

CITY OF OAKLAND



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Department of Workplace and Employment Standards

Date Issued: March 18, 2021

Modality: Email [REDACTED]

Department of Workplace and Employment Standards (DWES)

Re: Interpretive Guidance Letter regarding the definition of “Hotel Employee” and the meaning of "representative" under the Hotel Minimum Wage and Working Conditions Ordinance, Oakland Municipal Code (“OMC”) Chapter 5.93 (Measure Z).

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

This Interpretive Guidance Letter is in response to your E-mail [REDACTED] regarding the definition of “Hotel Employee” and the meaning of "representative" under the Hotel Minimum Wage and Working Conditions Ordinance, OMC chapter 5.93 (Measure Z).

Specifically, you ask whether Measure Z’s definition of Hotel Employee includes former employees. It appears you are asserting it does not because Measure Z’s definition of Hotel Employee does not specifically mention former employees. *See* OMC section 5.93.010 (defining Hotel Employee as “any individual: (1) who is employed directly by the hotel employer or by a person who has contracted with the hotel employer to provide services at a hotel in the City of Oakland; and (2) who was hired to or did work an average of 5 hours/week for 4 weeks at one or more hotels.”) .

Please be advised that Measure Z applies equally to current and former Hotel Employees. This fact is apparent from Measure Z’s requirement that Hotel Employers maintain certain Hotel

Employee records for at least three years, regardless of employees' employment status. *See* OMC sections 5.92.050©; 5.93.050. Moreover, if Measure Z applied only to current employees, then a Hotel Employer could simply terminate an employee's employment to prevent them from effectively pursuing their rights under Measure Z. Such a result would be inconsistent with the purposes of Measure Z.

You also inquire whether a Hotel Employer must respond to an information request made pursuant to OMC Section 5.93.050 on behalf of a former employee by a union that is not the bargaining representative for employees at the hotel. As you know, OMC section 5.93.050 provides "[t]he hotel employer will make . . . records available to hotel employees or their representatives..." Measure Z does not require that a Hotel Employee's representative be the authorized bargaining representative for employees of the hotel. "Representative" means any representative of the employee's or former employee's choosing. If it is clear that the requesting party represents an employee or former employee (e.g., the requesting party is the union representing employees at your hotel), the Hotel Employer must respond to the information request expeditiously in accordance with the ordinance. If it is objectively unclear whether the requesting party represents an employee or former employee, you may ask the requesting party to produce a statement signed by the employee or former employee declaring that the requesting party represents them; upon receipt of confirmation of representation, you must respond to the information request expeditiously in accordance with the Ordinance. In such a circumstance, a Hotel Employer may not simply ignore the information request.

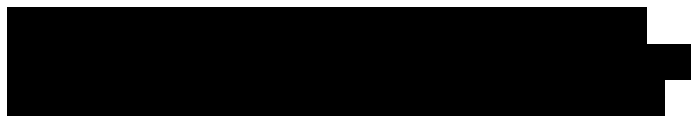
I trust this letter is responsive to your questions. Thank you for your inquiry.

Sincerely,

Deborah Barnes

Deborah Barnes, Director
Department of Workplace and Employment Standards

Cc:

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