



EL MONTE HERO PAY URGENCY ORDINANCE GUIDANCE Q&A

WHAT IS THE “HERO PAY” ORDINANCE?

Due to specific impacts to retail employees during the COVID-19 pandemic, the City Council enacted a requirement for “HERO Pay” for designated employees in the retail sector. These designated employees have been identified as essential and have continued to perform their duties in the front-lines of the pandemic.

WHAT DOES THE “HERO PAY” ORDINANCE REQUIRE?

The “HERO Pay” ordinance requires qualifying retail establishments within the City of El Monte to provide HERO pay (i.e., premium pay/hazard pay) of an additional \$4.00 per hour to their El Monte-based workers.

WHEN DOES IT TAKE EFFECT AND WHEN DOES IT END?

Because the HERO pay requirement was adopted by Urgency Ordinance its provisions went into effect immediately upon its adoption by the City Council on March 16, 2021.

The HERO pay requirement will last until the earlier of the following: (a) 120 days from March 16, 2021; or (b) fifteen (15) days after the County of Los Angeles is classified as being in the Tier 4 Minimal (Yellow) COVID threat category of the California Department of Public Health’s Blueprint for a Safer Economy. The City Council reserves the right to extend the requirement if circumstances call for an extension.

WHICH EMPLOYERS ARE REQUIRED TO PAY “HERO PAY”?

For purpose of the HERO pay Urgency Ordinance any **retail establishment** that employs 300 or more employees nationally and employs more than 10 employees per location in El Monte is required to pay HERO Pay to their employees. Retail establishments are establishments that are:

1. More than 15,000 square feet and (i) devote seventy percent (70%) or more of their sales floor area to retailing a general range of food products, which may be fresh or packaged, or (ii) receive seventy percent (70%) or more revenue from retailing a general range of food products;
2. More than 50,000 square feet and devote 10% or more of their sales floor area to the sale of merchandise that is non-taxable pursuant to Section 6359 of the Revenue and Taxation Code, including retail establishments with multiple tenants,

so long as consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits; or

3. Retail pharmacies that sell a variety of prescription and nonprescription medicines, as well as any combination of miscellaneous items, including, but not limited to, sundries, dry foods, packaged foods, beverages, fresh produce, meats, deli products, dairy products, canned foods, or prepared foods.

Employers who are subject to the requirements of the HERO Pay Urgency Ordinance are required to provide employees a written notice of the rights established under the ordinance in the manner prescribed under the ordinance.

The notice must include the following information:

1. The employee's right to HERO pay as provided by the Urgency Ordinance;
2. The right to be protected from retaliation for exercising in good faith the rights protected by the Urgency Ordinance; and
3. The right to bring a civil action for a violation of the requirements of the Urgency Ordinance, including a retail establishment's denial of premium pay and a retail establishment or other person's retaliation against a covered retail employees or other person for asserting the right to premium pay or otherwise engaging in an activity protected by the Urgency Ordinance.

The written notice must be posted in a location of the retail establishment used by employees for breaks, and also provided in an electronic format that is readily accessible to employees. The notice of rights shall also be made available to the designated retail employees via smartphone application or an online web portal, in English and any language that the retail establishment knows or has reason to know is the primary language of the covered retail employees.

WHAT EMPLOYEES QUALIFY FOR "HERO PAY"?

Any employee who works for an employer that falls into the requirements of the HERO pay Urgency Ordinance qualifies for the premium pay of an additional \$4.00 per hour.

WHAT EMPLOYEE PROTECTIONS DOES "HERO PAY" PROVIDE?

The HERO pay Urgency Ordinance provides that no qualifying employer may, as a result of the ordinance, (i) reduce an employee's compensation, or (ii) limit the employee's earning capacity. The Urgency Ordinance also prohibits employers from retaliating against employees who exercise their rights under the Urgency Ordinance.

You can also find the full Urgency Ordinance text at: <http://www.elmonteca.gov/153/City-Clerks-Office>

If you have received this notification by mail a copy of the Urgency Ordinance is enclosed.

