

Frequently Asked Questions: Cupertino Minimum Wage

Q: What is the Cupertino Minimum Wage Ordinance?

A: The ordinance requires employers that maintain a place of business in Cupertino or are subject to the City of Cupertino Business License to pay the Cupertino minimum wage to each employee who performs at least two hours or more per week of work in city limits. The City Council adopted the ordinance on October 4, 2016 to increase minimum wage to \$15.00/hour by 2019.

Q: When was the Cupertino Minimum Wage Ordinance adopted and when does it go into effect?

A: The new Cupertino Minimum Wage Ordinance was enacted by City Council on October 4, 2016 and went into effect 30 days later on November 3, 2016. However, the minimum wage did not change until January 1, 2017.

Q: How much is the Cupertino minimum wage rate?

A: As of January 1, 2018, the Cupertino minimum wage rate will be \$13.50 per hour.

Q: What is the difference between the Federal, State and Cupertino minimum wage laws?

A: Cupertino employers are subject to Federal, State and City of Cupertino minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the strictest standard – that is, the one that is most favorable to the employee. Since Cupertino's ordinance requires a higher minimum wage rate than the State and Federal law, covered employers are required to pay the Cupertino minimum wage. As of January 1, 2017, Federal Minimum Wage is \$7.25 per hour; California Minimum Wage is \$10.50 per hour; and the Cupertino minimum wage is \$12.00 per hour. Beginning January 1, 2018, Federal Minimum Wage is \$7.25 per hour; California Minimum Wage is \$11.00 per hour for employers with more than 25 employees and \$10.50 for employers with less than 25 employees; and the Cupertino minimum wage is \$13.50 per hour.

Q: How is the Cupertino minimum wage adjusted?

A: The Cupertino minimum wage will be adjusted as follows: \$12.00 per hour on January 1, 2017, \$13.50 per hour on January 1, 2018, and \$15.00 per hour on January 1, 2019. Beginning January 1, 2020, and on every January 1 thereafter, the Cupertino minimum wage will increase by an amount corresponding to the prior year's Regional Consumer Price Index as reported by the U.S. Department of Labor's Bureau of Labor Statistics. The intent of this increase is to adjust for inflation.

Q: What are the administrative requirements for covered employers under the Cupertino Minimum Wage Ordinance?

A: In addition to payment of the minimum wage, covered employers are required to:

- (1) Post a notice at the workplace of the current and prospective minimum wage rates and the employees' rights under the Ordinance;
- (2) Maintain payroll records for a period of four (4) years; and
- (3) Provide in writing to each employee at time of hire with employer's name, address and telephone number.

The Minimum Wage Ordinance prohibits retaliation or discrimination against any person seeking to enforce the rights provided by the Ordinance.

Q: What are the penalties for violation of the Cupertino minimum wage?

A: The City of Cupertino may issue daily fines currently set at \$50 or initiate a legal action for injunctive relief and damages. Employees may also bring a civil action for back payment and daily penalties of \$50, reinstatement in employment and/or injunctive relief.

Applicability

Q: Does the ordinance on the Cupertino minimum wage cover employees who work in Cupertino, but are not Cupertino residents?

A: Yes. Any person, who performs at least two hours of work in a calendar week for an employer that maintains a facility in the City of Cupertino or is required to pay the Cupertino Business License fee, is entitled to be paid the Cupertino minimum wage.

Q: Does the Cupertino minimum wage apply to full-time and part-time employees?

A: Yes, the ordinance applies to any person who performs at least two hours of work in a calendar week for an employer covered by the ordinance.

Q: Does the Cupertino Minimum Wage Ordinance apply to undocumented workers?

A: Yes. All workers in Cupertino, whether or not they are legally authorized to work in the United States, are protected. The City's Office of Equality Assurance will process and investigate a wage claim without regard to a worker's immigration status. Workers filing a claim with the City's Office of Equality Assurance will not be questioned about their immigration status.

Q: Does the minimum wage apply to employees under the age of 18?

A: Yes. All employees who perform at least two hours of work per calendar week in Cupertino must be paid at least Cupertino minimum wage regardless of the age.

Q: My business is a family run business. Do I need to pay my parent, spouse or child the Cupertino minimum wage?

