

## HAZARD PAY FOR GROCERY WORKERS ORDINANCE

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### **Section 1. Purpose.**

This “Hazard Pay for Grocery Workers Ordinance” may be referred to herein as the “Ordinance.” The purpose of this Ordinance is to protect and promote the public health, safety, and welfare during the novel coronavirus disease of 2019 (“COVID-19”) emergency by requiring certain grocery stores to provide hazard pay for grocery workers performing work in the City of Napa. Grocery workers face magnified risks of catching or spreading COVID-19 because the nature of their work involves close contact indoors with the public and co-workers, including individuals who are not showing symptoms of COVID-19. Hazard pay also ensures the retention of these essential grocery store workers who are the frontlines of this pandemic providing essential services and who are needed throughout the duration of the COVID-19 emergency.

### **Section 2. Definitions.**

For purposes of this Ordinance:

**"Adverse Action"** means reducing the compensation to a grocery worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or

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bonuses, offering less desirable work, demoting, terminating, deactivating, putting a grocery worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a Covered Employee.” Adverse action also encompasses any action by the Covered Employer or a person acting on the Covered Employer's behalf that would dissuade a Covered Employee from exercising any right afforded by this Ordinance. [Deleted previous inadvertent typographical error]

**“Baseline Compensation”** means the hourly compensation paid to Covered Employees as of the effective date of this Ordinance after subtracting any premium compensation used to compensate Covered Employees for working during the pandemic. Baseline Compensation does not include Hazard Pay owed under this Ordinance, but does include premium compensation unrelated to the pandemic, such as holiday premiums paid for performing work during a holiday.

**“Covered Employee”** means a Grocery Worker who is entitled to Hazard Pay pursuant to this Ordinance.

**“Covered Employer”** ~~means any entity that employs more than three hundred (300) Grocery Workers nationwide and employs more than two hundred (200) Grocery Workers in the State of California.~~ [Requesting Direction from City Council]

**“Grocery Store”** ~~means an establishment primarily engaged in selling a range of foods including fresh, frozen or canned meats, fish and poultry, fruits and vegetables, bread and/or grain products and dairy products, including, but not limited to, grocery stores, markets, or supermarkets; or produce stores, cheese, uncooked meat/butcher shops and fish markets.~~ [Requesting Direction from City Council]

**“Grocery Worker”** means a worker employed to work at a Grocery Store. Grocery worker does not include managers, supervisors, or independent contractors.

**“Hazard Pay”** means additional compensation owed to a Covered Employee that is separate from Baseline Compensation and does not include tips earned from customers.

**“Person”** shall have the meaning set forth in Napa Municipal Code Section 1.04.030.

### **Section 3. Applicability.**

- A. For purposes of this Ordinance, Covered Employers are required to pay Hazard Pay to each Covered Employee who works at a grocery store located in the City of Napa.

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- B. For purposes of this Ordinance, the number of Grocery Workers employed by an employer is the total number of Grocery Workers who worked for compensation during the two-week period immediately preceding the effective date of this Ordinance.
- C. Covered Employers shall provide the Hazard Pay required by this Ordinance to any Covered Employee in the City of Napa beginning on the effective date of this Ordinance, until one-hundred and twenty (120) days from the effective date of this Ordinance.
- D. Unless extended by the City Council, the Hazard Pay requirement set forth in this Ordinance shall only remain in effect for a limited period of one-hundred and twenty (120) days from the effective date of this Ordinance.

