Seattle Paid Sick and Safe Time

Practical Guidance Employers Need to Know

Wednesday, August 8, 2012

Foster Pepper PLLC
Seattle, Washington

Presented by:

FOSTER PEPPER PLLC

Table of Contents

Presentation

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Understanding Seattle Paid Sick and Safe Time

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August 8, 2012

Employment Law Update

NLRB Rejects Confidentiality Instructions for Internal Investigations

Banner Health System d/b/a Banner Estrella Medical Center and James A. Navarro, Case No. 28-CA-023438 (July 30, 2012)

- To prohibit employee discussion of an investigation, an employer must show that it has a **legitimate business justification** that **outweighs** employees' right to engage in **concerted activity**.
- **Individualized assessment** required for each investigation. Considerations include whether:
  - Witnesses need protection;
  - Evidence is in danger of destruction;
  - Testimony is in danger of being fabricated; or
  - There is a need to prevent a cover up.
- **Takeaway**: Evaluate circumstances before instructing employees not to discuss investigations

EEOC Issues New Guidance On Criminal Background Checks

- **Purpose**: To guide EEOC investigators and assist employers in complying with Title VII.
- **Concern**: Criminal record exclusions may disproportionately exclude people in a protected class ("disparate impact discrimination").
- **EEOC Guidance**: Employer must show that criminal record exclusions are "job-related and consistent with business necessity" for the position in question, the exclusion is unlawful under Title VII.
- **Takeaway**: Make "individualized assessments" of applicants with criminal records; no blanket exclusions.

Employee or Independent Contractor? Washington's Supreme Court Changes the Rules

Anfinson v. FedEx Ground Package Systems, Inc.

- New test under **Washington's Minimum Wage Act**
- **Economic-Dependence Test**: The worker is an employee if, "as a matter of economic reality," he or she is "economically dependent upon the alleged employer *or* is instead in business for himself."
- **No set factors** committed to by the Court
- **Takeaway**: Carefully evaluate employee/independent contractor status under various laws. Different tests exist.

PAID SICK & SAFE TIME

Seattle Works Well

Overview of Seattle Paid Sick and Safe Time Ordinance

- Begins September 1, 2012
- Requires "paid sick and safe time" ("PSST") for employees working within Seattle city limits

Overview of Seattle Paid Sick and Safe Time Ordinance

- Establishes minimum standards for Seattle employers
  - Minimum requirements for accrual, use and carryover of PSST
  - Basic job protections
  - Employer notification and tracking

Justification for the Ordinance

- Allows employees to care for health and safety without losing pay
- Helps community by limiting spread of contagious illnesses
- Promotes equity by allowing access to paid time off
- Builds economic security for employees and their families

Relationship to Other Laws

- PSST does not preempt, limit, or otherwise affect applicable federal, state or other local laws
- Employers must comply with applicable laws when making PSST-related medical inquiries and examinations, and when requesting documentation

What Is Paid Sick and Safe Time?

What Is Paid Sick and Safe Time?

- Sick time
  - Illness, injury, diagnosis, treatment, or preventive care
  - May be used for employee or employee's partner or family members

What Is Paid Sick and Safe Time?

- Who counts as a "family member" for Sick Time?
  - Employee
  - Employee's child – broadly defined
  - Parent
  - Grandparent
  - Parent-in-law
  - Spouses and domestic partners
- Washington Family Care Act

What Is Paid Sick and Safe Time?

- Safe time
  - Domestic violence -- Physical harm, assault, bodily injury or fear of imminent physical bodily harm between family or household members
  - Sexual assault
  - Stalking

What Is Paid Sick and Safe Time?

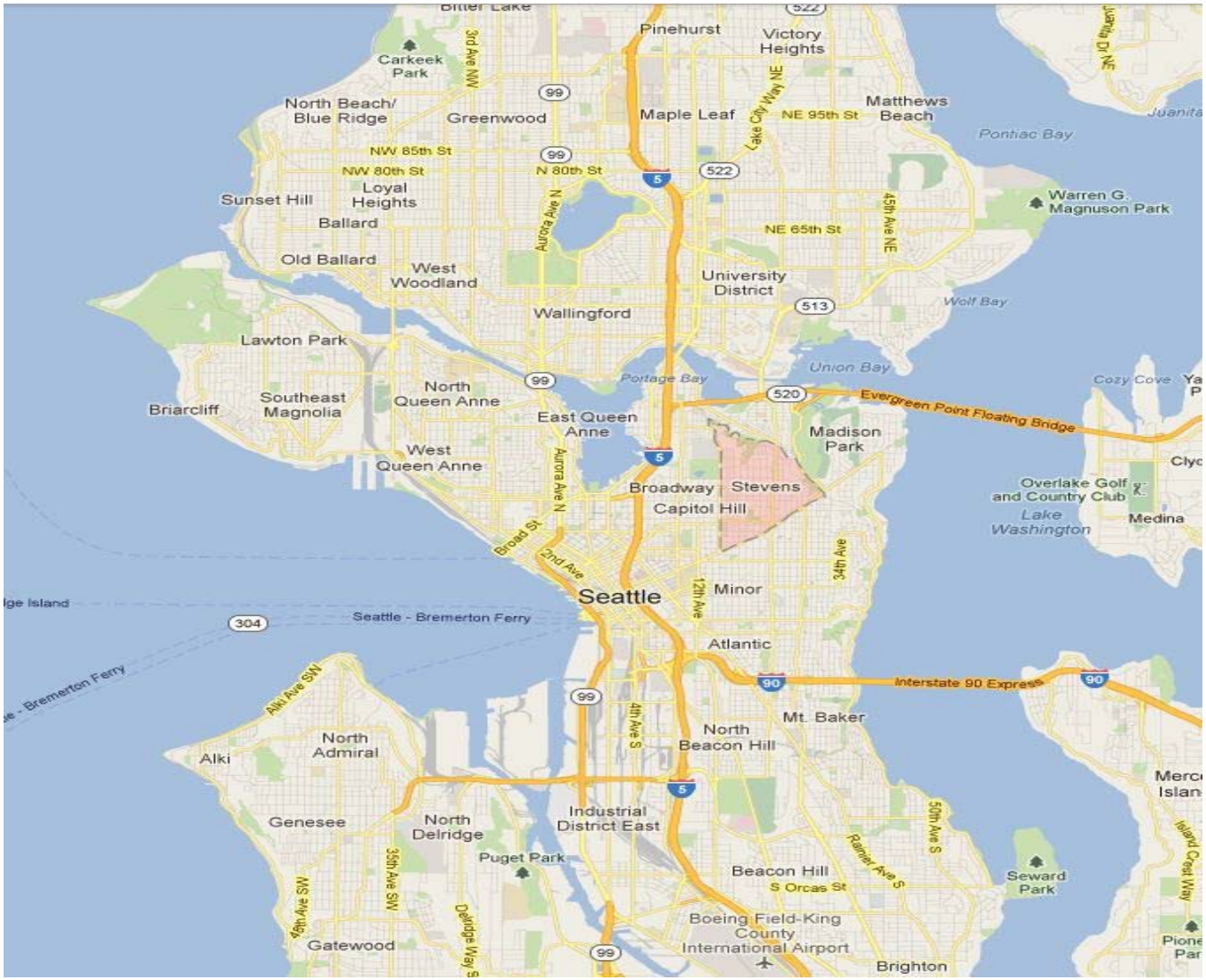
- Safe time
  - Closure of workplace or child's school or place of care by a public official to limit exposure to infectious agent, biological toxin or hazardous materials.

What Is Paid Sick and Safe Time?

- Who counts as a "family member" for safe time?
  - Spouses and domestic partners
  - Biological or legal parent-child relations
  - Former spouses and former domestic partners
  - Persons with a child in common (regardless of cohabitation history)
  - Adults related by blood or marriage
  - Adults who reside together now or in the past
  - Cohabiting people 16 or older with a dating relationship

Coverage and Scope

Coverage and Scope



Coverage and Scope

- Applies to
  - Private sector employers with employees working in Seattle
  - City of Seattle employees
- Excluded
  - Federal, state, and county government employers
  - New Tier 1 and Tier 2 employers with two-year exemption

Coverage and Scope

- Employees eligible for PSST
  - Full time employees
  - Part time employees
  - Temporary workers
  - Undocumented workers

Coverage and Scope – Employees (cont.)

- Employees performing work in Seattle on an occasional basis
  - 240+ Seattle-based hours within a calendar year
- Employees who telecommute from home in Seattle
- Employees who stop in Seattle as a purpose of their work

Coverage and Scope

- Excluded employees:
  - Employees who work or telecommute outside Seattle
  - Employees who travel *through* Seattle
  - Work study students
  - Independent contractors
  - Employees performing fewer than 240 hours of Seattle-based work in a year

Coverage and Scope

- No individual waiver of rights
- Employers with collective bargaining units are COVERED unless the parties enter into a waiver of rights
  - Sample Letter of Understanding on City of Seattle website

Determining FTEs and Employer Tiers

Determining FTEs and Employer Tiers

- Obligations depend on the number of employees
- Organized into “tiers”
- All employers are covered by some aspects of the Ordinance, but not every employer is required to provide paid leave

Determining FTEs and Employer Tiers

- Requirements determined by number of “full time equivalent” (FTE) employees
  - FTE = Average number of hours worked for all employees per week
    - Non-exempt: actual hours worked
    - Exempt: typical work schedule (40 hours)
  - Based on prior calendar year

Employer Tiers – calculating FTEs

- For FTE purposes, employers must count:
  - Full time employees
  - Part time employees
  - Temporary employees
  - Employees made available through staffing agencies
  - Employees who work outside of Seattle
- Beware of integrated and joint employer considerations

Employer Tiers

TIER	EMPLOYER SIZE
Not Covered	4 or fewer FTEs
1	5 – 49 FTEs
2	50 – 249 FTEs
3	250+ FTEs
	250+ FTEs (PTO benefit systems)

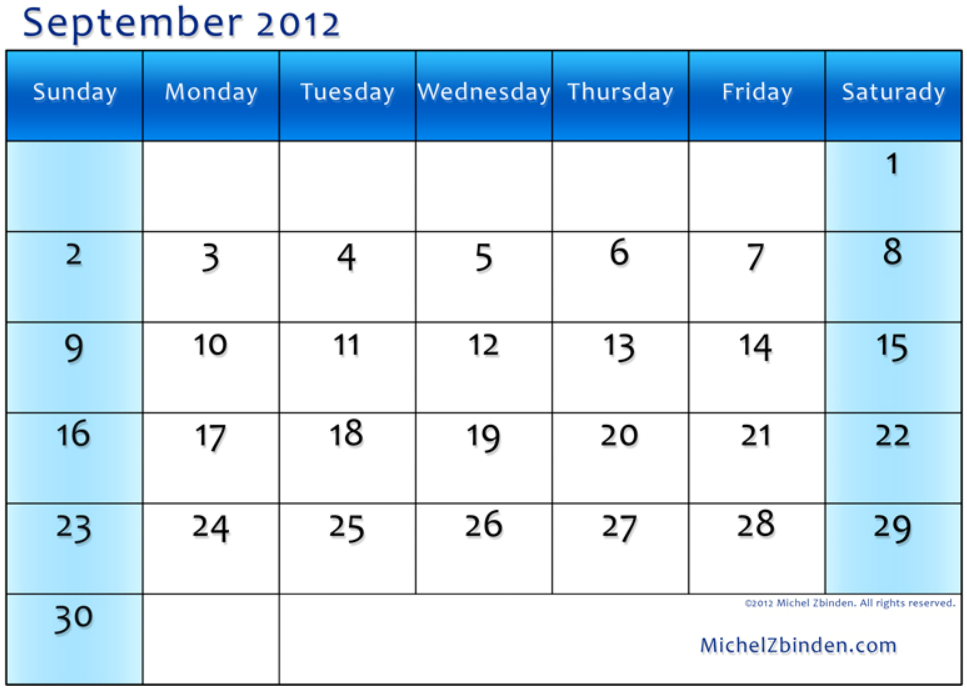
Employer Tiers – New Employers

- If no employees in previous calendar year, use average number of FTEs paid per calendar week the first 90 days in current year

Minimum Leave Requirements

Accrual and Use – When Does Accrual Start?

- **Start date:** Accrual begins on September 1, 2012 or at start of employment if hired after 9/1/12



Employer Tiers – Accruals

TIER	EMPLOYER SIZE	ACCRUAL		
1	5 – 49 FTEs	1 hour/40 hours worked		
2	50 – 249 FTEs	1 hour/40 hours worked		
3	250+ FTEs	1 hour/30 hours worked		
	250+ FTEs (PTO benefit systems)	1 hour/30 hours worked		

Accrual and Use – Accrual Rates

- "Hours worked" – hours worked *in Seattle*
  - Non-exempt employees: regular and overtime hours
  - Exempt employees: 40 hour workweek
    - No accrual for more than 40 hours in a week
    - Part-time exempt employees: accrual based on normal work week if regular schedule is less than 40 hours per week

Accrual and Use – Accrual Rates

- "Frontloading" OK if meets accrual, use and carryover requirements
  - Example: Employer provides 12 paid sick days per year. Instead of accrual, sick banks "frontloaded" with 12 days on January 1.

