

# CITY OF OAKLAND

## REGULATIONS FOR THE ENFORCEMENT OF THE CITY OF OAKLAND'S EMPLOYMENT ORDINANCES

**Issued by:** Department of Workplace and Employment Standards, City of Oakland  
**Effective:** March 29, 2022<sup>1</sup>  
**Revised:**

### Introduction<sup>2</sup>

These Enforcement Regulations shall apply to the following City of Oakland (“City”) Employment Ordinances:

#### Minimum Wage and Sick Leave Ordinance (Measure FF)

In November 2014, Oakland voters passed Ballot Measure FF, the Minimum Wage and Sick Leave Ordinance. (“Minimum Wage Ordinance”). This Ordinance, codified at Oakland Municipal Code (“OMC”) Chapter 5.92, established a minimum wage in the City of \$12.25 per hour, commencing March 2, 2015. The Minimum Wage Ordinance requires that the minimum wage rate increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index (“CPI”) for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area. The City of Oakland uses the August-to-August change in the Consumer Price Index to calculate the annual increase, if any, in Oakland’s minimum wage rate. The current minimum wage rate shall be posted at [www.oaklandca.gov/minimumwage](http://www.oaklandca.gov/minimumwage).

The Minimum Wage Ordinance also requires that employers provide paid sick leave to their eligible employees beginning on March 2, 2015, in addition to requiring that hospitality employers who collect service charges from customers pay the charge to their hospitality workers who provide the service. The City declared the results of the general municipal election that approved the Minimum Wage Ordinance through Oakland City Council Resolution No. 85423 C.M.S.

#### Hotel Minimum Wage and Working Conditions Ordinance (Measure Z)

In November 2018, Oakland voters passed Ballot Measure Z, the Hotel Minimum Wage and Working Conditions Ordinance. (“Hotel Workers Ordinance”). This Ordinance, codified at OMC Chapter 5.93 et seq., requires Oakland hotels with 50 or more guest rooms or suites of rooms to provide employees who work alone in guest rooms with a panic button to report an ongoing crime, threat or other emergency, and support after using the provided button or after reporting an

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<sup>1</sup> These Rules and Regulations revise and expand upon the City of Oakland’s Rules and Regulations for the Enforcement of Oakland’s Minimum Wage Law (Measure FF), which became effective on May 4, 2016.

<sup>2</sup> This Introduction contains brief summaries of City Employment Ordinances, which are not a substitute for the Ordinances themselves. In case of any conflict between the summaries in this Introduction and the Ordinances, the Ordinances shall govern.

ongoing crime, threat or other emergency through other means. The support includes a right to reassignment based upon the employee's reasonable fear that their safety is at risk and paid time off to contact the police and consult a counselor or advisor of the employee's choosing, which may include family members, friends, licensed professionals, attorneys and advocates.

Additionally, the Hotel Workers Ordinance established a minimum wage for hotel workers of \$15 per hour with healthcare benefits or \$20 per hour without healthcare benefits, which increases annually by an amount corresponding to the prior calendar year's increase, if any, in the CPI for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area, starting on January 1, 2020. The Ordinance also establishes workload restrictions and limitations on mandatory overtime, guarantees employees access to records regarding the pay rate, daily workload and overtime, and protects employees against retaliation for exercising their rights under the Ordinance.

### **Hospitality and Travel Worker Right to Recall (“Right to Recall Ordinance” or “RTR Ordinance”)**

On July 31, 2020, the Oakland City Council amended the Oakland Municipal Code to require certain travel and hospitality businesses to rehire their laid-off workers before offering workers' positions to new hires. The RTR Ordinance requires employers who are rehiring for laid-off positions to offer the positions first to laid-off employees who are qualified for the positions and allow them at least ten days to respond to the offer. Where multiple laid-off employees are qualified for the same position, the business must rehire laid-off workers in the order of their seniority beginning with the worker who has the most seniority.

