

# SANTA MONICA'S MINIMUM WAGE

## Frequently Asked Questions

# \$15 by 2020

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### TOP FAQ

#### Who does the minimum wage law apply to?

The law applies to any employee that works two (2) hours in a given week in the City of Santa Monica, and who is entitled to minimum wage payment under California labor law (Santa Monica Municipal Code Section 4.62.010(c)). This includes full time, part time, and temporary workers. There is a separate rate for Hotel Workers.

#### Who has to comply with the law?

All businesses with employees in Santa Monica. This includes small and large businesses. Businesses based outside Santa Monica but whose employees work in Santa Monica must also comply with the law.

#### Do I count all my employees, or only those in Santa Monica to tell what business size category I fall in?

Only the employees in Santa Monica. This comes from the Employee definition (employees must work in the City of Santa Monica to be eligible for Santa Monica's minimum wage law benefits).

#### Do I need to post Santa Monica-specific legal notices? How will I receive them?

Yes. Businesses must post the Santa Monica Minimum Wage legal notices in English and Spanish, and in any other language that 5% or more of the workforce speaks. You can download/ print the legal notices from the City's website at [smgov.net/minimumwage](http://smgov.net/minimumwage).

**The City will not mail notices out;** it is business owners' responsibility to print and post notices. Failure to post can result in fines.

#### What is the current minimum wage rate?

The current rate is \$12 per hour for large businesses (26+ employees) and \$10.50 per hour for small businesses (25 or less employees). The wage will increase annually according to the schedule below.

Year*	Businesses with 26+ employees	Businesses under 25 employees
2016	\$10.50	\$10.00**
2017	\$12.00	\$10.50
2018	\$13.25	\$12.00
2019	\$14.25	\$13.25
2020	\$15.00	\$14.25
2021	\$15.00	\$15.00

\*Rate effective July 1 each year. \*\*CA state minimum wage.

#### How many paid sick days does the law require?

The law requires employers to provide at least the hours below. Employees are eligible for Santa Monica sick leave benefits when they work a minimum of 2 hours in a given week in Santa Monica. This applies to full time, part time, and temporary employees.



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*This is intended as general information only and does not carry the force of legal opinion. The information is provided as a public service.*

Year (Effective on Jan. 1)	Businesses with 26 or more employees	Businesses with 25 or fewer employees
2017	40 hours	32 hours
2018	72 hours	40 hours

Businesses can provide the full amount up front (called frontloading), or can provide it based on the number of hours worked (the accrual method). Under the accrual method, it may take longer than one year for an employee to earn the full amount of paid sick leave.

## What is the accrual rate?

Employees earn one hour of leave for every 30 hours worked (same as State law).

## Can I frontload sick leave (provide all leave as a lump sum up front)?

Yes. You can provide the full amount of leave by at the start of the calendar year, fiscal year, or anniversary date. If the business frontloads leave, the law does not require rolling over any unused leave at the end of a fiscal, calendar, or anniversary year.

## Are the paid sick leave requirements annual?

No. If the employer chooses the accrual method, it may take longer than one year for the employee to earn up to the required number of hours – the law does not specify that the hours must be provided in one year. However, if the employer frontloads leave, they must provide the full amount within one year.

Note that employers must follow California state law where its requirements are more generous than those in Santa Monica law.

## I have an existing policy that provides vacation days. Do these count as paid sick leave days for Santa Monica law?

No. Businesses must provide paid sick leave as distinct from vacation. The same applies to time that employees can use for either vacation or for illness – this would not be sufficient to fulfill Santa Monica requirements.

## I would like to use a service charge at my place of business. Does the law allow me to do this, and if so what steps should I take?

Yes, you can use a service charge. If you choose to do so, read the minimum wage law to make sure your noticing, distribution, employee notification, and record keeping is consistent with the law. If you have questions about a specific business policy or practice, contact City staff at [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net).

