



**KING COUNTY**  
**Signature Report**

ATTACHMENT 1  
1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Ordinance**

**Proposed No.** 2021-0093.1

**Sponsors** Dembowski, Zahilay and  
Upthegrove

1           AN ORDINANCE relating to employment; establishing a  
2           hazard pay requirement for additional compensation for  
3           grocery employees working in the unincorporated area of  
4           King County from the effective date of this ordinance  
5           through the duration of the King County executive's  
6           proclamation of emergency for the coronavirus disease  
7           2019.

8           BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9           SECTION 1. Findings:

10           A. The King County Charter grants the King County council the authority to act  
11 to preserve the public peace, health or safety.

12           B. This ordinance protects and promotes public peace, health and safety during  
13 the coronavirus disease 2019 emergency, proclaimed by the King County executive on  
14 March 1, 2020, by requiring grocery businesses located in unincorporated areas of King  
15 County to provide hazard pay for grocery employees, thereby compensating those  
16 employees for the hazards of working with significant exposure to an infectious disease  
17 and increasing retention of employees who provide essential services to local  
18 communities.

19           C. On January 30, 2020, the World Health Organization declared that

20 coronavirus disease 2019 constituted a public health emergency of international concern,  
21 the highest level of alarm.

22 D. On February 29, 2020, Washington Governor Jay Inslee issued proclamation  
23 20-05, proclaiming a state of emergency for all counties throughout the state of  
24 Washington in response to new cases of coronavirus disease 2019, and directing state  
25 agencies to use all resources necessary to prepare for and respond to the outbreak.

26 E. On March 1, 2020, King County executive Dow Constantine issued a  
27 proclamation of emergency enabling extraordinary measures to respond to the  
28 coronavirus disease 2019 pandemic. On March 3, 2020, the council passed Motion  
29 15610, affirming the proclamation of emergency.

30 F. On March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-  
31 25, a "Stay Home - Stay Healthy" order that closed all nonessential workplaces, required  
32 people to stay home except to participate in essential activities or to provide essential  
33 business services and banned all gatherings for social, spiritual and recreational purposes.  
34 This order was extended through May 31, 2020. The "Stay Home - Stay Healthy"  
35 proclamation identified grocery employees as "Essential Critical Infrastructure Workers"  
36 performing work to protect communities and ensure continuity of functions critical to  
37 public health and safety, as well as economic and national security.

38 G. On May 4, 2020, Washington Governor Jay Inslee announced a "Safe Start"  
39 plan to start on June 1, 2020, to reopen Washington's economy in phases with adequate  
40 social distancing measures and health standards in place. On June 19, 2020, King County  
41 moved to Phase 2 of the "Safe Start" plan.

42 H. In October 2020, The British Medical Journal, Occupational & Environmental

43 Medicine, reported that grocery employees face a serious risk of coronavirus disease  
44 2019 infection and associated psychological distress. A study of one hundred four  
45 grocery employees at a grocery store in Boston, Massachusetts, found that twenty percent  
46 tested positive for coronavirus disease 2019 despite ninety-one percent of employees  
47 reporting wearing a face mask at work and seventy-seven percent of employees reporting  
48 wearing masks outside of work. The positive rate of infection among grocery employees  
49 was five times as likely for those who interacted with customers than for those who did  
50 not. The study also found that seventy-six percent of employees had no symptoms,  
51 suggesting that those employees could be a source of asymptomatic infection. Further,  
52 twenty-four of the ninety-nine employees who filled out a related medical health  
53 questionnaire also reported experiencing anxiety, and eight employees were deemed  
54 depressed from their questionnaire answers.

55 I. On January 3, 2021, the Centers for Disease Control reported that multiple  
56 variants of the coronavirus disease 2019 that are circulating globally appear to spread  
57 more easily and quickly than other variations.

58 J. The Washington state Department of Health reports that two coronavirus  
59 disease 2019 vaccines are authorized for emergency use by United States Food and Drug  
60 Administration. In December 2020, the Department of Health published an estimated  
61 timeline for vaccine implementation. The initial vaccine timeline indicated that all  
62 grocery employees would be eligible for vaccination in February 2021. A modified  
63 timeline, published in January 2021, clarified that only grocery employees fifty years old  
64 or older would be eligible in February 2021 and grocery employees under year years old  
65 would be eligible in April 2021.

66 K. On January 5, 2021, Governor Jay Inslee announced the "Healthy  
67 Washington-Roadmap to Recovery," a phased recovery plan beginning on January 11,  
68 2021, that began with every region of the state in Phase 1, which prohibited indoor  
69 gatherings with people outside the household and limited business activity, with retail  
70 stores limited to twenty-five percent capacity. On February 1, 2021, King County moved  
71 to Phase 2 of the plan, which retains retail activity to twenty-five percent capacity.