URGENCY ORDINANCE NO. 2998

AN UNCODIFIED URGENCY ORDINANCE OF THE
CITY COUNCIL OF THE CITY OF EL MONTE
ESTABLISHING LABOR STANDARDS AND
REQUIREMENTS FOR "HERO" PAY FOR FRONT-
LINE RETAIL ESTABLISHMENT EMPLOYEES IN
THE CITY OF EL MONTE FOR ONE HUNDRED
TWENTY DAYS

City Attorney Summary

This urgency ordinance ("Urgency Ordinance"), adopted in accordance with Government Code Section 36937(b)", aims to protect and promote the public peace, health, safety, and welfare during the COVID-19 emergency by requiring grocery and retail pharmacy stores to provide premium pay for grocery and retail pharmacy workers performing work in El Monte.

WHEREAS, the new coronavirus 19 ("COVID-19") disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization ("WHO") as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout California and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, the WHO has declared that COVID-19 is a global pandemic, which is particularly severe in high risk populations, such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of this disease; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and

WHEREAS, on March 17, 2020, the City of El Monte ("City") declared a local emergency to implement measures recommended by State and federal authorities; and

WHEREAS, on March 19, 2020 Governor Newsom issued an Executive Order that requires all persons to remain at home to the extent possible and requires all non-essential businesses to be closed; and

WHEREAS, on March 21, 2020 the Los Angeles County Department of Public Health issued a clarifying Safer at Home order, requiring all persons to remain at home to the extent possible, unless engaged in essential businesses; and

WHEREAS, on December 3, 2020, Governor Newsom extended the "Stay Home – Stay Healthy" proclamation; and

WHEREAS, on January 25, 2021 Governor Newsom lifted the statewide stay-at-home order, returning counties back to a tiered system; and

WHEREAS, the County Public Health Officer issued an order aligning Los Angeles County with the State Health Officer order reopening key sectors; and

WHEREAS, Los Angeles County remains in the most restrictive purple tier where many non-essential business operations remain closed and the virus remains widespread; and

WHEREAS, as of March 5, 2021, the WHO Situation Report reported a global

total of 115,289,961 cases of COVID-19, including 2,564,560 deaths; California reported 3,493,126 cases of COVID-19, including 53,448 deaths; and El Monte has reported 16,858 cases of COVID-19, including 394 deaths; and

WHEREAS, grocery and retail pharmacy stores are essential businesses operating in El Monte during the COVID-19 emergency, making grocery and retail pharmacy workers highly vulnerable to economic insecurity and health or safety risks; and

WHEREAS, grocery and retail pharmacy workers have been unable to work from home, including those with children engaged in distance learning, and have therefore likely incurred additional childcare expenses; and

WHEREAS, grocery and retail pharmacy workers are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19 crisis. They work in high risk conditions with inconsistent access to protective equipment and other safety measures; work in public situations with limited ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease; and

WHEREAS, premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress; and

WHEREAS, during the early stages of the COVID-19 pandemic, many grocery companies provided premium pay, which was generally implemented as either a temporary hourly wage increase or a one-time bonus, but this practice has either generally been phased out or terminated; and

WHEREAS, grocery and retail pharmacy workers working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty due to the significant risk of exposure to the COVID-19 virus. Grocery and retail pharmacy workers have been working under these hazardous conditions for months. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection. Additionally, new and potentially more contagious variants of the coronavirus have now been detected in California; and

WHEREAS, the availability of grocery and retail pharmacy stores is fundamental to the health of the community and is made possible during the COVID-19 emergency because grocery and retail pharmacy workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by working in hazardous situations; and

WHEREAS, establishing an immediate requirement for grocery and retail pharmacy stores to provide premium pay to grocery and retail pharmacy workers protects public health, supports stable incomes, and promotes job retention by ensuring that grocery and retail pharmacy workers are compensated for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency; and

WHEREAS, the City Council finds that this Urgency Ordinance is necessary for the preservation of public peace, health, and safety of grocery and retail pharmacy workers working in El Monte and finds urgency to approve this Urgency Ordinance immediately based on the facts described herein and detailed in the staff report; and

WHEREAS, Government Code Sections 36934 and 36937(b) authorize the City to adopt an Urgency Ordinance for the immediate preservation of the public peace, health and safety, provided that such Urgency Ordinance is passed by a four-fifths vote of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Urgency Ordinance as if fully set forth herein.