Accrual and Use – Accrual Rates

- PTO ("combined or universal leave") OK if meets Ordinance requirements
  - Ordinance does not require "cushion" for sick/safe time beyond existing PTO plans
- Need not accrue leave during paid or unpaid leave
- Need not cash out unused PSST unless policy to do so

Accrual and Use – Accrual Rates

- "Hours worked" – in Seattle
  - Including OT for non-exempt
- Occasional employees begin accrual after 240 hours
  - But beware: employers must track Seattle-based hours even before accrual begins!
  - After 240 hours, covered for current and following calendar year

Accrual and Use – Carryover

- Some unused hours must be carried into next calendar year
- Amounts based on tier
  - Employer may provide more generous carryover
  - Employer may provide for voluntary cash out of leave

Employer Tiers – Carryover

TIER	EMPLOYER SIZE			CARRY OVER
1	5 – 49 FTEs			40 hours
2	50 – 249 FTEs			56 hours
3	250+ FTEs			72 hours
	250+ FTEs (PTO benefit systems)			108 hours

Accrual and Use – Waiting Periods

- Existing employees may use PSST immediately after time accrues
- Later hires may be required to wait 180 days
- Employer may provide more generous use provisions

Accrual and Use – Using PSST

- Non-exempt employees: PSST may be used in **hour long** increments **OR** employer may allow shorter increments (15 minutes, 30 minutes, etc.)
- Exempt employees: follow wage and hour requirements

Accrual and Use – Maximum Use

- Maximum use per calendar year determined by tier
- Special requirements for Tier 3 employers with PTO
- Employer may provide more generous use policies
  - Combined PTO policy
  - More favorable existing sick leave policy

Employer Tiers

TIER	EMPLOYER SIZE	ACCRUAL	USE	
1	5 – 49 FTEs	1 hour/40 hours worked	40 hours	
2	50 – 249 FTEs	1 hour/40 hours worked	56 hours	
3	250+ FTEs	1 hour/30 hours worked	72 hours	
	250+ FTEs (PTO benefit systems)	1 hour/30 hours worked	108 hours	

Accrual and Use – Pay Rates

- Exempt employees
  - Annual salary divided by weeks worked per year = weekly salary
  - Weekly salary divided by 40 (or fewer hours) = hourly rate for PSST leave pay
- Non-exempt employees: regular straight-time hourly rate
- Hourly rate must be at least minimum wage (now $9.04)
- Excludes lost tips and commissions

Accrual and Use – Special Compensation Questions

- Breaks in service
- Seasonal employees
- Shifts of indeterminate length
- Commission/piece rate employees
- On-call employees

Accrual and Use – Special Compensation Questions

- Shift swapping
- Concurrent leave (FMLA, WFLA, etc.)
- Disciplinary leave
- Other paid leave

Paid Sick and Safe Time Leave Requests

Leave Requests

- **Foreseeable** leave: Written request 10+ days in advance;
- **Unforeseeable** leave: Notice "as soon as practicable" – safe time by end of first day
- Employer notice policies
  - May permit shorter notice
  - May discipline for failure to follow notice rules

Leave Requests - Documentation

- **1 – 3 consecutive work days/shifts:** No required documentation
- Leave request may trigger other employer obligations
  - ADA accommodations requests, FMLA, etc.

Leave Requests - Documentation

- **3+ consecutive work days/shifts**: May require documentation
  - Sick time: statement from health care professional
    - Who pays?
    - Can't require documentation to reveal nature of illness or other private medical information
  - Safe time: very broad provisions, including employee's own statement

Leave Requests – Attendance Policies

- Generally, PSST cannot be counted as an absence that results in discipline or other adverse action
- **Exception:** clear instance or pattern of abuse
  - Examples: repeated absences or absences follow regular pattern without legitimate reason.

Leave Requests – No Retaliation

- Cannot take discriminate or take adverse action against employees for exercising rights under Ordinance
- Other employee rights under Ordinance
  - Informing employer, union, or attorney about PSST violations
  - Filing PSST-related complaint
  - Informing other employees of rights under Ordinance

Notice and Recordkeeping Requirements

Notice and Recordkeeping Requirements

- **Notice:** Employers must provide notice to all employees who work in Seattle, regardless of tier size or location
- Notice must be **conspicuous and accessible.**
  - In paper and/or electronic form available to all employees
  - Single sheet notice available in materials and on City website
- Penalties for violation includes civil fines

Notice and Recordkeeping Requirements

- Pay stub notifications: Must disclose available PSST hours each time wages paid; pay stub or online
- Record retention: Must retain PSST records for **two years**
  - Employee hours worked in Seattle
  - Accrued PSST by employee
  - Usage of PSST by employee

Violations

- Enforcement by Seattle Office for Civil Rights (SOCR)
- SOCR responsibilities include:
  - Technical assistance
  - Investigating PSST compliance
  - Negotiating settlements
  - Providing posters and information resources

Violations – SOCR Process

- If complaint brought, SOCR notifies employer and provides technical assistance
- Employer has reasonable time to comply with Ordinance
- If employee files formal charge, SOCR investigates
- SOCR encourages negotiation and settlement; seeks compliance – not fines

Practical Guidelines for Employer Compliance

Practical Guidelines for Employer Implementation

- Provide leave as required
- Review and update policies
- Develop tracking mechanism for transitory employees
- Post SOCR poster and update new hire information
- Review and update payroll notices
- Train HR and front line managers in recordkeeping (and no retaliation!)

Questions?

FOSTER PEPPER PLLC

Understanding Seattle Paid Sick and Safe Time

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August 7, 2012

Speaker Bios

Presented by:

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Steven R. Peltin

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Practices

Employment and Labor Relations CHAIR

Industries

Emerging Companies and Venture Capital

Retail

Practice Summary

Steve's practice covers the gamut of employment and labor law. His advice practice is dedicated to helping employers solve problems such as employee discipline and discharge, leaves of absence, discrimination and harassment claims, and threats of employee violence. Steve enhances employee handbooks and prepares and negotiates employment, confidentiality and non-compete agreements. He also counsels executives and professionals on employment and separation agreements, and assists with corporate transactions such as purchases and sales of businesses.

On the litigation side, Steve represents public and private employers in lawsuits claiming discrimination, harassment, wrongful discharge and violations of wage and hour, employee benefits, trade secrets and non-compete obligations. He also appears before local, state and federal administrative agencies and arbitrators in employment and labor matters.

Experience

Foster Pepper PLLC
Member, 2010-Present

K&L Gates LLP / Preston Gates & Ellis, LLP
Partner, 1998-2010

Georgia-Pacific Corporation
Senior Counsel, 1996-1998

Altheimer & Gray, Chicago, IL
Associate and Partner, 1986-1996

Isham Lincoln & Beale, Chicago, IL
Associate, 1983-1986

U.S. District Court for the Western District of Wisconsin
Law Clerk for Hon. John C. Shabaz, 1982-1983

Bar Admissions

Washington, 1999

Illinois, 1983

Representative Cases

Won a jury trial for an employer accused of age discrimination by laid-off union employee.

Prevailed in a hearing before the United States Department of Labor brought by a union business agent who claimed that the company conspired with the union to discharge him.

Co-counsel in class action claiming pay for commuting in company vehicle; certification defeated and individual claim resolved promptly.

Co-counsel for large employers in two US Department of Labor collective actions claiming that employees worked off the clock; summary judgment obtained in one case, and the other was settled favorably.

Won summary judgment on discrimination / harassment claim for financial services company.

Obtained temporary restraining orders in two cases where employees removed and refused to return computerized documents and information.

Won summary judgment on sex bias claim by male employee of performing arts client.

Convinced OSHA that a safety whistleblower on a construction site was not subject to a hostile work environment.

Obtained anti–harassment orders against former employees.

Defended company in ERISA case brought by former executive seeking payments under a Supplemental Executive Retirement Plan.

Representative Transactions

Employment and labor counsel in sales of business, including drafting of purchase agreement language, preparation of offer letters, executive employment agreements and employee communications.

Assistance to client in reductions in force.

Counseling of clients facing threat of workplace violence.

Creation of documentation for background investigations, hiring, leaves of absence, requests for disability accommodation, last chance agreement and severance agreements.

Preparation on policies such as travel pay, use of cell phones and blogging.

Management training on employment law topics, including avoiding harassment and discrimination, performance management and hiring.

Activities

Seattle Theatre Group
Board of Directors
Executive Committee

University Preparatory Academy
Board of Directors 2011-2012
Chair of Personnel Committee 2011-2012

Publications

Steve Peltin is a frequent contributor to Foster Pepper's Washington Workplace Law blog.
Check out the latest news in this fast-changing area at: **www.washingtonworkplacelaw.com**.

Employee or Independent Contractor? Washington Supreme Court Changes the Rules (Parts 1 and 2)
Employee or Independent Contractor? Washington Supreme Court Changes the Rules
Not So Fast III: NLRB Employer Posting Requirement Again Delayed
Back to Basics: Family and Medical Leaves (Parts 1, 2, 3 and 4)
Can't I Require a Job Applicant to Have a High School Diploma?
Not So Fast II: NLRB Again Delays Employer Posting Requirements
Court Rejects Arbitration Award Reinstating Employee Who Hung Noose at Work
Interns & Volunteers: Do We Really Have to Pay Them?
Letting Someone Else Dig for the Dirt: Hiring Vendors to Assist in Social Media Searches
Some Things Don't Have to Be In Writing: Supreme Court Protects Employees Against Retaliation After Making Verbal Complaints of Wage and Hour Violations
Unsafe at Any Speed: Unauthorized Passengers in Employer-Owned Vehicles May Sue Employer for Driver's Negligence

Effective Negotiation of Executive Employment Agreements
Author, *Inside the Minds: Negotiating and Employment Agreements, Leading Lawyers on Constructing Effective Employment Contracts*, 2012 Edition

Employers: Beware of High School Diploma Requirements
Author, *WIB HR & Training Digest* - February 2012

Bad Acts: Smaller Employers Should Confront Threats of On-The-Job Physical Assaults
Author, *Washington Journal*

Telecommuting: Legal and Management Risks For Employers
Author, *Corporate Counsel Magazine*

Reducing Telecommuting Management Risks
Author, *National Underwriter Magazine*

How To Reduce Workplace Violence
Author, *National Underwriter Magazine*

Whose Workforce Is It Anyway? The Worker Adjustment and Retraining Act in the M&A Context
Author, *Preston Gates & Ellis LLP E-Alert*

50-State Survey of Employment Libel and Privacy Law, Washington Chapter
Author, *Media Law & Resource Center*

Hiring Employees: Disability Questions and Medical Exams
Author, *Realty & Building*

Workplace Sexual Harassment
Author, *Realty & Building*

Department of Labor Expands FMLA Leave Rights for Non-traditional Families
Author, *K&L Gates Labor and Employment Alert*

News

It's Not Just Paid Time Off -- It's the Law: Attorneys explain what Seattle's new sick leave ordinance means for employers
Quoted in *Puget Sound Business Journal* - September 2011

Your Office Away from the Office
Quoted in *Utah CEO Magazine*

Keeping violent employees out of the workplace
Quoted in *Risk Management Magazine*

10 Considerations in Developing Telecommuting Policies and Agreements
Quoted in HR.COM

Presentations

Seattle Paid Sick and Safe Time: Practical Guidance Employers Need to Know
Speaker/Moderator, Foster Pepper Client Briefing

Legal Issues for Startups: Employment Law
Presenter, SURF Incubator

Employment Law Challenges for Public Employers and Current Developments under the Public Employees Collective Bargaining Act
Panelist, 2012 Association of Washington Housing Authorities (AWHA) Meeting

Reasonably Accommodating Employees with Disabilities
Speaker/Moderator, Foster Pepper Client Briefing

High-Stakes Employment and IP Protections: Protect your Company from Increasing Employment Risks and Shield your Valuable Intellectual Property
Panelist, Foster Pepper and Washington State Chapter of ACC America

Conducting Effective Workplace Investigations
Speaker/Moderator, Foster Pepper Client Briefing

Managing the Process of Labor Negotiations
Panelist, Washington Fire Commissioners Association 63rd Annual Conference

Out of Sight but Not Out of Mind: Untangling Employer Obligations under FMLA and Other Leave Statutes
Speaker/Moderator, Foster Pepper Client Briefing

FMLA and Leave Law
Speaker, 14th Annual Labor & Employment Law Conference, The Seminar Group

Social Media in the Workplace
Speaker/Moderator, Foster Pepper Client Briefing

Payroll Management
Speaker, Lorman Educational Services

Time Off: State and Federal Laws on Employee Leave, Vacations and Holidays
Speaker, Lorman Educational Services

When Hand Washing is Not Enough: Legal Challenges Presented By the Flu Pandemic
Speaker, K&L Gates Breakfast briefing

Recent Developments under the Family and Medical Leave Act
Speaker, National Council of State Housing Agencies

10 Scary Issues You Need to Know About Your Employees
Speaker, ASTRA Women's Business Alliance

New Developments in Employment Law
Speaker, Seattle CFO Arts Roundtable

Best Practice in FMLA Administration
Speaker, Council on Education in Management

Conducting Effective Investigations Into Employee Complaints
Speaker, PUD and Municipal Attorneys Association

Cyberstalking: The Washington Employer's Perspective
Speaker, King County Bar Association

Blowing the Whistle: Policies & Procures under Sarbanes-Oxley
Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Workplace Investigations
Speaker, Council on Education in Management

Email and the Internet – Legal Challenges for Employers
Speaker, PUD and Municipal Attorneys Association

Minimizing Risks When Upsizing, Downsizing, and Using Alternative Work Arrangements
Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Negligent Hiring Liability, Pre-Hire Investigations and the Fair Credit Reporting Act
Speaker, Preston Gates & Ellis LLP Breakfast Briefing

Honors & Awards

The Best Lawyers in America®
- Labor Law – Management, 2012-2013
- Litigation – Labor & Employment, 2013

Education

Cornell Law School, J.D., *cum laude*, 1983

University of Wisconsin-Madison, B.A., *with distinction*, 1978
Phi Beta Kappa

Personal / Interests

Raised in Milwaukee, Wisconsin

Investor and part-time employee in *Nena*, Steve's wife's gift and vintage shop in Seattle's Madrona neighborhood

Enthusiastic traveler, dog owner, and poker player

FOSTER PEPPER PLLC

Katie Carder McCoy

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Fax: 206-749-1911

Practices
Litigation and Dispute Resolution
Employment and Labor Relations

Industries
Retail
Transportation Industries

Practice Summary
Areas of Concentration:
Electronically Stored Information - ESI Squad
Emergency Injunction Team
Directors & Officers
Intellectual Property
Appellate Team

Katie's practice is concentrated in Litigation and Dispute Resolution, with an emphasis in commercial and employment litigation. She has broad experience litigating complex commercial disputes in state and federal courts and private arbitration, including contract claims, business torts, trademark and intellectual property claims, fraud claims, partnership disputes, and shareholder derivative actions. Katie has significant trial experience in court and private arbitration.

In her employment practice, Katie has experience in both federal and state courts defending employers and managers in employment litigation involving claims for violation of federal and state anti-discrimination, disability, and family and medical leave laws, wrongful discharge in violation of public policy, and emotional distress claims. She also helps employers enforce non-competition agreements, protect trade secrets and other confidential business information, and prevent unfair competition through negotiation, temporary restraining orders, and other injunctive relief.