### **Protecting Workers and Communities During a Pandemic–COVID–19 Emergency Paid Sick Leave (“Emergency Paid Sick Leave Ordinance” or “EPSL Ordinance”)**

On May 12, 2020, the Oakland City Council amended the OMC to require that employers provide emergency paid sick leave (“EPSL”) to employees and compensate laid off employees for certain accrued paid sick leave immediately upon separation. Subsequently, the City Council amended the EPSL Ordinance, extending it until the expiration of Oakland's March 9, 2020 Declaration of COVID-19 Emergency declared by the City Administrator and ratified by Council Resolution 88075 on March 12, 2020; the Council has the authority to pass a resolution extending the emergency in accordance with Section 216 of the Oakland City Charter.

Subject to certain exemptions, the ordinance requires all employers to immediately provide:

- At least 80 hours of EPSL to each current employee (1) who worked at least 40 hours per week within the City between February 3, 2020 and March 4, 2020; or at any point thereafter; or (2) who is classified as full-time; and
- To each current employee who worked fewer than 40 hours per week between February 3, 2020 and March 4, 2020 and continued to do so after March 4, 2020, EPSL equal to the average number of hours the employee worked within the City over the 14 days

with the highest number of hours worked from February 3, 2020 through March 4, 2020.

The paid sick leave provided by the EPSL Ordinance is available if an employee is unable to work or telework for the COVID-19-related reasons enumerated in the ordinance. Employers may credit any paid sick leave provided under the federal Families First Coronavirus Response Act against their obligation to provide EPSL under this ordinance.

**Grocery Worker Hazard Pay Emergency Ordinance (“Grocery Workers Ordinance”)**

On February 2, 2021, the City Council enacted the Grocery Workers Ordinance, which requires large grocery stores to temporarily pay an additional five dollars an hour to their employees. This requirement is reduced for employers who voluntarily provide their employees with COVID-19-related hazard pay.

The Grocery Workers Ordinance is tied to the severity of the pandemic and remains in effect only while Alameda County remains in the Orange tier or higher. On June 8, 2021, the state of California lowered the risk status of Alameda County to a minimal level (Yellow), which means the ordinance no longer is in effect. On June 15, 2021, the state abandoned the county tier system as part of its reopening of the economy, which also signified a reduction of the risk of COVID-19 transmission to minimal, similarly triggering the end of the large grocers’ obligation to pay hazard pay to their employees under the Grocery Workers Ordinance.

**Enforcement Regulations**

The following regulations shall govern the enforcement procedures set forth in Oakland Municipal Code Section 5.92.050 and therefore govern the enforcement of the above City Employment Ordinances and any City Employment Ordinances enacted after the date these regulations are issued, unless otherwise specified.

**REGULATION #E1: DEFINITIONS**

The definitions provided in the City Employment Ordinances shall apply in these Enforcement Regulations. Additionally:

- A. “City” shall mean the City of Oakland.
- B. “DWES” shall mean the City’s Department of Workplace and Employment Standards of the Office of the City Administrator, which is responsible for monitoring compliance with the ordinances including but not limited to the investigation of alleged violations from complainants and Employees.

C. “City Attorney” shall mean the Office of the Oakland City Attorney.

“Employee” shall refer to the definitions of:

“Employee” in the Right to Recall Ordinance and Emergency Paid Sick Leave Ordinance;

“Hotel Employee” in the Hotel Worker Ordinance; and

“Covered Employee” in the Grocery Worker Ordinance.

D. “Employer” shall refer to the definitions of:

“Employer” in the Right to Recall Ordinance and the Emergency Paid Sick Leave Ordinance;

“Hotel Employer” in the Hotel Minimum Wage Ordinance; and

“Covered Employee” in the Grocery Worker Ordinance.

## **REGULATION #E2: RECORD KEEPING BY EMPLOYER AND CITY ACCESS**

A. Retention of Records

1. Each Employer shall comply with California and federal law regarding the maintenance of employee records.
2. Each Employer shall comply with any and all record-keeping requirements contained in each City Employment Ordinance, as applicable.

B. City Access to Records

1. Each Employer shall permit DWES and/or City Attorney representatives physical access to their worksites and relevant records, including but not limited to Employee personnel files, Employee wage records, Employee schedules, sign-in and sign-out records, handbooks, and/or written policies and procedures, postings, and collective bargaining agreements for the purpose of monitoring compliance and/or investigating complaints of noncompliance with City Employment Ordinances, including production for inspection and copying of any such employment records.
2. Each Employer shall permit the City to interview their Employees individually at the worksite during working hours without a supervisor, manager or other Employee present.
3. An Employer shall have fourteen (14) calendar days to comply with a written request from the City to produce records for inspection and copying and a written statement in response to a complaint of a violation of a City Employment Ordinance.