72 L. Throughout the coronavirus disease 2019 emergency, grocery businesses have  
73 been operating in King County and relying upon the work of grocery employees who are  
74 highly vulnerable to health and safety risks.

75 M. Grocery employees are essential workers performing services that are  
76 fundamental to the economy and health of the community during the coronavirus disease  
77 2019 emergency. They cannot choose to work from home and must come to work to  
78 perform their jobs, which can involve substantial interaction with customers.

79 N. The United States Centers for Disease Control and Prevention reports that  
80 Black and Indigenous people, followed by Pacific Islanders and Latinx people, are  
81 disproportionately affected by coronavirus disease 2019 due to long-standing inequities  
82 in social determinants of health, including overrepresentation in jobs that require  
83 customer contact, such as grocery stores. Those determinants may increase the risk of  
84 coronavirus disease 2019 exposure, illness, hospitalization, long-term health and social  
85 consequences and death.

86 O. Hazard pay is defined by the United States Department of Labor as additional  
87 pay for performing hazardous duty or work involving physical hardship. Work duty that  
88 causes extreme physical discomfort and distress, which is not adequately alleviated by

89 protective devices, is deemed to impose a physical hardship.

90 P. Ensuring that grocery employees are compensated for the risks of working  
91 during the coronavirus disease 2019 emergency promotes retention of those essential  
92 workers. Retention of grocery employees is fundamental to protecting the health of the  
93 community, as those employees directly support public purchase of groceries and  
94 facilitate community access to food.

95 SECTION 2. The definitions in this section apply throughout this ordinance  
96 unless the context clearly requires otherwise.

97 A. "Adverse action" means reducing compensation, garnishing gratuities,  
98 denying a job or promotion, demoting, terminating, failing to rehire after a seasonal  
99 interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-  
100 related practices, filing a false report with a government agency or otherwise  
101 discriminating against any person for any reason.

102 B. "Aggrieved party" means an employee or other person who suffers tangible or  
103 intangible harm due to an employer or other person's violation of this ordinance.

104 C. "Compensation" means the payment owed to an employee by reason of  
105 employment, including but not limited to, salaries, wages, tips, service charge  
106 distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or  
107 legislatively required pay or paid leave and reimbursement for employer expenses.

108 D. "Employ" means to hire or engage the services of a person or persons for  
109 compensation.

110 E. "Employee" means a person who is employed for wages or salary, including,  
111 but not limited to, a full-time employee, a part-time employee and a temporary worker.

112 An employer bears the burden of proof that the individual is, as a matter of economic  
113 reality, in business for the individual's self as an independent contractor, rather than  
114 employed by the alleged employer.

115 F. "Employer" means any individual, partnership, association, corporation,  
116 business trust or any entity, person or group of persons or a successor thereof, that  
117 employs another person and includes any such entity or person acting directly or  
118 indirectly in the interest of the employer in relation to the employee.

119 G.1. "Grocery business" means a retail store operation located in unincorporated  
120 King County that is either:

121 a. over ten thousand square feet in size and that is primarily engaged in the  
122 retail sale of groceries for offsite consumption, including but not limited to the sale of  
123 fresh produce, meats, poultry, fish, deli products, dairy products, canned and frozen  
124 foods, dry foods, beverages, baked foods or prepared foods. Other household supplies or  
125 other products shall be secondary to the primary purpose of groceries sales; or

126 b. over eighty-five thousand square feet and with thirty percent or more of its  
127 sales floor area dedicated to the retail sale of groceries, including but not limited to the  
128 sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned and  
129 frozen foods, dry foods, beverages, baked foods or prepared foods.

130 2. "Grocery business" does not include convenience stores or food marts  
131 primarily engaged in retail sales of a limited line of goods that generally includes milk,  
132 bread, soda and snacks. "Grocery business" also does not include farmers' markets or  
133 farm stands.

134 H. "Grocery employee" means a person employed by a grocery employer, and

135 works at a grocery business.

136 I. "Grocery employer" means an employer that matches the requirements in  
137 section 3 of this ordinance.

138 J. "Hazard pay" means additional compensation owed to an employee on top of  
139 the employee's other compensation, including but not limited to salaries, wages, tips,  
140 service charge distributions, overtime, commissions, piece rate, bonuses, rest breaks,  
141 promised or legislatively required pay or paid leave and reimbursement for employer  
142 expenses.