SECTION 2. Urgency Findings. This Urgency Ordinance is declared by the City Council to be necessary as an emergency measure to protect and preserve the public peace, health, safety and welfare of the citizens of the City of El Monte and will become effective immediately if passed by the affirmative votes of at least four-fifths (4/5) of the members of the City Council. The City Council hereby finds that there is an urgent need to adopt these regulations in order to address the current and immediate threats set forth above. Given the uncertain and evolving nature of the COVID-19 pandemic, the premium pay and associated protections must be immediately implemented to ensure that grocery and retail pharmacy workers continue working and providing these essential services to the residents of El Monte and the region generally. These workers have already been working for many months through this pandemic. Grocery and retail pharmacy workers face magnified risks of catching and/or spreading COVID-19 because the nature of their work involves close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can still transmit the disease. The provision of premium pay better ensures the retention of these essential workers who are on the frontlines of this pandemic providing essential services and who are needed throughout the duration of it. This urgency ordinance is needed during the emergency in the interest of maintaining access to and continuity in essential grocery and pharmacy services.

SECTION 3. Definitions:

- a) "Adverse action" means reducing the compensation to a designated retail employee, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a covered retail employees on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, or otherwise discriminating against a designated retail employee for any reason prohibited by Section 7 and 10. "adverse action" also encompasses any action by the retail establishment or a person acting on the retail establishment's behalf that would dissuade a covered retail employee from exercising any right afforded by this Urgency Ordinance.
- b) "Aggrieved party" means a designated covered retail employee or other person who suffers tangible or intangible harm due to a retail establishment or other person's violation of this Urgency Ordinance.
- c) "City" means the City of El Monte.
- d) "Covered retail employee" means a retail employee employed directly by a retail establishment who is entitled to premium pay pursuant to this Urgency Ordinance.
- e) "Premium pay" means additional compensation owed to a designated retail employee that is separate from retail establishment payments for providing services, bonuses, and commissions, as well as tips earned from customers.
- f) "Respondent" means a retail establishment, parent company or any person who is alleged or found to have committed a violation of this Urgency Ordinance.

- g) "Retail establishment" means a retail establishment located in the City of El Monte that:
1. are more than 15,000 square feet and (i) devotes seventy percent (70%) or more of its sales floor area to retailing a general range of food products, which may be fresh or packaged, or (ii) receives seventy percent (70%) or more revenue from retailing a general range of food products;
 2. is more than 50,000 square feet and devotes 10% or more of its sales floor area to the sale of merchandise that is non-taxable pursuant to Section 6359 of the Revenue and Taxation Code, including retail establishments with multiple tenants, so long as consumer goods and nontaxable items are sold under the same roof with shared checkout stands, entrances, and exits; or
 3. is retail pharmacy that sells a variety of prescription and nonprescription medicines, as well as any combination of miscellaneous items, including, but not limited to, sundries, dry foods, packaged foods, beverages, fresh produce, meats, deli products, dairy products, canned foods, or prepared foods.

SECTION 4. Designated retail employee coverage. For the purposes of this Urgency Ordinance, Designated retail employee are limited to those who perform work for a retail establishment where the work is performed in the City of El Monte.

SECTION 5. Retail establishment coverage.

- a) For purposes of this Urgency Ordinance, retail establishments are limited to those who employ three hundred (300) or more designated retail employees nationally and employ more than ten (10) employees per retail establishment in the City of El Monte.
- b) To determine the number of designated retail employee employed for the current calendar year:
 1. The calculation is based upon the average number per calendar week of designated retail employee who worked for compensation during the preceding calendar year for any and all weeks during which at least one (1) designated retail employee worked for compensation. For hiring entities that did not have any designated retail employees during the preceding calendar year, the number of designated retail employees employed for the current calendar year is calculated based upon the average number per calendar week of designated retail employees who worked for compensation during the first ninety (90) calendar days of the current year in which the retail establishment engaged in business.
 2. All designated retail employees who worked for compensation shall be counted, including, but not limited to:
 - i. Designated retail employees who are not covered by this Urgency Ordinance; and
 - ii. Designated retail employees who worked in the City.

