

City of Oakland

Proposed Regulations Interpreting the Oakland Hotel Minimum Wage and Working Conditions Law

(Oakland Municipal Code Section 5.93 et seq.)

Effective ____ 2019

I. Definitions/Coverage of Oakland Municipal Code Section 5.93 et seq.

A. Additional-Bed Rooms. For purposes of OMC (OMC) Section 5.93.010;

1. Additional-Bed Room (ABR) does not include any rooms with more than one permanent bed that does not also have an additional bed such as a cot or rollaway.
2. The mere existence of a permanent sofa bed in a guest room does not, by itself, convert the guest room into an ABR unless the sofa bed has been opened and used as a bed.

B. Hotel. For purposes of Oakland Municipal Code (OMC) section 5.93.010:

1. A premise is “connected to” a Hotel when it is physically connected to the Hotel building, or shares an entrance with the Hotel or is accessible through an entrance within the Hotel.
2. A premise is “operated in conjunction with” a Hotel’s purpose when it provides services to Hotel Guests such as room service, banquet service or valet parking, or is staffed by employees of the Hotel or permits charges to be added to Hotel Guests’ room bills.

C. Hotel Employee. An employee must be a “Hotel Employee” under OMC section 5.93.010 to be eligible for the protections of OMC section 5.93 et seq.

1. A Hotel Employee is “hired to or did work” an average of 5 hours/week for 4 weeks if he or she worked an average of 5 hours per week for 4 weeks or if he or she was scheduled to work the requisite number of hours and weeks, even if the employee worked a lesser amount due to having taken approved leave.

2. A Hotel Employee need not work an average 5 hours/week for 4 weeks at a single Hotel site to be eligible for the law’s protections. In determining whether an individual is a Hotel Employee, a Hotel Employer must consider the individual’s work hours at all sites owned, controlled and/or operated by that Hotel Employer that meet the definition of Hotel in OMC section 5.93.010; or the individual’s work hours at all sites meeting the definition of Hotel in OMC section 5.93.010 that are contracted, leased or sublet by that Hotel Employer, or operated by that Hotel Employer in conjunction with a site meeting the definition of Hotel in OMC section 5.93.010; or the individual’s work hours at all sites meeting the definition of Hotel in OMC section 5.93.010 at which the individual is providing services for that Hotel Employer.
3. Individuals who provide delivery services to Hotels but perform no additional work on the Hotel’s premises are not Hotel Employees.

D. Room Cleaner. The term “principal duties” in OMC 5.93.010’s definition of “Room Cleaner” means the primary, main, or major duties performed by the Hotel Employee. Hotel Employers must determine a Hotel Employee’s principal duties based on all of the facts in each particular case, with the major emphasis on the character of the employee’s job as a whole. The Hotel Employee’s actual duties will be determinative regardless of his or her position title or classification.

E. Notice Requirements. Wherever the ordinance requires a Hotel Employer to provide notice to a Hotel Employee, the employer shall provide such notice in each language spoken as a primary language by more than ten percent (10%) or ten (10) Hotel Employees at the Hotel, whichever is less.

II. Measures to Protect Hotel Employees Who Work Alone in Guest Rooms and/or Bathrooms from Violence and Threatening Behavior

A. Panic Button.

1. Hotel Employers must provide a Panic Button to any Hotel Employee assigned to work in a Guest room or bathroom without other employees present, whether or not the Hotel Employee performs cleaning services, and regardless of the individual’s position or official title.
2. Panic Buttons must conform to each and all of the following requirements:
 - a. Hotel Employees must be able to easily carry the Panic Button on their person by means other than carrying it in their hand.

- b. Hotel Employees must be able to activate the Panic Button quickly and easily to summon immediate assistance.
 - i. When a Hotel Employee activates a Panic Button, a designated responding person or team must receive immediate notification and be alerted to the notification via an audible ring, flashing light and/or vibration; and
 - ii. The Panic Button must alert the designated responder to the precise location where the Hotel Employee is located, including the building, floor and room; and
 - iii. The designated responder must have all necessary keys and codes to access any area of the hotel a Hotel Employee or an assailant could reasonably access.
 - c. The Hotel must have in place a fully operational technology system that enables the Panic Button to work in a manner that complies with these requirements in every guest room and bathroom in which a Hotel Employee may work without other employees present; and
 - d. The Panic Button must not require continued activation by the Hotel Employee to sustain the alert.
3. The following do not qualify as Panic Buttons: whistles, personal alarms, and walkie-talkies or two-way radios. Additionally, requiring Hotel Employees to call for help from a Guest room phone does not satisfy the Panic Button requirement.
 4. Hotel Employers are responsible for ensuring Panic Buttons are in proper working order and shall not charge Hotel Employees for the replacement cost of a Panic Button that is lost or stolen.

B. Rights of Hotel Employees Who Report Violence or Threatening Behavior.

The protections of OMC section 5.93.020(C) are available to any Hotel Employee entitled to the protections of that section who alerts a Hotel Employer of the occurrence of any violence or threatening behavior, whether through activation of a Panic Button or through other means.