Experience

Foster Pepper PLLC
Associate, 2006-Present
Summer Associate, 2005

Lane County Legal Aid - Eugene, OR
Legal Extern, 2005

Oregon Department of Justice, Trial Division - Salem, OR
Law Clerk, 2004-2005

Bar Admissions

Washington, 2006
Admitted to practice

Representative Cases

Defense of Northwest-based global retailer against former supplier's breach of contract, fraud, CPA, and unjust enrichment claims. Fraud claims dismissed on summary judgment. Client deemed the prevailing party after 12-day trial in private arbitration, defeating plaintiff's $23 million damage claim and obtaining attorneys' fees and costs.

Defense of Northwest-based global retailer against claims brought by former supplier's bank involving supplier's sales contract and account. Dismissed on summary judgment in private arbitration, with attorneys' fees and costs awarded.

Defense of Northwest-based global retailer against fraudulent inducement, breach of contract, and unjust enrichment claims brought by former tax vendor. All claims denied following 4-day trial in private arbitration. Obtain temporary restraining order against Snohomish County employer's former employee who violated non-competition agreement and took trade secrets to direct competitor.

Obtain temporary restraining order in Whatcom County against signature gatherers trespassing on client's private property and harassing client's customers.

Defend mortgage company against trademark, breach of contract, false light and similar claims in federal court. Summary judgment dismissal of plaintiff's trademark infringement and dilution, breach of contract, false light, and misappropriation of likeness claims.

Activities

Washington State Bar Association

Legal Voice
Board Member
Auction Committee

Featured in 2010 Foster Pepper Pro Bono Annual Report
KCBA Housing Justice Project

Featured in 2009 Foster Pepper Pro Bono Annual Report
Helping Secure Land Rights for the World's Poorest - Bangladesh

Featured in 2006 Foster Pepper Pro Bono Annual Report
Real Change

Star Guild, Children's Hospital Guild Association
Board Member, 2006-2010

Publications

Katie Carder McCoy is a contributor to Foster Pepper's Washington Workplace Law blog.
Check out the latest news in this fast-changing area at: **www.washingtonworkplacelaw.com.**

Experts give their solutions to difficult workplace problems
What's Working in Human Resources - August 2012

Presentations

Seattle Paid Sick and Safe Time: Practical Guidance Employers Need to Know
Speaker, Seattle, WA - August 2012

Disability Accommodation: Navigating the Interactive Process
Speaker, Reasonably Accommodating Employees with Disabilities, Seattle, WA - June 2012

Employment Law Challenges for Public Employers and Current Developments under the Public Employees Collective Bargaining Act
Panelist, 2012 Association of Washington Housing Authorities (AWHA) Meeting, Seattle, WA - April 2012

Employee Investigations: A Practical Guide For Washington Employers
Speaker, Conducting Effective Workplace Investigations, Seattle, WA - February 2012

Update on Developments in Employment Law
Speaker, Social Media in the Workplace, Seattle, WA - May 2011

Just Cause
Speaker, Civil Service Conference - October 2010

Compensation Issues under FLSA/Wage and Hour
Speaker, Fundamentals of Employment Law, Seattle, WA - June 2010

Education

University of Oregon School of Law, J.D., 2006
Oregon Law Review, Editor, 2004-2006
Graduate Teaching Assistant, University of Oregon President Dave Frohnmayer, 2006

University of Washington
B.A. Political Science, 2003
B.A. Business Administration, 2003

Personal / Interests

Interests include traveling internationally, cheering for the Huskies, practicing yoga, hiking and enjoying the Great Outdoors.

Born in Santa Ana, CA

FOSTER PEPPER PLLC

Janelle Milodragovich

E-mail: miloj@foster.com

Tel: 206-447-6220 / Seattle

Fax: 206-749-2120

Practices

Litigation and Dispute Resolution
Employment and Labor Relations
Business

Industries

Transportation Industries
Arts and Entertainment
Wineries, Breweries and Distilleries

Practice Summary

Ms. Milodragovich advises and represents all types of employers in a broad range of labor and employment law matters, including union avoidance, wage and hour disputes, discrimination complaints, progressive discipline issues, and employee terminations. She represents corporations and small business in union negotiations, organizing campaigns, elections and labor arbitrations. Ms. Milodragovich's practice also includes representing clients in unfair labor practice proceedings and 10j actions before the National Labor Relations Board and related administrative agencies.

In addition to her traditional labor experience, Ms. Milodragovich has significant experience defending employers of all sizes in employment litigation involving claims of disability and employment discrimination, wrongful termination, and wage and hour class actions. She has extensive California litigation experience, including representing employers in California state administrative proceedings. Ms. Milodragovich works closely with Human Resource professionals to ensure clients' compliance with applicable state and federal labor laws, as well as other statutory and contractual obligations. She also serves as Publisher of Foster Pepper's Washington Workplace Law blog: www.washingtonworkplacelaw.com.

Prior to law school, Ms. Milodragovich worked as a Human Resources Generalist for a multi-state education company.

Experience

Foster Pepper PLLC
Associate, 2010-Present

Littler Mendelson, PC - San Francisco, CA
Associate, 2005-2010

Office of the Washington State Attorney General, Ecology Division - Olympia, WA
Clerk, June-September 2004

Office of the Washington State Attorney General, UW Division - Seattle, WA
Clerk, June 2003-June 2004; September-December 2004

Bar Admissions

United States District Court
Eastern District of Washington, 2012
Central District of California, 2009
Northern District of California, 2006

Washington, 2010

California, 2005

Ninth Circuit Appellate Court

Activities

American Bar Association

King County Bar Association

Washington State Bar Association

California Bar Association

Serbian Bar Association of America

Publications

Janelle Milodragovich is a contributor to Foster Pepper's Washington Workplace Law blog.
Check out the latest news in this fast-changing area at: **www.washingtonworkplacelaw.com**.

Presentations

Seattle Paid Sick and Safe Time: Practical Guidance Employers Need to Know
Panelist, Seattle, WA - August 2012

Managing the Process of Labor Negotiations
Panelist, WFCA 63rd Annual Conference - October 2011

Civil Service & Collective Bargaining – A Short History
Speaker, 2011 Civil Service Conference - September 2011

Out of Sight, But Not Out of Mind: Untangling Employer Obligations Under FMLA and Other Statutes
Speaker, Seattle, WA - September 2011

Issues Arising From Off-Duty Use of Social Media
Speaker, Social Media in the Workplace - May 2011

Collective Bargaining and Managing The Unionized Workforce
Speaker, PNRC-NAHRO conference - May 2011

Employment-Related Due Diligence For Transactional Attorneys
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Employment Issues for Filmmakers
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Employee or Independent Contractor? Washington Supreme Court Changes the Rules

Posted by Steve Peltin on July 23, 2012

In a case with potentially sweeping impact on many Washington enterprises, the Washington Supreme Court announced a new test for determining whether a worker is an employee entitled to minimum wage and overtime, or an independent contractor entitled only to compensation set by the parties. Under the "economic-dependence test," the worker is an employee if "as a matter of economic reality," the individual "is economically dependent upon the alleged employer or is instead in business for himself." *Anfinson v. FedEx Ground Package Sys., Inc.* (click for separate majority opinion and dissent)

Although the full consequences of the July 19 decision are not yet clear, many workers who have been treated as independent contractors may now have the right to minimum wage and overtime compensation, and businesses and government agencies can expect a flurry of new lawsuits, including class actions.

The Lawsuit

Randy Anfinson, a delivery driver for FedEx Ground, was engaged as an independent contractor. Along with two other drivers, Anfinson filed a class action lawsuit seeking overtime wages under the Washington Minimum Wage Act. The case was certified as a class action that covered 320 current and former drivers.

After a four week trial, the jury found that the workers were independent contractors and therefore not entitled to overtime pay. The plaintiffs appealed. The Court of Appeals and Supreme Court found the jury instructions to be erroneous and prejudicial, and sent the case back for a new trial.

The Supreme Court's Analysis

The Supreme Court rejected an eight-factor "right to control test" that formed the basis of the jury instructions. Under this test, the main issue was whether the enterprise controlled, or had the right to control, the details of the worker's performance, and the eight factors were relevant only in deciding control or right to control.

According to the Supreme Court, the correct inquiry is "whether, as a matter of economic reality, the worker is economically dependent upon the alleged employer or is instead in business for himself." Unfortunately, the Court did not list the factors it would apply to the economic-dependence test, or suggest how to flesh out the general outlines of the test. The Court referred obliquely to "competing lists of nonexclusive factors" that some federal courts use.

The dissenting Supreme Court justices objected to the absence of a definite set of factors. They wrote that employee status under the Minimum Wage Act now is governed by a single determination – whether the worker is economically dependent upon the alleged employer – and any other factor will be relevant only in deciding economic dependence. The dissenting justices concluded that economic dependence focus potentially sweeps in almost any work done by one person on behalf of another.

For its part, the majority acknowledged that the economic-dependence test will result in "a more inclusive definition of employee than does the right-to-control test." In other words, more workers will be considered employees under the economic-dependence test than under the right-to-control test.

Competing Standards

Unfortunately, the determination in the Anfinson case applies only to the Washington Minimum Wage Act. Courts and agencies, such as the Internal Revenue Service, the Washington Department of Labor and Industries, and the Equal Employment Opportunity Commission, apply different formulations. Therefore, a worker could be considered either an employee or an independent contractor depending on the law or agency. For example, a worker who qualifies as an independent contractor for federal income tax purposes might be entitled to overtime pay as an employee under the Washington Minimum Wage Act.

Conclusion

As noted above, the consequences of the Anfinson decision remains to be seen. We will continue to cover developments on the Washington Workplace Law blog. If you have a question about avoiding liability for misclassifying employees as independent contractors, please contact the Foster Pepper Employment and Labor Relations group.

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Washington Workplace Law

Foster Pepper PLLC

Employee or Independent Contractor? Washington Supreme Court Changes the Rules - Part Two

Posted by Steve Peltin on July 25, 2012

In an article posted earlier this week, we wrote about the Washington Supreme Court's new test for determining whether a worker is an employee entitled to minimum wage and overtime, or an independent contractor entitled only to compensation set by the parties. The article described the "economic-dependence test" in general terms: the worker is an employee if "as a matter of economic reality," the individual "is economically dependent upon the alleged employer or is instead in business for himself." *Anfinson v. FedEx Ground Package Sys., Inc.*

The article noted that the Court did not list the factors it would apply to the economic-dependence test, or suggest how to flesh out the general outlines of the test, but merely referred in passing to "competing lists of nonexclusive factors" that some federal courts use. Finally, the article warned that other courts and agencies have different factors for determining whether a worker is an employee or independent contractor.

In this post we will detail the factors used by the federal courts cited in the *Anfinson* decision, as well as the factors applied under other laws.

Cases cited in Anfinson

In supporting its economic-dependence test, the Supreme Court mentioned "competing lists of nonexclusive factors" that some federal courts use, citing *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 343 (5th Cir. 2008) and *Real v. Driscoll Strawberry Assocs.*, 603 F.2d 748, 754 (9th Cir. 1979).

Hopkins applied these "non-exhaustive" factors:

> (1) the degree of control exercised by the alleged employer;
>
> (2) the extent of the relative investments of the worker and the alleged employer;
>
> (3) the degree to which the worker's opportunity for profit or loss is determined by the alleged employer;

(4) the skill and initiative required in performing the job; and

(5) the permanency of the relationship.

Real applied these factors:

(1) the degree of the alleged employer's right to control the manner in which the work is to be performed;

(2) the alleged employee's opportunity for profit or loss depending upon his managerial skill;

(3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers;

(4) whether the service rendered requires a special skill;

(5) the degree of permanence of the working relationship; and

(6) whether the service rendered is an integral part of the alleged employer's business.

Other formulations

The *Anfinson* case applies only to the Washington Minimum Wage Act. Courts and agencies apply different formulations for different laws. Therefore, a worker could be considered either an employee or an independent contractor depending on the law or agency. For example, a worker who qualifies as an independent contractor for federal income tax purposes may be entitled to overtime pay as an employee under the Washington Minimum Wage Act.

A few of those formulations, along with links to source materials, follow below:

United States Department of Labor (applying the federal Fair Labor Standards Act, governing minimum wage and overtime):

(1) The extent to which the services rendered are an integral part of the principal's business.

(2) The permanency of the relationship.

(3) The amount of the alleged contractor's investment in facilities and equipment.

(4) The nature and degree of control by the principal.

(5) The alleged contractor's opportunities for profit and loss.

(6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.

(7) The degree of independent business organization and operation.

Washington Department of Labor and Industries (covering workers compensation and safety requirements):

(1) Are you hiring someone for more than personal labor? ["Yes" answers tend to favor an independent contractor relationship.]

- Are they bringing employees?
- Are they bringing heavy equipment?

(2) Are you supervising?

- You ARE NOT supervising if you are only scheduling and inspecting the work.
- You ARE supervising if you are telling your worker or a subcontractor's workers how to do the job, assigning tasks, training, keeping time sheets, paying a wage or setting regular hours.

(3) Do they have an established business of their own? ["Yes" answers tend to favor an independent contractor relationship.]

- Supervision: Does the worker perform work free of your direction and control?
- Separate business: Does worker offer services that are different from what you provide? *Or*, does the worker maintain and pay for a place of business that is separate from yours? *Or*, does the worker perform service in a location that is separate from your business or job sites?
- Previously established business: Does the worker have an established, independent business that existed before you hired?
- IRS taxes: When you entered into the contract, was this person responsible for filing a tax return with the IRS for his or her business?
- Required registrations: Is the worker up-to-date on required Washington State business registrations?
- Maintains books: Does the worker maintain his or her own set of books dedicated to the expenses and earnings of the business?
- Construction trades: If the work performed is in the construction trades, does the worker have an active contractor registration or electrical contractor's license?

Internal Revenue Service (covering federal income tax responsibilities):

The IRS traditionally applied a 20 factor test enunciated in a 1987 revenue ruling. The IRS since has modified its analysis to cover three factors and a number of sub-factors. They are:

(1) Behavioral: Does the company control or have the right to control what the worker does and how the worker does the job? [These factors tend to favor an employment relationship]

- Type of instructions given (when and where to do the work; what tools or equipment to use; what workers to hire or to assist with the work; where to purchase supplies and services; what work must be performed by a specified individual; what order or sequence to follow when performing the work)
- Degree of instruction (the more detailed the instructions, the more control the business exercises over the worker)
- Evaluation system (measures the details of how the work is performed)
- Training (training on how to do the job, and periodic or on-going training about procedures and methods)

(2) Financial: Are the business aspects of the worker's job controlled by the payer (such as how the worker is paid, whether expenses are reimbursed, and who provides tools/supplies)? [These factors tend to favor an independent contractor relationship.]

