

**COOK COUNTY
COMMISSION ON HUMAN RIGHTS
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INTERPRETATIVE AND PROCEDURAL RULES

GOVERNING THE COOK COUNTY MINIMUM WAGE ORDINANCE

APPROVED MAY 25, 2017

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SECTION 1. DEFINED TERMS

Rule 1.01 Definitions

All defined terms used in these Rules have the same meaning as the defined terms set out in Section 42-12 of the Cook County Minimum Wage Ordinance. In addition, the following terms shall have the following meanings when used in these Rules.

“Business Facility” means a place where Covered Employees may work for a Covered Employer, including a residence or dwelling unit. A facility must be owned, leased, rented, operated, managed or in some manner controlled by a Covered Employer to meet this definition.

“Commission” means the Cook County Commission on Human Rights.

“Commissioners” means the members of that body of eleven Commissioners appointed by the President of the Cook County Board and approved by the County Board pursuant to the Cook County Human Rights Ordinance.

“Commission Staff” means those individuals who shall perform investigative, clerical, administrative or other duties as described and delegated by the Commissioners on behalf of the Commission through the Executive Director.

“Cook County Minimum Wage” means the minimum wage required by the Ordinance.

“Covered Employee” is defined and explained below in Rule 3.03.

“Covered Employer” is defined and explained below in Rule 3.01.

“CPI” means the Seasonally Adjusted Consumer Price Index for All Urban Consumers, inclusive of all items and averaged across all U.S. cities as published monthly by the U.S. Department of Labor Bureau of Labor Statistics and as it is determined by the Commission pursuant to Rule 2.04. The data that the Commission will use to calculate this figure is currently available online at: <https://data.bls.gov/cgi-bin/srgate> under the data series ID: CUSR0000SA0, but may change from time to time.

“Director” means the Executive Director of the Cook County Commission on Human Rights.

“Domestic Worker” means a person whose primary employment duties include housekeeping; house cleaning; home management; nanny services, including childcare and child monitoring; caregiving, personal care or home health services for elderly persons or persons with illnesses, injuries, or disabilities who require assistance in caring for themselves; laundering; cooking; companion services; chauffeuring; and other household services to members of households or their guests in or about a private home or residence, or any other location where the domestic work is performed.

“Federal Minimum Wage” means the minimum wage required under the federal Fair Labor Standards Act to be paid to an employee who does not usually and traditionally receive gratuities as part of his or her compensation.

“Federal Minimum Wage for Tipped Employees” means the minimum wage required under the federal Fair Labor Standards Act to be paid to an employee whose compensation usually and traditionally includes gratuities.

“Fair Labor Standards Act” means the United States Fair Labor Standards Act of 1938, 29 USC § 201 *et seq.*, in force on the effective date of the Ordinance and as thereafter amended.

“Government Employer” means any government entity other than Cook County that employs a Covered Employee, including any unit of local government, the Illinois State government, and the government of the United States, as well as any other federal, state or local governmental agency or department. The Commission will define “units of local government” as that term is used in Article VII, Section 1 of the Illinois Constitution to include counties, municipalities, townships, special districts and units designated as units of local government by law that exercise limited governmental powers or powers in respect to limited governmental subjects. However, the Commission also includes school districts within its definition of Government Employers as used in these Rules.

“Illinois Minimum Wage” means the minimum wage required under the Illinois Minimum Wage Law to be paid to an employee who does not usually and traditionally receive gratuities as part of his or her compensation.

“Illinois Minimum Wage for Tipped Employees” means the minimum wage required under the Illinois Minimum Wage Law to be paid to an employee whose compensation usually and traditionally includes gratuities.

“Illinois Minimum Wage Law” means the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*, in force on the effective date of the Ordinance and as thereafter amended.

“Ordinance” means the Cook County Minimum Wage Ordinance, enacted by the Cook County Board of Commissioners on October 26, 2016, as amended from time to time. The Ordinance is compiled in the County Code at Sections 42-11 through 42-23.

“Ordinance Rate for Non-Tipped Employees” means the hourly wage set out in Section 42-13 of the Ordinance, as amended from time to time, and as published by the Commission annually.

“Ordinance Rate for Tipped Employees” means the hourly wage set out in Section 42-14 of the Ordinance, as amended from time to time, and as published by the Commission annually.

“Overtime-Exempt Employees” means Covered Employees who are exempt from overtime pay benefits under the Fair Labor Standards Act and/or the Illinois Minimum Wage Law.

“Person” means any individual, partnership, association, corporation, limited liability company, business, or trust.

“Tipped Employee” means any Covered Employee engaged in an occupation in which gratuities have customarily and usually constituted part of the remuneration.

“Unemployment Rate” means the average of the not seasonally adjusted unemployment rate as published by the Illinois Department of Employment Security through the Local Area Unemployment Statistics program for the 12 months between March of the year in which the Commission is determining a change in the CPI pursuant to Rule 2.04 and March of the previous year. The data that the Commission will use to calculate this figure is currently available online at: http://www.ides.illinois.gov/lmi/Pages/Local_Area_Unemployment_Statistics.aspx, but may change from time to time.

SECTION 2. MINIMUM WAGE

Rule 2.01 Applicability to Work Performed in Cook County

The Cook County Minimum Wage applies to the payment of wages by a Covered Employer to a Covered Employee for work that is performed while the Covered Employee is physically present within the geographic boundaries of Cook County; provided that the Cook County Minimum Wage does not apply to work performed by a Covered Employee while he or she is physically present within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

The Cook County Minimum Wage does not apply to the payment of wages by a Covered Employer to an employee for work that is performed while physically present within the geographic boundaries of Cook County until the employee has satisfied the two-hour minimum criterion for coverage described in Rule 3.01.