143 K. "Unincorporated area" means those areas outside any city or town and under  
144 King County's jurisdiction.

145 SECTION 3.

146 A. For the purposes of this ordinance, "grocery employers" are those businesses  
147 that:

148 1. Employ at least one grocery employee who works at a grocery business  
149 located in unincorporated King County; and

150 2. Employ five hundred or more employees worldwide regardless of where  
151 those employees are employed, including but not limited to chains, integrated enterprises  
152 or franchises associated with a franchisor or network of franchises that employ five  
153 hundred or more employees in aggregate.

154 B. To determine the number of employees for the current calendar year for the  
155 purposes of this section:

156 1. The calculation is based upon the average number of employees who worked  
157 per calendar week during the preceding calendar year for any and all weeks during which

158 at least one employee worked for the grocery employer. For employers that did not have  
159 any employees during the preceding calendar year, the number of employees for the  
160 current calendar year is calculated based upon the average number of employees who  
161 worked during the first ninety calendar days of the current year in which the grocery  
162 employer has engaged in the grocery business; or

163 2. All employees shall be counted, including, but not limited to:

164 a. grocery employees;

165 b. employees who are not grocery employees;

166 c. employees who worked outside King County;

167 d. employees who worked in incorporated and unincorporated areas of King  
168 County; and

169 e. employees who worked in full-time employment, part-time employment,  
170 joint employment, temporary employment or through the services of a temporary services  
171 or staffing agency or similar entity.

172 C.1. Business entities otherwise treated separately shall be, for the purposes of  
173 this ordinance, considered as:

174 a. an integrated enterprise; and

175 b. a single employer when one entity controls the operation of the other entity.

176 2. The factors to consider in determining the existence of a single enterprise  
177 may include, but are not limited to:

178 a. degree of interrelation between the operations of multiple entities;

179 b. degree to which the entities share common management;

180 c. centralized control of labor relations;



- 181 d. degree of common ownership or financial control over the entities; and
- 182 e. use of a common brand, trade, business or operating name.

183 SECTION 4. This ordinance applies to the time a grocery employee performs  
184 work for a grocery employer at a grocery business location. It does not apply to time  
185 spent by a grocery employee in unincorporated King County solely for the purpose of  
186 travelling through the unincorporated area, with no employment-related or commercial  
187 stops in the unincorporated area except for refueling or the grocery employee's personal  
188 meals or errands.

189 SECTION 5.

190 A. Grocery employers shall provide each grocery employee with hazard pay at a  
191 rate of four dollars per hour for each hour worked at the grocery employers' grocery  
192 businesses.

193 B. Grocery employers shall provide written notice of employment information  
194 that includes notice of hazard pay by thirty days after the effective date of this ordinance.

195 C. Grocery employers shall provide payment for hazard pay on the established,  
196 regular pay day on which wages are paid.

197 D. Grocery employers shall provide written itemization of the hazard pay  
198 separately from payment for wages and other compensation.

199 E. Grocery employers shall comply with the hazard pay requirements in this  
200 ordinance until the executive's March 1, 2020, proclamation of emergency is terminated  
201 in accordance with the provisions in the proclamation.

202 SECTION 6.

203 A. Within thirty days of the effective date of this ordinance, grocery employers

204 shall display a written notice of rights established by this ordinance in a conspicuous and  
205 accessible place at all its grocery businesses. Grocery employers shall display the notice  
206 of rights in English and in the primary language or languages of the employee or  
207 employees at its grocery businesses.

208 B. The notice of rights shall provide information on:

209 1. The right to hazard pay guaranteed by this ordinance;

210 2. The right to be protected from retaliation for exercising in good faith the  
211 rights protected by this ordinance; and

212 3 The right to bring a civil action for a violation of this ordinance, including a  
213 grocery employer's denial of hazard pay as required by this ordinance and a grocery  
214 employer or other person's retaliation against a grocery employee or other person for  
215 asserting the right to hazard pay or otherwise engaging in an activity protected by this  
216 ordinance.

217 SECTION 7.

218 A. Grocery employers shall retain records that document compliance with this  
219 ordinance for each grocery employee.

220 B. Grocery employers shall retain the records required by this section for three  
221 years.

222 C. If a grocery employer fails to retain adequate records required under this  
223 section, there shall be a presumption, rebuttable by clear and convincing evidence, that  
224 the grocery employer violated this ordinance for the periods and for each grocery  
225 employee for whom records were not retained.

226 SECTION 8.

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227           A. A grocery employer or any other person shall not interfere with, restrain or  
228 deny the exercise of, or the attempt to exercise, any right protected under this ordinance.