4. The City has discretion to grant additional time to an Employer to comply with a request to produce records for inspection and copying upon a written request demonstrating good cause for the need of additional time.
  5. An Employer's failure to comply with the City's request(s) may result in the issuance of a subpoena pursuant to OMC section 2.44.030, in addition to the assessment of fines and penalties in accordance with City Employment Ordinances.
- C. The City retains the right to conduct an investigation *sua sponte* (of its own accord) in accordance with Enforcement Regulation #E4 upon review of the Employer-provided information and documents.

### **REGULATION #E3: CITY COMPLAINT PROCEDURE AND EMPLOYER RESPONSE**

- A. DWES shall determine, whether an Employer violated the requirements of a City Employment Ordinance. DWES may investigate complaints on referral or on its own initiative. DWES's jurisdiction relates to investigations of potential violations of City Employment Ordinances. Employees and complainants seeking to redress state and federal employment claims, including wage and hour claims, should contact the appropriate enforcement agency, including the California Division of Labor Standards and Enforcement, California Department of Fair Employment and Housing, U.S. Equal Employment Opportunity Commission, and/or Oakland's City Attorney's Office.
- B. Any Employee or complainant who alleges a violation of a City Employment Ordinance may file a written complaint with the City through DWES.
1. These Enforcement Regulations shall not be construed to limit an Employee's right to bring legal action against their Employer for a violation of any other laws concerning wages, hours, or other standards or rights, nor shall the exhaustion of remedies under these Enforcement Regulations be a prerequisite to the assertion of any right contained in the City's Employment Ordinances, including the right to bring a civil action in court.
  2. If an Employee or complainant wishes to file a complaint with the City, the Employee and/or complainant must submit the complaint in writing to DWES. The City strongly encourages use of its complaint forms which can be found at <https://www.oaklandca.gov/departments/workplace-employment-standards> or 250 Frank Ogawa Plaza – 3<sup>rd</sup> Floor, Oakland, California 94612 (“Department of Workplace and Employment Standards”). DWES shall provide the complaint forms in English, Spanish, Chinese and Vietnamese and will strive to provide translated complaint forms in other preferred languages.

3. Whether an Employee or complainant uses a City complaint form or other method to document a complaint, a complaint of a violation of a City Employment Ordinance must be in writing and should contain the following:
  - a. Date;
  - b. Name of Employee or complaining party, unless anonymous complaint;
  - c. Address;
  - d. Phone number;
  - e. Name, address, and phone number of Employer that is the subject of the complaint;
  - f. Position/job title and brief description of job duties;
  - g. Date when employment began;
  - h. Date of termination (if applicable);
  - i. Name of manager/supervisor, employees or witnesses;
  - j. Name of union and union representative, if any;
  - k. Description of the alleged violation(s) of a City Employment Ordinance;
  - l. Rate of pay;
  - m. Description of payroll period and how Employee(s) are paid;
  - n. Average number of hours worked per week; and
  - o. Copies of pay stubs or other evidence of payment;
  - p. Records of hours worked; and
  - q. Attestation by the Employee or complaining party that the complaint is true and accurate to the best of their knowledge.
4. During the City's investigation, DWES or City Attorney's representatives may ask the Employee or complainant to provide additional information and/or documentation. Failure to comply with such requests may hinder the investigation and may result in a dismissal of the complaint.
5. The written complaint must be delivered to DWES via any of the following means:
  - a. U.S. Mail:  
  
City of Oakland  
Department of Workplace and Employment Standards  
250 Frank Ogawa Plaza, Suite 3341  
Oakland, CA. 94612  
Attn: Matt Berens
  - b. Hand delivery to the aforementioned address and/or
  - c. Electronic submission:  
[minwageinfo@oaklandca.gov](mailto:minwageinfo@oaklandca.gov)