A: No. Consistent with California Labor Code Section 3352(a), individuals who are the parents, spouses or children of the employers are not covered by the Cupertino minimum wage. Domestic partners are also excluded under the Cupertino Minimum Wage Ordinance. However, an employer must pay the required Cupertino minimum wage rate to any other person who performs more than two hours of work in a calendar week and qualifies as an employee entitled to payment of the minimum wage from any employer under the California Minimum Wage law as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

Q: My company is not located in Cupertino, but I have employees who work in Cupertino. Would the Cupertino Minimum Wage Ordinance apply?

A: Yes. Even though the company does not maintain a facility in Cupertino, it is conducting business in Cupertino and is required to pay the Cupertino Business Tax. The Ordinance requires employers who

maintain a facility in Cupertino or employers that are subject to the Cupertino Business Tax to comply with the Cupertino Minimum Wage Ordinance.

Q: Are salaried employees exempt from the Cupertino Minimum Wage Ordinance?

A: Yes. Salaried employees are subject to the state law. The current law requires a minimum monthly salary of no less than two times the state minimum wage for full-time employment. Additional information is available at <http://www.labor.ca.gov/>.

Q: Are residential care facilities located in Cupertino required to pay the Cupertino minimum wage?

A: Yes. Although state law exempts residential care facilities for six or fewer elderly persons from the City's business license tax, all residential care facilities, regardless of number or type of occupant, are required to pay local minimum wage to employees when located in Cupertino.

Q: Are government agencies with sites in Cupertino subject to the Cupertino Minimum Wage Ordinance?

A: State and federal agencies, including school districts, are not required to pay minimum wage when the work performed is related to their governmental function. However, for work that is not related to their governmental function (for example, booster or gift shops, non-K-12 cafeterias, on-campus pubs, and the like), minimum wage is required to be paid. Minimum wage is also required to be paid by lessees or renters of facilities or space from the government agency.

Q: Is the Cupertino minimum wage the same for employees of non-profit agencies?

A: Yes. All employees who perform at least two hours of work per calendar week in Cupertino must be paid at least Cupertino minimum wage regardless of the employer's nonprofit status.

Q: A company located outside of the Cupertino City limits provides personal attendants to care for disabled adults in their homes and some of these adults reside in Cupertino. Would the Cupertino Minimum Wage Ordinance apply?

A: Yes. Even though the company does not maintain a facility in Cupertino, it is conducting business in Cupertino and is required to pay the Cupertino Business Tax. The Ordinance requires employers who maintain a facility in Cupertino or employers that are subject to the Cupertino Business Tax to comply with the Cupertino Minimum Wage Ordinance.

Q: A worker hired by a temp agency located in Cupertino is working outside of Cupertino. Does the Cupertino minimum wage apply?

A: No. Because the work is performed outside of Cupertino, the agency is not required to pay the Cupertino minimum wage.

Q: Does the ordinance apply to rideshare and taxi companies that work in or pass through Cupertino?

A: Taxi companies are required to have a business license with the City of Cupertino if they do business within the City limits and are required to pay Cupertino's minimum wage rate. Other rideshare companies are regulated by the CPUC and are not required to pay the Cupertino minimum wage rate.

Q: Are there any exemptions to the Cupertino Minimum Wage Ordinance?

A: Yes, there is waiver for collective bargaining listed in Section 3.37.050.

Q: May employers use tips or fringe benefits (health insurance, vacation, sick leave) to pay the Cupertino minimum wage?

A: No. An employer may not use an employee's tips or fringe benefits as a credit towards the employer's obligation to pay the Cupertino minimum wage.

Q: May commissions be counted toward payment of the Cupertino minimum wage?

A: Yes. Commissions may be counted toward payment of the Cupertino minimum wage when the commissions are earned and paid together with other compensation paid to an employee and are equal to or greater than the current Cupertino minimum wage. For each pay period, employers must pay the employee an amount that equals or exceeds the hours that the employee worked multiplied by the current Cupertino minimum wage. If the employee's commissions for the pay period together with other compensation earned are less than that amount, the employer must pay the difference. Whether the employer may thereafter recover any amounts based on commissions that the employee earns in a later pay period or which are paid at a later date depends on whether the employer and employee have an enforceable written agreement.