**MODEL ORDINANCE FOR CITIES & COUNTIES**

**(Premium Pay for Frontline Essential Workers—COVID-19)**

**[Note: The** [**American Rescue Plan Act of 2021**](https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf)**, adopted into law in March 2021, allows local governments to use funds appropriated under Title IX, Subtitle M of the Act to pay for premium pay to eligible essential COVID-19 workers. Thus, in addition to the model proposed below requiring employers/certain hiring entities to pay workers premium pay, local governments can consider establishing a publicly subsidized premium pay program with funds received through the American Rescue Plan Act of 2021.** [**Vermont’s Frontline Employees Hazard Pay Grant Program**](https://dvha.vermont.gov/front-line-employees-hazard-pay-grant-program) **offers an example of a publicly funded program.]**

**WHEREAS,** Coronavirus Disease 2019 (COVID-19) has sickened over 29 million and led to the deaths of over 530,000 people in the United States in just one year; and

**WHEREAS**, The COVID-19 pandemic is not only one of the largest public health crises our nation has faced in a hundred years, it is also the single largest occupational health crisis; and

**WHEREAS,** COVID-19 can spread from both symptomatic and asymptomatic individuals through exhaling; and

**WHEREAS,** more contagious versions of the virus are spreading in the country; and

**WHEREAS,** to mitigate the spread of COVID-19 in the United States, we must mitigate the spread of COVID-19 at work; and

**WHEREAS**, frontline workers face increased risks of being infected with COVID-19 because the nature of their work can involve close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease; and

**WHEREAS**, frontline workers are supporting community efforts to engage in physical distancing and sheltering in place to mitigate the spread of COVID-19 while simultaneously exposing themselves to a higher risk of infection; and

**WHEREAS**, premium pay, in additional to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort or emotional distress; and

**WHEREAS**, the work and health of frontline workers is fundamental to the health of the community because frontline workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by providing vital services to the public while working in hazardous conditions; and

**WHEREAS**, the <CITY/COUNTY> intends to make clear that essential frontline workers have a right to receive premium pay for work performed during the COVID-19 emergency; and

**WHEREAS**, establishing premium pay standards for essential frontline workers during the COVID-19 emergency is necessary to compensate essential frontline workers for the risks of working during a pandemic and the safety measures they are undertaking to protect themselves, customers, and the public from catching or spreading illness, and to better ensure retention of these workers who are on the frontlines of this pandemic who are needed throughout the duration of the COVID-19 emergency and who deserve fair and equitable compensation for their work; and

**WHEREAS**, protecting the health and safety of residents and workers in <CITY/COUNTY> is among the most important functions of local government; and

**WHEREAS**, establishing a labor standard that requires premium pay for essential frontline workers is a subject of vital and imminent concern to the people of this <CITY/COUNTY> and requires appropriate action by the <CITY/COUNTY COUNCIL>; NOW, THEREFORE,