Rule 2.02 Non-Tipped Employees

Except as provided for Tipped Employees in Rule 2.03, Covered Employers must pay Covered Employees the greater of: (1) the Illinois Minimum Wage; (2) the Federal Minimum Wage; or (3) the Ordinance Rate for Non-Tipped Employees.

As of the date of these Rules, the Illinois Minimum Wage is \$8.25 per hour (and has been since 2010), and the Federal Minimum Wage is \$7.25 per hour (and has been since 2009).

The Ordinance Rate for Non-Tipped Employees is: beginning on July 1, 2017, \$10.00 per hour; beginning on July 1, 2018, \$11.00 per hour; beginning on July 1, 2019, \$12.00 per hour; and beginning on July 1, 2020, \$13.00 per hour. Beginning on July 1, 2021, and on every July 1 thereafter, the Ordinance Rate for Non-Tipped Employees will be calculated by the Commission in the manner described in Rule 2.04 and published by June 1 of each year.

Rule 2.03 Tipped Employees

For Tipped Employees, Covered Employers must pay Covered Employees the greater of (1) the Illinois Minimum Wage for Tipped Employees; or (2) the Federal Minimum Wage for Tipped Employees.

As of the date of these Rules, the Illinois Minimum Wage for Tipped Employees is \$4.95 per hour (*i.e.* 60 percent of the \$8.25 Illinois Minimum Wage), and the Federal Minimum Wage for Tipped Employees is \$2.13 per hour.

Beginning on July 1, 2018, Covered Employers must pay Tipped Employees the greater of: (1) the Illinois Minimum Wage for Tipped Employees; (2) the Federal Minimum Wage for Tipped Employees or (3) the Ordinance Rate for Tipped Employees.

Beginning on July 1, 2018, and on every July 1 thereafter, the Ordinance Rate for Tipped Employees will be calculated by the Commission in the manner described in Rule 2.04 and published by June 1 of each year.

Consistent with the practice of the Illinois Department of Labor, if for hours worked during any seven-day period, a Covered Employee's compensation inclusive of gratuities and the greater of (1) the Illinois Minimum Wage for Tipped Employees; (2) the Federal Minimum Wage for Tipped Employees or (3) the Ordinance Rate for Tipped Employees is less than the number of hours worked by that Covered Employee during the seven-day period *times* the greater of (1) the Illinois Minimum Wage or (2) the Federal Minimum Wage, the Covered Employer must make up the difference.

Rule 2.04 Cost of Living Increases in the Cook County Minimum Wage

Starting in 2018 for Tipped Employees and in 2021 for all other Covered Employees, on or about June 1, the Commission will announce whether there will be any CPI-based increase in the Cook County Minimum Wage by posting such notice on its website at:

<https://www.cookcountylil.gov/service/minimum-wage-ordinance>. Any annual adjustments to the Cook County Minimum Wage that are based on increases, if any, in the CPI, as described in Rules 2.02 and 2.03, shall be done as follows:

1. Calculation

On or about May 15 of each year, the Commission shall multiply the percentage change in the CPI from April of the prior year to April of the current year, and shall multiply that percentage by the greater of: (1) the Illinois Minimum Wage; (2) the Federal Minimum Wage; or (3) the Ordinance Rate for Non-Tipped Employees, and also by the greater of: (1) the Illinois Minimum Wage for Tipped Employees; (2) the Federal Minimum Wage for Tipped Employees or (3) the Ordinance Rate for Tipped Employees.

The resulting increase, if any, shall be rounded up to the nearest multiple of \$0.05 and added to the applicable wage. For example, if the Cook County Minimum Wage between July 1, 2020 and June 30, 2021, is \$13.00 per hour and the CPI increases by 1.8 percent between April 2020 and April 2021, then the Commission would advise and post by June 1, 2021 that the Cook County Minimum Wage will increased by \$0.25 (*i.e.* $\$13.00 \times 0.018 = 0.234$, then round up to the nearest nickel) effective July 1, 2021.

If the CPI decreases in the annual time period, the Cook County Minimum Wage will remain the same. For example, if the Cook County Minimum Wage between July 1, 2020 and June 30, 2021, is \$13.00 per hour and the CPI decreases by 0.1 percent between April 2020 and April 2021, then the Commission would advise by June 1, 2021 that the Cook County Minimum Wage will remain \$13.00 per hour until at least June 30, 2022.

2. Limitations

a. Recessionary Breaker

There shall be no increase in the Cook County Minimum Wage pursuant to an increase in the CPI in any year when the Unemployment Rate in Cook County is equal to or greater than 8.5 percent. For example, if the Cook County Minimum Wage between July 1, 2020 and June 30, 2021, is \$13.00 per hour and the CPI increases by 1.8 percent between April 2020 and April 2021, but the Unemployment Rate in Cook County averaged 8.7 percent between March 2020

and March 2021, the Commission would not increase the Cook County Minimum Wage by \$0.25. Instead, the Cook County Minimum Wage would remain \$13.00 per hour for the year between July 1, 2021 and June 30, 2022.

b. Inflationary Cap

Any annual increase in the Cook County Minimum Wage shall be capped at 2.5 percent. For example, if the Cook County Minimum Wage between July 1, 2020 and June 30, 2021, is \$13.00 per hour and the CPI increases by 3.1 percent between April 2020 and April 2021, the Commission would not increase the Cook County Minimum Wage by \$0.45 (*i.e.* $\$13.00 \times 0.031 = 0.403$, then round up to the nearest nickel) effective July 1, 2021. Instead, the Cook County Minimum Wage would increase by only \$0.35 (*i.e.* $\$13.00 \times 0.025 = 0.325$, then round up to the nearest nickel) for the year between July 1, 2021 and June 30, 2022.