- Worker's significant investment in equipment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market (rather than just to one enterprise)
- Method of payment (e.g., flat fee)

(3) Type of Relationship: Are there written contracts or employee type benefits (such as pension plan, insurance, or vacation pay)? Will the relationship continue, and is the work performed a key aspect of the business?

- Written contracts (not controlling)
- Employee benefits (tend to show employee status)
- Permanency of the relationship (indefinite engagement tends to show employer-employee relationship)
- Services provided as key activity of the business (if worker's services are a key aspect of the business, it's more likely an employment relationship)

The IRS uses Form SS-8 in determining whether the worker is an employee or independent contractor for federal income tax purposes.

Equal Employment Opportunity Commission (covering federal anti-discrimination law, including Title VII of the Civil Rights Act of 1964, list below found at note 67):

(1) The employer has the right to control when, where, and how the worker performs the job.

(2) The work does not require a high level of skill or expertise.

(3) The employer furnishes the tools, materials, and equipment.

(4) The work is performed on the employer's premises.

(5) There is a continuing relationship between the worker and the employer.

(6) The employer has the right to assign additional projects to the worker.

(7) The employer sets the hours of work and the duration of the job.

(8) The worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job.

(9) The worker does not hire and pay assistants.

(10) The work performed by the worker is part of the regular business of the employer.

(11) The employer is in business.

(12) The worker is not engaged in his/her own distinct occupation or business.

(13) The employer provides the worker with benefits such as insurance, leave, or workers' compensation.

(14) The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state, and Social Security taxes).

(15) The employer can discharge the worker.

(16) The worker and the employer believe that they are creating an employer-employee relationship.

This list is not exhaustive. Other aspects of the relationship between the parties may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met. Rather, the determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship.

Washington Common Law (covering the responsibility of the principal for the negligence of agents):

(1) the extent of control which, by the agreement, the principal may exercise over the details of the work;

(2) whether or not the worker is engaged in a distinct occupation or business;

(3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of an employer or by a specialist without supervision;

(4) the skill required in the particular occupation;

(5) whether the principal or the worker supplies the instrumentalities, tools, and the place of work:

(6) the length of time for which the worker is engaged;

(7) the method of payment, whether by the time or by the job;

(8) whether or not the work is a part of the regular business of the principal;

(9) whether or not the parties believe they are creating the relation of principal and agent; and

(10) whether the principal is or is not in business.

Hollingbery v. Dunn, 68 Wash.2d 75, 79-80 (1966).

Conclusion

The conflicting standards imposed by various courts and agencies make it difficult for businesses, non-profits and government entities to determine whether the people engaged to provide services are employees or independent contractors. Foster Pepper's Employment and Labor Relations attorneys can assist.

Washington Workplace Law

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Seattle Paid Sick and Safe Time Ordinance

Overview

- Begins on September 1, 2012.
- Provides paid sick and safe time (PSST) for employees working within Seattle City limits.
- Sets minimum requirements for accrual, use, and carryover of PSST.
- Requires employer notification and tracking of PSST.
- Offers basic job protections for employees who use PSST.
- New law is enforced by Seattle Office for Civil Rights.

What is PSST?

SICK TIME can be used for:

- Personal illness or preventative care.
- Care for a family member's illness or preventative care (child, grandparent, parent, parent-in-law, spouse and registered domestic partner).

SAFE TIME can be used for:

- Survivors of domestic violence, sexual assault or stalking.
- Closure of workplace or child's school or place of care by public official to limit exposure to infectious agent, biological toxin or hazardous material.

Who is covered?

- Employees who perform work in Seattle:
  - Full-time, part-time, temporary, and occasional-basis employees.
  - Employees who telecommute in Seattle.
  - Employees who stop in Seattle as a purpose of their work.

- Excludes:
  - Federal, state, or county government employers
  - Employees who work or telecommute outside of Seattle.
  - Employees who travel through Seattle.
  - Students enrolled in a work study program.
  - Two year exemption for new small and medium-sized employers (Tier 1 and Tier 2)

General Information	Small (Tier 1) Employer	Medium (Tier 2) Employer	Large (Tier 3) Employer
Full Time Equivalents (FTEs)	More than 4-49 employees	More than 49 to 249 employees	250 or more employees
Accrual of paid sick/safe time	1 hour / 40 hours worked	1 hour / 40 hours worked	1 hour / 30 hours worked
Use of paid sick/safe time	40 hours / calendar year	56 hours / calendar year	72 hours / calendar year
Carryover of unused paid sick/safe time	40 hours / calendar year	56 hours / calendar year	72 hours / calendar year

Other facts:

- **Accrual begins** on September 1, 2012 or when the employee is hired after this date.
- **Accrual based on hours worked in Seattle** including overtime for non-exempt employees.
- **Accrual for occasional employees begins** after they have worked 240 hours in a calendar year. Accrual begins on the 241st hour; employees are covered for current and following calendar year.
- **Use begins** after 180th calendar day from the beginning of employment.
- **Hour-long increments**: PSST can be used in hour-long increments.
- **Carry-over:** Employees permitted to carry over unused hours to the next calendar year.
- **Frontloading permitted** for accrual, use and carry over.
- **Combined or universal leave** (aka Personal Time Off / PTO) policies are permitted, provided they comply with the PSST Ordinance.
- **Cash out option**: If employer allows, employees have the voluntary option to cash out unused PSST.
- **Rate of pay**: Same hourly wage that employee would have earned during time PSST was taken.
- **Excludes lost tips and commissions** that employee might have received when PSST was taken.
- **No waivers**: Employees cannot waive their right to PSST (except collective bargaining agreements).
- **Separation from employment**: PSST reinstated if an employee is rehired within 7 months by the same employer.
- **Other laws**: Ordinance does not preempt or limit application of federal, state or other local laws.
- **Other laws**: PSST can be coordinated with other leave laws such as FMLA, Domestic Violence Leave, Workers Compensation etc.

How does an employee request use of PSST?

- **Foreseeable leave**: A written request at least 10 days in advance of leave (unless employer's policy requires less notice.)
- **Unforeseeable leave**: Give notice "as soon as practicable" (in compliance with the employer's policy for unforeseeable leave).
- **Paid safe time**: end of first day of for domestic violence, sexual assault or stalking.
- **Employer policies**: Employer can require employees to follow their rules about giving notice.

Employee documentation for use of PSST:

- 1-3 consecutive days: Employee **not** required to provide documentation.
- More than 3 consecutive days: Employer may require documentation (e.g. statement from healthcare professional that sick time was necessary).
- **Clear instance or pattern of abuse**: Employer may ask for documentation for absences that are shorter than 3 days.
- **Privacy**: Employer cannot require statement regarding the nature of the illness or other private medical information (but FMLA and ADA may apply and permit such inquiries).
- **Payment for documentation:**
  - **If employer does not offer health insurance**: Employer and employee each pay 50% of the cost to obtain documentation (services by health care professionals and facilities, prescribed testing and transportation service providers).
  - **If employee declined health insurance**: Employee is not entitled to reimbursement.
- **Paid SAFE time for domestic violence, sexual assault or stalking:**
  - Police report.

- Court order.
- Documentation that the employee or employee's family member is experiencing domestic violence, sexual assault, or stalking.
- Employee's written statement is acceptable documentation by itself.
- Confidential – no explanation required of the nature of the situation or reason for taking leave.

PSST and employer attendance policies:

- **Absence control policies**: PSST cannot be counted as an absence that may result in discipline.
- **Clear instance or pattern of abuse**: Employer can take reasonable action (e.g. discipline) for:
  - Repeated absences.
  - Absences that precede or follow regular days off, or some other pattern without valid reason.
  - Obtaining or using paid sick time improperly.

PSST notice and record-keeping requirements:

- **Notice**: employers are required to provide notice to all employees who work in Seattle, regardless of employer tier size or location. Notice must be:
  - Conspicuous and accessible.
  - Physical and/or electronic.
- **Notification**: Employers must provide notification of available PSST each time wages are paid:
  - By paystub and/or online.
- **Record keeping**: Employers must retain PSST records for two years that indicate:
  - Employee hours worked in Seattle.
  - Accrued PSST by employee.
  - Use of PSST by employee.

Retaliation protection

- **Retaliation is illegal**. Employers are prohibited from disciplining or discriminating against employees who have exercised their rights under the Ordinance.
- **Employee and third-party complaints are permitted**.
- **Broad protection against retaliation**: Anti-retaliation provision applies to **ALL** employers with one or more employees.

Collective Bargaining Agreements (CBA):

- **Waiver of rights is permitted**:
- In CBA or MOA (Memorandum of Agreement).
- Must be in clear and unambiguous language.
- Must include a specific reference to the Ordinance.

City of Seattle employees:

- **PSST Ordinance applies to City of Seattle employees**:
  - Most City employees already receive PSST benefit.
  - City policies regarding temporary employees have been changed to comply with the Ordinance.

http://www.cityofseattle.net/civilrights/SickLeave.htm

PAID SICK & SAFE TIME
Seattle Works Well

Frequently Asked Questions: City of Seattle Paid Sick/Safe Leave Ordinance

On September 23, 2011, the City of Seattle passed an ordinance mandating all employers operating within Seattle city limits to provide paid sick/safe leave to their employees. Seattle now joins San Francisco, California and Washington D.C. in requiring employers to offer this benefit to employees.

The Seattle Office for Civil Rights (SOCR) is responsible for administering and enforcing this ordinance, which takes effect on September 1, 2012. SOCR also will provide technical assistance to employers and employees.

This Frequently Asked Questions (FAQ) sheet addresses some of the most common questions about the ordinance. Do you have a question that isn't covered by this FAQ? Contact Elliott Bronstein at 206-684-4507 or elliott.bronstein@seattle.gov.

A. General information

1. **What does the ordinance do?**
   Ordinance Number 123698 adds a new chapter (14.16) to the Seattle Municipal Code (SMC). The new chapter establishes minimum standards for businesses operating within Seattle City limits to provide paid sick/safe leave to their employees. The ordinance also prescribes penalties, remedies and enforcement procedures.

2. **When does the Paid Sick/Safe Leave Ordinance take effect?**
   The ordinance takes effect on September 1, 2012.

3. **Which City department is responsible for administering and enforcing this ordinance?**
   The Seattle Office for Civil Rights (SOCR) is responsible for administering and enforcing the ordinance. SOCR also is available to provide technical assistance to employers and employees. For more information, please call 206-684-4507, e-mail elliott.bronstein@seattle.gov, or fill out a Customer Feedback form.

4. **What is the difference between sick leave and safe leave?**
   An employee can use **sick leave** for the following reasons:
   - An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.
   - An employee providing care for a family member with an illness, injury or medical appointment, etc.

An employee can use **safe leave** for the following reasons:

- An employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material.
- An employee needs to care for a child whose school or place of care has been closed by order of a public health official to limit exposure to an infectious agent, biological toxin or hazardous material.
- For reasons related to domestic violence, sexual assault or stalking that affect the employee or the employee's family member.

B. Coverage and scope of the ordinance

1. Which employees are covered by the paid sick/safe leave ordinance?

Employees are covered if they perform full-time, part-time or temporary work within Seattle city limits. Employees who occasionally work in Seattle are covered if they perform more than 240 hours of work in Seattle within a calendar year.

Example: Nicole works as a bartender for a restaurant in Seattle for 30 hours per week. She is a covered employee because she performs part-time work in Seattle.

2. Does coverage include all government employees who work in Seattle?

No. The only government employees covered by the ordinance are employees of the City of Seattle. Federal, state and other local government employees are not covered.

Example: Kim works for the Seattle Department of Transportation. She is covered by the ordinance because she is a City of Seattle employee.

Example: Scott works for the University of Washington at the Seattle campus. He is not covered by the ordinance because he is a state employee working for a state institution.

Example: Lars works as a Metro bus driver in the Seattle area. He is not covered by the ordinance because he is a King County employee.

3. Does coverage include work study participants who work in Seattle?

No. Participants in work study programs are not covered. More information about the classification of work study participants is available at the US Department of Education Web site.

4. Does coverage include employees who are based outside of Seattle, but occasionally work in Seattle?

Yes. Employees are covered if they perform work in Seattle for more than 240 hours within a calendar year and the employer has five or more employees. The paid sick/safe leave must be used in Seattle.

Example: Carla works for an employer that operates stores in Renton and Seattle. Carla primarily works for the Renton store, but she also works some shifts in Seattle. The hours that Carla works in the Seattle store count toward her accrual of paid sick/safe leave. Carla's employer is only required to permit use of paid sick/safe leave for the work she performs in Seattle, not Renton.

Example: Maria works as a manager for a store in Spokane. She temporarily transfers to Seattle for a period of four months to manage the opening of a new store and then returns to Seattle only on an intermittent basis to oversee the store. Only the hours that Maria works in Seattle count toward accrual of paid sick/safe leave. In addition, Maria's employer is only required to permit Maria's use of paid sick/safe leave while she is working in Seattle, not Spokane.

Example: Jamal works for a company based in New York. He lives in New York, but frequently travels to Seattle to lead training seminars. The hours that Jamal works in Seattle count toward accrual of paid sick/safe leave. Jamal's employer must provide paid sick/safe leave to Jamal if he accrues more than 240 hours of work in Seattle within a calendar year. The hours that Jamal works in New York do not count toward the minimum number of hours to qualify for paid sick/safe leave in Seattle.

5. **Does coverage include independent contractors?**
No. The ordinance only applies to employees. However, the designation of an individual as an independent contractor or as an employee depends on a variety of factors. The Washington State Department of Labor and Industry provides more information about classifying independent contractors.

6. **Does coverage include undocumented employees?**
Yes. All employees who perform work in Seattle are covered, including employees who are not legally authorized to work in the United States. SOCR does not ask people who file complaints about their immigration status; SOCR investigates complaints without regard to immigration status.

7. **Can employees waive their rights to the protections of this ordinance?**
Employees can only waive their rights as part of a bona fide collective bargaining agreement. Individual waivers of rights are not allowed.

