

URGENCY ORDINANCE NO. 4300

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING THE POMONA MUNICIPAL CODE BY ADDING ARTICLE XIV TO CHAPTER 30, RELATING TO FRONT-LINE RETAIL ESTABLISHMENT EMPLOYEES IN POMONA, AND ESTABLISHING LABOR STANDARDS AND REQUIREMENTS FOR “HERO” PAY FOR FRONT-LINE RETAIL EMPLOYEES IN POMONA

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, the WHO has declared that COVID-19 is a global pandemic, which is particularly severe in high risk populations, such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of this disease; 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 16, 2020, the City Council of the City of Pomona proclaimed the existence of a local 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 March 19, 2020, Governor 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 covered retail establishments 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 19, 2020, in order to mitigate the effects of COVID-19 within the County of Los Angeles, the County Public Health Officer issued the “Safer at Home” Order to control the affects and spread of COVID-19 by 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 of more than 10 people. In addition to healthcare,

public health and emergency services, the “Safer at Home” Order identified covered retail establishments 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 December 3, 2020, Governor Newsom extended the “Stay Home – Stay Healthy” proclamation; and

WHEREAS, on January 25, 2021 Governor Newsom lifted the statewide stay-at-home order, returning counties back to a tiered system;

WHEREAS, the County Public Health Officer issued an order aligning Los Angeles County with the State Health Officer order reopening key sectors;

WHEREAS, Los Angeles County remains in the most restrictive purple tier where many non-essential business operations remain closed and the virus remains widespread;

WHEREAS, as of January 28, 2021, the WHO Situation Report reported a global total of 100,455,529 cases of COVID-19, including 2,166,440 deaths; California reported 3,200,000 cases of COVID-19, including 38,927 deaths; and Pomona has reported 22,383 cases of COVID-19, including 305 deaths; and

WHEREAS, covered retail establishments are essential businesses operating in Pomona during the COVID-19 emergency making retail establishment employees highly vulnerable to economic insecurity and health or safety risks; and

WHEREAS, retail establishment employees working for covered retail establishments 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, retail establishment employees 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. Retail establishment employees 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 retail establishments is fundamental to the health of the community and is made possible during the COVID-19 emergency because retail

establishment employees 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 retail establishments to provide premium pay to designated retail employees protects public health, supports stable incomes, and promotes job retention by ensuring that designated retail employees 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.

NOW, THEREFORE, the City Council of the City of Pomona ordains as follows:

SECTION 1. Incorporation of Recitals. The findings and determinations reflected above are true and correct, and are incorporated by this reference herein as the cause and foundation for the action taken by and through this Urgency Ordinance.

SECTION 2. Addition to the Pomona Municipal Code. The Pomona Municipal Code is amended by adding Article XIV to read as follows:

ARTICLE XIV

PREMIUM PAY FOR DESIGNATED RETAIL EMPLOYEES

Sec. 30-800. Purpose.

As a result of the COVID-19 pandemic, this Ordinance aims to protect and promote the public health, safety, and welfare during the new coronavirus 19 (COVID-19) emergency by requiring retail establishments to provide premium pay for designated retail employees performing work in Pomona. Requiring retail establishments to provide premium pay to designated retail employees and compensates designated retail employees for the risks of working during a pandemic. Designated retail employees 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.

Sec. 30-801. Short title.

This Ordinance shall constitute the “Premium Pay for Designated Retail Employees Ordinance” and may be cited as such.

Sec. 30-802. Definitions.

For purposes of this Ordinance:

“Adverse action” means reducing the compensation to a designated retail employee, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a covered retail employees on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a designated retail employee for any reason prohibited by Section 30-806 and 30-809. “Adverse action” also encompasses any action by the retail establishment or a person acting on the retail establishment’s behalf that would dissuade a covered retail employee from exercising any right afforded by this ordinance.

“Aggrieved party” means a designated covered retail employee or other person who suffers tangible or intangible harm due to a retail establishment or other person’s violation of this ordinance.

“City” means the City of Pomona.

“Covered retail employee” means a retail employee employed directly by a retail establishment who is entitled to premium pay pursuant to this Ordinance.

“Premium pay” means additional compensation owed to a designated retail employee that is separate from retail establishment payments for providing services, bonuses, and commissions, as well as tips earned from customers.

“Respondent” means a retail establishment, parent company or any person who is alleged or found to have committed a violation of this Ordinance.

“Retail establishment” means a retail establishment located in the City of Pomona that:

(A) are more than 15,000 square feet and (i) devotes seventy percent (70%) or more of its sales floor area to retailing a general range of food products, which may be fresh or packaged, or (ii) receives seventy percent (70%) or more revenue from retailing a general range of food products;

(B) greater than 50,000 square feet of gross buildable area that will generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code);

(C) is more than 50,000 square feet and devotes 10% or more of its sales floor area to the sale of merchandise that is non-taxable pursuant to Section 6359 of the Revenue and Taxation Code, including retail establishments with multiple tenants, so long as consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits; or

(D) is retail pharmacy that sells a variety of prescription and nonprescription medicines, as well as any combination of miscellaneous items, including, but not limited

to, sundries, dry foods, packaged foods, beverages, fresh produce, meats, deli products, dairy products, canned foods, or prepared foods.

Sec. 30-803. Designated retail employee coverage.

For the purposes of this Ordinance, Designated retail employee are limited to those who perform work for a retail establishment where the work is performed in the City of Pomona.