1. Right to Reassignment.

- a. For purposes of OMC section 5.93.020(C), it shall be presumed that a Hotel Employee’s belief that his or her safety is at risk is reasonable.
 - b. A Hotel Employee’s verbal indication to a Hotel Employer that he or she wishes to be reassigned because he or she believes that his or her safety is at risk shall be sufficient to trigger the Hotel Employer’s duty to reassign the Hotel Employee. A Hotel Employee need only make one request for reassignment following his or her report of violence or threatening behavior and need not renew his or her request on any subsequent shift.
2. **Paid time off.** After a Hotel Employee has activated a Panic Button or otherwise alerted a supervisor or other management employee of a Hotel Employer of the occurrence of violence or threatening behavior, a Hotel Employer must immediately allow the Hotel Employee sufficient paid time to contact and provide a statement to police and to consult with a counselor or advisor of the Hotel Employee’s choosing.
- a. The amount of paid time considered sufficient for this purpose will vary according to the seriousness and/or complexity of the situation. The police or other law enforcement officer, including a district attorney or investigator, may determine the amount of time needed to obtain a statement from the Hotel Employee.
 - b. The phrase “counselor or advisor of the employee’s choosing” in OMC section 5.93.020(C)(2) may include, but is not limited to, family members, friends, licensed professionals, attorneys and advocates.
 - c. The phrase “consult with” in OMC section 5.93.020(C)(2) means to seek advice on immediate next steps following an event triggering the right to paid time as provided in that section. Immediate next steps may include, but are not limited to, creating a safety plan with an advocate, seeking advice from an attorney about whether to file a police report, or speaking with a friend about whether to seek professional counseling.
 - d. The paid time provided for in OMC section 5.93.020(C)(2) is in addition to any other paid leave provided to the Hotel Employee, including sick or vacation leave. A Hotel Employer shall not deduct sick, vacation or any other accrued or prospective leave

from the Hotel Employee's leave balance for the purpose of providing paid time off under this section.

III. Humane Workload

A. Maximum square footage limitations.

1. When two or more Room Cleaners clean a room together, the room is attributed to each Room Cleaner proportionately for purposes of computing the square footage cleaned and the number of Checkout rooms (CO) or Additional-bed rooms (ABR) cleaned.
2. A Hotel Employer may assign a Room Cleaner to clean up to 4,000 square feet and up to 6 COs and/or ABRs for each eight-hour shift without paying the Room Cleaner double her or his regular rate of pay. The square footage limits are decreased proportionately if the Room Cleaner works less than eight hours, and are increased proportionately if he or she works more than eight hours. Nothing in the ordinance prohibits Hotel Employers from assigning additional square footage, COs or ABRs to a Room Cleaner provided that he or she receives additional pay as provided for in the ordinance.
3. If a Hotel Employer assigns seven or more COs or ABRs over the course of an eight-hour shift, the square footage that Room Cleaner can be assigned to clean during that shift without receiving twice his or her regular rate of pay is decreased by 500 feet for each CO or ABR over six. A single guest room that is both a CO and an ABR need only be counted once.
4. Examples.
 - a. For example, a Hotel Employer could require a Room Cleaner to clean 6 COs or ABRs within a total square footage of 4,000 square feet in an 8-hour shift without double pay. Where a Hotel Employer requires a Room Cleaner to clean 7 or more COs or ABRs in an 8-hour shift, the maximum floor space that can be assigned to the Room Cleaner without additional pay would be reduced by 500 square feet for each such additional CO or ABR over six as follows: If the Room Cleaner is assigned one additional CO or ABR (7 in total), there is a 500 square foot reduction to 3,500 maximum square feet that the Room Cleaner can be assigned to clean in that 8-hour shift without receiving double pay for the entire 8 hours. If he or she is assigned to clean

2 additional COs or ABRs (8 in total), there is a 1,000 square foot reduction to a maximum of 3,000 square feet that he or she can be assigned to clean in that 8-hour shift without double pay.

b.

The square footage limits are reduced proportionately for Room Cleaners who work less than 8 hours in a day. For example, a Hotel Employer could require a Room Cleaner to clean 3,000 square feet in a 6-hour shift without double pay.

5. If a Hotel Employer assigns a Room Cleaner room-cleaning duties for only a portion of the Room Cleaner's shift, the Hotel Employer must document the number of hours the Room Cleaner will be assigned to room-cleaning, the number of rooms he or she will be assigned to clean, and how many of those rooms are COs or ABRs .
 - a. The Hotel Employer must use only the number of hours assigned to room-cleaning duties to calculate square footage and CO or ABR allowances.
 - b. If the requirement to pay double the Room Cleaner's regular rate is triggered, the Hotel Employer must pay double the Room Cleaner's regular rate of pay for the entire shift, for both the time assigned to room-cleaning and to non-room-cleaning duties.
6. A Room Cleaner who cleans no more than 4,000 square feet and no more than 6 CO or ABR rooms prior to completion of his or her 8-hour shift, adjusted proportionately for changes in the length of shift, may be assigned non-room-cleaning duties for the remainder of the shift without becoming entitled to double pay for that shift.
7. Calculation of square footage. Hotel Employers are responsible for accurately determining square footage under OMC section 5.93.010 et seq.

