

## Los Angeles County Passes “Hero Pay” Ordinance

March 8, 2021

By [Adam C. Abrahms](#) and [Jonathan Assia](#)

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In our last [Act Now Advisory](#), we discussed a proposed Ordinance that would mandate a \$5 pay increase for food and drug store workers in Los Angeles County. On February 23, 2021, the Los Angeles County Board of Supervisors approved that proposal, which went into effect on February 26, 2021. You can find [the full language of the enacted Ordinance here](#).

Several of the issues we identified with the initial proposal exist in the final Ordinance. For example, the Ordinance still applies to all hourly employees, irrespective of their wage rate, and applies to pharmacists, certain supervisors, and various employees who make a great deal more than the minimum wage or even the average Angelino. While the Ordinance does include an exclusion for employees working remotely and a credit for employers who already offer a voluntary hazard pay increase, it does not allow for any offset in minimum wage reductions. Further, it does not address nuances such as application to unionized workers or exclusions for any specific businesses.

The cities of Long Beach, Berkeley, and Buena Park have already passed similar ordinances, and it is likely that other counties and cities will see similar proposals shortly. A hazard pay proposal is currently pending in San Mateo County. Trade organizations have already filed suits against the City of Long Beach seeking injunctions on the grounds that the ordinance violates both the California and U.S. Constitutions, but a federal district court judge recently upheld the legality of that ordinance in favor of the City of Long Beach (see [here](#)). It is only a matter of time until similar organizations file suit against Los Angeles County, the City of Berkeley, and the City of Buena Park.

### Applicable Businesses

The Los Angeles Ordinance applies to all retail grocery or drug store employers that (1) are publicly traded or employ 300 or more people nationwide, and (2) employ more than ten employees per store in the unincorporated areas of Los Angeles County.

To qualify, the grocery or drug store must occupy at least 85,000 square feet and dedicate 10% or more of its sales to grocery or drug retail.

## **Employer Responsibilities**

Applicable businesses must increase the wages of all their non-exempt employees who work at least two hours per week in unincorporated areas of Los Angeles County by \$5 per hour for 120 days (currently, until June 26, 2021).

The Ordinance specifically prohibits employers from lowering employees' wages to offset the increase. But as we noted in our analysis of the proposal, the Ordinance does not require such businesses to maintain the same store hours or even remain open, and does not prohibit impacted businesses from raising prices to offset the mandated increase and spreading its cost to customers. In fact, a number of retailers have already closed stores in Long Beach (see [here](#)), Berkley, and other areas in response to those ordinances, and similar closures can be anticipated in LA County. Other retailers may also reduce staffing and hours for economic reasons. That being said, the Ordinance does prohibit retaliation against employees who assert "rights" pursuant to the Ordinance—which includes reducing their hours.

Similar to an employer's requirements to maintain employee records pursuant to Labor Code section 226, the Ordinance also requires that employers maintain records evidencing compliance with the Ordinance for at least four years. This includes wage statements and payroll records.

Finally, the Ordinance requires that employers post a notice of the Ordinance in a conspicuous place such as an employee bulletin board. A copy of the notice is available [here](#).

## **Associated Fines and Penalties**

The Ordinance sets forth a series of administrative fines for employers who fail to provide hazard pay as instructed. The fines start at \$100 per day and go up to a maximum of \$20,000 per employee per year (with the exception of fines for retaliation).

In addition to these administrative fines, the employer must also pay each employee all back wages owed and \$100 per day for each day that a violation occurred. Employees are provided a private right of action to collect these penalties, fines, back pay, and attorney's fees up to three years after the violations occurred.

## **What Los Angeles Employers Should Do Now**

- Contact legal counsel to see if the Ordinance applies to your business.
- Ensure that your business is compliant with all hazard pay requirements under the Ordinance to avoid liability.
- Do not fire, demote, or reduce the hours of employees who ask about receiving hazard pay.

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For more information about this Advisory, please contact:

**Adam C. Abrahms**  
Los Angeles  
310-557-9559  
[aabrahms@ebglaw.com](mailto:aabrahms@ebglaw.com)

**Jonathan Assia**  
Los Angeles  
310-557-9563  
[jassia@ebglaw.com](mailto:jassia@ebglaw.com)

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