## My business is located on a hotel property, but it is not a hotel. Do I need to pay my workers the hotel wage?

Most likely yes. The law says that any business attached to, leased from, and operated in conjunction with a hotel is considered a hotel for purposes of the law and must pay the hotel worker wage. Contact the City ([minimum.wage@smgov.net](mailto:minimum.wage@smgov.net) or 310-458-8281) if you're not sure whether your business meets this definition.

## How will the City enforce the minimum wage law? Are there consequences for non-compliance?

The City has contracted with the Los Angeles County Department of Consumer and Business Affairs (DCBA) to receive wage enforcement claims and conduct primary investigation of any claims. Wage enforcement hearings and appeals of administrative citations will follow the City's administrative hearing process (Santa Monica Municipal Code Chapter 1.09). The City will handle any criminal prosecution. More information about enforcement is at [smgov.net/minimumwage/education-enforcement](http://smgov.net/minimumwage/education-enforcement).

## How can I file a wage claim?

You can contact the Los Angeles County Department of Consumer and Business Affairs (DCBA) directly at (800) 593-8222 or through their [website](http://smgov.net/minimumwage/education-enforcement). If you have any questions about the process or whether to file a complaint or claim, you can call the DCBA, or contact City staff at (310) 458-8281 or [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net). We will treat your questions and complaints as confidential. Visit [smgov.net/minimumwage/education-enforcement](http://smgov.net/minimumwage/education-enforcement) for more information.



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### What if I have other questions about the law?

You can review the City's resources online at [www.smgov.net/minimumwage](http://www.smgov.net/minimumwage), email the City at [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net), or call the information line at (310) 458-8281.

## GENERAL WAGE

### What is the minimum wage law?

The City of Santa Monica Minimum Wage Law went into effect in 2016. The law establishes a local minimum wage and other benefits and protections for Santa Monica workers. The law provides for paid sick leave in excess of State law and regulates service charges. It maintains the State first time worker (learner) provision and aligns the Santa Monica Hotel Worker Living Wage with LA County's Hotel Worker Wage. Finally, it gives the City of Santa Monica authority to enforce the law, and prohibits employers from retaliating against workers seeking to learn about or exercise rights. For more information on these provisions, see the Special Provisions Section below.

You can find the law in [Santa Monica Municipal Code \(SMMC\) Section 4.62 \(Minimum Wage\)](#) and [Section 4.63 \(Hotel Worker Living Wage\)](#).

### Who has to comply with the minimum wage law?

All businesses with employees that fit the "Employee" definition under SMMC Section 4.62.010 must comply. Eligible employees include any individual that works at least two (2) hours in a given week in Santa Monica. Employers located outside Santa Monica but whose employees perform work in Santa Monica satisfying that requirement must also comply with Santa Monica's ordinance. Please refer to the "Employee" definition in the Minimum Wage Ordinance for additional information, and note that there is a separate rate for Hotel Workers.

Workers not entitled to minimum wage payment under California law are exempt from the local law. These exemptions apply to certain categories of workers including independent contractors, learners (for a limited time), in-home support services, and certain disabled workers. For further information on these categories of workers, please consult the Industrial Welfare Commission wage orders (<http://www.dir.ca.gov/iwc/WageOrderIndustries.htm>) and/or the Division of Labor Standards Enforcement (<http://www.dir.ca.gov/DLSE/dlse.html>).

Federal, State, County, City, and School District employees abide by different laws.

### Is Santa Monica's wage rate the same as the Los Angeles minimum wage rate?

Yes, the City of Santa Monica and County of Los Angeles share the same wage schedule, including the one-year wage escalation delay for smaller businesses.

### Is there a separate wage for hotel workers?

Yes. Hotels and hotel related businesses (defined as an employer that contracts, leases, or sublets premises connected to the hotel and operated in conjunction with the hotel, or that provides services at the hotel) must pay a hotel living wage of \$15.66 per hour, which is aligned with the City of Los Angeles hotel wage. The City of Santa Monica's hotel living wage rate increases annually with the City of Los Angeles hotel wage rate (annual CPI increase). Workers with a collective bargaining agreement may be exempt; see the union FAQ below.