Rule 2.05 Overtime Pay

Covered Employers must pay Covered Employees who work over 40 hours in any particular workweek a minimum wage of at least 1.5 times the Cook County Minimum Wage (*e.g.*, when the Cook County Minimum Wage is \$10.00 per hour, the minimum wage for overtime is \$15.00 per hour); provided that this requirement does not apply to Overtime-Exempt Employees.

Examples of such Overtime-Exempt employees include, but are not limited to: employees employed in a *bona fide* executive, administrative or professional capacity; employees who receive more than half of their compensation in the form of commission; mechanics primarily engaged in servicing automobiles, trucks and farm implements; salespersons primarily engaged in selling to ultimate purchasers automobiles, trucks, farm implements, trailers, boats, and aircraft; and employees of Government Employers, who are permitted to substitute compensatory time in lieu of overtime pay.

SECTION 3. EMPLOYERS AND EMPLOYEES

Rule 3.01 Covered Employer - Definition

To qualify as an “Employer” within the meaning of the Ordinance and a “Covered Employer” as that term is used in these Rules, a Person must satisfy both of the following two requirements:

1. Minimum Number of Employees

To be a Covered Employer, a Person must employ for compensation at least:

- a. One (1) Covered Employee as a Domestic Worker, or
- b. Four (4) employees, at least one (1) of whom is a Covered Employee.

2. Cook County Location or Cook County Licensee

To be a Covered Employer, a Person must also:

- a. Maintain a Business Facility within the geographic boundaries of Cook County and/or
- b. Be subject to one or more of the license requirements in Chapter 54 of the Cook County Code of Ordinances.

Notwithstanding the foregoing, no Person will be considered to be a Covered Employer if that Person is:

- a. A Government Employer, other than Cook County;
- b. An employer that employs only employees who are excluded from coverage by the Ordinance as set forth and described in Rule 3.05 below;
- c. A regulated motor carrier subject to subsection 3(d)(7) of the Illinois Minimum Wage Law; or
- d. An employer who is preempted by Federal or State Law from being covered by the Ordinance.

Rule 3.02 Covered Employer – Location of Business Facility

An employer with a single Business Facility within the geographic boundaries of Cook County satisfies the location requirement to qualify as a Covered Employer without regard to the location of its other Business Facilities, including whether its corporate headquarters, primary place of business, or the majority of its business, sales, facilities, or employees are located outside of Cook County. Examples of Business Facilities include, but are not limited to, stores, restaurants, offices, factories and storage facilities.

Both (i) a residence within Cook County that is used in part for a home business by a person who employs at least four (4) employees, at least one (1) of whom is a Covered Employee, and (ii) a residence where a person employs at least one (1) Covered Employee as a Domestic Worker whose work is performed in or about the residence or any other location constitute a Business Facility that satisfies the location requirement to qualify as an Employer covered by the Ordinance.

The Commission will consider any Business Facility within the geographic boundaries of Cook County for the purpose of determining whether the employer is a Covered Employer.

Rule 3.03 Covered Employee - Definition

A Covered Employee is an employee who:

1. Is not subject to any of the exclusions set out in Rule 3.05; and
2. In any particular two-week period, has performed at least two (2) hours of work for a Covered Employer (as defined in Rule 3.01) while physically present within the geographic boundaries of Cook County (except as limited by Rule 3.04).

Rule 3.04 Covered Employees - Location of Work

The Commission will consider any compensated work that an individual performs within the geographic boundaries of Cook County for the purpose of determining whether the individual has worked a sufficient number of hours in Cook County to be a Covered Employee with the following exception: The Commission will not consider work that an individual performs within the geographic boundaries of a municipality that has lawfully preempted the Ordinance.

The Commission will not consider the following to constitute compensated work while physically present within the geographic boundaries of Cook County:

1. Uncompensated commuting or
2. Traveling through Cook County without stopping for a work purpose. Examples of stopping for a work purpose include, but are not limited to, making deliveries or sales calls. Stopping for a work purpose would not include making only incidental stops, such as to purchase gas or buy a snack.

The Commission will consider the following to constitute compensated work while physically present within the geographic boundaries of Cook County:

1. Compensated commuting and
2. Traveling into Cook County for a work purpose, including but not limited to deliveries, sales calls, and travel related to other business activity for a Covered Employer which is taking place within Cook County.

For the purpose of determining whether an individual is a Covered Employee, the Commission will consider time that an individual spends performing compensated work for a Covered Employer at the individual's residence or any other location that is physically present in Cook County that is not the Covered Employer's Business Facility if the Covered Employer explicitly requires that the individual to work at that location.

Rule 3.05 Covered Employees – Exclusions

Notwithstanding the foregoing, the Commission will not consider any of the following to be Covered Employees:

1. Employees who are covered by a *bona fide* Collective Bargaining Agreement, under the conditions described in Rule 4.01;
2. Employees of any Subsidized Temporary Youth Employment Program (as defined in Section 41-12 of the Ordinance);
3. Employees of any Subsidized Transitional Employment Program (as defined in Section 41-12 of the Ordinance);
4. Employees subject to the provision in subsection 4(a)(2) of the Illinois Minimum Wage Law which currently allows employers to pay certain employees a wage up to 50¢ per hour less than the Illinois Minimum Wage during the first ninety (90) consecutive calendar days of employment;
5. Employees subject to the provision in subsection 4(a)(3) of the Illinois Minimum Wage Law, which currently allows employers to pay employees who are less than 18 years old a wage up to 50¢ per hour less than the Illinois Minimum Wage;
6. Employees who perform compensated work as camp counselors subject to subsections 4(d) and 4(e) of the Illinois Minimum Wage Law;
7. Persons whose earning capacity is impaired by age, physical or mental deficiency, or injury, who are subject to Section 5 of the Illinois Minimum Wage Law;
8. Employees licensed as "learners" by the Illinois Commission of Labor, which generally refers to employees involved in occupational training programs, who are subject to Section 6 of the Illinois Minimum Wage Law;
9. Persons employed in agriculture or aquaculture subject to subsection 3(d)(2) of the Illinois Minimum Wage Law;
10. Persons employed as outside salespersons subject to subsection 3(d)(4) of the Illinois Minimum Wage Law;