229           B. A grocery employer or any other person shall not take any adverse action  
230 against any person because the person has exercised in good faith the rights protected  
231 under this ordinance. The rights include, but are not limited to:

232                 1. The right to make inquiries about the rights protected under this ordinance;

233                 2. The right to inform others about their rights under this ordinance;

234                 3. The right to inform the person's employer, the person's legal counsel, a union  
235 or similar organization or any other person about an alleged violation of this ordinance;

236                 4. The right to bring a civil action for an alleged violation of this ordinance;

237                 5. the right to testify in a proceeding under or related to this ordinance;

238                 6. The right to refuse to participate in an activity that would result in a violation  
239 of city, state or federal law; and

240                 7. The right to oppose any policy, practice, or act that is unlawful under this  
241 ordinance.

242           C. A grocery employer or any other person shall not communicate to a person  
243 exercising rights protected in this section, directly or indirectly, the willingness to inform  
244 a government worker that the person is not lawfully in the United States, or to report, or  
245 to make an implied or express assertion of a willingness to report, suspected citizenship  
246 or immigration status of an employee or family member of an employee to a federal, state  
247 or local agency because the employee has exercised a right under this ordinance.

248           D. It shall be a rebuttable presumption of retaliation if a grocery employer or any  
249 other person takes an adverse action against a person within ninety days of the person's

250 exercise of rights protected in this section. However, in the case of seasonal work that  
251 ended before the close of the ninety-day period, the presumption also applies if the  
252 grocery employer fails to rehire a former grocery employee at the next opportunity for  
253 work in the same position. The grocery employer may rebut the presumption with clear  
254 and convincing evidence that the adverse action was taken for a permissible purpose.

255 E. Proof of retaliation under this section shall be sufficient upon a showing that a  
256 grocery employer or any other person has taken an adverse action against a person and  
257 the person's exercise of rights protected in this section was a motivating factor in the  
258 adverse action, unless the grocery employer can prove that the action would have been  
259 taken in the absence of the protected activity.

260 F. The protections afforded under this section shall apply to any person who  
261 mistakenly but in good faith alleges violations of this ordinance.

262 G. A complaint or other communication by any person triggers the protections of  
263 this section regardless of whether the complaint or communication is in writing or makes  
264 explicit reference to this ordinance.

265 SECTION 9. Any aggrieved party or any entity acting on behalf of an aggrieved  
266 party may bring a civil action in a court of competent jurisdiction against the grocery  
267 employer or other person violating this ordinance and, upon prevailing, may be awarded  
268 reasonable attorney fees and costs and such legal or equitable relief as may be appropriate  
269 to remedy the violation including, without limitation: the payment of any unpaid  
270 compensation plus interest due to the aggrieved party and liquidated damages in an  
271 additional amount of up to twice the unpaid compensation; and a penalty payable to any  
272 aggrieved party if the aggrieved party was subject to prohibited retaliation. Interest shall

273 accrue from the date the unpaid compensation was first due at twelve percent per annum,  
274 or the maximum rate permitted under RCW 19.52.020.

275 SECTION 10. Any waiver by an individual of any provision of this ordinance  
276 shall be deemed contrary to public policy and shall be void and unenforceable.

277 SECTION 11.

278 A. Nothing in this ordinance shall be construed to discourage or prohibit an  
279 employer from the adoption or retention of hazard pay policies more generous than the  
280 one required.

281 B. Nothing in this ordinance shall be construed as diminishing the obligation of  
282 the employer to comply with any contract, collective bargaining agreement, employment  
283 benefit plan or other agreement providing more generous hazard pay policies to an  
284 employee than required in this ordinance.

285 SECTION 12.

286 A. This ordinance provides minimum requirements for hazard pay for grocery  
287 employees during the coronavirus disease 2019 emergency and shall not be construed to  
288 preempt, limit or otherwise affect the applicability of any other law, regulation,  
289 requirement, policy or standard that provides for hazard pay or that extends other  
290 protections to employees; and nothing in this ordinance shall be interpreted or applied so  
291 as to create any power or duty in conflict with federal or state law.

292 B. Nothing in this section shall be construed as restricting an employee's right to  
293 pursue any other remedies at law or equity for violation of the employee's rights.

294 SECTION 13. This ordinance expires on the termination of the executive's March  
295 1, 2020, proclamation of emergency in accordance with the provisions in the

296 proclamation.

297           SECTION 14. If any provision of this ordinance of its application to any person  
298 or circumstance is held invalid, the remainder of the ordinance or the application of the  
299 provision to other persons or circumstances is not affected.

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KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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Claudia Balducci, Chair

ATTEST:

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Melani Pedroza, Clerk of the Council

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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Dow Constantine, County Executive

**Attachments:** None