### What happens when there are differences in the Federal, State (CA), and City (Santa Monica) minimum wage laws?

Santa Monica employers must comply with all applicable Federal, State, and City minimum wage laws. Where there is a conflict, employers must follow the law that is most beneficial to the employee. Since Santa Monica's minimum wage is higher than the State and the Federal minimum wage, employers must follow Santa Monica's law, unless an exemption applies (see Deferrals and Exemptions below). Exemptions include employees who work under a collective bargaining agreement, and those exempt under State labor law.

### What was the process for voting on this law? Did the City Council consider impacts on businesses?

City Council began discussing a Santa Monica minimum wage law in September 2014, when Los Angeles Mayor Garcetti announced the LA minimum wage plan, and formally directed staff to research and prepare a proposed law in July 2015. Since that time, staff has worked with subject matter experts, Santa Monica businesses and community business partners including the Santa Monica



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Chamber of Commerce and Santa Monica Travel and Tourism, workers, and the community to receive input on the law, and has made adjustments to proposals in response to this feedback. City staff works closely with community-based outreach partners to provide education and outreach services to the business community.

You can find more information about the process, and view related community meetings, City Council discussions, reports and research on the City's minimum wage website.

### **What if I work in Santa Monica, but I live somewhere else?**

You must be paid the Santa Monica minimum wage rate for work performed in Santa Monica.

### **Does the law apply to full-time and part-time workers?**

Yes.

### **I am part of a union. Does the new wage rate apply to me?**

Yes, but you can waive rights as part of the collective bargaining process. Santa Monica's ordinance is a minimum labor standard and a law of general application that applies to all employees covered by the ordinance, whether represented by a union or not. However, per SMMC Section 4.62.045, the ordinance provisions may be waived by a collective bargaining agreement. The waiver must be in a bona fide collective bargaining agreement, must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement are free to negotiate any language they desire, and the City will not interfere with or participate in the negotiation of such language.

## DEFERRALS AND EXEMPTIONS

### **Who is exempt from Santa Monica's minimum wage law?**

The law does not apply to employees of government agencies, and certain employees who do not qualify for minimum wage payments under California law. The minimum wage law also does not apply to employees participating in a collective bargaining agreement that waives the minimum wage requirement. Santa Monica's ordinance does not apply to exempt employees and also contains limited exemptions for some nonprofit organizations, transitional employers, and first-time workers.

### **Are there different rules for small businesses?**

Yes. Businesses with 25 or fewer employees (determined by the average number of employees employed per quarter during the previous calendar year) have a one-year delay in the minimum wage escalation rate (see wage rate table), and fewer paid sick leave hours (see sick leave section) than larger businesses.

### **I have a small office in Santa Monica, but belong to a company with many locations. Do I qualify for the smaller business one-year delay?**

The employee count (for purposes of determining 26 or more, versus 25 or fewer) is based on the number of employees fitting the "Employee" definition – that is, those individuals who perform at least two hours of work in a given week within Santa Monica (see SMMC Section 4.62.010(c)).

Please refer to SMMC Section 4.62.015(h) for more information. Multiple employers that form a single integrated enterprise are considered a single employer if so deemed under the Fair Labor Standards Act (FLSA).

### **Do nonprofits also need to comply with the law?**

Yes. However, nonprofit organizations that meet any one of the following conditions can apply for a waiver to delay the minimum wage rate increases by one year. All nonprofits with 25 or fewer employees will qualify for the small business delay, and do not need to apply for a one-year delay.

- The chief executive officer earns a salary that, when calculated on an hourly basis, is less than five times the lowest wage paid by the Nonprofit Corporation; or
- The Nonprofit Corporation is a Transitional Employer; or
- The Nonprofit Corporation serves as a child care provider; or



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- The Nonprofit Corporation is funded primarily by City, county, state or federal grants or reimbursements.

### How can I apply for a nonprofit deferral?

Please contact the City at [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net) to request an application form.

### What defines a transitional employer? If I believe that I qualify, how can I apply for an exemption?

A Transitional Employer is a Nonprofit Corporation that provides Transitional Jobs (short-term, wage-paying, subsidized employment in a nonprofit corporation that combines actual work, skill development, and Supportive Services) for the long-term unemployed.