**BE IT ORDAINED BY THE <CITY/COUNTY>, AS FOLLOWS:**

**Section 1. Definitions**

1. “Emergency” means an incident, outbreak, or threat that is the subject of an executive order under <State/Local Law>, an executive declaration under <State/Local Law> or an executive proclamation under <State/Local Law>.
2. “Covered Employer” means any individual or entity who suffers or permits to work or pays for the services of an Essential Worker, including any person acting directly or indirectly in the interest of a Covered Employer in relation to an Essential Worker. For purposes of this Act, any Hiring Entity as defined in subsection (d) of this section is a Covered Employer. For the purposes of this Act, a Covered Employer does not include any of the following:
3. The United States Government.
4. The <State of [X]>, including any office department, agency, authority, institution, association, society, or other body of the state, including the legislature and the judiciary.
5. Any county or local government other than <CITY/COUNTY>. [**Note:** If necessary due to limitations on the authority of the local legislative body to determine benefits for the locality’s own workers, this can read: “Any county or local government.”]
6. “Essential Worker” means:
7. Any person so defined by <STATE/LOCAL Emergency Order, Law, etc.>, or
8. Any person whose work cannot be performed remotely from home or who is required to be at a worksite during the Emergency, and who performed any service or labor for renumeration during the Emergency (including where such work is assigned through an online-enabled application or platform to connect customers with workers, and regardless of whether the individual is an employee of an employer or is an independent contractor and regardless of an employer’s classification as employee or independent contractor of such worker) in the following sectors:
	1. Grocery [**Note:** Grocery can be defined to clearly include stores that devote a significant portion of the store to groceries such as “big box” stores, while small businesses, such as bodegas, can be excluded if appropriate. [Here](http://seattle.legistar.com/View.ashx?M=F&ID=9191345&GUID=2459B448-75CD-4A6D-99B1-FED17797E994) is a sample definition from a Seattle ordinance];
	2. Delivery, rideshare and taxis, and other transportation or logistics;
	3. Health care;
	4. Emergency response;
	5. Sanitation;
	6. Food preparation, packaging, services, or delivery;
	7. Hotel or retail;
	8. Fish, poultry, and meat processing work or agricultural work including labor that is seasonal in nature;
	9. Commercial or residential construction, renovation or landscaping;
	10. Domestic work in private homes, including but not limited to childcare, home care, and house cleaning;
	11. Housing, residential, and commercial construction-related activities or certain public works construction;
	12. Home and community-based work, including home health care, residential care, assistance with activities of daily living, and any services provided by direct care workers (as defined in section 799B of the Public Health Service Act (42 U.S.C. § 295p)), personal care aides, job coaches, or supported employment providers, and any other provision of care to individuals in their homes by direct service providers, personal care attendants, and home health aides;
	13. Childcare services outside of private homes, and nursing homes;
	14. Manufacturing;
	15. Warehousing;
	16. Janitorial;
	17. Any other worker whom the State or local government deems to be essential during the emergency referred to in subsection (a) of this section.
9. “Hiring Entity” means any entity that suffers, permits, or pays for the services of an Essential Worker during the Emergency, and any entity that acts directly or indirectly in the interest of a Hiring Entity with regards to an Essential Worker during the Emergency. Hiring Entity shall specifically include any Delivery Network Company (as defined in <STATE LAW>) and any Transportation Network Company and any Marketplace Platform (as defined in <STATE LAW>).
10. “Department” means <Local Agency Responsible for Enforcing this Act>.
11. “Premium amount” means five dollars ($5) per hour or twenty-five dollars ($25) per day, whichever is greater.
12. “Relator” means a current or former Essential Worker, contractor, subcontractor, or employee of such a contractor or subcontractor of an alleged violator of this Act, regardless of whether that person has received full or partial relief from harm, who seeks relief through a public enforcement action brought under this Act. [**Note:** “*qui tam*” protections are included as an enforcement option under Section 4(h) of this model bill; this definition should only be included if those protections are added.]
13. “Representative organization” means a nonprofit or labor organization selected by a relator to initiate a public enforcement action on the relator’s behalf.
14. “Adverse action”  means any threat, discharge, suspension, demotion, reduction of hours or pay, reporting or threatening to report an Essential Worker’s suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the Essential Worker, to a federal, state, or local agency, or any other action against an Essential Worker for exercising or attempting to exercise any right guaranteed herein if that action would dissuade a reasonable person from exercising or attempting to exercise any right protected under this Act. Adverse action shall also include interfering with or punishing an individual for in any manner participating in or assisting an investigation, proceeding, or hearing under this Act, or willfully preventing or attempting to prevent an individual from securing other employment by word, writing, or any other action.