8. **Which employers are covered by the paid sick/safe leave ordinance?**
All employers are covered by some aspects of the ordinance (such as the anti-retaliation provision of the law). However, only employers with 5 or more "full-time equivalent employees" (FTEs), are required to provide paid sick/safe leave to covered employees. An employer's specific obligations depend on the number of full-time equivalent employees:

   Tier One – Employers with more than 4 and fewer than 50 FTEs on average per calendar week during the previous calendar year.
   Tier Two – Employers with at least 50 and fewer than 250 FTEs on average per calendar week during the previous calendar year.
   Tier Three – Employers with 250 or more FTEs on average per calendar week during the previous calendar year.

   Note: Tier size is determined by the employer's number of FTEs, not the number of individual employees.

9. **What does the ordinance mean by "full time equivalent" (FTE)?**
"Full time equivalent" (FTE) refers to the number of hours worked for compensation that

add up to one full-time employee, based either on a 40-hour work week or on how an employer defines "full-time" in writing or practice.

10. How do employers determine the number of FTEs?

To determine the number of FTEs, employers should count all compensated hours of all employees from the previous calendar year. All employees are counted for FTE determination, including:

- Full-time employees.
- Part-time employees.
- Temporary employees.
- Employees who are made available by a temporary service, staffing agency or similar entity.
- Employees who work outside of Seattle.

11. How do new employers determine the number of FTEs?

Employers that did not have any employees during the previous calendar year can determine their tier size by calculating the average number of FTEs paid per calendar week during the first 90 days of the current year of business.

12. If an employer has both Seattle and out-of-state employees, does the employer need to count all employees to determine tier size?

Yes. To determine the number of FTEs for tier size, employers must count the compensated hours of **all** employees (full-time, part-time, and/or temporary) who perform work in Seattle or outside the city.

Example: NW Food Company is headquartered in Oregon and has locations in Portland, Seattle, and Boise. To determine tier size, NW Food Company must count the compensated hours of its employees in all three locations.

13. Does this ordinance apply to employers based outside of Seattle that send employees to work in Seattle?

Yes, the ordinance applies if the employees are performing work in Seattle. Only the hours worked in Seattle will count toward accrual of paid sick/safe leave.

Example: All-Star Uniforms is an employer based in Tukwila. All-Star Uniforms sends sales representatives to Seattle to market merchandise to local businesses and deliver uniforms. While the sales representatives are performing work in Seattle, they are accruing hours that will count toward their qualification for paid sick/safe leave. If the sales representatives qualify for paid sick/safe leave, All-Star Uniforms is only required to permit use of the paid leave for work scheduled in Seattle.

14. Do employers with branches outside of Seattle need to provide health insurance for those employees who work outside of Seattle?

No. The ordinance does not require employers to provide health insurance for any employee – whether the employee works in Seattle or outside the city. The purpose of the ordinance is to provide employees with paid sick/safe leave.

15. **If an employer does not provide other benefits to employees, does the employer still have to comply with the paid sick/safe leave ordinance?**
    Yes. Employees are covered by the ordinance even if an employer does not provide other benefits to employees.

16. **Can employers offer more generous policies for paid sick/safe leave?**
    Yes. The ordinance sets the minimum requirements for a paid sick/safe leave policy; it does not prevent employers from establishing more generous policies.

C. Accruing paid sick/safe leave

1. **When do employees begin to accrue paid sick/safe leave?**
   Current employees will begin to accrue paid sick/safe leave on September 1, 2012, which is the date the ordinance takes effect. Accrual rates will not apply to hours worked before that date. **New employees** hired on or after September 1, 2012 will begin to accrue paid sick/safe leave from the start-date of employment.

2. **How much paid sick/safe leave do employees accrue?**
   Employees accrue paid sick/safe leave based on their employer's tier size:
   - **Tier One and Two**: Employees accrue at least one hour of paid leave for every 40 hours worked.
   - **Tier Three**: Employees accrue at least one hour of paid leave for every 30 hours worked.

3. **When can employees start using paid sick/safe leave?**
   Employees of **current employers** can use accrued paid sick/safe leave on the 180th calendar day after they begin employment. Employees of **new employers** (Tier One and Tier Two) can use accrued paid sick/safe leave as described above, but only after 24 months from the hire date of the first employee.

   Example: Solomon started working for an employer in 2009. The employer hired its first employee in 1999. Solomon can begin to use his accrued paid sick/safe leave after he works 40 hours after the date that the ordinance takes effect, September 1, 2012.

   Example: Enrique started working for an employer on December 1, 2011. The employer hired its first employee on November 1, 2011. Enrique can begin to use his accrued paid sick/safe leave on November 1, 2013 – 24 months after the employer's hire date of its first employee.

4. **Do employees accrue sick leave and safe leave separately, or is it one amount of time that employees can use either way?**
   Employees accrue paid leave in one amount and can choose to use it either for sick leave or safe leave.

5. **What about seasonal employees?**
   If an employee is laid off and rehired by the same employer within seven months of separation, the previous period of employment will be counted toward the employee's eligibility to use accrued paid sick/safe leave. The total time of employment must have occurred within two calendar years.

Example: During his summers off from school, Aziz works in a restaurant from May through September. Aziz will retain his previously accrued hours of paid sick/safe leave (and will accrue more hours as he continues to work) as long as the period between Aziz's departure and return to work is no longer than 7 months.

Example: Caprice works full-time and accrues 20 hours of paid sick/safe leave. She then leaves her job to pursue a master's degree. Six months later she is rehired by the same company and begins to work on a part-time basis. When Caprice returns to work, she retains the 20 hours that she previously accrued and will accrue more hours as she continues to work.

6. **How much paid sick/safe leave can an employee use in a calendar year?**
   The number of hours of paid sick/safe leave that an employee can use in a calendar year depends on the employer's tier size:

   Tier One – Employees can use 40 hours or less per calendar year.
   Tier Two – Employees can use 56 hours or less per calendar year.
   Tier Three – Employees can use 72 hours or less per calendar year.

7. **Can employees carry over unused paid sick/safe leave to the next calendar year?**
   Yes. Employees are permitted to carry over unused hours to the next calendar year. However, the number of hours depends on the employer's tier size:

   Tier One – Employees can carry over 40 hours or less.
   Tier Two – Employees can carry over 56 hours or less.
   Tier Three – Employees can carry over 72 hours or less.

8. **What about employees who are exempt from overtime under the Fair Labor Standards Act (FLSA)?**
   Exempt employees do not accrue paid sick/safe leave for hours worked beyond a 40-hour work week. If an exempt employee's normal work week is less than 40 hours, paid sick /safe leave accrues based on the employee's normal work week. If an exempt employee's normal work week is 40 hours or more, paid sick/safe leave accrues based on a 40-hour work week.

9. **What about employers who offer universal paid time off (PTO) for employees?**
   Employers do not need to provide additional paid sick/safe time to employees if they provide a PTO policy that combines sick and vacation leave. However, the PTO policy must permit accrual and the use of paid sick/safe leave for the same purposes and under the same conditions as Seattle's ordinance. In addition, Tier Three employers must permit employees to use up to 108 hours of paid leave within a calendar year and/or carry over up to 108 hours of unused paid leave to the next calendar year.

D. Using paid sick/safe leave

1. **What are acceptable reasons for using paid <u>sick</u> leave?**
   An employee can use paid sick leave for the following reasons:

- An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.
- An employee providing care for a family member with an illness, injury or medical appointment, etc.

Note: For paid sick time, "family member" is defined by the Washington Family Care Act as a child, grandparent, parent, parent-in-law, spouse and registered domestic partner. See RCW 49.12.265 and 49.12.903 for more information.

2. **What are acceptable reasons for using paid <u>safe</u> leave?**
   An employee can use paid safe leave for the following reasons:
   - An employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material.
   - An employee needs to care for a child whose school or place of care has been closed by order of a public health official to limit exposure to an infectious agent, biological toxin or hazardous material.
   - For reasons related to domestic violence, sexual assault or stalking that affect the employee or the employee's family member.

   Note: For paid safe leave, "family member" is defined as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship. See RCW 49.76.020 for more information.

3. **Under an employer's PTO policy, can employees use all of their accrued leave for vacation and not leave any "cushion" for paid sick/safe leave?**
   Yes. Under an employer's PTO policy, employees can choose to use their paid leave as vacation, sick or safe leave.

4. **Can an employee trade shifts or work additional hours instead of using paid sick/safe leave?**
   Yes. With mutual employer and employee consent, employees may work additional hours or shifts during the same or next pay period instead of using paid sick/safe leave. For eating and/or drinking establishments, employers may offer substitute hours/shifts to employees who request paid sick/safe leave. If an employee chooses to work substitute hours/shifts, the employer may deduct paid sick/safe leave in accordance with ordinance requirements.

   Example: Serena works for an office supply company in the stocking department. When Serena becomes sick with the flu, she may stay home and use paid sick leave for the hours she misses from work. She also may work additional hours and/or swap shifts with another employee to cover the missed hours from work <u>instead of</u> using paid sick leave.

   Example: Bindu works for a restaurant as a server. When Bindu becomes sick with the flu just before her 6:00 pm to 10:00 pm shift, she may stay home and use paid sick leave for the four hours she misses from work. With mutual consent between Bindu and her employer, she also may stay home and then make-up the missed hours from work in a substitute shift during the same or next pay period. For example, Bindu could work the following

Wednesday in a substitute shift from 6:00 pm to 10:00 pm. To pay for her work in this substitute shift, Bindu's employer may use four hours of her accrued paid sick leave.

5. **Is an employee required to use paid sick/safe leave in hour-long increments?**
   For employees covered by FLSA overtime requirements, employers can require the use of paid sick/safe leave in hourly increments. However, an employer may choose to permit use of paid sick/safe leave in less than one hour increments if preferable.

   For FLSA exempt employees, employers may make deductions of paid sick/safe leave in accordance with the FLSA. FLSA-exempt public employees must use paid sick /safe leave in accordance with a pay system established by statute, ordinance or regulation, or by a policy or practice established under principles of public accountability.

6. **What pay does an employee earn during use of paid sick/safe leave?**
   Employers must pay employees for sick/safe leave at the same hourly rate and with the same benefits, (including health care benefits) as during regular work hours.

7. **Are employees entitled to tips that would have been earned?**
   Employees are not entitled to lost tips or commissions during use of paid sick/safe leave.

8. **Are employees compensated for unused paid sick/safe leave when they leave their job?**
   No. An employer is not required to pay for unused paid sick/safe leave upon an employee's termination, resignation, retirement or other separation from employment.

9. **How does an employee request use of paid sick/safe leave?**
   The method for requesting paid sick/safe leave depends on the employer's policies. Employees may be required to comply with the employer's notice policy for absences and/or leave requests, provided that those policies do not interfere with the purpose of the leave.

   - For leave that is foreseeable, a written request should be provided at least 10 days ahead of time (or as early as possible), unless the employer's customary notice policy requires less advance notice.
   - For unforeseeable leave, the employee must provide notice as soon as is practicable and must generally comply with an employer's customary notice policies and/or call-in procedures.

10. **Does an employee have to provide documentation for use of paid sick leave?**
    An employee does not need to provide documentation for use of paid sick leave unless the employee is absent for more than three consecutive days. After three consecutive days, an employer may require documentation, such as a statement signed by a health care provider stating that sick leave is necessary. An employer cannot require the documentation to reveal the nature of the illness or other private medical information.

11. **Who pays for documenting use of paid sick leave after more than three consecutive days?**
    If the employee's health insurance does not cover this service, the employer and the employee should each pay 50% of the cost of documentation. Expenses are limited to the cost of:

- Services provided by health care professionals.
- Services of health care facilities.
- Testing prescribed by health care professionals.
- Transportation to the location where such services are provided.

If an employee has declined health insurance from an employer, the employee is not entitled to reimbursement for expenses.

12. **Does an employee have to provide documentation for use of paid safe leave?**,
An employee does not need to provide documentation for use of paid safe leave unless s/he is absent for more than three consecutive days. After three consecutive days, an employer may require documentation.

    - For documentation of the closure of a school or place of care, an employee can provide notice of the closure in whatever format the employee received it.
    - For verification of leave taken for domestic violence, sexual assault or stalking, an employee may provide a police report; applicable evidence from the court or the prosecuting attorney; documentation from an advocate, attorney, member of the clergy, medical or other professional; or the employee's written statement.

    Note: The verification provision for domestic violence, sexual assault or stalking does not waive confidentiality requirements.

13. **How can employees learn how many hours of paid sick/safe leave they have accrued?**
Employers shall provide employees the amount of their available paid sick/safe leave each time that wages are paid. Employers may choose a reasonable system for providing this information, such as a statement with available paid sick/safe leave on each pay stub or an online system where employees can access their own paid leave information.

14. **What happens if an employer retaliates against an employee for use of paid sick/safe leave?**
Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against an employee for exercising in good faith her/his rights under this ordinance. These rights include (but are not limited to):

    - Using paid sick/safe leave.
    - Informing an employer, union or legal counsel about alleged violations of this ordinance.
    - Filing a complaint about alleged violations of this ordinance.
    - Participating in an investigation of alleged violations of this ordinance.
    - Informing other employees of their rights under this ordinance.

E. Employers' notice and record-keeping requirements

1. What are employers' notice requirements to employees?

Employers are required to provide employees with notice of their rights under this ordinance, including employee rights regarding retaliation and the right to file a complaint or bring a civil action if paid sick/safe leave is denied by the employer.

Employers may comply with the notice requirements of this ordinance by:

- Including a paper or electronic copy of notice in employee handbooks or other written guidance.
- Distributing a notice to each new employee at the time of hire.
- Displaying a poster created by SOCR in a conspicuous and accessible place in the workplace. SOCR will make a poster available prior to the effective date of the ordinance.

2. What are employers' record keeping requirements?

Employers are not required to change their record-keeping policies, as long as those records reasonably indicate:

- Hours worked by employees.
- Accrued paid sick/safe leave.
- Paid sick/safe leave taken by employees.

Employers are required to allow SOCR access to these records in order to investigate potential violations and to monitor compliance with the requirements of the ordinance.

F. Enforcement

1. Which agency enforces this ordinance?

SOCR is responsible for enforcing this ordinance. SOCR conducts fair and impartial investigations. SOCR does not provide legal representation for employees or employers. Enforcement includes:

- Filing charges of alleged violation.
- Conducting investigations.
- Facilitating settlements and conciliations.
- Issuing written findings of fact and determinations.

