



# Grocery Employee Hazard Pay Ordinance

## Questions and Answers

Seattle’s Grocery Employee Hazard Pay (GEHP) Ordinance requires certain grocery businesses in Seattle to pay hazard pay of \$4 per hour to employees who work at a retail store during the COVID-19 emergency. This hazard pay requirement will be in effect from 12:01 AM on February 3, 2021 until the end of the COVID-19 civil emergency.

The **Seattle Office of Labor Standards (OLS)** is responsible for the administration of this ordinance, providing outreach, compliance assistance and enforcement services to workers and employers.

If you have a question that this Q&A does not cover, visit the [Office of Labor Standards website](#). You may also call 206-256-5297 or reach us electronically:

- Employees with questions and complaints – submit an [online inquiry form](#).
- Employers with requests for technical assistance – send an email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov) or submit an [on-line inquiry form](#).

*The Office of Labor Standards created this document to provide an explanation of the law. **Note:** Information provided by the Office of Labor Standards does not constitute legal advice, create an agency decision, or establish an attorney-client relationship with the reader.*

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## **A. General Information**

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**1. When did the Seattle Grocery Employee Hazard Pay (GEHP) Ordinance take effect?**

The ordinance took effect at 12:01 AM on February 3, 2021.

**2. How long will the GEHP Ordinance be in effect?**

The requirement to provide Grocery Employee Hazard Pay will be in effect until the end of the COVID-19 civil emergency. OLS may investigate potential violations of the ordinance up until three years following the end of the civil emergency. Covered employers must also retain records for three years following the end of the civil emergency.

**3. Which City department implements this law?**

The City of Seattle's Office of Labor Standards (OLS) implements this law. OLS provides a range of services for employees and employers, including education, training, compliance assistance, intake and investigations.

**4. Where do employees call with questions? Can employees remain anonymous?**

Employees can call 206-256-5297, email [workers.laborstandards@seattle.gov](mailto:workers.laborstandards@seattle.gov), or submit an [online inquiry](#). Upon request, and to the extent permitted by law, OLS protects the identifying information (e.g. name, job title) of employees who report violations and witnesses who provide information during investigations. OLS will not disclose the person's identifying information during and after the investigation, to the extent permitted by law. OLS may need to release names of employees who are owed payment as a result of an investigation.

**5. What happens when employees call OLS?**

Employees may call OLS with questions or complaints. When employees call OLS, they will be directed to an intake investigator who will provide information about the law or gather information about issues at the workplace. If employees wish to make a complaint, OLS may collect information from additional witnesses and/or request documents from employees. After reviewing information provided by employees, OLS will decide if and how it can help, which may take a variety of forms, including simply providing information to the employer, trying to informally resolve the issue without a full investigation, or conducting a formal investigation. If OLS decides to investigate, and if OLS cannot investigate the employer immediately, it may place the case on a waitlist.

**6. Does an employee's immigration status impact coverage or application of this law?**

No, immigration status does not impact coverage/application of the ordinance. As a matter of policy, the City of Seattle does not ask about the immigration status of anyone using City services. Read [OLS' Commitment to Immigrant and Refugee Communities](#) for more information.





## 7. Can employers call OLS with their questions?

Yes! OLS provides compliance assistance and training for employers. Employers can call 206-256-5297, send an email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov), or submit an [on-line inquiry form](#). OLS does **not** share information about employer questions with our enforcement team. Phone conversations and email conversations with employers are kept separate from the investigation process.

## 8. What happens when an employer calls OLS with a question about compliance?

OLS encourages employers to call or email their questions to our office. Our goal is to help employers attain full compliance with Seattle's labor standards and we will answer many types of labor standards questions. OLS has staff dedicated to business engagement who respond to employer inquiries and who are not members of the enforcement team. Phone conversations and email exchanges with the business engagement staff are kept entirely separate from the investigation process.

Note: The information provided by our business engagement team is not intended to be and should not be construed as legal advice.

## 9. Does OLS provide language interpretation for its services?

Yes. If OLS staff do not speak your preferred language, OLS will arrange for an interpreter to help with the conversation. OLS's services are free of charge regardless of whether interpretation services are required.

## 10. Can employers offer more hazard pay than required by the ordinance?

Yes. The ordinance sets the minimum requirements for Grocery Employee Hazard Pay; it does not prevent employers from establishing additional compensation policies.