**Section 2. Premium Pay Requirements**

1. **Premium amounts.** A Covered Employer shall provide an Essential Worker with the premium amount for each hour or day worked by the Essential Worker until the end of the Emergency or until <DATE>, whichever is later. Hours worked for purposes of this ordinance include any time that an Essential Worker is logged into the application or platform referenced in Section 1(c)(2) of this Act. A Covered Employer shall pay the premium amount required under this section at such time as such Covered Employer pays an Essential Worker wages or pay owed for work performed during that work week. Premium amounts shall be separately noted on a wage stub or other form of written documentation and provided to the Essential Worker for that pay period. Premium amounts shall be paid in addition to the applicable minimum wage or other pay rate due on the effective date of this Act, whichever is higher, such that amounts received by the Essential Worker as tips or gratuities shall not be counted toward payment of the premium amount. [**Note:** A local government may consider establishing a grant program to fund premium pay for frontline employees. [Vermont’s Frontline Employees Hazard Pay Grant Program](https://dvha.vermont.gov/front-line-employees-hazard-pay-grant-program) is an example.]
2. **Recordkeeping**. A Covered Employer shall retain records documenting their compliance with the applicable requirements of this Act for a period of three (3) years, and shall allow the Department access to such records, with the appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Act. When an issue arises as to whether a violation of this Act has occurred, if the Covered Employer does not maintain or retain a record or other information required to be maintained by this Act, or does not allow the Department reasonable access to such records, it shall be presumed in an administrative action or civil action that the Covered Employer has violated this Act, absent clear and convincing evidence otherwise.

**Section 3. Exercise of Rights Protected; Retaliation Prohibited**

1. No person shall discharge or in any way discriminate or take adverse action against any Essential Worker who exercises or attempts to exercise in good faith any right protected under this Act, including through a written or oral communication to the Covered Employer, the Covered Employer’s agent, other workers, a government agency, an attorney or legal aid organization, a community or labor organization, or to the public such as through print, online, social, or any other media that discloses or is intended to disclose a violation of this Act. An Essential Worker need not explicitly refer to this Act or the rights enumerated herein to be protected from an adverse action.
2. If a Covered Employer or other person takes adverse action against an Essential Worker within ninety (90) days of the worker’s engagement or attempt to engage in activities protected by this Act, such conduct shall raise a presumption that the action is an adverse action in violation of this Act. The presumption may be rebutted by clear and convincing evidence that 1) the action was taken for other permissible reasons; and 2) that the engagement or attempt to engage in activities protected by this Act was not a motivating factor in the adverse action.
3. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Act.

**Section 4. Enforcement**

1. **Administrative Enforcement.** The Department shall enforce the requirements of this Act. Either on its own initiative or after receiving a complaint, it shall have the authority to conduct investigations, including the authority to enter and inspect workplaces and to subpoena records and witnesses. Where a Covered Employer does not comply with any of the requirements of this Act, the Department shall order relief as authorized in this section. In effectuating its enforcement:
2. The Department shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this Act and investigate complaints received by the Department in a timely manner.
3. Upon receiving a complaint alleging a violation of this Act, the Department shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The Department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the Department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The Department shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the Department.
4. **Administrative Relief.** For administrative proceedings brought to enforce this Act, the appropriate court or the Department shall order relief as follows:
5. For any violation of any provision of this Act:

	1. An order to comply with the requirements of this Act, and to refrain from continued violations, including through a stop-work order or business closure;
	2. Payment to the <CITY/COUNTY> by the Covered Employer of reasonable costs and attorney’s fees;
	3. A civil penalty payable to the <CITY/COUNTY> of: An amount not to exceed $100 for a willful violation of the notice and posting requirements of this Act; an amount of $1,500 per violation of Section 2(a) of this Act, per Essential Worker affected; and an amount of $3,000 per violation of the retaliation protections in Section 3 of this Act, per person affected. Each day that a violation occurs or is not corrected shall constitute a separate violation;
	4. For violations of Section 2(a), damages payable to each aggrieved Essential Worker equal to three times the actual damages including but not limited to unpaid premium amounts and benefits, plus punitive damages, and equitable relief as appropriate;
	5. Damages payable to each person aggrieved by a violation of Section 3 equal to the greater of $10,000 or three times the actual damages including but not limited to unpaid wages and benefits, plus punitive damages, and equitable relief as appropriate; and
	6. Where a person was discharged or demoted in violation of this Act, reinstatement of the person to the same position held before any adverse action, or to an equivalent position, and reinstatement of full fringe benefits and seniority rights.