6. Copies of the complaint may also be emailed to:  
[civilrights@oaklandcityattorney.org](mailto:civilrights@oaklandcityattorney.org)
- C. If an Employee or complainant chooses to file a complaint with DWES, the complaint must be received no later than **twelve (12) months** after the Employee and/or complainant knew or should have known of the alleged Ordinance violation.
1. DWES may consider a late-filed complaint if the Employee and/or complainant provides, in writing, good cause for the late submission. Reasons for good cause may include but are not limited to the following: a reasonable fear of retaliation from the Employer or an Employer's failure to comply with an Employment Ordinance's notice requirements.
  2. Nothing herein shall modify the time limits an Employee has to file a complaint with the California Division of Labor Standards and Enforcement, California Department of Fair Employment and Housing, U.S. Equal Employment Opportunity Commission, or any other federal, state, or local agency and/or court of law. In other words, filing a complaint with DWES does not stop the running of the statutes of limitations for filing such complaints; those time frames are specified in governing state and federal law.
- D. Upon receipt of a written Ordinance violation complaint that complies with Enforcement Regulation #E3(B), DWES shall provide the subject Employer with written notice of the complaint. DWES's written notice will include a general summary of the allegations in the written complaint, a list of documents and information demanded by DWES for its investigation as set forth in Enforcement Regulation #E4, and an opportunity to respond to the complaint or investigation. *See* Regulation #E4(C) for information regarding the City's efforts to protect the confidentiality of the Employee or other complainant.

#### **REGULATION #E4: CITY INVESTIGATION**

- A. After receipt of a written complaint, the assigned DWES investigator will conduct an investigation that may include but is not limited to the following:
1. Interview, in private, the complaining Employee and/or other Employees who work for the subject Employer;
  2. Request and review Employer's written response or position statement pursuant to the complaint;
  3. Demand, examine, and analyze the records of the Employer, including but not limited to, personnel files, payroll records, DE-9 forms, sign-in and sign-out records, schedules, wage records, paid time off records, employee handbooks, written policies and procedures, relevant forms and emails, and collective bargaining agreements, where applicable. Failure to provide requested documents in a timely manner may result in DWES issuing fines and/or penalties.

4. Interview the Employer and/or Employer-provided witnesses;
  5. Make additional document demands and information requests to further investigate the complaint; and
  6. Inspect Employer's premises where the complaining Employee works to interview employee witnesses and/or request and inspect documents and postings.
- B. During DWES's investigation, Employer and Employee or complainant may attempt to resolve the complaint through settlement discussions facilitated through DWES. The City encourages the Employer to immediately remedy any Ordinance violations rather than waiting for the conclusion of DWES's investigation.
- C. The City will reasonably strive to keep confidential during an investigation, the name and identifying information of the Employee or complainant reporting the violation in light of the City's legal obligations pursuant to the California Public Records Act and Oakland's Sunshine Ordinance, in addition to balancing the need to conduct a thorough and complete investigation and the Employer's due process rights in the investigation. Prior to releasing an Employee's name, DWES will provide advanced, written notice to the Employee.
1. DWES cannot guarantee the confidentiality of complaints. Information provided and produced by an Employer, Employee, and/or complainant will be disclosed as required by state and federal law, including the California Public Records Act and Oakland's Sunshine Ordinance.
  2. DWES may consult with the City Attorney throughout its investigation.
  3. DWES may refer a complaint to the City Attorney at any point during or after the investigative process, either before or after issuance of a Notice of Determination. The City Attorney has full discretion to conduct its own investigation or to return the complaint to DWES for further handling pursuant to Regulations # E6; and/or to file a civil action to remedy the violation(s).
- D. Employer must provide DWES access to its records and premises for the purposes of the investigation within a reasonable time frame. If an employer unreasonably fails to produce requested documentation, fails to allow access to the worksite or the employees for interviews, or otherwise unreasonably fails to cooperate with DWES in any investigation, DWES may consider the Employer to be out of compliance with a City Employment Ordinance.
- E. No Employer shall retaliate against an Employee for exercising their rights or otherwise asserting their rights under a City Employment Ordinance. An Employee claiming retaliation after filing a written complaint pursuant to these Enforcement Regulations may separately report the alleged retaliation in accordance with Enforcement Regulation #E3. DWES will either investigate



complaints of retaliation and/or refer the complaint to the City Attorney, the Division of Labor Standards and Enforcement, Department of Fair Employment and Housing, and/or the Equal Employment Opportunity Commission.