SECTION 6. Premium pay requirement.

- a) Hiring entities shall provide each covered retail employee with premium pay consisting of an additional Four Dollars (\$4.00) per hour for each hour worked. If a hiring entity already provides COVID-19-related hourly

premium pay as of the effective date of this Urgency Ordinance, such compensation may be credited towards the additional four dollars per hour of premium pay required by this Urgency Ordinance. Accordingly, compliance with this Urgency Ordinance may be achieved if a hiring entity provides COVID-19-related hourly premium pay in the full amount required by this Urgency Ordinance as of the effective date of this Urgency Ordinance and for the duration of its effectiveness, provided that all other requirements of this Urgency Ordinance are satisfied. In no event shall premium pay of any type provided prior to the effective date of this Urgency Ordinance be credited towards the premium pay required by this Urgency Ordinance.

- b) Unless extended by the City Council, the premium pay hiring entities are required to pay pursuant to Section 6(a), above, shall expire automatically upon the earlier of the following:
 - 1. One hundred twenty (120) days from the effective date of this Urgency Ordinance; or
 - 2. The fifteenth (15th) day following the date upon which the County of Los Angeles is classified as being in the Tier 4 Minimal (Yellow) category of the California Department of Public Health's Blueprint for a Safer Economy.

SECTION 7. Covered Retail Employees and consumer protection.

- a) No retail establishment shall, as a result of this Urgency Ordinance going into effect, take any of the following actions:
 - 1. Reduce a designated retail employee's compensation by reducing the base wage rate, overtime, holiday or other premium pay rate, hours of work, vacation, pension contributions, or other non-wage benefits of any designated retail employee, or by increasing charges to any designated retail employee for parking, uniforms, meals, or other work-related materials or equipment;
 - 2. Limit a covered retail employee's earning capacity.
- b) It shall be a violation if this Urgency Ordinance is a motivating factor in a retail establishment's decision to take any of the actions in Section 7(a) unless the retail establishment can prove that its decision to take the action(s) would have happened in the absence of this Urgency Ordinance going into effect.

SECTION 8. Notice of rights.

- a) Hiring entities shall provide covered designated retail employees with a written notice of rights established by this Urgency Ordinance. The notice of rights shall be in a form and manner sufficient to inform designated retail employees of their rights under this Urgency Ordinance. The notice of rights shall provide information on:
 - 1. The right to premium pay guaranteed by this Urgency Ordinance;
 - 2. The right to be protected from retaliation for exercising in good faith the rights protected by this Urgency Ordinance; and
 - 3. The right to bring a civil action for a violation of the requirements of this Urgency Ordinance, including a retail establishment's denial of premium pay as required by this Urgency Ordinance and a retail establishment or other person's retaliation against a covered retail

employees or other person for asserting the right to premium pay or otherwise engaging in an activity protected by this Urgency Ordinance.

- b) Hiring entities shall provide the notice of rights required by posting a written notice of rights in a location of the retail establishment utilized by employees for breaks, and in an electronic format that is readily accessible to the designated retail employees. The notice of rights shall be made available to the designated retail employees via smartphone application or an online web portal, in English and any language that the retail establishment knows or has reason to know is the primary language of the covered retail employee(s).

SECTION 9. Retail establishment records.

- a) Hiring entities shall retain records that document compliance with this Urgency Ordinance for covered designated retail employees.
- b) Hiring entities shall retain the records required by Section 9(a) for a period of two (2) years.
- c) If a retail establishment fails to retain adequate records required under Section 9(a), there shall be a presumption, rebuttable by clear and convincing evidence, that the retail establishment violated this Urgency Ordinance for each covered retail employee for whom records were not retained.

SECTION 10. Retail establishment records. No retail establishment employing covered retail employees shall discharge, reduce in compensation, or otherwise discriminate against any covered retail employee for opposing any practice proscribed by this Urgency Ordinance, for participating in proceedings related to this Urgency Ordinance, for seeking to exercise their rights under this Urgency Ordinance by any lawful means, or for otherwise asserting rights under this Urgency Ordinance.