Please contact the City at [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net) to request an application form.

## SPECIAL PROVISIONS (HOTEL WAGE, SERVICE / SURCHARGES, PAID SICK LEAVE, FIRST-TIME WORKERS)

### HOTELS

#### What is the wage rate for hotel workers? When is it effective?

Hotels and hotel related businesses (an employer that contracts, leases, or sublets premises connected to a hotel and operated in conjunction with a hotel, or that provides services at a hotel) must pay the Santa Monica Hotel Worker Living Wage. Effective July 1, 2017, the Santa Monica hotel wage is the same as the City of Los Angeles at \$15.66 per hour. Thereafter (from 2018 onwards), the wage increases annually by CPI. The annual rates will be posted on the City's minimum wage website.

#### Why do hotels / hotel workers have a different requirement?

Tourism is one of the largest industries in the City and in the entire region. Having a uniform living wage for hotel workers regionally promotes equity and benefits in both the local and regional economy.

#### Is the hotel wage the same as Los Angeles?

Yes. The Santa Monica wage is different only in that it applies to hotels of all sizes, where the Los Angeles hotel wage applies to hotels of 100 rooms or greater.

#### Are any hotels exempt?

The law does not apply to youth hostels. Santa Monica also has a hardship clause where hotels may apply for a one-year waiver under SMMC Section 4.63.020. To qualify for the waiver, a hotel must demonstrate that compliance with the increased wage would lead to either a 20% decrease in its workforce or a 30% decrease in employee total hours to avoid bankruptcy or shut down. An external review or audit would establish these conditions, and an applying hotel must notify its employees.

#### I am part of a union. Does the new wage apply to me?

Yes, but you can waive rights as part of the collective bargaining process. Santa Monica's ordinance is a minimum labor standard and a law of general application that applies to all employees covered by the ordinance, whether represented by a union or not. However, per SMMC Section 4.63.045, the ordinance provisions may be waived by a collective bargaining agreement. The waiver must be in a bona fide collective bargaining agreement, must be express, and must be in clear and unambiguous terms. The parties to a collective bargaining agreement are free to negotiate any language they desire, and the City will not interfere with or participate in the negotiation of such language.

#### My employer is a contractor, but I work at a hotel. Does the hotel wage apply to me?

Yes. The law says that any employer that contracts, leases, or sublets premises connected to a hotel and operates in conjunction with a hotel, or that provides services at a hotel, must pay the hotel wage for any worker who performs work duties within the City of Santa Monica for two or more hours per any given week. The Santa Monica wage applies for the hours of work performed while in Santa Monica in accordance with the "Employee" definition.

#### I work at a Santa Monica hotel part time. Am I eligible for the hotel wage?

Yes. You are entitled to the Santa Monica hotel wage rate for the hours that you work in Santa Monica. Any hours worked outside of Santa Monica are subject to the wage rate for that location.



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## SERVICE CHARGES

### EMPLOYERS

#### **My restaurant charges customers service charges. Will I need to change my current process?**

Yes, most likely, per SMMC Section 4.62.040. The law requires service charge proceeds to be distributed to employees generally contributing to the customers' service (including back of house staff). Service charge proceeds cannot be distributed to employees whose primary roles are managerial or supervisory. Employers are also required to disclose in writing their plan for service charge distribution and report to employees the amount of service charges collected. The business cannot deduct credit card processing fees or costs from the employee's distribution.

The law also addresses transparency concerns for the customer: employers must clearly disclose all service charges to customers before they make a purchase or selection.

Lastly, the employer cannot automatically include any optional charge in a bill. If the charge is optional, a customer must write it in.

#### **My restaurant uses a healthcare surcharge to offset employee health care costs. Do I need to change my current process?**

Yes, most likely, per SMMC Section 4.62.040 (a)(1). The law requires that healthcare surcharges be deposited within seven days of collection into segregated accounts controlled exclusively by employees, such as (but not limited to) Flexible Spending Accounts, Health Savings Accounts, or Premium-Only Cafeteria Plans; or be paid to employees in wages.