#### **REGULATION #E5: CITY DETERMINATION**

Upon completion of its investigation, DWES issues a written decision to all affected parties, including the Employee or complainant, if any, and the subject Employer.

- A. If DWES determines there has been no violation of a City Employment Ordinance, the Employer and Employee or complainant, if any, will be notified in writing of its determination and the investigation will be concluded and formally closed.
- B. If DWES determines an Employer violated a City Employment Ordinance but said violation was corrected by the Employer during the investigation, DWES may do the following: issue a written notice advising of the results of its investigation, including a statement that the Employer remedied the Ordinance violation(s); award any remaining restitution owed by Employer to Employees; assess penalties against the Employer due to the previous violation(s); refer the matter to the City Attorney's Office; and/or follow-up with the Employer to ensure ongoing compliance with the City Employment Ordinance.
- C. If DWES determines the subject Employer violated a City Employment Ordinance and has not corrected such violation(s), DWES will issue a written decision in accordance with Enforcement Regulation #E6.
  - 1. The City Attorney may, within its full discretion, file a civil action to remedy the Ordinance violation(s) or return the complaint to DWES for further handling pursuant to Regulations # E6.
  - 2. If the City Attorney foregoes filing a civil action over the Ordinance violation, DWES may refer the complaint to the Division of Labor Standards Enforcement or any other appropriate state or federal agency for further investigation and adjudication.
  - 3. Even if the Division of Labor Standards Enforcement declines to investigate a complaint or fails to respond in a timely manner, DWES may proceed with issuing the Determination Report pursuant to Regulations # E6.

## **REGULATION #E6: NOTICE OF DETERMINATION**

- A. Upon conclusion that the Employer violated the Ordinance, DWES shall issue a written Notice of Determination which will include the following:
1. Complaint number;
  2. Date of violation;
  3. Identification of the City Employment Ordinance and section(s) the Employer violated;
  4. Location where the violation occurred, including full address;
  5. Amount of restitution and/or method by which Employer must determine amount of restitution, administrative penalties, and/or City costs the Employer owes and description of other corrective action DWES is seeking, including a deadline and location where the restitution, administrative penalties, and/or City costs shall be paid; and
  6. Notice of the Employer's right to a review process by filing an appeal pursuant to Enforcement Regulation #E7 and the filing deadline.
  7. DWES will issue the Notice of Determination to the Employer with a copy of the Notice of Determination to the City Attorney. The City Attorney's Office shall have thirty (30) calendar days from the date of the Notice of Determination to evaluate, within its sole discretion, whether it will initiate a civil action to remedy the Ordinance violation(s), in addition to any other state and federal law claims.
    - a. If the City Attorney chooses to pursue a civil lawsuit, the Office will give written notice to the Employer and Employee(s) of such intention within the timeframe set forth in Regulation #E6(A)(7).
    - b. If the City Attorney does not issue written notice of its intent to pursue a civil action against the Employer, the Employer may appeal DWES's Determination Report as set forth in Regulation #E7.
- B. Once DWES has notified an Employer of an Employment Ordinance violation and the City Attorney foregoes issuing written notice of its intent to initiate a civil action, the Employer must correct the Ordinance violation if it has not already done so, in addition to providing back pay or restitution to the Employee(s), and any other lawful remedy set forth in the Notice of Determination.
1. If an Employer is ordered to pay restitution or administrative penalties, it shall remit payment to DWES within forty-five (45) calendar days of the date of the Determination Report. DWES will ensure payment to the

affected Employee(s). Employers shall ensure all proper payroll deductions are withheld from wages paid to Employee(s).

2. If an Employer is ordered to compensate the City for the costs of investigating and remedying the Ordinance violation, it shall remit payment to DWES within forty-five (45) calendar days of the date of the Notice of Determination.
3. DWES has the discretion to grant the Employer additional time to comply with the Notice of Determination if the Employer makes a written request demonstrating the following: good cause for the need for additional time; a written declaration under attestation (i.e., a sworn statement by someone with personal knowledge) that it will come into compliance with the City Employment Ordinance it violated and will remedy the violation(s) ensure prompt payment of restitution and/or administrative penalties to affected Employee(s), and, if ordered, ensure prompt payment of the City's costs.

