated damages, penalties, fines, and interest due;
 - b. The nature and persistence of the violations;
 - c. The extent of the respondent's culpability;
 - d. The substantive or technical nature of the violations;
 - e. The size, revenue, and human resources capacity of the respondent;
 - f. The circumstances of each situation;
 - g. The amount of penalties in similar situations; and
 - h. Other factors pursuant to Director rules.

Substitute Bill – Proposed Revisions to Enforcement

- **Designate a daily penalty of \$50 if a respondent fails to produce records during an investigation**
 - B. A respondent found to be in violation of this ordinance shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this ordinance and other equitable relief. If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may designate a daily amount of \$50 for unpaid compensation due to aggrieved party.

Duration of Legislation

- **Hazard pay requirements**
 - Employers must provide premium pay for the duration of the civil emergency proclaimed by the Mayor on March 3, 2020.
 - The Council intends to consider modifying or eliminating the hazard pay requirements after four or more months of implementation.
- **Rest of the legislation** (e.g., recordkeeping, enforcement)
 - The legislation will be automatically repealed without subsequent action by Council three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020.

Next Steps

- **January 25, 2020** – Opportunity for Full Council Vote

Questions?