The law also addresses transparency concerns for the customer. Employers must clearly disclose all healthcare surcharges to customers before they make a purchase or selection.

#### **My restaurant operates on a tipping model. Do I need to change my current process?**

No, per SMMC Section 4.62.040(i), the law does not apply to any tip or gratuity.

#### **What records do I need to keep?**

Businesses that use any type of service charge are required to maintain records related to this type of business activity for three years from the date of the charges being collected.

#### **My hotel has an established service charge sharing model for portering, catering, and room service. Do I need to change this?**

No, per SMMC Section 4.62.040 (2)(C), employers that had, prior to July 1, 2016, an existing practice of pooling and distributing service charges for portering, catering, and room service may continue to do so.

#### **I would like to use a service charge at my place of business. Does the law allow me to do this, and if so what steps should I take?**

Yes, you can use a service charge. If you choose to do so, read the minimum wage law to make sure your noticing, distribution, employee notification, and record keeping is consistent with the law. If you have questions about a specific business policy or practice, contact City staff at [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net).

### EMPLOYEES

#### **I receive some income from service charges. Will anything change for me?**

Yes, possibly. Employers may decide to distribute service charges differently than they have in the past. The law requires the employer to distribute 100% of proceeds to employees generally providing the service, which can include back of house staff, like dishwashers or cooks.

#### **I receive tips in addition to my regular check. Will anything change for me?**

No, the law will not impact your tips. Per SMMC Section 4.62.040(i), the law does not apply to any tip or gratuity.

#### **My employer redistributes service charges but I'm not sure how or who receives the money. Is this right?**

No. The law requires employers to disclose the service charge distribution plan in writing to employees, and to report this distribution to employees.



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## PAID SICK LEAVE

### **When is the effective date for paid sick leave? Is it the same as the minimum wage law?**

Paid sick leave is a part of Santa Monica's minimum wage law. While the minimum wage was first effective July 1, 2016 and increases annually in July, the paid sick leave was first effective January 1, 2017, and will increase once on January 1, 2018. All Santa Monica businesses must comply with sick leave requirements as of January 1, 2017.

### **How is this different from State law? Is the accrual rate the same?**

The accrual rate (one hour for every 30 hours worked) is the same as under State requirements. Under Santa Monica's law, employees can accrue more paid sick leave than under State law. And, unlike State law, Santa Monica's ordinance does not include annual accrual or use requirements.

### **What if the State and Santa Monica laws are different?**

If there is a conflict, the employer must abide by the law that is most generous to employees.

### **What are the reporting requirements for sick leave?**

Businesses are obligated to track their employees' accrued and used paid sick leave. They must ensure that staff know how much they have earned each payroll cycle. This applies to both full-time and part-time employees.

### **Will paid sick leave hours roll over from year to year?**

Yes, as long as the employer uses the accrual method. Any unused sick leave will roll over up to the cap of 40 hours or 32 hours (starting January 1, 2017), and 72 or 40 hours (starting January 1, 2018 and thereafter). The rollover can be on fiscal or calendar year, or anniversary date. If the employer provides all required leave at the start of the year (i.e., front loading), there is no required carryover.

### **Does the law limit the total number of Paid Sick Leave days an employee can take in a year?**

No. An employee can take up to the total amount he or she has accrued at any given time. For example, an employee could carry over the full amount of accrued, unused leave and take this leave at the start of the year. He or she would begin to accrue leave again, and could take the additional leave during that same year. Under the frontloading method, an employee can never use more than the required amount in one year. **Does the law require that employers compensate employees for unused hours (provide cash out for unused hours)?**

No.

### **What about part-time employees? How does the law apply?**

The law is the same as for full-time employees. Part-time employees will accrue paid sick leave at the same rate as full-time employees (one hour for every 30 hours worked), and have the same minimum requirements. If you provide sick leave up front, you must provide the maximum required, even if that employee would not have earned those days in a year under the accrual method.

### **I'm not sure if I'm receiving the right amount of paid sick leave. What should I do?**

You can contact City staff at (310) 458-8281 or [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net) who will answer questions about your specific situation.