11. Persons employed as members of a religious corporation or organization subject to subsection 3(d)(5) of the Illinois Minimum Wage Law; and
12. Students employed at an accredited Illinois college or university at which they are students subject to subsection 3(d)(6) of the Illinois Minimum Wage Law.

The exclusions described in this Rule that are defined by reference to the Illinois Minimum Wage Law may be affected by changes to that law or, where relevant, to the Fair Labor Standards Act.

SECTION 4. GENERAL INFORMATION

Rule 4.01 Waiver – Collective Bargaining Agreements

The Commission will not enforce the Ordinance with respect to employment that is governed by a *bona fide* collective bargaining agreement that was entered into prior to July 1, 2017 and that remains in force on July 1, 2017. After July 1, 2017, the Commission will enforce the Ordinance with respect to Covered Employees and Covered Employers who are governed by any *bona fide* collective bargaining agreement that is entered into after July 1, 2017, unless that agreement provides in clear and unambiguous terms that the Covered Employees have waived their rights under the Ordinance.

The Commission will enforce the Ordinance, except in cases where the waiver of rights complies with this Rule, whether a *bona fide* collective bargaining agreement executed after July 1, 2017 is the first collective bargaining agreement between the parties or a renewal or extension of a previously existing collective bargaining agreement.

Rule 4.02 Required Employer Records

1. For All Covered Employees

Covered Employers are not required to retain any records prior to being named as respondents to a claim filed under the Ordinance with the Commission. The Commission, however, anticipates that moderately sophisticated Covered Employers who are complying with the Ordinance will have personnel and payroll records from the three (3) most recent years that are sufficient to demonstrate:

- a. Each Covered Employee's name;
- b. Each Covered Employee's contact information, including mailing address, telephone number and/or email address;
- c. Each Covered Employee's occupation or job title;
- d. Each Covered Employee's hire date;
- e. The number of hours that each Covered Employee worked each workweek or pay period;
- f. The rate of pay for each Covered Employee, including regular and overtime pay, if applicable;
- g. The type of payment for each Covered Employee (*e.g.*, hourly rate, salary, commission) and whether any overtime pay;
- h. The amount and explanation of any additions to and deductions from the wages of each Covered Employee; and

- i. The date of all wage payments to Covered Employees.

Failure of a moderately sophisticated Covered Employer to be able to produce such records if requested by the Commission in response to a complaint alleging a violation of the Ordinance may result in an adverse presumption against the Covered Employer by which the Commission will presume the accuracy of a Covered Employee's testimonial evidence with respect to the specific issue when it is in conflict with the testimonial evidence of a moderately sophisticated Covered Employer who cannot produce the expected records.

For the purpose of this Rule, the Commission will presume that any Covered Employer who does business in any corporate form or any natural person who employs more than four (4) Covered Employees is moderately sophisticated.

2. For Tipped Employees

In lieu of annual filings pursuant to Section 42-14(b) of the Ordinance, a Covered Employer must maintain records of Tipped Employees for a period of not less than three (3) years sufficient to show the following information for each Tipped Employee:

- a. An identifying symbol, letter, or number on the payroll record indicating such Covered Employee is a person whose wage is determined in part by gratuities.
- b. The report received from the Covered Employee setting forth gratuities received during each workday. Such reports submitted by the Covered Employee shall be signed and include a unique identifier such as his or her social security number.
- c. The amount by which the wage of each such Covered Employee has been deemed to be increased by gratuities as determined by the Covered Employer. The amount per hour which the Covered Employer takes as a gratuity credit shall be reported to the Covered Employee in writing each time it is changed from the amount per hour taken in the preceding pay period.
- d. If the Covered Employee worked for the Covered Employer some hours in an occupation in which he or she received gratuities and some hours in an occupation in which he or she did not receive gratuities, then the Covered Employer shall specify the total hours worked and the total daily or weekly straight-time payment made by the Covered Employer to the Covered Employee in each category (with and without gratuities).

Rule 4.03 Notice & Posting

1. Every Covered Employer shall post in a conspicuous place at each Business Facility within the geographic boundaries of Cook County a notice advising Covered Employees of the current Cook County Minimum Wage and of their rights under the Ordinance; provided that (a) a Business Facility located within the geographic boundaries of a municipality that has lawfully preempted the Ordinance and (b) a residence that serves as the worksite for a Domestic Worker are exempt from this requirement.
2. Every Covered Employer shall provide, with a Covered Employee's first paycheck after the effective date of the Ordinance, and at least once per calendar year thereafter, a notice advising such employee of the current Cook County Minimum Wage and of Covered Employees' rights under the Ordinance.
3. Covered Employers can satisfy these notice and posting obligations by providing any notice that states the current Cook County Minimum Wage and explains employees' rights under the Ordinance, including where to file a complaint for violation of the Ordinance and the prohibition against retaliation. The Director shall prepare sample notices and will make them available online at <https://www.cookcountyil.gov/service/minimum-wage-ordinance>, but Covered Employers are not required to use such samples as long as their notices convey all required information.