SECTION 11. Violation. The failure of any respondent to comply with any requirement imposed on the respondent under this Urgency Ordinance is a violation. City shall not be responsible for any enforcement of this Urgency Ordinance

SECTION 12. Remedies.

- a) The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Urgency Ordinance is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.
- b) A respondent found to be in violation of this Urgency Ordinance for retaliation under Section 6 and 9 shall be subject to any appropriate relief at law or equity including, but, not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Urgency Ordinance, and liquidated damages in an additional amount of up to twice the unpaid compensation.

SECTION 13. Private right of action.

- a) Any covered retail employee that suffers financial injury as a result of a violation of this Urgency Ordinance, or is the subject of prohibited retaliation under Section 9, may bring a civil action in a court of competent jurisdiction against the retail establishment or other person violating this Urgency Ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be

appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a reasonable penalty payable to any aggrieved party if the aggrieved party was subject to prohibited retaliation.

SECTION 14. Encouragement of more generous policies.

- a) Nothing in this Urgency Ordinance shall be construed to discourage or prohibit a retail establishment from the adoption or retention of premium pay policies more generous than the one required herein.
- b) Nothing in this Urgency Ordinance shall be construed as diminishing the obligation of a retail establishment to comply with any contract or other agreement providing more generous protections to a covered retail employee than required by this Urgency Ordinance.

SECTION 15. Other legal requirements. This Urgency Ordinance provides minimum requirements for premium pay while working for a retail establishment 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 premium pay, or that extends other protections to designated retail employees; and nothing in this Urgency Ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nothing in this Section shall be construed as restricting a covered retail employee's right to pursue any other remedies at law or equity for violation of their rights.

SECTION 16. Exemption for collective bargaining agreement. All of the provisions of this Urgency Ordinance, or any part thereof, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of all or any of the provisions of this Urgency Ordinance.

SECTION 17. No waiver of right. Except for a collective bargaining agreement provision made pursuant to Section 15, any waiver by a covered retail employee of any or all provisions of this Urgency Ordinance shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a retail establishment to a covered retail employee to waive rights given by this Urgency Ordinance shall be a violation of this Urgency Ordinance.

SECTION 18. Environmental. This Urgency Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (Cal. Code Regs., tit.14, § 15378, subd. (a).) Further, this Urgency Ordinance is exempt from CEQA as there is no possibility that it or its implementation would have a significant negative effect on the environment. (Cal. Code Regs., tit.14, § 15061, subd. (b)(3).)

SECTION 19. Inconsistent Provisions. Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of this Urgency Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Urgency Ordinance.

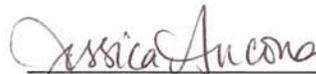
SECTION 20. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Urgency Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection,

subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 21. Construction. The City Council intends this Urgency Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Urgency Ordinance shall be construed in light of that intent. To the extent the provisions of the El Monte Municipal Code amended by this Urgency Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Urgency Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 22. Publication and Effective Date: The Clerk of the Council shall certify the adoption of this Urgency Ordinance and shall cause the same to be published as required by law. This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council by Government Code Sections 36934 and 36937 and shall be in full force and effect upon its adoption by a four-fifths (4/5) vote of the City Council.

PASSED, APPROVED AND ADOPTED by the City Council of the City of El Monte at the regular meeting on this 16th day of March, 2021.



Jessica Ancona, Mayor
City of El Monte

ATTEST:



Catherine A. Eredia, City Clerk
City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)

I, Catherine A. Eredia, City Clerk of the City of El Monte, hereby certify that the foregoing Urgency Ordinance No. 2998 was passed and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on this 16th day of March, 2021 and that said Urgency Ordinance was adopted by the following votes, to-wit:

AYES: Mayor Ancona, Mayor Pro Tem Martinez Muela, Councilmembers Herrera, Dr. M. Dr. Morales, and Puente

NOES: None

ABSTAIN: None

ABSENT: None


Catherine A. Eredia, City Clerk
City of El Monte