



City of Milpitas – Minimum Wage Increase

Introduction

On February 21, 2017, Milpitas City Council adopted Ordinance No. 292 to establish a city-wide minimum wage. Beginning July 1, 2021, employers who are subject to the City’s business license requirement or who maintain a business facility in the City, must pay to each employee who performs at least two (2) hours of work per week in Milpitas, minimum wages of not less than \$15.65 per hour. Effective July 1 of every year, the City adjusts the minimum wage based on the Bay Area Consumer Price Index as published by the U.S. Department of Labor.

Frequently Asked Questions (FAQ’s)

1. What is the City of Milpitas’s Minimum Wage Ordinance?

The Milpitas City Council approved the ordinance to create a local minimum wage. The ordinance requires employers who are subject to the City’s business license requirement or who maintain a business facility in the City to pay the City’s minimum wage.

2. What is the new City minimum wage rate?

The City’s minimum wage rate will be \$15.65 starting July 1, 2021.

3. What are the Minimum Wage Ordinance administrative requirements for covered employers?

In addition to payment of the minimum wage, employers are required to:

- i. Post a notice published by the City at the workplace informing employees of the law and the employees’ right under the Ordinance; and,
- ii. Maintain payroll record for a period of four (4) years.
- iii. Provide in writing to each employee at time of hire with employer’s name, address and telephone number.

4. Are salaried employees exempt from the Milpitas Minimum Wage Ordinance?

Yes. Salaried employees are subject to the State law. The current law requires a minimum monthly salary of no less than two times the state minimum wage for full-time employment. Additional information is available at <http://www.labor.ca.gov/>.

5. Does the ordinance exempt small businesses?

No. The ordinance does not have any exemptions for small businesses. If an employee works more than two (2) hours per calendar week in Milpitas, they must be paid the Milpitas minimum wage rate.

6. A worker hired by a temp agency located in Milpitas is working outside of Milpitas. Does the Milpitas minimum wage apply?

No. Because the work is performed outside of Milpitas, the agency is not required to pay the Milpitas minimum wage.

7. Is the Milpitas minimum wage the same for employees of non-profit agencies?

Yes. All employees who perform at least two (2) hours of work per calendar week in Milpitas must be paid at least Milpitas minimum wage regardless of the employer's nonprofit status.

8. Does the ordinance on the Milpitas minimum wage cover employees who work in Milpitas, but are not Milpitas residents?

Yes. Any person, who performs work for an employer that maintains a facility in the City of Milpitas or provides goods and/or services within city limits, is entitled to be paid the Milpitas minimum wage rate.

9. Does the Milpitas minimum wage apply to full-time and part-time employees?

Yes, the ordinance applies to any person who performs at least two (2) hours of work in a calendar week for an employer covered by the ordinance.

10. Does the minimum wage apply to employees under the age of 18?

Yes. All employees who perform at least two (2) hours of work per calendar week in Milpitas must be paid at least Milpitas minimum wage regardless of the age.

11. Does Milpitas Minimum Wage Ordinance protect undocumented workers?

Yes. All workers in Milpitas, whether or not they are legally authorized to work in the United States, are protected. Minimum wage claims will be processed and investigated without regard to a worker's immigration status. Workers filing a claim will not be questioned about their immigration status.

12. My business is a family run business. Do I need to pay my parent, spouse or child the Milpitas minimum wage?

No. Consistent with California Labor Code Section 3352(a), individuals who are the parents, spouses or children of the employers are not covered by the Milpitas minimum wage. Domestic partners are also excluded under the Milpitas Minimum Wage Ordinance. However, an employer must pay the required Milpitas minimum wage rate to any other person who performs more than two (2) hours of work in a calendar week and qualifies as an employee entitled to payment of the minimum wage from any employer under the

California Minimum Wage law as provided under Section 1197 of the California Labor code and Wage orders published by the California Industrial Welfare Commission.

13. Are residential care facilities located in Milpitas required to pay the Milpitas minimum wage?

Yes. All residential care facilities, regardless of number or type of occupant, are required to pay local minimum wage to employees when located in Milpitas.

14. A company moves its headquarters to a neighboring city but still performs work in Milpitas. Would the Milpitas Minimum Wage Ordinance apply?

Yes. The ordinance requires employers who maintain a facility in Milpitas or employers that are subject to the business license requirement of the City of Milpitas to comply with the Milpitas Minimum Wage Ordinance.

15. My company is not located in Milpitas, but I have employees who work in Milpitas. Do I have to pay all of my employees the Milpitas minimum wage?

No, the Milpitas minimum wage only applies to those employees who work in Milpitas and only for those who perform more than two (2) hours of work in a calendar week.

16. May employers use tips or fringe benefits (health insurance, vacation, sick leave) to pay the Milpitas minimum wage?

No. An employer may not use an employee's tips or fringe benefits as a credit towards the employer's obligation to pay the City minimum wage.

17. What are the penalties for violation of the Milpitas minimum wage?

The City may issue a fine not exceeding \$100.00 for a first violation, a fine not exceeding \$200.00 for a second violation, and a fine not exceeding \$500.00 for a third and subsequent violations for each violation and for each employee or person as to whom the violation occurred or continued. An employer will be given a reasonable period of time, which shall not be less than 15 days, to correct or otherwise remedy the violation. All fines shall be paid to the City within 30 days from the date of the administrative citation. A late payment charge of \$25.00 and interest at the legal rate of ten percent shall be imposed on a monthly basis for any administrative citation amount remaining unpaid to the City. The City may also initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

**18. Who do I contact if I am not receiving \$15.65 per hour?
Office of Equity Assurance**

City of San Jose
200 East Santa Clara Street, 5th Floor
San Jose, CA 95120
(408) 535-8430
MyWage@sanjoseca.gov