Sec. 30-804. Retail establishment coverage.

A. For purposes of this Ordinance, retail establishments are limited to those who employ three hundred (300) or more designated retail employees nationally and employ more than fifteen (15) employees per retail establishment in the City of Pomona.

B. To determine the number of designated retail employee employed for the current calendar year:

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

2. All designated retail employees who worked for compensation shall be counted, including, but not limited to:

(a) Designated retail employees who are not covered by this Ordinance; and

(b) Designated retail employees who worked in Pomona.

Sec. 30-805. Premium pay requirement.

A. Hiring entities shall provide each covered retail employee with premium pay consisting of an additional Four Dollars (\$4.00) per hour for each hour worked.

B. Hiring entities shall provide the pay required by Section 30-805 (A) for a minimum of one hundred twenty (120) days from the effective date of this Ordinance.

C. Unless extended by City Council, this ordinance shall expire in one hundred twenty (120) days.

Sec. 30-806. Covered Retail Employees and consumer protections.

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

1. Reduce a covered retail employee's compensation;
2. Limit a covered retail employee's earning capacity.

B. It shall be a violation if this Ordinance is a motivating factor in a retail establishment's decision to take any of the actions in Section 30-806 (A) unless the retail establishment can prove that its decision to take the action(s) would have happened in the absence of this Ordinance going into effect.

Sec. 30-807. Notice of rights.

A. Hiring entities shall provide covered designated retail employees with a written notice of rights established by this Ordinance. The notice of rights shall be in a form and manner sufficient to inform designated retail employees 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 retail establishment's denial of premium pay as required by this Ordinance and a retail establishment or other person's retaliation against a covered retail employees 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 retail establishment utilized by employees for breaks, and in an electronic format that is readily accessible to the designated retail employees. The notice of rights shall be made available to the designated retail employees via smartphone application or an online web portal, in English and any language that the retail establishment knows or has reason to know is the primary language of the covered retail employee(s).

Sec. 30-808. Retail establishment records.

A. Hiring entities shall retain records that document compliance with this Ordinance for covered designated retail employees.

B. Hiring entities shall retain the records required by Section 30-808 (A) for a period of two (2) years.

C. If a retail establishment fails to retain adequate records required under Section 30-808 (A), there shall be a presumption, rebuttable by clear and convincing evidence, that the retail establishment violated this Ordinance for each covered retail employee for whom records were not retained.

Sec. 30-809. Retaliation prohibited.

No retail establishment employing a covered retail employees shall discharge, reduce in compensation, or otherwise discriminate against any covered retail employee 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.

Sec. 30-810. Violation.

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

Sec. 30-811. 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.

B. A respondent found to be in violation of this Ordinance for retaliation under Section 30-806 and 30-809 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.

Sec. 30-812. Private right of action.

A. Any covered retail employee that suffers financial injury as a result of a violation of this Ordinance, or is the subject of prohibited retaliation under Section 30-809, may bring a civil action in a court of competent jurisdiction against the retail establishment 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.

Sec. 30-813. Encouragement of more generous policies.

A. Nothing in this Ordinance shall be construed to discourage or prohibit a retail establishment 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 retail establishment to comply with any contract or other agreement providing more generous protections to a covered retail employee than required by this Ordinance.

Sec. 30-814. Other legal requirements.

This Ordinance provides minimum requirements for premium pay while working for a retail establishment 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 designated retail employees; 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 covered retail employee's right to pursue any other remedies at law or equity for violation of their rights.

Sec. 30-815. 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 retail establishment, covered retail employee, 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.

Sec. 30-816. Exemption for collective bargaining agreement.

All of the provisions of this Ordinance, or any part thereof, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of all or any of the provisions of this Ordinance.

Sec. 30-817. No waiver of rights.

Except for a collective bargaining agreement provision made pursuant to Section 30-816, any waiver by a covered retail employee of any or all provisions of this Ordinance shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a retail establishment to a covered retail employee to waive rights given by this Ordinance shall be a violation of this Ordinance.

SECTION 3. Urgency Findings. Pursuant to the Pomona City Charter, this Ordinance is designed to protect the health, safety and welfare of the citizens of the City of Pomona and becomes effective immediately upon adoption by a five-sevenths (5/7) vote of the City Council. The City Council hereby finds that there is an urgent need to adopt these regulations in order to address the current and immediate threats set forth above.

SECTION 4. CEQA. The City Council determines that the adoption of this Urgency Ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to the following provisions of the CEQA Guidelines, 14 California Code of Regulations, Chapter 3: this Urgency Ordinance is exempt under CEQA Guidelines Section 15378(b)(5) in that it is not a “project” under CEQA, and will not result in direct or indirect physical changes in the environment.

SECTION 5. Severability. If any section or provision of this Urgency Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Urgency Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Urgency Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

SECTION 6. Adoption, Certification, and Publication. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Urgency Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law.

PASSED, APPROVED AND ADOPTED this 1st day of March, 2021.

CITY OF POMONA:

Tim Sandoval
Mayor

APPROVED AS TO FORM:

ATTEST:

Sonia Carvalho
City Attorney

Rosalia A. Butler, MMC
City Clerk

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, ROSALIA A. BUTLER, MMC, CITY CLERK, of the City of Pomona do hereby certify that the foregoing Urgency Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on March 1, 2021 and was adopted at a regular meeting of the City Council of the City of Pomona held on March 1, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rosalia A. Butler, MMC
City Clerk