2. How does an employee file a complaint regarding violations of this ordinance?

To report alleged violations of the paid sick/safe leave ordinance, an employee may telephone SOCR at 206-684-4500 or fill out an online Intake Questionnaire.

3. What is the timeline for filing a complaint?

Complaints must be filed within 180 days of the alleged violation of this ordinance.

This document is designed to help employers create a letter to inform employees about Seattle's Paid Sick/Safe Time Ordinance. Feel free to edit this document to suit your business's policies and procedures.

[Employer letterhead]
[Today's date]

To all employees,

Beginning September 1, 2012, a new law in Seattle requires employers to offer paid sick and safe time to employees who work within Seattle city limits. The Seattle Paid Sick and Safe Time Ordinance (SMC 14.16) covers full-time, part-time and temporary employees who work in Seattle, as well as employees who work in Seattle on an occasional basis (more than 240 hours per calendar year).

Seattle's Paid Sick and Safe Time Ordinance requires employers to provide employees working in Seattle paid hours to take time off from work due to illness or a safety issue. Paid sick and safe time may be used for:

- Your personal illness, injury or health condition, or to take care of a family member (including domestic partners) with an illness, injury or medical appointment.
- Closure of your place of business or child's school/place of care by order of a public official for health reasons.
- For reasons related to domestic violence, sexual assault, or stalking.

We are a [Tier x] employer. This means that for every [40 / 30] hours you work, you will earn an hour of sick and safe time, and you will be able to use [40 / 56 / 72] hours of sick and safe time each year. You will be able to carryover up to [40 / 56 / 72] hours of unused leave on an annual basis.

[*Optional information for employers with PTO leave systems*: As a Tier 3 company with a Personal Time Off plan, you will be able to use and carry over 108 hours on an annual basis.]

We will notify you of available paid sick and safe time each time wages are paid [on your pay stub and/or electronically]. If you have questions about your Paid Sick and Safe Time benefits as an employee of [employer name], please contact [Employer's HR or payroll staff].

The City of Seattle Office for Civil Rights (SOCR) is responsible for enforcing this ordinance and ensuring that you are not retaliated against for using paid sick and safe time . SOCR also provides technical assistance, brochures, posters and other resources. For more information from SOCR, call 206-684-4500 or visit www.seattle.gov/civilrights/SickLeave.htm.

Sincerely,

[Name of employer]

SEATTLE OFFICE FOR CIVIL RIGHTS

Seattle Office for Civil Rights Rules
Chapter 70

Practices for administering paid sick time and paid safe time under SMC 14.16

GENERAL PROVISIONS

SHRR 70-001 Purpose

These Rules (Chapter 70) govern the practices of the Seattle Office for Civil Rights in administering the provisions of the Paid Sick Time and Paid Safe Time Ordinance (Ordinance), Seattle Municipal Code (SMC) 14.16.

SHRR 70-010 Definitions

(1) “Adverse action” means the discharge, suspension, discipline, transfer, demotion or denial of promotion by an employer of an employee for any reason prohibited by SMC 14.16.040.

(2) “Business” and “engaging in business” have the same meanings as in SMC 5.30.

(3) “Calendar year” means the period of a year beginning January 1 and ending December 31 and is not interchangeable with a fiscal year or rolling year that is different than this definition.

(4) “City” shall mean the City of Seattle.

(5) “Charging party” means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.

(6) “Clear instance or pattern of abuse” includes one or more situations when an employee has used paid sick/safe time in a pattern without legitimate reason (e.g. repeated absences or absences that precede or follow regular days off) or has obtained, attempted to obtain or used paid sick/safe time improperly.

(7) “Client” means any employer that enters into a professional employer agreement with a professional employer organization.

(8) “Combined or universal leave policy” means a policy, such as a paid time off (PTO) policy, that is defined in writing or practice as providing employees with a single amount of paid leave and permitting employees to use available paid leave regardless of the reason.

(9) “Department” means the Seattle Office for Civil Rights.

(10) “Director” means the Director of the Seattle Office for Civil Rights.

(11) “Eating and/or drinking establishment” means a place where food and/or beverages are prepared and sold at retail for immediate consumption either on- or off-premise, but excludes food and beverage service sites such as cafeterias, that

are accessory to other activities and primarily serve students, patients and/or on-site employees.

(12) “Employ” means to engage, suffer or permit to work.

(13) “Employee” shall mean any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Individuals performing services under a work study agreement are not covered by this chapter. Employees are covered by the Ordinance if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by the Ordinance only if he or she performs more than 240 hours of work in Seattle within a calendar year. An employee who is not covered by the Ordinance is still included in any determination of the size of the employer. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be an employee of the staffing agency for all purposes of this chapter, except as provided in SMC 14.16.010(T)(4)(b)

(14) “Employer” shall mean, as defined in SMC 14.04.030(K), any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. Employer size shall be determined as provided in SMC 14.16.010(T). For purposes of the Ordinance, "employer" does not include any of the following:

a. The United States government;

b. The State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;

c. Any county or local government other than the City.

(15) “Employment agency” or “staffing agency” means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

(16) “Enterprise” means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units, including departments of an establishment operated through leasing arrangements but not including the related activities performed for such enterprise by an independent contractor.

(17) “Exempt employee” means an employee who is exempt from overtime payment under federal or state law.

(18) "Full-time" means an eight-hour day and a five-day week or as full-time is defined, in writing or practice, by the employer. There is no minimum number of hours for full-time; it is an employer-specific determination. An employer may define full-time differently for exempt and nonexempt employees.

(19) "Full-time equivalent" shall mean the number of hours worked for compensation that add up to one full-time employee, based either on an eight-hour day and a five-day week or as full-time is defined, in writing or in practice, by the employer.

(20) "Health care professional" shall mean any person authorized by the City, any state government and/or the federal government to diagnose and treat physical or mental health conditions, including a doctor, nurse, emergency medical care provider, and/or a public health clinic worker, so long as that person is performing within the scope of their practice as defined by the relevant law.

(21) "Hours worked" means time that an employee performs work for the employer and does not include paid or unpaid leave.

(22) "Integrated enterprise" means an enterprise in which the operations of two or more separate entities are considered so intertwined that they can be considered the single employer of the employee.

(23) "Joint employer" means a relationship in which two or more separate entities exercise some control over the work or working conditions of the employee.

(24) "Nonexempt employee" means an employee who is not exempt from overtime payment under federal or state law.

(25) "Normal work week" means an employee's regular schedule of work hours (e.g. 40 hours at full-time, etc.).

(26) "Ordinance" means the Paid Sick Time and Safe Time Ordinance, Seattle Municipal Code (SMC) 14.16.

(27) "Paid sick time" and/or "paid sick days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in SMC 14.16.030(A)(1), for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked.

a. For purposes of determining eligibility for "paid sick time," "family member" shall mean, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

i. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) under 18 years of age; or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability.

ii. "Grandparent" means a parent of a parent of an employee.

iii. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

iv. "Parent-in-law" means a parent of the spouse of an employee.

v. "Spouse" means husband, wife or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships as well as to marital relationships and married persons to the extent that such interpretation does not conflict with federal law. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in city or state registered domestic partnerships.

(28) "Paid safe time" and/or "paid safe days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in SMC 14.16.030(A)(2), for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

a. For the purposes of determining eligibility for "paid safe time":

i. "Family or household members" shall mean, as defined in RCW 49.76.020, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons 16 years of age or older with whom a

person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

ii. “Domestic violence” shall mean:

1. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2. sexual assault of one family or household member by another; or

3. stalking, as defined below in SMC 14.16.010(P)(1)(c), of one family or household member by another family or household member.

4. “Stalking” shall be defined as in RCW 9A.46.110,

5. “Dating relationship” shall mean, as defined in RCW 49.76.020, a social relationship of a romantic nature.

6. “Sexual assault” shall be defined as in RCW 49.76.020.

(29) “Part-time” means the number of hours that constitute a part-time work schedule as defined in writing or practice by the employer.

(30) “Party” includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Seattle Office for Civil Rights.

(31) “Person” includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.

(32) "Professional employer agreement" means a written contract by and between a client and a professional employer organization that provides for the joint employment of covered employees; and for the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees. See RCW 82.04.540(3)(e).

(33) "Professional employer organization" means any person engaged in the business of providing professional employer services as defined by RCW 82.04.540(3)(f).

(34) "Tier One," "Tier Two," and "Tier Three" employers are defined as follows:

a. "Tier One employer" shall mean an employer that employs more than four and fewer than fifty full-time equivalents on average per calendar week.

b. "Tier Two employer" shall mean an employer that employs at least fifty and fewer than 250 full-time equivalents on average per calendar week.

c. "Tier Three employer" shall mean an employer that employs 250 or more full-time equivalents on average per calendar week.

d. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:

i. work performed outside of the City; and

ii. compensated hours made available by part-time employment, temporary employment or through the services of a temporary services or staffing agency or similar entity.

e. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

(35) "Work Study" means a job placement program that provides students in secondary and/or post-secondary educational institutions with employment opportunities for financial aid and/or vocational training.

SHRR 70-020 Practice where rules do not govern

If a matter arises in administering the Ordinance that is not specifically governed by these rules, the Director shall, in the exercise of his or her discretion, specify the practices to be followed.

SHRR 70-030 Construction of rules

These rules shall be liberally construed to permit the Department to accomplish its administrative duties and to secure the just and efficient determination of the merits of all charges and complaints received by the Department.

EMPLOYEES

SHRR 70-040 Alternative and limited Seattle schedules

(1) Employer location. Employees who perform work in Seattle are covered by the Ordinance regardless of where their employer is located.

(2) Telecommuting in Seattle. Employees who perform work for an employer by telecommuting are covered by the Ordinance for hours that they telecommute in Seattle.

(3) Telecommuting outside Seattle. Employees who perform work for an employer by telecommuting are not covered by the Ordinance for hours that they telecommute outside of Seattle.

(4) Work outside of Seattle. Employees who perform work outside of Seattle, even if the employer is based in Seattle, are not covered by the Ordinance for hours worked outside of Seattle.

(5) Occasional basis. Employees who typically perform work outside of Seattle but work in Seattle on an occasional basis are covered by the Ordinance if they perform more than 240 hours of work in Seattle within a calendar year.

a. Employees who perform work in Seattle on an occasional basis are distinguished from traditional employees, temporary workers and part-time employees with a reasonable expectation of performing more than 240 hours of work in Seattle.

b. Once an employee who performs work in Seattle on an occasional basis is covered by the Ordinance, that employee shall remain covered by the Ordinance for the current and following calendar year.

c. The requirement to track hours of occasional basis employees starts on the date this Ordinance goes into effect, September 1, 2012.

i. Tracking hours worked in Seattle may be delegated to employees if the employer meets Ordinance requirements for notice and posting and provides employees with a reasonable system for tracking hours.

ii. Tracking total hours worked, rather than hours worked in Seattle, is permitted if the employer meets Ordinance requirements for provision of paid sick/safe time regardless of where work is performed.

(6) Stopping in Seattle. Employees who travel to Seattle and make a stop as a purpose of their work (e.g., to make pickups, deliveries, sales calls, etc.) are covered by the Ordinance for all hours that they perform work in Seattle, including travel within the city to and from the work site(s).

(7) Travelling through Seattle.

a. Employees who travel through Seattle, but do not stop in the city as a purpose of their work (e.g. to make pickups, deliveries, sales calls, etc.) are not covered by the Ordinance for the time spent travelling through Seattle.

b. Employees who travel through Seattle and only make incidental stops (e.g. purchasing gas or changing a flat tire) are not making a stop as a purpose of their work.

SHRR 70-050 Temporary workers

(1) In general. Temporary workers are covered by the Ordinance if they perform work in Seattle. See 14.16.010(J).

(2) Off assignment. If a temporary worker is not on assignment in Seattle, an employer is not required to permit his or her use of paid sick/safe time.

(3) Staffing Agencies.

a. In general. A temporary worker supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, shall be an employee of the staffing agency for all purposes of the Ordinance except as provided in SMC 14.16.010(T)(4)(b) to determine employer tier size. See SMC 14.16.010(J).

b. Tier size. Temporary workers supplied by a staffing agency shall be counted for tier size of the staffing agency and the contracting employer.

c. General responsibility. Absent a contractual agreement stating otherwise, a staffing agency is responsible for complying with the Ordinance's requirements for providing paid sick/safe time.

d. Situational responsibility. Absent a contractual agreement stating otherwise, the contracting employer is not responsible for providing paid sick/safe time if a staffing agency is not a covered employer under the Ordinance (e.g. a staffing agency is a federal, state or other local government employer).

e. Assignment. After a temporary worker uses paid sick/safe time, the staffing agency may return the temporary worker to the original assignment or the next available assignment if the original assignment is no longer available. A staffing agency's inability to provide a temporary worker with an assignment immediately following use of paid sick/safe time shall not be presumed an adverse action unless there is evidence of retaliation or discrimination due to the temporary worker's good faith exercise of rights under the Ordinance.

EMPLOYERS

SHRR 70-060 Integrated enterprises

(1) Single employer. Separate entities that form an integrated enterprise shall be a single employer under the Ordinance. Examples of an integrated enterprise include but are not limited to a single entrepreneur with multiple businesses, a corporation with subsidiaries in Seattle, a corporation with franchises in Seattle, etc.

(2) Determination. The Department will determine the existence of an integrated enterprise by assessing the degree of control exercised by one entity over the operation of another entity. The factors in this assessment include, but are not limited to:

a. Degree of interrelation between the operations;

b. Degree to which the entities share common management;

c. Centralized control of labor relations; and/or

d. Degree of common ownership or financial control over the entities.

(3) Tier Size. Employees of all separate entities that form an integrated enterprise shall be counted for the integrated enterprise's tier size.

SHRR 70-070 Joint employers

(1) Joint employer. Separate entities that exercise some control over the work or working conditions of the employee may be treated as a joint employer under the Ordinance. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. An example of a joint employer includes a client and professional employer organization that have entered into a professional employer agreement.

(2) Determination. The Department may determine that separate entities are joint employers when an employee performs work which simultaneously benefits two or more employers and/or an employee works for two or more employers at different

times during the workweek. The determination will be made on a case by case basis and will examine the entire relationship between the entities.

(3) Tier size for joint employers created by professional employer agreements. When a client enters into a professional employer agreement with a professional employer organization, only employees of the client (and not the employees of the professional employer organization) shall be counted for the client's tier size.