**Section 4. Hazard Pay Requirement.**

- A. A Covered Employer shall provide Grocery Workers with Hazard Pay consisting of an additional Five Dollars (\$5.00) per hour above Baseline Compensation for each hour worked within the City of Napa.
- B. All compensation above Baseline Compensation shall be credited against the Hazard Pay requirement, as follows:
  - 1. A Covered Employer that is already providing additional compensation above Baseline Compensation equivalent to Hazard Pay, on an ongoing basis prior to the effective date of this Ordinance may use the hourly rate of that additional compensation to offset the amount due under this Ordinance (e.g., a Covered Employer who is already paying two dollars (\$2.00) per hour above Baseline Compensation owes an additional three dollars (\$3.00) per hour in Hazard Pay).
  - 2. Health insurance premiums may be considered equivalent to Hazard Pay only where those premiums were not a part of Baseline Compensation and only where the cost of the premium can be directly attributed to the particular employee whose Hazard Pay is offset.
  - 3. The Covered Employer bears the burden of proof that the additional compensation is equivalent to Hazard Pay and not Baseline Compensation. No Covered Employer shall be credited prospectively for any past payments. No Covered Employer shall be credited for any hourly premiums already owed to Covered Employees, such as but not limited to, holiday premiums, however there shall be a rebuttable presumption that compensation paid by a Covered Employer at a particular Grocery Store in January 2020 was Baseline Compensation for purposes of calculating

Hazard Pay at that particular Grocery Store. Nothing herein shall be interpreted to prohibit any employer from paying more than five dollars (\$5.00) per hour in Hazard Pay.

**Section 5. Notice of rights.**

- A. A Covered Employer shall provide covered grocery workers with a written notice of rights established by this Ordinance. The notice of rights shall provide information on:
1. The right to Hazard Pay guaranteed by this Ordinance;
  2. The right to be protected from retaliation for exercising or assisting in the exercise of the rights set forth in this Ordinance; and
  3. The right to bring a civil action for a violation of the requirements of this Ordinance, including a Covered Employer's denial of Hazard Pay as required by this Ordinance and/or retaliation against a Grocery Worker or other person or entity exercising or assisting in the exercise of the rights set forth in this Ordinance.
- B. A Covered Employer shall provide the written notice of rights by posting in the same conspicuous location used for other mandatory employment postings such as the State of California Wage Orders and the Federal Family Medical Leave Act and shall also provide the written notice of rights in an electronic format that is readily accessible to all employees. The notice of rights shall be made available in English and Spanish and any other language that the Covered Employer knows or has reason to know is the primary language of the Covered Employees.

**Section 6. Recordkeeping.**

- A. Covered Employer shall retain records that document compliance with this Ordinance for Covered Employees for a period of two (2) years after the date of this Ordinance.
- B. If a Covered Employer fails to retain adequate records, there shall be a presumption, rebuttable by clear and convincing evidence, that the Covered Employer violated this Ordinance for each Covered Employee for whom records were not retained.

**Section 7. Retaliation prohibited.**

No Covered Employer shall discharge, reduce compensation, take Adverse Action against or otherwise retaliate against any grocery worker for exercising or assisting in the exercise of rights under this Ordinance by any lawful means.

**Section 8. Remedies.**

- A. Any person aggrieved by a violation of this Ordinance, any entity a member of which is aggrieved by a violation of this Ordinance, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Ordinance and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation:
1. Reinstatement, payment of back wages wrongfully withheld, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, the payment of an additional sum as a civil penalty in the amount of \$50 to each Covered Employee whose rights under this Ordinance were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.
  2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
- B. A Covered Employer found to have retaliated in violation of this Ordinance shall be subject to any additional remedy at law or equity including, but not limited to front pay in lieu of reinstatement with full payment of unpaid compensation plus interest and punitive damages in an additional amount of up to twice the unpaid compensation.

**Section 9. Waiver Through Collective Bargaining.**

To the extent required or permitted by federal or state law, all or any portion of the applicable requirements of this Ordinance may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms. Any request to an individual Employee by an Employer to waive their rights under this Ordinance shall constitute a violation of this Ordinance.

**Section 10. Encouragement of more generous policies.**

- A. Nothing in this Ordinance shall be construed to discourage or prohibit a Covered Employer 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 Covered Employer to comply with any contract or other agreement providing more generous protections to a Covered Employee than required by this Ordinance.

**Section 11. Other legal requirements.**

This Ordinance provides minimum requirements for Hazard Pay while working for a Covered Employer 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 hazard pay, or that extends other protections to grocery workers; and nothing in this Ordinance shall be interpreted or applied to create any power or duty in conflict with federal or state law. Nothing in this Section shall be construed as restricting a grocery worker's right to pursue any other remedies at law or equity for violation of their rights.