

CITY OF BALTIMORE

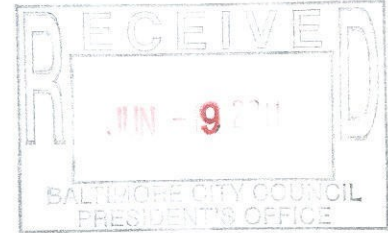
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 11-0693 – Living Wages – Limited Exemption from Overtime Requirements for Workers Receiving Commissions

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 11-0693 for form and legal sufficiency. The bill would amend the City's Living Wage law to exempt employers who are subject to the law from paying overtime if their employee makes at least 1.5 times the living wage rate and more than half his or her compensation is from commissions.

The exemption is designed to mirror a similar exemption in federal minimum wage law, which states that an employer need not pay overtime if the employee makes at least 1.5 times the minimum wage for each hour worked and receives half of his or her compensation from commissions. 29 USC §207(i). Commissions have been defined to include service fees paid to banquet workers. *See Mechmet v. Four Seasons Hotels, Ltd.*, 639 F. Supp. 330, 340 (N. D. Ill. 1986). However, this exemption will not be limited to banquet workers, but will cover any employee entitled to a Living Wage under the City's Living Wage law who receives any type of commission. *See, e.g.*, 29 CFR 779.414.

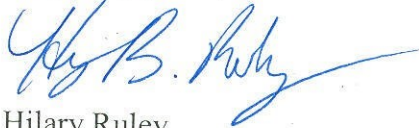
Several amendments to the bill language are necessary to conform it to the City's current living wage law. The term "employer" in line 6 on page 2 must be changed to "service contractor." The phrase "employee of a retail or service establishment" in line 7 on page 2 and the term "employee" in lines 9 and 12 on page 2 must be changed to "service worker." In line 8 on page 2, the word "workday" needs to be added before "workweek" so that it is clear that this exemption applies to all overtime required in the section. Finally, to avoid confusion from the use of the term "regular rate of pay," a parenthetical should be inserted after its use in line 9 on page 2: "(hourly rate + commissions)."

Additionally, the terms "draw or guarantee" as used in line 18 on page 2 are not defined in this bill or in the City's living wage law. This language was copied from federal law, where the terms are defined in corresponding federal regulations. *See* 29 CFR 779.416. Since there are no corresponding regulations that define these terms for the purposes of the City's living wage law, the Law Department recommends that the phrase, "as those terms are used in the Federal Fair Labor Standards Act" be inserted after the word "guarantee" in line 18 on page 2.

FA

Subject to these amendments, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hilary Ruley", with a long horizontal flourish extending to the right.

Hilary Ruley
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Victor Tervalá, Assistant Solicitor