SHRR 70-080 Newly-acquired employers

A newly-acquired employer shall not be a "new employer" under the Ordinance. The provisions of the Ordinance for paid sick/safe time shall immediately apply to newly-acquired Tier One and Tier Two employers without a 24 month waiting period because the hire date of the first employee will relate back to the former employer. See SMC 14.16.090.

For example, a new company purchases an existing company's assets and retains the existing company's employees. The former company's employees are all retained by the new company. The new company is a newly-acquired employer and is responsible for immediate compliance with the Ordinance.

SHRR 70-090 Full-time equivalents

(1) In general.

a. A full-time equivalent shall mean the number of hours worked for compensation that adds up to one full-time employee. See SMC 14.16.010(M).

b. The employer tier size for the current calendar year will be calculated based on the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. See SMC 14.16.010(T)(4).

c. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted. See SMC 14.16.010(T)(4).

(2) Compensated Hours. Employers shall count compensated hours for all hours worked and are not required to count paid leave as compensated hours.

(3) Nonexempt employees and overtime. Employers shall count all hours worked by nonexempt employees, including overtime hours.

(4) Exempt employees. Employers shall count all hours worked by exempt employees based on hours for a full-time or part-time normal work week (up to 40 hours per week) rather than tracking actual hours worked.

For example, if an exempt employee has a full-time normal work week of 40 hours per week, the employer counts "hours worked for compensation" based on 40 hours per week, regardless of whether the exempt employee worked more than 40 hours per week.

(5) Fractions of full-time equivalents. Employers shall count fractions of full-time equivalents.

For example, if an employer defines full-time as working 40 hours per week and has six employees who each work 30 hours per week, this employer has 4.5 full-time equivalents and is a Tier One employer.

ACCRUAL

SHRR 70-100 Accrual of paid sick/safe time

Employees of Tier One or Tier Two employers shall accrue at least one hour of paid time for every 40 hours worked in Seattle. Employees of Tier Three employers shall accrue at least one hour of paid time for every 30 hours worked in Seattle. See SMC 14.16.020(B).

SHRR 70-110 Accrual of combined or universal leave

Employees of employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall accrue at least one hour of paid time at the rate required for the employer's tier size. See SMC 14.16.020(H)(2)-(3) and SMC 14.16.020(I)(2)-(3).

SHRR 70-120 Start of Accrual

(1) Except as modified in section two of this rule, employees who perform work in Seattle, including traditional employees, temporary workers, part-time employees and employees who work in Seattle on an occasional basis shall begin to accrue paid sick/safe time on the date this Ordinance goes into effect on September 1, 2012 or at the commencement of their employment if they are hired after September 1, 2012.

(2) Employees who work in Seattle on an occasional basis shall begin to accrue paid sick/safe time upon coverage by the Ordinance (i.e. when they have worked more than 240 hours of work in Seattle within a calendar year).

SHRR 70-130 Existing Policy

(1) An employer that has an existing policy for paid sick/safe time on the date the Ordinance goes into effect on September 1, 2012 is not required to provide additional paid sick/safe time for the remainder of the 2012 calendar year provided that the existing policy meets the minimum requirements of the Ordinance, including but not limited to:

a. The existing policy provides paid leave for the same purposes and under the same conditions as paid sick/safe time as stated by SMC 14.16.030;

b. The existing policy provides paid leave that is accrued at the rate consistent with SMC 14.16.020(B), SMC 14.16.020(H)(2) and SMC 14.16.020(I)(2);

c. The existing policy provides use of paid leave within any calendar year that is limited to no less than the amounts specified respectively for Tier One, Tier Two or Tier Three employers in SMC 14.16.020(C), SMC 14.16.020(H)(3) and SMC 14.16.020(I)(3);

d. The existing policy provides carry over of unused paid leave to the following calendar year that is limited to no less than the amounts specified respectively for Tier One, Tier Two or Tier Three employers in SMC 14.16.020(G), SMC 14.16.020(H)(4) and SMC 14.16.020(I)(4); and

e. Records show the employee's accrual, use and carry over of the paid sick/safe time for the 2012 calendar year is consistent with the above requirements.

SHRR 70-140 Paid leave

Employers are not required to permit accrual of paid sick/safe time during an employee's use of paid leave.

SHRR 70-150 Unpaid leave

Employers are not required to permit accrual of paid sick/safe time during an employee's use of unpaid leave

SHRR 70-160 Overtime

Employers are required to permit accrual of paid sick/safe time when a nonexempt employee works overtime hours.

SHRR 70-170 Frontloading

An employer's provision of paid sick/safe time in advance of accrual shall be permissible frontloading, provided that the frontloading meets the Ordinance requirements for accrual, use and carry over.

SHRR 70-180 Carry over

(1) In general. Unused paid sick/safe time shall be carried over to the following calendar year according to Ordinance requirements.

a. Tier One employers shall permit employees to carry over unused paid sick/safe time up to 40 hours. Tier Two employers shall permit employees to carry over unused paid sick/safe time up to 56 hours. Tier Three employers shall permit employees to carry over unused paid sick/safe time up to 72 hours. See SMC 14.16.020(G).

b. Tier One or Tier Two employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to carry over unused paid leave in accordance with carry over requirements for Tier One and Two employers. See SMC 14.16.020(H)(4).

c. Tier Three employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to carry over up to 108 hours of unused paid leave, See SMC 14.16.020(I)(4).

(2) Amount of carry over. Employers are not required to permit employees to carry over unused paid sick/safe time beyond the provisions of SMC 14.16.020 (G)-(I).

(3) Accrual after carry over. Employers are required to permit employees to maintain and/or use their carried over paid sick/safe time while concurrently accruing new paid sick/safe time for every hour worked. However, employers are not required to permit use of paid sick/safe time beyond the provisions of SMC 14.16.020(C).

USE

SHRR 70-190 Waiting period

(1) 180 calendar days. Except as provided in the Ordinance for new employers, employees shall be eligible to use accrued paid sick/safe time beginning on the 180th calendar day after the commencement of their employment. The waiting period for eligibility relates back to the employee's commencement of employment, not the first day the Ordinance goes into effect on September 1, 2012.

(2) Occasional basis. Employees who perform work in Seattle on an occasional basis shall be eligible to use accrued paid sick/safe time beginning on the 180th calendar day after the commencement of their employment, provided that they have met the

initial coverage requirements of performing more than 240 hours of work in Seattle within the current or preceding calendar year.

SHRR 70-200 Location of use

All covered employees, including traditional employees, temporary workers, part-time employees and employees who perform work in Seattle on an occasional basis, shall be entitled to use paid sick/safe time during times that they are scheduled to perform work in Seattle.

SHRR 70-210 Paid safe time

(1) In general. Paid safe time can be used when an employee's place of business, or the school/place of care of an employee's child, has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material. See SMC 14.16.030(A)(2)(a)-(b).

(2) Inclement weather, loss of power or loss of water. Employees are not entitled to use of paid safe time when an employee's place of business, or when the school or place of care of an employee's child, has been closed due to inclement weather, loss of power or loss of water. The use of paid safe time shall be limited to the specific circumstances described in the Ordinance.

SHRR 70-220 Rate of pay

(1) In general. When using paid sick/safe time, an employee shall be compensated at the same hourly rate as the employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked. See SMC 14.16.010(O).

(2) Minimum wage. Employees may not be compensated for paid sick/safe time at a rate of pay that is less than the state minimum wage, except as modified by SHRR 70-240(1).

(3) Nonexempt employees

a. Hourly rate of pay. For nonexempt employees paid an hourly wage, the hourly rate of pay shall be the same hourly wage the employee would have earned during the time which paid sick/safe time is taken.

b. Overtime hours. For nonexempt employees who use paid sick/safe time for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's hourly rate of pay.

i. **Mandatory overtime.** Employers are required to permit use of paid sick/safe time for mandatory overtime hours that an employee was scheduled to work.

ii. **Voluntary overtime.** Employers are not required to permit use of paid sick/safe time for voluntary overtime hours that the employee elected or agreed to add to his or her schedule.

c. **Annual Salary.** For nonexempt employees paid an annual salary, the hourly rate of pay shall be determined by dividing the annual salary by the number of weeks worked per year to get the weekly salary and dividing the weekly salary by 40 or fewer hours, even if the non-exempt employee regularly works more than 40 hours per week.

(4) Exempt employees

a. **Annual Salary.** For exempt employees who are paid an annual salary, the hourly rate of pay shall be determined by dividing the annual salary by the number of weeks worked per year to get the weekly salary and dividing the weekly salary by the number of hours of the employee's normal work week.

(5) Two or more jobs for same employer. For employees who perform work for two or more jobs at different rates of pay for the same employer, the hourly rate of pay shall be equal to the scheduled rate of pay for the job during which paid sick/safe time is taken.

(6) Fluctuating rate of pay for same job. For employees whose rates of pay fluctuate for the same job (e.g. wage augmentation other than commission, tips or overtime), the hourly rate of pay shall be equal to the scheduled rate(s) of pay for the job during which paid sick/safe time is taken.

(7) Commissions and piecework. For employees who are paid on a commission (whether base wage plus commission or commission only) or piecework basis (whether base wage plus piecework or piecework only), the hourly rate of pay shall be the base wage or applicable minimum wage, whichever is greater.

SHRR 70-230 Shifts of indeterminate length

For employees who are scheduled to work a shift of indeterminate length (e.g. a shift that is defined by business needs rather than a specific number of hours), the employer may determine payment for paid sick/safe time based on hours worked by a replacement employee in the same shift or similarly-situated employees who worked that same or similar shift in the past.

SHRR 70-240 On-call shifts

(1) For employees who are scheduled for on-call shifts and are compensated for the scheduled time, regardless of whether work is performed, employers must permit use of paid sick/safe time.

(2) For employees who are scheduled for on-call shifts and are compensated only if work is performed, employers may, but are not required to, permit use of paid sick/safe time.

SHRR 70-250 Shift swapping

(1) In general.

a. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick or safe time for the original missed hours or shifts. See SMC 14.16.030(G).

b. When paid sick/safe time is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, may be deducted from the employee's accrued sick/safe time. See SMC 14.16.030(I).

(2) Signed Agreement. A shift-swapping arrangement may be memorialized in a signed agreement. Should questions arise about the nature of an arrangement, a signed agreement may serve as an accurate reflection of the interest and intentions of all involved parties.

(3) Employer discretion in eating and/or drinking establishments. In an eating or drinking establishment, the employer shall have the discretion to deduct an employee’s accrued sick/safe time for hours worked during a substitute shift only for employer-managed shift-swaps and only upon mutual consent by the employer and employee.

SHRR 70-260 Concurrent leave

An employee’s use of paid sick/safe time also may qualify for concurrent leave under federal, state or other local laws (e.g. leave for family medical leave, family care, reasonable accommodation, workplace injury, domestic violence, etc.).

SHRR 70-270 Disciplinary leave

Employers are not required to permit use of paid sick/safe time when an employee is suspended or otherwise on leave for disciplinary reasons.

SHRR 70-280 Other paid leave in lieu of paid sick/safe time

An employer may permit employees to use other paid leave for the purposes of paid sick/safe time (e.g. vacation leave) provided that the employer meets the minimum requirements of the Ordinance, including but not limited to requirements for accrual, use, carry over, employee notification and record keeping.

SHRR 70-290 Use of combined or universal leave

(1) Tier One or Tier Two employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to use paid leave within any calendar year in accordance with requirements for Tier One and Two employers. See SMC 14.16.020(H)(3).

(2) Tier Three employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to use up to 108 hours of paid leave within any calendar year, See 14.16.020(I)(3).

(3) If an employee uses all paid leave for a reason not related to paid sick/safe time, the employer is not obligated to provide additional leave for paid sick/safe time under this Ordinance, though other federal, state or local laws may provide paid or unpaid leave for similar purposes.

SHRR 70-300 Breaks in service

(1) In general. Except as provided in the Ordinance for new employers, employees shall be entitled to use accrued paid sick/safe time beginning on the 180th calendar day after the commencement of their employment. When an employee is separated from employment and rehired within seven months of separation by the same employer, previously accrued and unused paid sick/safe time shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee's eligibility to use accrued paid sick/safe time provided that if separation does occur, the total time of employment used to determine eligibility must occur within two calendar years. See SMC 14.16.020(F) and (L).

(2) Separation prior to eligibility. When an employee is separated from employment before becoming eligible to use paid sick/safe time and is rehired by the same employer within seven months of separation, the prior period of employment counts towards the 180 calendar day waiting period. The 180 calendar days do not have to be continuous or consecutive, but must have occurred within two calendar years.

(3) Separation after eligibility. When an employee is separated from employment after becoming eligible to use paid sick/safe time and is rehired by the same employer within seven months of separation, the employee is not subject to the 180 calendar day waiting period.

(4) Reinstatement.

a. When an employee is separated from employment and is rehired by the same employer within seven months of separation, the employer shall immediately reinstate previously accrued and unused paid sick/safe time, regardless of whether the employee has met eligibility requirements for use of paid sick/safe time.

b. The employer is not required to reinstate accrued and unused paid sick/safe time that an employee previously cashed out. Cashed out paid sick/safe time is the equivalent of used paid sick/safe time.

SHRR 70-310 Employee Notification

(1) In general. Each time wages are paid, employers shall provide written notification in physical and/or electronic form of an updated amount of paid leave available to each employee for use as sick/safe time. See SMC 14.16.030(K).

(2) Notification to all potentially eligible employees. Employers must provide written notification of paid leave available for paid sick/safe time to all employees who perform work in Seattle, regardless of whether the employee has met eligibility requirements (e.g. 180 calendar day waiting period) for use of paid sick/safe time.

EMPLOYEE NOTICE

SHRR 70-320 Reasonable notice policy and procedures

(1) An employer may require an employee to provide reasonable notice of an absence for paid sick/safe time if the notice requirements do not interfere with the purpose of the leave.

(2) Reasonable notice may include compliance with an employer's usual and customary notice and procedural requirements, normal notice requirements, reasonable normal notification policies and/or call-in procedures for absences and/or requesting leave, provided that such requirements do not interfere with the purposes of the leave.

(3) If an employer does not have an existing policy and procedure for providing reasonable notice, the employer should establish such policy and/or procedure, preferably in writing. The policy and procedure should enable the employee to effectively provide reasonable notice in a way that can be documented.