Rule 4.04 Retaliation Prohibited

A Covered Employer cannot subject a Covered Employee to adverse treatment because the Covered Employee exercises or has exercised his or her rights under the Ordinance or is or has engaged in conduct that is protected by the Ordinance. A Covered Employee's rights under the Ordinance include, but are not limited to, payment of the appropriate wage under Rule 2.02 or Rule 2.03 for work performed for a Covered Employer in Cook County.

Conduct protected by the Ordinance includes, but is not limited to, disclosing, reporting, or testifying about a violation of the Ordinance to the Covered Employer, the Commission or a court of competent jurisdiction. Adverse treatment is any conduct by, or at the direction of, the Covered Employer that is reasonably likely to deter a Covered Employee from exercising his or her rights under the Ordinance or in engaging in conduct that is protected by the Ordinance. Such conduct includes, but is not limited to, unjustifiable termination, unjustifiable negative evaluations, punitive schedule changes, punitive decreases in the desirability of work assignments, and other acts of harassment.

SECTION 5. ENFORCEMENT

Rule 5.01 Application of the Ordinance

All functions and powers of the Commission and the Director under the Ordinance shall be exercised in cooperation with the functions and powers of the U.S. Commission of Labor under the Fair Labor Standards Act, the Illinois Commission of Labor under the Illinois Minimum Wage Law and the enforcement agency of any municipality within the geographic boundaries of Cook County that has enacted a minimum wage ordinance.

With respect to enforcement of the Ordinance, the Commission will defer to the jurisdiction of any municipality that is within the geographic boundaries of Cook County, including but not limited to the City of Chicago, that has enacted a minimum wage law applicable to the Covered Employee at issue, which (a) provides a minimum wage that is the same as or higher than the Cook County Minimum Wage and (b) provides remedies against a Covered Employer that fails to pay such a wage.

In any municipality that is located within Cook County which requires payment of a minimum wage that is the same as or higher than the Cook County Minimum Wage, such municipality's minimum wage law shall apply within its geographic boundaries.

Compliance with the Ordinance does not relieve a Covered Employer from complying with any other ordinance or law promulgated by Cook County or any other government that requires payment of a higher wage, including but not limited to the Cook County Living Wage Ordinance.

Rule 5.02 Time Limit for Filing Complaints

A Covered Employee who seeks to file a complaint with the Commission alleging that a Covered Employer has failed to pay the wage required by Rule 2.02 or Rule 2.03 must file any such complaint within three (3) years of the first underpayment provided that, if there is evidence that the Covered Employer concealed the underpayment, then any complaint must be filed with the Commission within three (3) years of when the Covered Employee discovered, or reasonably should have discovered, the underpayment. A Covered Employee alleging any other violation of the Ordinance must file any such complaint with the Commission within three (3) years of the alleged violation. Where such a violation is continuing, the claim must be brought within three (3) years of the last occurrence of the alleged violation.

Once a Covered Employee has filed a complaint within the time allowed by this Rule, the Commission's investigation of that complaint is not necessarily limited to the same time period, though as a matter of practice, the Commission will not focus its investigation on alleged violations of the Ordinance that are more than three (3) years old.

That a claim may be too old to file at the Commission does not affect any right that the Covered Employee may have to bring the claim in a court of competent jurisdiction pursuant to Section 42-23 of the Ordinance.

Rule 5.03 Initiating Enforcement at the Commission

1. Case Initiation

A Covered Employee who believes that his or her Covered Employer has committed any violation of the Ordinance may file a complaint with the Commission. Such a complaint must be in writing and verified by the complaining Covered Employee in addition to being timely pursuant to Rule 5.02.

Further, the complaint must include:

- a. The name of the Covered Employee and his or her contact information;
- b. The name of the Covered Employer that has allegedly violated the Ordinance and its contact information;
- c. A statement of facts alleged to establish that the complaining employee and his or her employer are covered by the Ordinance, including, but not limited to, (i) the address of the Covered Employer's Business Facility located in Cook County or an allegation that the Covered Employer has or should have a Cook County license; (ii) the names or a description of three (3) other employees of the Covered Employer, unless complainant is a Domestic Worker; (iii) the date(s) and place(s) where the complainant performed a minimum of two (2) hours of work for a Covered Employer while physically present within the geographic boundaries of Cook County, and a brief description of that work; and
- d. A statement of the facts alleged to constitute the violation of the Ordinance, including, but not limited to (i) the date(s) and amount(s) of any alleged underpayment for work within the geographic boundaries of Cook County; (ii) the date(s) and place(s) of any alleged failure to notify; and (iii) the date(s), place(s) and witness(es) to any alleged retaliation.

The Commission will provide a form that a Covered Employee can use for this purpose on its website. A complaining Covered Employee can be represented by counsel at this or any stage of the Commission process, but is not required to retain an attorney for this purpose.

2. Review of Complaint

Once filed with the Commission, (i) if the complaint is not timely, (ii) if the Commission lacks jurisdiction over the complaint, or (iii) if the complaint does not state facts that, if true, would constitute a violation of the Ordinance, the Commission will not serve the complaint. The

Commission will issue an abeyance letter to the complaining employee and take no further action with respect to the employee's claim.

The Commission may also decline to serve a complaint from an employee who has previously filed multiple complaints with the Commission that subsequently were determined to be non-meritorious if (i) the Commission previously determined that the employee had filed the non-meritorious complaint for an improper purpose or (ii) the Commission has some articulable evidence that the current complaint is also being filed for an improper purpose. The Commission will explain this determination in an abeyance letter issued to the complaining employee.

In any instance, the Commission's decision to decline an employee's request to initiate a case for enforcement of the Ordinance does not in any way prejudice any right that employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-23 of the Ordinance.