B. Ten-hour maximum work limitation without consent.

1. The requirements of OMC section 5.93.030(C) apply to all Hotel Employees as defined in section 5.93.010.
2. For purposes of OMC section 5.93.030, an "emergency situation" includes but is not limited to a chemical spill, fire, broken water pipe, significant power outage, flooding, earthquake, or emergency caused by terrorism or an act of war.

IV. Hotel Employee Minimum Wage and Health Benefits

- A. **Health benefits or health care benefits.** For purposes of OMC section 5.93.040, Hotel Employers must pay no less than the difference between the higher and lower wages provided for in OMC 5.93.040(A) towards the provision of health care benefits in order to be eligible to pay Hotel Employees at the lower wage. The terms “health benefits” and “health care benefits” refers to payment of or contribution towards such medical, dental or other health benefits provided by the Hotel Employer.
- B. **Determining the sufficiency of Health Benefits.** If a Hotel Employer provides health benefits to Hotel Employees but does not pay for them on a per-hour basis, the value as to each Hotel Employee shall be the Hotel Employer’s average hourly cost to provide health benefits for that employee. Hotel Employers shall perform this calculation at the beginning of each month, for each Hotel Employee for the preceding months. If the average hourly cost to provide health benefits to any Hotel Employee was insufficient, the Hotel Employer, by the 15th day of the month, shall pay the employee the shortfall for each hour worked during the previous month. The Hotel Employer shall maintain documentation demonstrating the methodology used to convert non-hourly health benefit payments into hourly figures and must provide copies of such documentation to Hotel Employees and their representatives as part of its record-keeping obligations under OMC section 5.93.050(A)(3).
- C. **Health insurance waiting periods.** The ordinance does not require Hotel Employers to provide health insurance. Hotel Employers who do provide health insurance to Hotel Employees, but impose a waiting period before providing the health insurance, may continue to do so without violating the ordinance by paying Hotel Employees the higher hotel minimum wage until those employees become eligible for health insurance.
- D. **Requirement when a Hotel Employee declines a Hotel Employer’s offer of health insurance.** If a Hotel Employee declines a Hotel Employer’s offer of health insurance, the Hotel Employer must pay the employee the higher hourly minimum wage under this Ordinance.
- E. **Part-Time Hotel Employees.** The ordinance, including OMC section 5.93.040, applies equally to part-time employees who otherwise meet the ordinance’s definition of Hotel Employee.
- F. **Minimum Wage Increases Pursuant to Consumer Price Index Data.** Pursuant to OMC section 5.93.040(C), Oakland’s Hotel Employee minimum wage shall be

adjusted for inflation by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index ("CPI"), as provided in Oakland's minimum wage law at OMC section 5.92.020(B).

1. The City of Oakland shall use the August-to-August change in the CPI to calculate the annual increase, if any, in the Hotel Employee's minimum wage.
2. If there is a decrease in the CPI, the minimum wage will remain the same and shall not decrease.
3. Hotel Employers shall provide notice to Hotel Employees of the new minimum wage as soon as practicable but no later than December 15th of each year.
4. Minimum wage increases shall take effect on January 1st of each year.

V. Preservation of Records

A. Requirement to preserve certain records for at least three years. For purposes of complying with the recordkeeping requirements of OMC section 5.93.050, the following apply:

1. For each Room Cleaner:
 - a. If the records list room numbers and not the square footage of each room cleaned, the Hotel Employer must maintain a separate master document reflecting the accurate square footage of each guest room, suite, meeting room, or other areas assigned to Room Cleaners to clean.
 - b. Regardless of whether the records indicate the room number of each room cleaned or the total square footage cleaned, the records must indicate the number of CO or ABR rooms cleaned by the Room Cleaner each day.
2. A record of the written consents received from Hotel Employees to work more than ten hours during a shift. Hotel Employers must maintain these written consents separately, for each Hotel Employee.
3. For each Hotel Employee, records must be kept indicating payment of health benefits, if any, consistent with section 5.93.040(B). Proof of

health benefits shall consist of payroll or similar records reflecting payments toward health benefits provided by the Hotel Employer, a record of the computation described in Interpretive Regulation IV(B) and payment to each Hotel Employee of any shortfalls due.

- B. Requirement to maintain accurate records of square footage.** Hotel Employers must maintain accurate records of the square footage of each Guest room and suite, meeting room or hospitality room and any other space Room Cleaners are required to clean and to make such records available to Hotel Employees or their representatives for inspection and copying.

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