## 11. Can employees waive their rights to hazard pay under the ordinance?

No, individual employees cannot waive their rights under the ordinance.

## B. Employer Coverage

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### 12. Which employers are required to provide Grocery Employee Hazard Pay?

The law applies to Grocery Businesses that employ more than 500 employees worldwide. Grocery Businesses are defined as retail stores that are either:

1. Over 10,000 square feet in size and primarily engaged in retailing groceries, including, but not limited to: fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages, baked foods, and/or prepared foods; or





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2. Over 85,000 square feet, with 30 percent or more of its sales floor area dedicated to sale of groceries.

**13. How will OLS know whether a particular grocery store meets the threshold for coverage with respect to square footage requirements?**

OLS will make a reasonable estimate as to whether an employer meets the square footage requirements to be considered a “grocery business” by examining any available records. The employer bears the burden of proof to show that the employer is not a “grocery business,” and could produce floor plans or other records to show that they do not meet the square footage requirements to be covered under the law.

**14. How will OLS know whether a particular grocery store is “primarily engaged in retailing groceries”?**

OLS may consider any number of factors to determine whether a store is primarily engaged in retailing groceries, looking at the facts of each case. The factors OLS may consider include, but are not limited to: grocery sales as a percentage of the retail store’s overall sales; sales floor area dedicated to grocery sales; marketing or promotional materials from the employer; or other public statements from representatives of the employer.

**15. Does the GEHP Ordinance apply to the following businesses?**

The following answers relate to GEHP Ordinance coverage for the following employers:

**a. Stores that primarily sell alcoholic beverages?**

Yes. The ordinance states that “groceries” include beverages. Retail stores that are primarily engaged in retailing beverages are covered by the ordinance.

**b. Drug stores?**

Given the square footage size requirements of the ordinance, drug stores are likely not covered even if they are selling a limited line of groceries. However, OLS will look at the factors described in Question 14 above, as well as the square footage thresholds described in Question 12, to make a case-by-case determination if necessary.

**c. Stores that sell a combination of groceries and other non-grocery household items (e.g. clothing)?**

Maybe. Again, OLS will look at the square footage requirements as described in Question 12, and the factors described in Question 14, to make a case-by-case determination if necessary.

**d. Stores that are part of a larger building or marketplace?**

Probably not. If a smaller vendor is just subleasing space from a marketplace, they would not be covered. However, if a marketplace-type establishment with multiple vendors in a single





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location could be interpreted as a joint employer or integrated enterprise with those vendors, and has more than 500 employees worldwide, they might be covered. See Questions 21 and 25 for more information.

**e. Farmer's markets?**

No. The law excludes farmers markets that have permits to operate in the City of Seattle.

**f. Convenience stores?**

No. The law explicitly excludes convenience stores or food marts primarily selling a limited line of goods.

**16. How does an employer determine if they have more than 500 employees?**

An employer determines their size by calculating the average number of employees who worked for compensation each calendar week during the prior calendar year. An employer should include any week during which at least one employee worked. Employers should not include weeks where no employees worked. All employees worldwide are counted, including:

- Full-time employees
- Part-time employees
- Temporary or seasonal employees, including employees of a staffing agency or similar entity.
- Jointly-employed employees
- Paid interns
- Work study employees
- All employees of a franchise or a network of franchises in the United States

**17. Does an employer's size count employees working outside of Seattle?**

Yes. An employer's schedule size counts all employees worldwide.

**18. Does an employer's size count full-time equivalent employees (FTEs) or each employee?**

An employer's schedule size counts each employee regardless of whether that employee is full-time, part-time, temporary, etc.

**19. How do new employers determine the number of employees?**

Employers that did not have any employees during the previous calendar year count the average number of employees employed per calendar week during the first 90 calendar days of the current year of business.





## **20. How is a temporary worker obtained through a staffing agency counted for business size? Is the temporary worker counted as an employee of both the staffing agency and the contracting employer?**

If the staffing agency and contracting employer are joint employers of the temporary workers, then both employers count the temporary worker to determine schedule size. The temporary worker is counted twice for this purpose.