If the complaint is acceptable to the Commission, the Commission will either serve the complaint on the Covered Employer named in the complaint or serve, as a substitute, a Commission Complaint as described in Rule 5.03(3).

3. Commission Complaint

In its discretion, in lieu of serving a complaint as filed, the Commission may serve instead on the Covered Employer named in the complaint, a complaint that is written in the Commission's name. Such a complaint does not have to disclose the name of the complaining Covered Employee and may allege violations of the Ordinance that are broader than those involving the complaining Covered Employee.

The Commission will consider the totality of the circumstances, but at least two circumstances will favor this approach: (a) multiple Covered Employees of the same Covered Employer have filed, or attempted to file, complaints with the Commission alleging substantially similar violations of the Ordinance by the Covered Employer or (b) there is a reasonable probability, based on the nature of the allegations and any evidence provided by the complaining Covered Employee, that the Covered Employer has also violated the Ordinance with respect to other Covered Employees who have not yet filed a complaint with the Commission, but could conceivably do so.

Rule 5.04 Commission Investigations of Alleged Ordinance Violations

1. Response

Once served with a complaint, whether in the name of a complaining Covered Employee or in the name of the Commission, the Covered Employer has thirty (30) days to file with the Commission a written and verified answer to the complaint that admits or denies each allegation and sets out any additional facts that, if true, would establish that the Covered Employer has complied with the Ordinance, the Ordinance does not apply, the Commission lacks jurisdiction over the claim, or any other reason in support of dismissal of the complaint.

The Covered Employer can request an extension of time to respond to a complaint but must do so in writing before the expiration of the time to answer. Absent extraordinary circumstances, the Commission will only grant one extension. The failure to promptly retain counsel is not an extraordinary circumstance.

Where the Commission deems the Covered Employer's response to be sufficient to demonstrate that the complaint lacks merit, the Commission will dismiss the complaint. The Commission's decision to dismiss at this stage does not in any way prejudice any right that a Covered Employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-23 of the Ordinance.

Where the Commission deems the Covered Employer's response to be insufficient to demonstrate that the complaint lacks merit, the Commission will proceed with discovery.

Failure to submit a response within the time allotted will constitute an admission by the Covered Employer to the Commission of each allegation in the complaint. The Commission will render an order pursuant to Rule 5.05 on the basis of such admissions, as appropriate.

2. Discovery

The Commission will direct all discovery related to its determination of whether a violation of the Ordinance has occurred. The complaining Covered Employee and the Covered Employer can suggest discovery to the Commission that would facilitate the determination of whether or not a violation of the Ordinance has occurred, but the Commission will make the final determination of what information and testimony to obtain with the goal of conducting an accurate and expeditious investigation at the lowest reasonable cost to all parties and witnesses.

In conducting discovery of the parties, the Commission may conduct interviews or submit document requests and questionnaires calling for written responses. In conducting discovery of non-parties or as otherwise necessary, the Commission may issue a subpoena pursuant to Rule 5.03(4).

To the extent that the Commission is confronted with conflicting testimonial evidence on an issue that is material to its determination of whether a violation of the Ordinance has occurred, the Commission may order an Evidentiary Conference pursuant to Rule 5.03(3).

All discovery requested by the Commission must be provided within the time provided to respond in the Commission's request. The Commission will presume that any evidence it requests but that has not been produced or that has not been produced within the time requested does not exist, and it will resolve the related question of fact or law on the basis of the absence of evidence and/or the presence of other evidence obtained from other sources. Further, if a party fails to produce information requested by the Commission within the time requested, the party will be barred from presenting that evidence in any later setting related to enforcement of the Ordinance.

Parties who may be producing confidential, proprietary or personal information to the Commission should identify that material as such and may request appropriate protections for

that information, including that any documents that are not included or referenced in the Commission's final order be returned to the producing party at the close of the investigation.

3. Evidentiary Conference

The Commission may order an Evidentiary Conference to resolve simple factual disputes arising from conflicting testimonial evidence by parties and/or witnesses that is potentially determinative as to whether there is evidence of a violation of the Ordinance. The Commission may order the parties and/or witnesses to provide in-person, sworn testimony on the disputed fact before an administrative law judge, who will make a determination as to the credibility of any testifying party or witness with respect to the disputed fact. An order of an Evidentiary Conference will provide the parties with notice of the disputed issue of fact and the identity of the testifying parties and/or witnesses. Additional witnesses may be added by the parties as provided in subsection (a).

- a. At an Evidentiary Conference, the testifying parties and/or witnesses will be examined by the administrative law judge. The parties to the case, or their attorneys or representatives of record, will then have the opportunity to examine and cross-examine any party or witness testifying at an Evidentiary Conference. The parties to the case, or their attorneys or representatives of record, may also present any additional witnesses or documentary evidence to the administrative law judge that the parties believe will assist the administrative law judge in resolving the disputed issue of fact. A party must provide advance notice of any such additional evidence to the Commission and the other party at least five (5) business days before the Evidentiary Conference. The Evidentiary Conference is limited to hearing evidence relevant to resolving the dispute of fact identified in the order of an Evidentiary Conference.
- b. Within twenty-one (21) days of the Evidentiary Conference, the administrative law judge will present in writing any findings of fact, including any determinations of testimonial credibility, to the Commission. The administrative law judge's findings shall be considered an additional piece of evidence in the Commission's investigation into the merits of the complaint.

4. Subpoenas

The Commission may issue a subpoena for the appearance of witnesses or the production of evidence on its own initiative at any time. If a person does not comply with a subpoena on the date set for compliance whether because of refusal, neglect, or a change in the compliance date (such as due to continuation of an Administrative Hearing) or for any other reason, the subpoena shall continue in effect for up to one year, and a new subpoena need not be issued.