[**Note:** The exact remedies and penalties that a local government may have the authority to impose vary depending on state law.]

1. **Confidentiality.** The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Essential Worker or person reporting the violation, provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Act or for other appropriate purposes.
2. **Private Civil Action.** Any person aggrieved by a violation of this Act may bring a civil action in a court of competent jurisdiction and, upon prevailing in whole or in part, shall be awarded reasonable attorney’s fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including without limitation, reinstatement in employment, punitive damages, compensatory damages, including damages payable to the aggrieved Essential Worker for violations of Section 2(a) equal to three times the actual damages and, in the case of an adverse action, damages payable to the aggrieved person equal to the greater of $10,000 or three times the actual damages, back and front pay, where appropriate, and damages for emotional distress, and/or injunctive relief. Such action may be brought by a person aggrieved by a violation of this Act without first filing an administrative complaint.
3. **Other Government Enforcement.** The <CITY/COUNTY> Attorney may also enforce the requirements of this Act, acting in the public interest, including the need to deter future violations. The <CITY/COUNTY> Attorney may inspect workplaces and subpoena records and witnesses and, where they determine that a violation has occurred, may bring a civil action. The filing of a complaint with the <CITY/COUNTY> Attorney will not preclude the filing of a private civil action.
4. **Record of Noncompliance.** <CITY/COUNTY> officials are hereby authorized to consider, to the maximum extent permitted by law, a Covered Employer’s record of noncompliance with this Act in making decisions on <CITY/COUNTY> contracts, land use approvals, and other entitlements to expand or operate within the <CITY/COUNTY>. The <CITY/COUNTY> is authorized to either deny approval or to condition approval on the Covered Employer’s future compliance.
5. **Annual Department Report.** The Department shall annually report on its website the number and nature of the complaints received pursuant to this Act, the results of investigations undertaken pursuant to this Act, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this Act, and the average time for a complaint to be resolved pursuant to this Act.
6. **Qui Tam Enforcement.** The civil penalties, injunctive relief, and declaratory relief specified in subsection (b) of this section may be recovered through a public enforcement action brought on behalf of the Department in a court of competent jurisdiction by a relator, or by a representative organization designated by a relator according to the following procedures:

	* + 1. The relator or representative organization shall give written notice to the Department of the specific provisions of this Act alleged to have been violated, including the facts and theories to support the alleged violation. The notice shall be given in such a manner as the Department may prescribe by regulation. Where a representative organization is designated by a relator, the relator may elect to have their name and personal identifying information be kept confidential in the notice and in a subsequent civil complaint.
			2. If the Department intends to investigate the alleged violation, it shall notify the relator or representative organization of its decision within thirty (30) calendar days of the postmark date of the notice. Within sixty (60) days of that decision, the Department may investigate the alleged violation and take any enforcement action authorized by law. If the Department determines that additional time is necessary to complete the investigation, it may extend the time by not more than sixty (60) additional calendar days and shall notify the relator or representative organization of the extension.
			3. The relator or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Department within thirty (30) days of the postmark date of the notice, or if the Department informs the relator or representative organization that no enforcement action will be taken.
			4. The Department may intervene in an action brought under this Act and proceed with any and all claims in the action as of right within thirty (30) days after the filing of the action, or for good cause, as determined by the court, at any time after the thirty-day period after the filing of the action.
			5. Notwithstanding any other provision of law, a public enforcement action brought under this Act must be commenced within three (3) years of the date the relator or representative organization knew or should have known of the alleged violation. The statute of limitations for bringing a public enforcement action under this Act shall be tolled from the date a relator or representative organization files a notice under this Act with the Department, or the Department commences an investigation, whichever is earlier.
			6. Civil penalties recovered pursuant to this subsection shall be distributed as follows:
7. If the Department does not intervene in the action, sixty (60) percent to the Department for enforcement of this Act, and forty (40) percent to the relator or representative organization, to be distributed to the workers affected by the violation, including a service award that reflects the burden and risks assumed by the relator or representative organization in prosecuting the action.
8. If the Department does intervene in the action, seventy (70) percent to the Department for enforcement of this Act, and thirty (30) percent to the relator or representative organization, to be distributed to the workers affected by the violation, including a service award that reflects the burden and risks assumed by the relator or representative organization in prosecuting the action.
9. Twenty-five (25) percent of the Department’s share of the penalties shall be reserved for grants to community organizations for outreach and education about rights under this Act.