## **21. What are joint employers?**

Separate business entities (with separate owners, managers & facilities) may be treated as joint employers under this ordinance. An individual may also be a joint employer. While a joint employment relationship generally exists when an employee performs work that benefits two or more employers, the final determination depends on several nonexclusive factors that are part of an “economic realities test.” The five primary factors are:

- 1) The nature and degree of control of the workers;
- 2) The degree of supervision (direct or indirect) of the work;
- 3) The power to determine the pay rates or the methods of payment of the workers;
- 4) The right (directly or indirectly) to hire, fire or modify the employment conditions of the workers; and
- 5) Preparation of payroll and the payment of wages.

Other factors include:

- Whether the work is a specialty job on the production line;
- Whether responsibility between a labor contractor and an employer passes from one labor contractor to another without material changes;
- Whether the premises and equipment of the employer are used for the work;
- Whether the employees have a business organization that shifts as a unit from one work site to another;
- Whether the work is piecework and not work that requires initiative, judgment or foresight (i.e. considering if the service rendered requires a special skill);
- Whether the employee has an opportunity for profit or loss depending upon the employee's managerial skill;
- Whether there is permanence in the working relationship; and
- Whether the service rendered is an integral part of the employer's business.

For more information, see the U.S. Department of Labor’s [Factsheet on Joint Employment](#).<sup>1</sup>

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<sup>1</sup> Although this document was withdrawn by the Department of Labor, OLS continues to rely on this guidance because its reasoning is persuasive and consistent with caselaw.





**22. How does an employer determine business size if an employee is jointly employed by two employers?**

Each employer counts the employee in their determination of schedule size, regardless of whether the employee is maintained on only one of the employers' payrolls.

**23. Are both joint employers responsible for complying with the ordinance (e.g. workplace poster, payment of hazard pay, record-keeping)?**

Yes.

**24. How do employers determine if they are part of a franchise? Some business agreements use words like "affiliate" or "chapter," rather than franchise.**

A franchise is an agreement in which:

- A person is granted the right to sell or distribute goods or services under a marketing plan prescribed or suggested in substantial part by a grantor or its affiliate.
- The business operation is substantially associated with a trademark, trade name, advertising, or other symbols owned or licensed by the grantor or its affiliate.
- The person is required to pay a franchise fee. [See RCW 19.100.010 for more details.](#)

**25. How do employers determine if they are a part of an integrated enterprise?**

An integrated enterprise is a business relationship in which one separate entity controls the operation of another entity. To determine schedule size, separate entities that form an integrated enterprise are considered a single employer.

Factors to consider in making this assessment include (but are not limited to):

- Degree of interrelation between the operations of multiple entities;
- Degree to which the entities share common management;
- Centralized control of labor relations; and
- Degree of common ownership or financial control over the entities.

Separate legal entities that share some degree of interrelated operations and common management are generally considered separate employers (i.e. not integrated enterprises) for the purposes of this ordinance **as long as** they are substantially in separate physical locations from one another and each separate legal entity has partially different ultimate ownership.



## C. Employees

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### 26. Who is covered by the Grocery Employee Hazard Pay Ordinance?

This law applies to employees who perform work for a covered Grocery Business at a retail location in Seattle, who are also covered by Seattle’s Minimum Wage Ordinance. For more information on employees who are covered by that law, please visit OLS’s Minimum Wage webpage.

### 27. What does it mean to “perform work for a covered employer at a retail location”?

Whether an employee is covered by the ordinance because they “perform work for a covered employer at a retail location,” depends on a totality of circumstances. OLS may consider any number of factors, including, but not limited to: the proportion of an employee’s typical shift spent at a retail location, the nature of the work performed, and the degree of contact with the general public and other grocery employees during the course of their work.

*Example:* An employee works for a grocery business as a delivery truck driver and as part of their job will load and unload shipments at various grocery stores in Seattle. Their duties primarily involve driving from store to store, and they are not based at any particular retail store in Seattle. When they load and unload the truck, they do not interact with members of the public and spend little time in close proximity to other grocery employees. They would not be considered covered by the ordinance.

### 28. Does Seattle’s GEHP Ordinance requirements apply to the following employees or workers?

The following answers relate to GEHP Ordinance coverage for the following employers:

#### a. Salaried employees?

Salaried employees are generally not covered, except for those who would be covered under Seattle’s Minimum Wage Ordinance. Seattle’s minimum wage law includes exemptions under Washington state’s Minimum Wage Act, RCW 49.46. Many salaried employees are exempted from both State and City minimum wage law, but not all. For example, salaried workers who earn less than \$49,831 a year in 2021 are covered by Seattle’s Minimum Wage Ordinance, and therefore would be covered under this ordinance. For more information about who is covered by the Minimum Wage Act, please visit the Washington State Labor and Industries webpage.