When issuing a subpoena the Commission shall pay witness fees of \$20.00 per day and mileage fees of \$0.20 per mile to the person subpoenaed.

The person to whom the subpoena is directed may object to the subpoena in whole or in part. The objection may be made to the Commission or to the administrative law judge (if one has been assigned) no later than five (5) business days prior to the time for appearance or production required by the subpoena. The objection shall be in writing, filed with the Commission, served on all parties and on the administrative law judge (if any assigned), and shall specify the grounds for objection. The party opposing the objection may file a written response to the objection specifying the need for certain witnesses or documentation no later than two (2) business days prior to the time for appearance or production required by the subpoena. The Commission or, if assigned, the administrative law judge, shall consider the objection and render a decision on the objection.

Failure to comply with a subpoena issued by the Commission shall constitute a separate violation of the Ordinance. Every day that a person fails to comply with said subpoena shall constitute a separate and distinct violation. The Commission may seek judicial enforcement of its subpoenas.

Rule 5.05 Commission Findings

If the Commission finds that the parties' pleadings and the evidence that the Commission obtained through discovery is insufficient to establish that the Covered Employer violated the Ordinance, the Commission will render a Finding of No Violation and serve it on the parties. A Finding of No Violation is on the merits and may prejudice any right that the complaining Covered Employee may have to pursue enforcement of the Ordinance outside of the Commission in a court of competent jurisdiction pursuant to Section 42-23 of the Ordinance. A Finding of No Violation is a final order of the Commission, subject to administrative review as described in Rule 5.07.

If the Commission finds on the basis of its investigation that a violation has occurred, the Commission will render a Finding of Violation. The Finding of Violation will order remedies and/or sanctions as described in Rule 5.10.

The Covered Employer has thirty (30) days from the date that the Commission renders its Finding of Violation to accept the Commission's finding or contest it pursuant to the procedures set out in Rule 5.06.

If the Covered Employer accepts the Finding of Violation, the Covered Employer must demonstrate compliance with any remedies ordered within thirty (30) days or such other time as may be provided by the Commission.

Rule 5.06 Administrative Hearing

If the Covered Employer does not accept the Commission's Finding of Violation pursuant to Rule 5.05, the Commission will appoint an administrative law judge to make a final determination as to whether the Covered Employer violated the Ordinance and the remedies ordered by the Commission are appropriate. The Commission, or its designee, will present the

evidence it obtained that supports its Finding of Violation. The Covered Employer can cross-examine this evidence and/or produce additional relevant evidence (that it is not otherwise prohibited by Rule 5.04(2) from producing). Neither the Commission nor the Covered Employer will be entitled to any additional discovery at this stage, though the Commission can use its subpoena power as described in Rule 5.04(4) to arrange for the presence of any necessary witnesses whose live testimony is requested by the administrative law judge or the Covered Employer. In the case of a witness subpoenaed at the request of the Covered Employer, the Covered Employer must effect service of the subpoena and pay the associated witness and mileage fees.

The administrative law judge will promptly issue a written opinion affirming or setting aside all or any portion of the Finding of Violation, including any proposed remedies and/or sanctions. The administrative law judge's decision will be the final decision of the Commission.

Rule 5.07 Administrative Review

The Commission will not entertain motions for reconsideration of Findings of Violation or Findings of No Violation. A party contesting the Commission's Finding of Violation or Finding of No Violation may, however, seek administrative review of the Commission's decision by filing a petition for *writ of certiorari* in the Circuit Court of Cook County within thirty (30) days of a Finding of No Violation as described in Rule 5.05 or within thirty (30) days of a Finding of Violation as described in Rule 5.06.

Rule 5.08 Service

For the purpose of any of these Rules that require service, a complaining Covered Employee shall be served by mail or in person at the address he or she provides on the complaint, provided that, if a complaining Covered Employee subsequently provides any other address, including the address of counsel, in writing to all parties and the Commission, then all future service upon the complaining Covered Employee shall be at that address.

A Covered Employer shall be served by mail or in person at its principal place of business or the Business Facility in Cook County where all or some of the alleged Ordinance violations occurred, provided that, if a Covered Employer subsequently provides any other address, including the address of counsel, in writing to all parties and the Commission, then all future service upon the Covered Employer shall be at that address.

The Commission shall be served at its 69 West Washington office by mail or in person Monday through Friday, excluding County holidays, between 9:00 a.m. and 4:00 p.m.

After the initial pleadings, service by electronic means to an email address provided by a party or the Commission can be made in lieu of mail or in person delivery to any party or the Commission with the prior written consent of that party or the Commission, as applicable.

Electronic service is presumed to be effective on the date on which it is sent. In-person service is presumed to be effective on the date on which it is made. Service by U.S. mail is presumed to be effective three (3) business days after it is deposited in the mail with postage pre-paid.

Rule 5.09 Evidence of Compliance

For any administrative enforcement proceeding between July 1, 2017 and June 30, 2018, if a Covered Employer that is the respondent in a complaint for violation of this Ordinance provides the Commission with competent evidence that it is in, or has come back into, full compliance with the Ordinance, then the Commission will terminate any investigation pursuant to Rule 5.04, will not proceed to rendering an order pursuant to Rule 5.05, and will dismiss the complaint with prejudice. The Commission considers full compliance to include the payment of any back wages that would have been due to any Covered Employee had the case proceeded.

The Commission will revisit this Rule on or before July 1, 2018 to determine whether it has furthered the Commission's goal of encouraging Covered Employers who may be out of compliance with the Ordinance to come quickly into compliance. If so, this Rule may be extended.