- C. The Notice of Determination will become the final decision of DWES unless the Employer appeals in accordance with Regulation #E7.

**REGULATION #E7 – ADMINISTRATIVE APPEAL AND HEARING UPON DETERMINATION FROM THE DEPARTMENT OF WORKPLACE AND EMPLOYMENT STANDARDS.**

- A. An Employer may dispute DWES's investigation determination and Determination Report through an appeal process. The timelines set forth in Regulation #E7 do not commence running until the expiration of the thirty (30) calendar day window set forth in Regulation #E6(A)(7).
1. If the City Attorney provides written notice of its intent to pursue a civil action against the Employer pursuant to Regulation #E6(A)(7), the Employer may not pursue an appeal.
  2. An appeal shall involve a hearing conducted by a neutral independent hearing officer ("Hearing Officer").
  3. The administrative hearing for violations of a City Employment Ordinance(s) will be conducted pursuant to any rules and procedures adopted by DWES.
  4. The City Attorney shall represent DWES in administrative hearings.
- B. Appeal Process:
1. An appeal must be received by DWES within twenty-one (21) calendar days of the expiration of the thirty (30) calendar day window set forth in Regulation #E6(A)(7) or the Employer shall have waived its rights under

this Section. If DWES's decision is served only via U.S. mail, Employer shall have an additional five (5) calendar days to submit an appeal.

2. All appeals shall be both mailed to the Department of Workplace and Employment Standards, 250 Frank Ogawa Plaza, Suite 3341, Oakland, California 94612, Attn: Director of Department of Workplace and Employment Standards and emailed to [minwageinfo@oaklandca.gov](mailto:minwageinfo@oaklandca.gov).
3. Upon receipt of a properly and timely submitted appeal, DWES will give written notice to all affected parties, including a copy of Employer's Request for Appeal and indicate whether the Employer shall post a bond or other security. This is referred to as the Notice of Appeal.

C. The Employer's Request for an Appeal must be in writing and shall contain the following:

1. Full Name and address, and telephone number of the appealing party;
2. Complaint number;
3. A copy of the Notice of Determination;
4. Identification of the Employer designee who will attend the administrative hearing;
5. A written statement setting forth the specific facts and legal arguments supporting the appeal;
6. The signature of the representative for the Employer; and
7. The verification (by declaration under penalty of perjury) of at least one representative for the Employer as to the truth of the matters stated in the Request for Appeal.

D. Within ninety (90) calendar days of the receipt of a Request for Appeal that complies with Enforcement Regulation #E7(C), a Hearing Officer will be appointed and will make reasonable attempts to schedule an administrative hearing.

E. The appointed Hearing Officer shall be neutral and independent and shall not be selected either by DWES or the City Attorney.

1. The City Administrator or designee shall make best efforts to establish an ordered list of two Hearing Officers. Cases will be assigned to the Hearing Officers in order on the list. If a designated Hearing Officer is not available during the 90 days after the case is assigned, the case will be re-assigned to the Hearing Officer next in order. If the City has only one Hearing Officer, cases will be assigned to that Hearing Officer.

2. The appointed Hearing Officer shall not be a City employee.
  3. DWES will provide written notice of the appointed Hearing Officer.
  4. DWES shall provide the Hearing Officer with its Notice of Determination, the Employer's Request for an Appeal, and the Respondent's prehearing response to the Notice of Appeal.
  5. The Hearing Officer will schedule the date, time, and location of the administrative hearing with input from the parties within a reasonable time after receiving the hearing referral.
- F. No later than forty-five (45) calendar days prior to the hearing date, unless the parties mutually agree otherwise, each party shall provide to the other, in writing, a list of all witnesses and exhibits that will be relied upon at the appeal hearing, except that the City need not disclose rebuttal witnesses, if any, until the conclusion of the Employer's case at the hearing. The Employer shall not submit any new evidence or documents that it did not provide to DWES during the initial investigation unless the Employer can demonstrate to the Hearing Officer good cause why it did not provide the information, evidence or documents during the initial investigation.
- G. A party may seek a continuance of a scheduled administrative hearing only for good cause and in the interest of justice.
1. All requests for continuances shall be sent to the Hearing Officer.
    - a. "Good cause" shall include, but is not limited, to the following:
      - 1) The illness of a party, an attorney or other authorized representative of a party, or a material witness of a party;
      - 2) Verified travel outside of Oakland scheduled before the receipt of notice of the hearing; and
      - 3) Any other reason that makes it impractical to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans which cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause."
    - b. The parties may agree to a postponement at any time upon approval by the Hearing Officer.
    - c. Requests for postponement of a hearing must be made in writing at the earliest date possible, with supporting documentation attached. The party requesting a postponement should notify the other parties of the request and provide them with any supporting documentation.

