



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-20-25 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton & Lan Sena

ORDINANCE

Establishing The Public Health Emergency Premium Pay Ordinance; Setting Premium Pay Amounts For Large Essential Employees; Establishing Procedures For Implementation And Enforcement (Benton, Sena)

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. A new Article, Article 20, is hereby added to Chapter 13 "Businesses and Occupations" of the Revised Ordinances of Albuquerque as follows:

"[§ 13-20-1. SHORT TITLE. This ordinance may be cited as "The Public Health Emergency Premium Pay Ordinance."

§13-20-2. DEFINITIONS.

ESSENTIAL WORK. Any work that is performed by an employee for an employer prior to the expiration of all COVID-19 public health orders; is not performed while teleworking from the employee's residence; involves regular in-person interactions with patients, the public, or co-employees or regular physical handling of items that were handled by or are to be handled by patients, the public, or co-employees; and is in the areas of emergency response, health sector, child or family care, early education, grocery stores, food production or processing, sanitation, transportation providers, security, media services, hardware stores, laundromats, utilities, funeral homes and cemeteries, financial services, shipping, restaurants, delivery, provision of care to individuals in their homes or a residential facility, social services work, public health work, work

performed in a warehouse, or any other work deemed to be essential by COVID-19 public health orders. ESSENTIAL WORK does not include work covered by a collective bargaining agreement if such agreement provides equal or more generous benefits or covered by a program created pursuant to an emergency order issued by the State of New Mexico or a federal law that provides equal or more generous benefits.

EMPLOYER. Any person, partnership, association, corporation, business trust, legal representative, or any other entity, or group of persons or entities who is required to have a business license or business registration from the City of Albuquerque, including their corporate officers or executives, and who directly, or indirectly or through an agent or any other person including, but not limited to, through a subsidiary or through the services of a temporary services agency, a staffing agency, a building services contractor, or any similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. "Employer" shall include the City of Albuquerque.

LARGE ESSENTIAL EMPLOYER. The term "large essential employer" means an essential employer that employs 50 or more persons or permits 50 or more persons to work at or for such employer's business. In determining the number of persons performing work for an employer for compensation during a given week, all persons performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of persons who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of persons who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of persons performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted. The term "large essential employer" does not include a business that is assigned a North American Industry Classification System code beginning with 531.

ESSENTIAL EMPLOYEE. Any person who performs essential work for an Employer for monetary compensation for at least two (2) hours in a given week within the municipal limits of the City. "Essential employee" shall include persons who perform work for an Employer on a full-time, part-time, seasonal, or temporary basis. Essential employee shall not include any person who is excluded from the definition of employee under NMSA §§ 50-4-21(c)(2)-(4), (5) of the New Mexico Minimum Wage Act, except that persons employed by the City of Albuquerque are employees. The term "essential employee" means any person employed or permitted to work at or for a "large essential employer."

PREMIUM PAY AMOUNT. The term “Premium Pay Amount” shall mean \$30 for any shift of less than four hours, \$60 for any shift of between four and eight hours, inclusive, and \$75 for any shift of greater than eight hours.

COVID-19 PUBLIC HEALTH ORDERS. Public health emergency declarations and public health emergency orders associated with COVID-19 issued by the State of New Mexico or the City of Albuquerque.

§ 13-20-3. ESSENTIAL EMPLOYEE PREMIUM PAY

(A) Except as provided herein, Large Essential Employers shall pay each Essential Employee whose regular rate of pay is less than or equal to \$15 per hour the Premium Pay Amount for each shift of Essential Work performed within the municipal limits of the City of Albuquerque. This premium pay shall be in addition to the employee’s regular rate of pay.

(B) The premium pay required under this section shall be paid at such time as the employer pays the employee’s wages for work performed during that work week. The premium pay shall be separately noted on a wage stub or other form of written documentation and provided to the employee for that pay period.

§ 13-20-4. NOTICE, POSTING, AND RECORDS.

(A) Notice to Employees. Every Large Essential Employer shall post in a conspicuous place at any workplace or job site where any Essential Employee works a notice published each year by the City Attorney informing Essential Employees of the current Premium Pay Amounts and of their rights under this ordinance. Every Large Essential Employer shall post such notices in English and Spanish.

(B) Records. Large Essential Employers shall maintain payroll records showing the hours worked daily by and the Premium Pay Amounts provided to all Essential Employees. Large Essential Employers shall retain payroll records pertaining to Essential Employees for a period of three years.

§ 13-20-5. IMPLEMENTATION AND ENFORCEMENT

(A) Implementation and Rulemaking. The City shall implement and enforce this ordinance and shall promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the city shall have the force and effect of law and may be relied on by Large Essential Employers, Essential Employees, and other parties to determine their rights and responsibilities under this ordinance. Any such guidelines or rules shall establish procedures for ensuring fair, efficient and cost-effective implementation of this ordinance, including supplementary

procedures, such as a hotline, for helping to inform Essential Employees of their rights under this ordinance and for monitoring Large Essential Employer compliance with this ordinance.

(B) Civil enforcement. Any Essential Employee receiving less than the Premium Pay Amount to which the Essential Employee is entitled under this ordinance may bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover the balance of the Premium Pay Amount owed, including interest thereon, and an additional amount equal to twice the Premium Pay Amount owed, and any other appropriate legal or equitable relief. Any Essential Employee who has suffered discrimination in any manner or had adverse action taken against that Essential Employee in retaliation for exercising rights protected under this ordinance may bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover actual damages plus reinstatement in the case of discharge. In any case where an Essential Employee has been discharged in retaliation for exercising rights under this ordinance, the period of violation extends from the day of discharge until the day the Essential Employee is reinstated, the day the Essential Employee agrees to waive reinstatement or, in the case of an Essential Employee who may not be rehired, from the day of discharge until the day legal judgment is final. In such case, unpaid Premium Pay Amounts and actual damages recovered shall be payable to the individual Essential Employee as to whom the violation occurred. A plaintiff prevailing in an action to enforce this ordinance shall be entitled to recover his or her costs and expenses of suit and reasonable attorney's fees.

(C) Criminal penalty. Any person who violates this ordinance shall be deemed guilty of a petty misdemeanor and upon conviction shall be subject to the criminal penalty provisions set forth in § 1-1-99 of this code of ordinances. Each separate violation shall constitute a separate offense and each day of violation shall constitute a separate offense.

(D) The City Attorney shall enforce this ordinance.

§ 13-20-6. RELATIONSHIP TO OTHER REQUIREMENTS. This ordinance provides for payment of Premium Pay Amounts and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of wages, or for payment of higher or supplemental premium payments, benefits, or protections. Nothing contained in this ordinance prohibits a Large Essential Employer from paying more than the Premium Pay Amounts established under this ordinance.]”

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this

ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. COMPILATION. Section 1 of this Ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

Section 9. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.