## FIRST-TIME WORKERS

### **I just got a new job. How does the new law apply?**

If your new job is a position in which you have no previous similar or related experience, then your employer can pay you at 85% of the local minimum wage for the first 160 hours of your employment. Following 160 hours, the employer must pay you the general minimum wage rate.

### **I earned below the minimum wage last summer. I now have a new summer job, can my employer pay me below minimum wage again?**

Only if your role is different enough to satisfy the requirement of similar or related experience. If you are working in your same or similar job duties, the employer must pay the general minimum wage.



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## ENFORCEMENT

### How will the City enforce the minimum wage law?

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## EMPLOYERS

### Do I need to post all four pages of the legal notice?

The legal notice consists of four pages (minimum wage, hotel worker living wage, paid sick leave, and service charges). Businesses must post those pages that apply to their businesses – for example, businesses that are not hotels or do not have service charges are not required to post these sections. Generally, all businesses must have relevant Minimum Wage and Paid Sick Leave notices (in English and Spanish) clearly posted for their employees to see.

It is the responsibility of each business to download, print, and post notices annually, which can be downloaded here: [www.smgov.net/minimumwage](http://www.smgov.net/minimumwage). Failure to post can result in fines.

### Where can I find the ordinance?

You can download the ordinance at [www.smgov.net/minimumwage](http://www.smgov.net/minimumwage); or in the City's Municipal Code Chapter 4.62 (Minimum Wage) and Chapter 4.63 (Hotel Living Wage).

### Are there resources to help me understand what I need to do to comply with the law?

The City has prepared information and resources, including an online toolkit with posters, flyers and pay stub notices, which you can find at [www.smgov.net/minimumwage](http://www.smgov.net/minimumwage).

The City has contracted with the following local organizations to assist with business and employee outreach and education efforts, which include workshops, presentations, and one-on-one outreach

- Lee Andrews Group (Business outreach)
- Restaurant Opportunities Center Los Angeles (ROC LA) (Worker outreach with restaurant worker focus)
- Koreatown Immigrant Workers Alliance (KIWA) (Worker outreach)

You can find contact information for these groups at [www.smgov.net/minimumwage/education-enforcement](http://www.smgov.net/minimumwage/education-enforcement).

### Does the City provide resources so that I can post information for employees? Where can I find these resources?

Yes. Please check the Employer Resource section at [www.smgov.net/minimumwage](http://www.smgov.net/minimumwage).

## EMPLOYEES

### What types of activities are illegal for employers under the law?

Any activity that goes against the minimum wage law regulations is illegal. Illegal activities include:

- Payment below the required wage rate
- Failure to provide required sick leave
- Failure to provide records of service charge distribution
- Failure to distribute service charges to employees
- Retaliation for asking about or requesting employers fulfill new wage requirements
- Failure to post the annual Legal Notices

If you have questions about whether an activity is legal, you can contact the City at (310) 458-8281 or by email to [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net). The City's outreach partners can also assist with reviewing possible wage claims.

### How can I file a wage claim?



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You can contact the Los Angeles County Department of Consumer and Business Affairs (DCBA) directly at (800) 593-8222 or through their [website](#). If you have any questions about the process or whether to file a complaint or claim, you can call the DCBA, or contact City staff at (310) 458-8281 or [minimum.wage@smgov.net](mailto:minimum.wage@smgov.net). We will treat your questions and complaints as confidential. Visit [smgov.net/minimumwage/education-enforcement](http://smgov.net/minimumwage/education-enforcement) for more information.

**If my employer has been underpaying me, can the City help me recover back wages?**

Yes. As part of an investigation, the DCBA will calculate any back wages or unpaid sick leave due to you under the law.

**Can my employer fire me for asking about the law?**

No. This would be retaliation and is illegal under the law.

**What about my immigration status?**

The City and County will not ask about your immigration status, and it is irrelevant for your rights under Santa Monica's minimum wage law. The City will work to ensure that all workers receive the applicable benefits under the minimum wage law.