#### b. Administrative employees who visit a store regularly, but don’t primarily work in that store?

OLS will look at a number of factors to determine whether these workers are covered, such as: the proportion of an employee’s typical shift spent at a retail location, the nature of the work performed, and the degree of contact with the general public and other grocery employees during the course of their work.





**c. Truck delivery drivers when they stop and make a delivery at the store site?**

These truck drivers would typically not be considered covered by the ordinance under the following circumstances: if their duties primarily involve driving from store to store; they are not based at any particular retail store in Seattle; and when they load and unload the truck, they do not interact with members of the public and spend little time in close proximity to other grocery employees.

**d. Truck delivery drivers who deliver groceries to customers' homes?**

To determine coverage, OLS will look at a number of factors, such as: the proportion of an employee's typical shift spent at a retail location, the nature of the work performed, and the degree of contact with the general public and other grocery employees during the course of their work.

**e. Independent contractors?**

No. Grocery Employee Hazard Pay requirements only apply to employees. Whether an individual is an employee or an independent contractor is determined by the "Economic Realities Test" that is used by the Fair Labor Standards Act and the Washington State Minimum Wage Act.

If there is a dispute regarding a worker's status, the employer is responsible for proving that the worker is an independent contractor rather than an employee (i.e., the law favors employee status and an employer must prove otherwise). For more information, see our [Worker Classification Fact Sheet \(Guide\)](#).

**f. Gig workers covered under Gig Worker Premium Pay?**

Those who are considered "gig workers" under the Gig Worker Premium Pay Ordinance are not covered employees under the Grocery Employee Hazard Pay Ordinance. Hiring entities must pay all compensation and premium pay owed to such gig workers in accordance with their obligations under the Gig Worker Premium Pay Ordinance.

## D. Hazard Pay

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**29. What is hazard pay?**

"Hazard pay" means additional compensation owed to an employee on top of the employee's other compensation, including but not limited to salaries, wages, tips, service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses. Hazard pay, paid in addition to regular wages, is an established type of additional compensation for employees performing hazardous duties or work involving physical hardship that can cause extreme physical discomfort and distress.





**30. How much hazard pay is owed to covered grocery employees?**

Employees must receive at least **\$4 per hour** in hazard pay. Hazard pay is in addition to compensation, bonuses, commissions, and tips owed to a grocery employee for services provided.

**31. What if a Grocery Business was already paying hazard pay before the ordinance went into effect?**

Employers who were already providing hazard pay on the effective date of this ordinance may use the hourly rate of that hazard pay to offset the \$4 due under this law. Employers bear the burden of proof to show that the additional compensation they were offering was hazard pay for the purposes of working during the COVID-19 emergency.

**32. When does a Grocery Business need to pay out the hazard pay?**

A Grocery Business must pay hazard pay at the same time compensation is normally owed for the hours worked by the employee.

**33. How does a worker know if they are being paid hazard pay?**

The hazard pay must be separately itemized from other compensation on the employee's paycheck. A Grocery Business is also required to issue an updated [Notice of Employment Information](#) that includes a notice of hazard pay to each covered employee.

**34. Can a Grocery Business reduce other compensation owed to employees to make up for the hazard pay?**

No. Grocery Businesses are prohibited from taking steps to reduce other employee compensation because of this ordinance.

**35. What if a Grocery Business reduces a worker's rate of pay, but claims it is for other reasons besides the ordinance?**

Employers can reduce a worker's compensation for reasons other than having to provide hazard pay, but they must maintain records to establish the reason(s) for any reduction in employee compensation.

**36. Does the ordinance prohibit an employer from adjusting an employee's hours?**

The ordinance does not directly prohibit an employer from reducing an employee's hours as a result of this ordinance, only their hourly compensation. The ordinance does prohibit reducing an employee's hours in retaliation for an employee exercising their rights under the ordinance (see Question 46).

The Secure Scheduling Ordinance requires a covered employer to compensate an employee for changes to their written work schedule made with less than 14 days' notice. For more information, please visit OLS's Secure Scheduling Ordinance.





