

## Los Angeles County Passes Proposal to Mandate \$5 per Hour “Hero Pay” Increase for Food and Drugstore Employees

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On January 5, 2020, the Los Angeles County Board of Supervisors (“Board”) approved a proposal, available [here](#) (“Proposal”), that would mandate that all food and drugstore employees in unincorporated areas of Los Angeles County be provided a \$5 “Hero Pay” increase on top of whatever pay their private employer is already providing. As written, the proposed increase would last for 120 days from the date any ordinance is ultimately enacted.

The Proposal will be drafted into an ordinance and presented at the next Supervisors’ meeting on January 26. This final drafting is important because the Proposal itself failed to include many of the details generally expected in these types of enactments, which are truly necessary to understand the Proposal’s overall impact. For example, the Proposal currently appears to apply to all hourly employees, irrespective of their wage rate, which may include pharmacists, certain supervisors, and various other employees who already make substantially more than the employees the Proposal seems aimed at—and, in some cases, significantly more than \$100,000 per year. The Proposal also does not indicate any exceptions or exclusions, such as for those employees who are permitted to work remotely, any offset for prior voluntary pandemic pay increases, unionized employer exceptions, or any protections or exclusions for many of these businesses that may be experiencing economic hardship of their own.

According to the Board, the purpose of the Proposal is to compensate employees working for essential food and drugstores during the pandemic. The Proposal states that, at the onset of the COVID-19 pandemic, these same businesses issued pay raises to their employees. But since then, the Democratic-dominated Board claims that these essential business have allegedly seen an increase in profits without issuing corresponding wage increases to their employees. In an asserted effort to properly reward those employees risking COVID-19, the Board passed the Proposal by a vote of 4-0 (with the sole non-Democrat abstaining).

### Applicable Businesses

The Proposal applies to businesses covered under “Appendix B-1 of the County of Los Angeles Department of Public Health Targeted Temporary Safer at Home Health Officer

Order” (the language of which you can find [here](#)). This list includes retail food markets, such as grocery stores, convenience stores, liquor stores, and other retail locations that sell food or beverage products and have a health permit issued by the Department of Public Health as a “Food Market Retail.” But the Proposal does not include many other frontline workers and businesses, such as fast food workers, health care workers, public safety workers, and other workers who arguably could be included in the Proposal’s “Heroes” designation.

As currently drafted, the Proposal applies only to large publicly traded employers, or employers that have at least 300 employees nationwide and more than 10 employees per store in the unincorporated areas of Los Angeles County. However, the Proposal explicitly requires the County staff to advise as to whether it could be extended to incorporated areas of Los Angeles County, which would exponentially expand its impact—roughly only 1 million residents live in the unincorporated portions of the over 10-million-person county.

### **Employer Responsibilities**

If ultimately passed, applicable businesses must increase the wages of all their employees by \$5 per hour for 120 days.

The Proposal does not require such businesses to maintain the same store hours or even remain open, which leaves a question as to whether some of the chain retailers may opt to temporarily close the applicable locations—especially as many will have another location only a few miles away either in an incorporated portion of the County or in a neighboring county. Of course, the Proposal also does not prohibit impacted businesses from raising prices to offset the mandated increase and spreading its cost to customers (many of whom are currently unemployed or financially struggling in a county where a lot of economic activity has already been shut down due to the pandemic).

### **Potential Additional Requirements**

In the Proposal, the Board indicated that it may also “[i]nclude[] any other provisions necessary to implement the intent of this motion.” This provision suggests that the Board is not finished and may expand the scope of the already progressive initiative. As noted above, the geographic scope of the final ordinance could be expanded to apply county-wide or to the City of Los Angeles. Further, the Board may also see fit to extend the applicable period from beyond 120 days, add additional wage increases, lower the employee threshold for applicable employers, or even expand the reach beyond the retail food and drug industry.

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

- Employers should pay close attention to the hearing on January 26 to determine if their business will be subject to the proposed increase.

- If Los Angeles County ultimately enacts the Proposal, employers in the incorporated cities within Los Angeles County as well as other states or localities that tend to follow Los Angeles County's lead should be on the lookout for their state or local governments to adopt similar or even more far-reaching mandates.

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