



(Updated September 28, 2016)

1) **Q: Where can I find information relating to Berkeley's Minimum Wage Ordinance (MWO)?**

A: Information is posted on the City of Berkeley website at www.cityofberkeley.info/MWO. You can also call 981-CITY/2489 or 3-1-1 from a landline in Berkeley)

2) **Q: When did the Berkeley minimum wage take effect?**

A: Berkeley's Local MWO went into effect on October 1, 2014 at the rate of \$10.00 an hour. The minimum wage increased to \$11.00 an hour on October 1, 2015 and to \$12.53 an hour on October 1, 2016. The Minimum Wage will increase to \$13.75 on October 1, 2017 and then to \$15.00 an hour on October 1, 2018. Thereafter, the minimum wage will increase annually based on the annual increase in the Consumer Price Index (CPI). New requirements related to service charges for food service and hospitality businesses go into effect October 1, 2016

3) **Q: Does the Berkeley minimum wage apply to all employers that have employees who perform work in Berkeley?**

A: Yes, all employers regardless of where they are located, must pay the Berkeley minimum wage to their employees who perform at least two hours of work within the geographic limits of the City of Berkeley.

4) **Q: Is the Berkeley minimum wage the same for employees of non-profit agencies?**

A: Yes.

5) **Q: Does the Berkeley minimum wage cover employees who work in Berkeley but are not Berkeley residents?**

A: Yes. Any person who performs at least two hours of work in a particular week for an employer within the geographic boundaries of the City of Berkeley is entitled to be paid the Berkeley minimum wage, regardless of where they live.

- 6) **Q:If a person works as a server (waitperson) in a restaurant, can the employer use tips as a credit towards the obligation to pay the Berkeley minimum wage?**
A:No. An employer must not use an employee's tips as a credit towards its obligation to pay the Berkeley minimum wage.
- 7) **Q:**Does the Berkeley MWO regulate how Service Charges are collected and distributed?
A:Yes. The ordinance requires that an employer of a food service or hospitality business that collects mandatory "Service Charges" from patrons, distribute the entirety of Service Charges revenue collected to the employees providing the service. The Employer must define the chain of service and notify the employees of the distribution formula as well as its plan of distribution of Service Charges revenue to employees.
- 8) **Q:Does the Berkeley Minimum Wage Ordinance protect undocumented workers?**
A:Workers reporting violations of the Minimum Wage Ordinance with the City of Berkeley will not be questioned about their immigration status.
- 9) **Q:What is the difference between the Federal, State and Berkeley Minimum wage laws?**
A:Berkeley employers are subject to the Federal, State and Berkeley minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard; that is, the one that is most beneficial to the employee. Since Berkeley's current law requires a higher minimum wage rate than the state and federal laws, all employers that have employees who perform work in Berkeley must pay Berkeley's minimum wage rate unless their employees are exempt under California law.
- 10) **Q:May an employee agree to work for less than the Berkeley minimum wage?**
A:The Berkeley minimum wage is an obligation of the employer and cannot be waived by an employee except explicitly in a bona fide collective bargaining agreement (union agreement) as described in Section 13.99.055.

11) Q:What can I do if my employer doesn't pay me at least the Berkeley minimum wage?

A:You can file a wage claim with the City of Berkeley's Department of Health, Housing & Community Services. You must file a claim in writing by mail or in person. The City will conduct an investigation and has the authority to inspect workplaces, conduct interviews, and request the City Attorney to subpoena books, papers, records or other items relevant to the enforcement of the Minimum Wage Ordinance (Section 13.99.080). You also have the right to file a civil action in court against the employer (Section 13.99.090B), or contact the State's Department of Industrial Relations.

12) Q:What can I do if my employer retaliates against me because I question him/her about not being paid the Berkeley minimum wage?

A:Under the ordinance, it is unlawful for the employer to retaliate against any employee who asserts their right to receive the Berkeley minimum wage. An employee or another person may report to the Department in writing any suspected violation of the MWO, including retaliation. A fine of one thousand dollars (\$1,000) may be assessed for retaliation by an employer for exercising rights protected under the MWO. For a full description of actions and remedies please refer to section 13.99.090 of the MWO.

13) Q:Are there any exemptions to the Berkeley Minimum Wage Ordinance?

A:No. Prior to October 1, 2016, there were exemptions for Employees who were on "standby" or "on-call" and for job training participants that were under 25 years old when the job training program was operated by a nonprofit or governmental program. City Council eliminated these exemptions in 2016. However, the Ordinance does provide a different schedule for wage increases for youth job training participants in non-profit or governmental programs prior to October 1, 2017 (BMC Section 13.99.040.C).

14) Q:My business is a family owned business. Do I need to pay my parent, spouse or child the Berkeley minimum wage?

A:No. Consistent with California Labor Code, Sec 3352, (a) Individuals who are the parents, spouses or children of the employer are not covered by the Berkeley minimum wage.

15) **Q:Did Berkeley adopt a local Paid Sick Leave Ordinance and when does that go into effect?**

A:Yes. The City Council adopted a revised Minimum Wage Ordinance which includes new regulations for Paid Sick Leave (BMC 13.99.100). The Ordinance goes into effect on October 1, 2016, but the regulations related to Paid Sick Leave do not start until October 1, 2017. For more information about the California Paid Sick Leave policies that are currently in effect, please visit the state website [here](#)

Please email further questions to MWO@cityofberkeley.info

Or call

Health, Housing & Community Services Department

(510) 981-CITY/2489 or 311 from a landline in Berkeley

www.cityofberkeley.info/MWO

This fact sheet is intended as general information only and does not carry the force of legal opinion. This information is provided as a public service.