### **37. Is hazard pay included when determining an employee's regular rate of pay for the purposes of calculating overtime?**

Yes. Hazard pay compensation must be included in the regular rate of pay calculation for overtime purposes. Hazard pay is not one of the types of compensation that can be excluded from the regular rate of pay calculation, as described in Washington State Department of Labor and Industries' Administrative Policy ES.A.8.1. See Sections 3, 4 and 5.

*Example:* A covered employee earns a wage of \$17 + \$4 per hour in hazard pay. The employee's regular rate of pay is \$21. For any hours worked in excess of 40 in the workweek, the employee must be paid one and one-half times this regular rate of pay (1.5 x \$ 21 = \$31.50). For more details, consult Washington State Department of Labor and Industries' Administrative Policy ES.A.8.2 on how to calculate overtime.

### **38. How does grocery store hazard pay interact with premium pay requirements for secure scheduling? In other words, is hazard pay included in the calculation of what is owed for Secure Scheduling premium pay for schedule changes or "clopening" pay?**

Hazard pay would not be included in the calculation for what is owed for purposes of Secure Scheduling premium pay, as Hazard pay is owed only for each "hour worked." OLS made this determination based on our interpretation of applicable law. This information does not constitute legal advice. Employers should contact competent wage and hour counsel for additional information or to obtain legal advice.

### **39. Is grocery store hazard pay included in an employee's rate of pay when using Paid Sick and Safe Time hours?**

For the purposes of compensating an employee for paid sick and paid safe time under Seattle Municipal Code Chapter 14.16, hazard pay is considered a premium rate and is not included in the employee's normal hourly compensation.

## **E. Notice, Posting, and Records**

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### **40. What are the notice and posting requirements of the ordinance?**

Grocery Businesses must provide workers with written notice of the rights granted by this law, including:

- a. The right to hazard pay guaranteed by this ordinance;
- b. The right to be protected from retaliation for exercising their rights under this ordinance; and
- c. The right to file a complaint with OLS or bring a civil action for a violation of the law.

This notice must be in English and the primary languages of the workers at the store and must be posted no later than March 5, 2021.





The law also requires that Grocery Businesses send an updated [Notice of Employment Information](#) to each covered employee, as also required by the Wage Theft Ordinance. This law requires employers to provide this notice in English and in the primary language used by the employee. For convenience, OLS provides model notices in multiple languages on its website.

#### **41. Is OLS planning on issuing a Model Notice of Rights for this ordinance?**

At this time, OLS does not plan to publish a model notice of rights. Employers are responsible for providing employees with a notice of rights in a manner sufficient to inform them of their rights under this ordinance, regardless of whether OLS has created and distributed a model notice of rights. Employers may choose to model some of their language, where relevant, after [OLS's workplace poster](#), which suffices as a notice of rights posting for many of our other labor standards.

#### **42. How should employers provide the required notice of rights?**

The notice of rights must be displayed as a poster at the job site if possible. If display of the notice of rights is not feasible, including situations when the employee works remotely or does not have a regular workplace or job site, employers may solely provide the notice of rights on an individual basis in the employee's primary language in a physical or electronic format that is reasonably conspicuous and accessible. An employer may choose to both post a notice of rights at the job site and give individual written notice to their employees.

The notice of rights must be provided in English and in the primary language of the employees at the store. Employers must make a good faith effort to determine the primary languages of the employees at the store.

#### **43. Does an employer need to re-issue an updated Notice of Employment Information (NOEI) to notify employees of hazard pay?**

Yes. The Wage Theft Ordinance requires that Grocery Businesses send an updated [Notice of Employment Information](#) that includes a notice of hazard pay to each covered employee.

#### **44. What are the recordkeeping requirements for Grocery Businesses?**

Employers shall retain records that document compliance with this ordinance for each employee for a period of three years. Examples of records can include, but not be limited to, copies of NOEI forms for each employee, and payroll records itemizing hazard pay for each covered employee.



## F. Prohibition from Retaliation

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### 45. Does the ordinance prohibit retaliation?

Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against employees who assert their rights under the Grocery Employee Hazard Pay (GEHP) ordinance in good faith.

These rights include (but are not limited to):

- Asking questions about rights or the ordinance (e.g. asking about hazard pay);
- Informing an employer, union or legal counsel about alleged GEHP violations;
- Filing a complaint about alleged GEHP violations.
- Participating in an investigation of alleged GEHP violations.
- Talking to the Office of Labor Standards or other coworkers about hazard pay rights or the ordinance
- Informing other employees of their hazard pay rights.