Rule 5.10 Remedies

When the Commission determines that a Covered Employer has violated the Ordinance, the Commission may (1) fine the Covered Employer; (2) order the Covered Employer to pay back wages to Covered Employees; (3) disqualify the Covered Employer from various County benefits; and/or (4) order other appropriate injunctive relief.

1. Fines

The Commission will impose fines payable to Cook County for any violation of the Ordinance. The amount of such fine will be at least \$500 per violation per Covered Employee affected per day, but will not exceed \$1,000 per violation per Covered Employee affected per day. In exercising its discretion within this range, the Commission will take into account the extent of the violation, the culpability of the Covered Employer, and whether the Covered Employer promptly and thoroughly cooperated during the course of the Commission's investigation into the complaint that led to the Finding of Violation.

2. Back Wages

The Commission may order a Covered Employer that has violated the Ordinance to pay to the affected Covered Employees the amount of back wages that resulted from noncompliance with the Ordinance. In exercising its discretion, the Commission will take into account whether the Covered Employer is currently meeting its obligations under the Ordinance and the amount and duration of any underpayment to affected Covered Employees.

If the Commission exercises the option pursuant to Rule 5.03(3) to proceed on behalf of the complaining Covered Employee, back wages will be based on all Covered Employees employed by the Covered Employer during the relevant time period. The Commission will award the complaining Covered Employee his or her back wages. The Commission will collect any back wages due to non-complaining Covered Employees to create a fund, administered by the Commission or its designee, to award back pay to non-complaining Covered Employees employed by the Covered Employer.

If the Commission does not proceed on behalf of the complaining Covered Employee, the amount of back wages awarded will be based only on back wages due to the complaining Covered Employee. Back wages due to non-complaining Covered Employees will not be considered.

3. Disqualifications

A Covered Employer who admits to violating the Ordinance or is adjudicated liable of a violation of the Ordinance by an administrative law judge shall be ineligible to enter into a contract with Cook County for a period of five (5) years from the date of the admission or administrative finding. Any failure to comply with the Ordinance also may result in suspension or revocation of a Covered Employer's Cook County general business license, if any. Failure to comply with the Ordinance may also adversely impact any property tax incentive a Covered Employer receives or seeks from Cook County.

The Commission will forward any Finding of Violation rendered pursuant to Rule 5.06 to the appropriate County officer for further appropriate action.

4. Injunctive Relief

The Commission may impose appropriate post-judgment injunctive relief. Such relief may include, for example, an order to cease and desist violating the Ordinance going forward or to reinstate a Covered Employee who was discharged in retaliation for exercising rights protected by the Ordinance.

The Commission may require the Covered Employer to submit to monitoring of future compliance with the Ordinance by the Commission or its designee. Monitoring may include additional recordkeeping obligations.

Rule 5.11 Private Right of Action

To the extent that a Covered Employee wishes to pursue a claim for failure to pay the appropriate wage under Rule 2.02 or Rule 2.03 for work performed for a Covered Employer in Cook County in a court of competent jurisdiction pursuant to Section 42-23 of the Ordinance, the Commission will not require that the Covered Employee first bring such a claim to the Commission. A Covered Employee requires no authorization from the Commission to pursue such a claim in a court of competent jurisdiction and the Commission will not purport to grant such authorization.

If, however, a Covered Employee first brings such a claim to the Commission and, while it is pending, files a substantially similar claim pursuant to Section 42-23 of the Ordinance in a court of competent jurisdiction, the Commission will dismiss its pending matter so as to avoid the risk of rendering inconsistent determinations. Similarly, the Commission will not entertain a claim to vindicate a right under the Ordinance that is substantially similar to a claim that was previously filed in a court of competent jurisdiction.

SECTION 6. MISCELLANEOUS

Rule 6.01 Construction of Rules

These Rules shall be liberally construed to accomplish the purposes of the Ordinance.

Rule 6.02 Effect of Rules

These Rules shall constitute the policy and practice of the Commission and shall govern activities of the Commission.

Rule 6.03 Amendment of Rules

Changes in these Rules may be made by a vote of a majority of the full membership of the Commissioners at a regular or special meeting of the Commissioners.

Rule 6.04 Availability of Rules

The Rules of the Commission shall be available to the public, and copies may be obtained on the Commission's website: <https://www.cookcountylil.gov/agency/commission-human-rights-0>.

Rule 6.05 Petition for Rulemaking

Any person may request that the Commission promulgate, amend or repeal a rule by submitting a written petition to the Chairperson. The petition, which shall be in writing, shall set forth in particular the rulemaking action desired and should contain the person's arguments or reasons in support thereof. The Commission shall be notified of any petition filed in accordance herewith. Any rulemaking undertaken in response to such petition shall be conducted in accordance with Rule 6.03 herein.

Rule 6.06 Practice Where Rules Do Not Provide Clear Guidance

If a matter arises in enforcing the Ordinance that is not specifically governed by these Rules, the Director shall, in the exercise of his or her discretion, specify the practice to be followed and as soon as practicable petition the Commission to adopt a clarifying rule pursuant to Section Rule 6.03 herein.

Rule 6.07 Delegation of Authority by Commissioners

Except as to those matters specifically enumerated below, the Commissioners may delegate to the Commission Staff, as the Commissioners consider necessary, any matter properly before the Commission. Such delegation to the Commission Staff, where permissible, shall be presumed, subject to recall as to specific items at any time by a vote of the majority of Commissioners present at a meeting of the Commission. Any delegation of authority by the Commissioners to the Commission Staff shall be effectuated in accordance with both the Ordinance and these Rules adopted and approved by the Commissioners.

The following matters are reserved for consideration of and disposition by the Commissioners:

1. Rulemaking and similar proceedings involving the promulgation of Commission rules; and
2. Conducting Commission meetings.