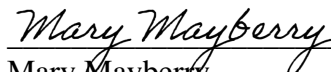
2. Attendance at the administrative hearing by the Appellant and Respondent shall be mandatory. If a party fails to appear at a properly noticed hearing or fails to file a written excuse for non-appearance prior to a properly noticed hearing, the Hearing Officer may, as appropriate: continue the case; decide the case on the record in accordance with these regulations; dismiss the case with prejudice; or proceed to a hearing on the merits.

H. Conduct of Hearing:

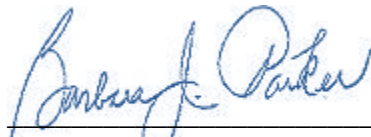
1. Oral evidence shall be taken only on oath or affirmation.
2. Each party shall have the following rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called the witness to testify; and rebut the evidence against them.
3. The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence that responsible persons are accustomed to relying upon in conducting serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. In the absence of a timely and proper objection, relevant hearsay evidence is admissible for all purposes. Proffered hearsay evidence to which a timely and proper objection is made is admissible for all purposes, including as the sole support for a finding, if (a) it otherwise would be admissible under the rules of evidence applicable in a civil action or (b) the Hearing Officer determines, in his or her discretion, that, based on all the circumstances, it is sufficiently reliable and trustworthy. The rules of privilege shall be effective to the extent that a statute otherwise requires that they be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.
4. Stipulations: The parties, by stipulation in writing filed with the Hearing Officer, may agree upon the facts or any portion thereof that are involved in the hearing. The parties may also stipulate as to the testimony that a witness would give if the witness were present. The Hearing Officer may require additional evidence on any matter covered by stipulation.
5. Record of Proceedings: All proceedings before the Hearing Officer, except settlement discussions, shall be recorded by tape, stenographer or other electronic means. A party may order a transcript, provided that such party makes a copy for the Hearing Officer and pays the transcript cost.
6. Personal Appearances, Representation by Lawyer/Agent: In any proceeding before the Hearing Officer, both parties are entitled to representation at any stage of the administrative hearing. The City Attorney shall represent DWES. If the Employee(s) and/or the Employer(s) wishes to have

representation at the hearing, such representatives need not be attorneys. Each party and/or attorney appearing at the hearing shall file a written notice of appearance with the Hearing Officer, which notice shall become part of the record.

- I. Within ninety (90) calendar days of the close of the administrative hearing, the Hearing Officer shall issue to Appellant and Respondent, including DWES, a written decision granting or denying the appeal.
  1. The Hearing Officer shall make written findings of fact and a written decision regarding the Employer’s alleged violation(s).
  2. The decision may be published for review by the public on the City’s website and is subject to the requirements of the Public Records Act and Oakland’s Sunshine Ordinance.
  3. The decision of the Hearing Officer shall be final and binding except as provided for under state law.
  4. If a party proceeds with a Writ of Mandate pursuant to California Civil Code section 1094.6 et seq., “[a]ny such petition shall be filed not later than the 90th day following the date on which the decision becomes final.”
  5. Failure to comply with the Hearing Officer’s decision (or Notice of Determination that has not been appealed), may result in DWES referring the matter to the City Attorney which may take any appropriate, lawful enforcement action, including but not limited to the initiation of a civil action, to secure compliance by Employer.

  
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Mary Mayberry  
Interim Director, DWES

April 8, 2022  
Date

  
\_\_\_\_\_  
Barbara J. Parker  
City Attorney

April 7, 2022  
Date