	* + 1. In any public enforcement action commenced under this Act, the court shall allow a prevailing relator or representative organization to recover all reasonable attorney’s fees, expert fees, and other costs. For the purposes of this provision, a “prevailing” relator or representative organization includes a relator or representative organization whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement, or as a result of a judgment in such relator or representative organization’s favor.
			2. No public enforcement action brought under this Act shall be required to meet class action certification requirements under <RELEVANT PROVISION OF STATE LAW> or Rule 23(a) of the Federal Rules of Civil Procedure.
			3. The relator or representative organization may not recover compensatory damages or back pay, or seek reinstatement, in a public enforcement action. But the filing of a public enforcement action does not preclude an Essential Worker from pursuing these remedies in another forum.
			4. The right to bring an action under this subsection shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.
10. The rights and remedies under this Act may not be waived by any agreement, policy, form, or condition of employment.
11. Actions brought pursuant to this section may be brought as a class action pursuant to the laws of <State>.
12. **Statute of Limitations.** Any person alleging a violation of this Act shall have a right to pursue enforcement as provided in this section within three (3) years of the date the person knew or should have known of the alleged violation.

**Section 5. Notice and Posting**

1. Covered Employers shall give notice to each Essential Worker at the time of hiring or by the effective date of this Act, whichever is later, and on an annual basis that Essential Workers are entitled to the protections under this Act.
2. The Department shall create and make available to Covered Employers a poster and written notice, hereinafter referred to as the “notice,” which contains the information required under subsection (a) of this section for their use in complying with this section. The notice and poster shall be printed in English, Spanish, and any language that is the first language spoken by at least five (5) percent of the workforce in the <CITY/COUNTY> (as calculated by the Department).
3. Covered Employers shall display the poster in a conspicuous and accessible place in each establishment where Essential Workers perform work, provided, however, that in cases where the Covered Employer does not maintain a physical workplace, or an Essential Worker performs work through a web-based or app-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based or app-based platform. The poster displayed shall be in English, Spanish, and any language that is the first language spoken by at least five (5) percent of the Covered Employer’s workforce, provided that such poster has been provided by the Department.
4. The premium amount paid to Essential Workers under this Act shall be recorded in, or on an attachment to, the Essential Worker’s regular paycheck or other documentation of pay received.
5. A Covered Employer that provides a handbook to any of its Essential Workers must include in the handbook the notice of rights required under this section.

**Section 6. Encouragement of More Policies; No Effect on More Generous Policies or Laws**

* 1. Nothing in this Act shall be construed to discourage or prohibit a Covered Employer from the adoption or retention of a policy more generous than the one required herein.
	2. Nothing in this Act shall be construed as diminishing the obligation of a Covered Employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous policy than required herein. Nothing in this Act shall be construed as diminishing the rights of public employees regarding the rights addressed in this Act as provided in <Laws of the state and/or locality pertaining to public employees>.

**Section 7. Public Education and Outreach**

The Department shall develop and implement a multilingual outreach program to Essential Workers and Covered Employers about the protections and requirements under this Act. This program shall include the distribution of notices and other written materials in English, Spanish, and any language that is the first language spoken by at least five (5) percent of the workforce in the <CITY/COUNTY> (as calculated by the Department).

**Section 8. Regulations**The Department may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Act.

**Section 9. Severability**
If any provision of this Act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

**Section 10. Effective Date**

This Act will take effect <**#**> days following enactment. [**Note:** The effective date should be as soon as possible according to the local government’s laws, and advocates should consider whether any emergency clauses can have it take effect sooner than a legal default.]

**Please note that this document does not constitute legal advice.**