SHRR 70-330 Reference to ordinance

An employee may provide reasonable notice of an absence for paid sick/safe time without explicitly referencing the Ordinance or using the terms “paid sick time” or “paid safe time.” An employer may inquire further to determine whether the absence qualifies for paid sick/safe time, provided that the inquiry does not violate the privacy and confidentiality provisions of the Ordinance or federal, state or local medical privacy laws.

SHRR 70-340 Notice for foreseeable leave

(1) In general. If the reason for paid sick/safe time is for a pre-scheduled or foreseeable absence, the employee shall provide a written request at least 10 days, or as early as possible, in advance of the paid leave, unless the employer’s normal notice policy requires less advance notice. See SMC 14.16.030(B)(1).

(2) Written request. An employer may require that the written request state the reasons for leave as paid sick time or safe time, the anticipated duration of the leave and the anticipated start of the leave as well as designate a specific individual for point of contact. An employer may not require that the notice explain the nature of the illness or other reason for the absence.

SHRR 70-350 Notice for unforeseeable leave

(1) In general. If the reason for paid sick/safe time is unforeseeable, the employee shall provide notice as soon as is practicable. In all cases, whether an employee can practicably provide notice depends upon the individual facts and circumstances of the situation. See SMC 14.16.030(B)(2).

(2) Paid sick and safe time. Except as modified in section three of this rule, an employee shall generally comply with an employer’s reasonable notice policy and/or call-in procedures for unforeseeable leave, recognizing that there are certain situations such as accidents or sudden illnesses for which such requirements might be unreasonable. If an employee is unable to provide notice personally, notice may be provided by the employee’s spokesperson (e.g. spouse, domestic partner, adult family member or other responsible party).

(3) Domestic violence, sexual assault or stalking. An employee shall provide oral or written notice to the employer no later than the end of the first day that the employee has used paid safe time for a reason related to domestic violence, sexual assault or stalking.

SHRR 70-360 Notice for combined or universal leave

When an employer offers a combined or universal leave policy, such as a paid time off (PTO) policy, the employer may require the employee to provide notice that the paid

leave is being used for foreseeable or unforeseeable paid sick/safe time. See SMC 14.16.030(B)(1)-(2).

EMPLOYEE DOCUMENTATION

SHRR 70-370 Reasonable documentation

(1) In general. When an employee uses paid sick/safe time for more than three consecutive days, an employer may require reasonable documentation that the sick/safe time is being used for a reason that is consistent with the Ordinance. See SMC 14.16.030(E).

(2) Paid sick time. Reasonable documentation for paid sick time shall consist of a signed statement by a health care provider indicating that sick time is necessary.

- **a. Confidentiality**. An employer may not require an explanation of the nature of the illness or other reason for the absence unless the absence is for a purpose covered by a federal, state, or other local law (e.g. leave for family medical leave, reasonable accommodation, workplace injury, etc.).

(3) Paid safe time for domestic violence, sexual assault or stalking. Reasonable documentation for paid safe time shall communicate that the employee or the employee's family member is experiencing domestic violence, sexual assault, or stalking and that the leave was taken for a purpose covered by the Ordinance. Reasonable documentation may include a police report, court order, documentation that the employee or the employee's family member is experiencing domestic violence, sexual assault, or stalking, or an employee's written statement. See SMC 14.16.030(F)(2), RCW 49.76.040(4) and WAC 296-135-070(3) and (4).

- **a. Confidentiality.** An employer may not require an explanation of the nature of the domestic violence, sexual assault or stalking.

- **b. Employee's written statement.** An employee's written statement, by itself, is acceptable documentation for use of paid safe time. An employee's written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity and, if applicable, the employee's relationship to the family member.

SHRR 70-380 Consecutive days

Consecutive days may be partial or full work days and are distinguishable from calendar days.

For example, an employee is scheduled to work on Mondays, Wednesdays and Fridays. The employee uses paid sick time for any portion of those three work days in a

row. If the employee uses paid sick time again on the following Monday, the employee would have used paid sick time for more than three consecutive days and could be required by his or her employer to obtain reasonable documentation from a health care provider.

SHRR 70-390 Payment for documentation

(1) In general. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested, reasonable documentation. These expenses are limited to the cost of services by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. See SMC 14.16.030(E).

(2) Health insurance. Employees who are offered insurance by the employer but do not meet eligibility requirements (e.g. hours per week, etc.) shall be considered as employees who are not offered health insurance by the employer.

(3) Out of Pocket Expense. The out-of-pocket expenses for employer-requested, reasonable documentation shall not be unduly burdensome for the employer or employee.

SHRR 70-400 Documentation for clear instance or pattern of abuse

When there is a clear instance or pattern of abuse, an employer may require reasonable documentation to verify that an employee's use of paid sick/safe time is consistent with the Ordinance regardless of whether the employee has used paid sick/safe time for more than three consecutive days.

SHRR 70-410 Relationship to other laws

(1) In general. The Ordinance does not preempt, limit or otherwise affect the applicability of federal, state or other local laws that permit employers to make medical inquiries, including requests for more detailed information; require medical examinations; and/or require documentation for absences from work. See SMC 14.16.130.

(2) Medical inquiries, medical examinations and documentation. When an employee provides notice, or an employer has reason to know, that use of paid sick/safe time is for a purpose covered by a federal, state or other local law (e.g. direct threat to health and safety of others, family medical leave, reasonable accommodation, workplace injury, etc.), the employer may inform the employee of other legal requirements for medical inquiry, medical examination and documentation before the employee has used paid sick/safe time for more than three consecutive work days.

(3) Employee response. An employee's response to an employer's medical inquiry, request for medical examination or request for documentation may impact the employee's rights under a federal, state or other local law, but the employee shall retain the right to use paid sick/safe time under the Ordinance provided that he or she has met Ordinance requirements.

EMPLOYER NOTICE AND POSTING

SHRR 70-420 Notice and posting requirements

(1) In general. Employers shall give notice in physical and/or electronic form of an employee's entitlement to paid sick/safe time; the amount of paid sick/safe time and the terms of its use guaranteed under the Ordinance; the prohibition of retaliation against employees who request or use paid sick/safe time; and each employee's right to file a complaint if paid sick time/safe time as required by the Ordinance is denied by the employer or if the employee is retaliated against for requesting or taking paid sick time or paid safe time. See SMC 14.16.050.

(2) Tier size and employer location. Except as provided in section three of this rule, employers shall provide notice to all employees who perform work in Seattle regardless of employer tier size or employer location.

(3) Occasional basis. Employers with employees who perform work in Seattle on an occasional basis are not required to provide notice to all employees, provided that notice is provided to occasional basis employees reasonably in advance of their first period of work in Seattle.

(4) Conspicuous and accessible. Employers may choose whether notice is physical and/or electronic, but in either case, the notice shall be reasonably conspicuous and accessible to employees.

(5) Penalties. An employer who willfully violates the notice requirements of this section shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

EMPLOYER RECORDS

SHRR 70-430 Employer records requirement

Employers shall retain records for a period of two years that reasonably indicate employee hours worked, accrued paid sick/safe time and used paid sick/safe time. See SMC 14.16.060.

SHRR 70-440 Records of hours worked

(1) Seattle hours. Employers that meet minimum Ordinance requirements for paid sick/safe time based on actual hours worked in Seattle must track and retain records of actual hours worked in Seattle starting on the date this Ordinance goes into effect, September 1, 2012.

a. Exempt employees

i. **Regular basis**. For exempt employees who work in Seattle on a regular basis, employers may retain records of hours worked for a part-time or full-time normal work week (up to 40 hours per week) rather than tracking actual hours worked in Seattle. The hours of a normal work week must be the actual basis for the employee's accrued and used paid sick/safe time.

ii. **Occasional basis**. For exempt employees who work in Seattle on an occasional basis, employers must retain records of actual hours worked in Seattle.

(2) Total hours. Employers that meet minimum Ordinance requirements for paid sick/safe time regardless of hours worked in Seattle (e.g. employers with unlimited leave policies, employers of occasional basis employees with leave policies commensurate with the Ordinance, etc.) may track and retain records of total hours worked rather than actual hours worked in Seattle.

a. Exempt employees. For exempt employees, employers may retain records of total hours worked for a part-time or full-time normal work week (up to 40 hours per week) rather than tracking actual hours worked.

SHRR 70-450 Records for combined or universal leave

(1) When an employer provides a combined or universal leave policy, such as a paid time off (PTO) policy, for a limited or unlimited amount of leave, the employer shall retain records for a period of two years that reasonably indicate employee hours worked, accrued leave and used leave.

(2) An employer providing a combined or universal leave, such as a paid time off (PTO) policy, is not required to maintain records showing employee reasons for use of the paid leave (e.g. vacation, paid sick/safe time, etc).

RETALIATION

SHRR 70-460 Individual and third party protection

The Ordinance's protections for exercise of rights and prohibition against retaliation shall extend to any person in the exercise or attempt to exercise any right protected under the Ordinance, including any person who has aided or encouraged another person in the exercise or attempt to exercise any right under the Ordinance.

SHRR 70-470 Absence control policies

The Ordinance's protections for exercise of rights and prohibition against retaliation shall apply in situations where an absence control policy, in writing or practice, counts paid sick/safe time covered under the Ordinance as an absence that may lead to or result in any adverse action taken against the employee.

SHRR 70-480 Response to clear instance or pattern of abuse

The Ordinance's protections for exercise of rights and prohibition against retaliation do not prevent an employer from taking reasonable action (e.g. discipline) when an employee's use of paid sick/safe time is not in good faith, such as a clear instance or pattern of abuse.

ENFORCEMENT

SHRR 70-490 Practice and procedures for enforcement of ordinance

(1) Investigations. For specific enforcement practices and procedures, see Seattle Office for Civil Rights Rules (SHRR) Chapter 40.

(2) Appeals. For specific appeals practices and procedures, see Seattle Human Rights Commission Appeals Rules (SHRR) Chapter 46.

WAIVER

SHRR 70-500 Collective bargaining agreement

(1) In general.

a. The provisions of the Ordinance shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. See SMC 14.16.120.

b. In the absence of clear and unambiguous terms that expressly waive Ordinance requirements in a collective bargaining agreement, employers must comply with the Ordinance's requirements for provision of paid sick/safe time when the Ordinance goes into effect on September 1, 2012.

(2) Clear and unambiguous terms. The terms that expressly waive Ordinance requirements shall be clear and unambiguous with explicit reference to the Ordinance.

(3) In the collective bargaining agreement. The terms that expressly waive Ordinance requirements shall be in the collective bargaining agreement as a provision within the agreement or as a separate addendum to the agreement, including a separate addendum to an agreement that is open for negotiation.

City of Seattle Legislative Information Service

Information retrieved on July 5, 2012 10:44 AM

Council Bill Number: 117216
Ordinance Number: 123698

AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post- implementation assessment from the Seattle Office for Civil Rights.

Status: Passed as amended
Date passed by Full Council: September 12, 2011
Vote: 8-1 (No: Conlin)
Date filed with the City Clerk: September 23, 2011
Date of Mayor's signature: September 23, 2011
(about the signature date)

Date introduced/referred to committee: June 27, 2011
Committee: Housing, Human Service, Health, and Culture
Sponsor: LICATA; CO-SPONSOR GODDEN
Committee Recommendation: Pass as amended
Date of Committee Recommendation: August 10, 2011
Committee Vote: 4 (Licata, Clark, Godden, O'Brien) - 0 - 1 (Abstain: Conlin)

Index Terms: LABOR, HEALTH-CARE, BUSINESS-ORGANIZATION

Fiscal Note: Fiscal Note to Council Bill 117216

Electronic Copy: PDF scan of Ordinance No. 123698

Text

AN ORDINANCE relating to employment in Seattle; adding a new chapter 14.16 to the Seattle Municipal Code; establishing minimum standards for the provision of paid sick and paid safe time; prescribing penalties, remedies and enforcement procedures; amending Section 3.14.931 of the Seattle Municipal Code; and requesting a post- implementation assessment from the Seattle Office for Civil Rights.

WHEREAS, A large number of workers in the city of Seattle will at some time during the year need temporary time off from work to take care of their own or their family members' health needs or their own or their family members' safety or other needs resulting from domestic violence, sexual assault, or stalking; and

WHEREAS, many workers do not have access to any paid leave for sick or safe days or have an inadequate number of paid sick or safe days;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following findings:

When workers have no paid sick leave or an inadequate amount available to them, they are more likely to come to work when they or their family members are sick. Workers who are

compensated through tips still have a financial incentive to work when ill, even if they do have paid leave. Absent the proper care needed for treatment or recovery, the ill worker's or ill family member's health problems may intensify or be prolonged.

Employees who come to work when they are sick are likely to expose other employees, customers, and members of the public to infectious diseases, such as the flu.

Workers with no paid sick leave, or an inadequate amount to take time off to care for a sick child, are likely to send sick children to school or a child care center, thereby potentially spreading contagious illnesses.

Family economic security is at risk for workers who lack adequate paid sick leave because workers who lack paid sick leave lose earnings if they miss work to care for themselves, their children, or other family members who are ill or injured.

Victims of domestic violence, sexual assault and stalking with no paid sick leave are less able to receive medical treatment, participate in legal proceedings and obtain other necessary services. In addition, without paid sick leave, domestic violence victims are less able to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

Paid sick and safe days will promote the safety, health and welfare of the people of the City of Seattle by reducing the chances that worker's illnesses will intensify or be prolonged, by reducing the exposure of co-workers and members of the public to infectious diseases, and by reducing the exposure of children at schools and day cares to infectious diseases; resulting in a healthier and more productive workforce, better health for older family members and children, enhanced public health and improved family economic security.

Paid sick and safe days will enable victims of domestic violence, sexual assault and stalking and their family members to participate in legal proceedings, receive medical treatment, or obtain other necessary services and, thus, to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

Through the collective bargaining process, employers and represented workers can develop alternative means of meeting the policy goals underlying the paid leave requirements established by this ordinance.

To safeguard the public welfare, health, safety, and prosperity of the city of Seattle, all persons working in our community should have access to adequate paid sick and safe leave, because doing so will ensure a more stable workforce in our community, thereby benefiting workers, their families, employers, and the community as a whole.

Section 2. A new Chapter 14.16 "Paid Sick Time and Paid Safe Time" is added to Title 14 of the Seattle Municipal Code as follows:

14.16.010. Definitions

For purposes of this chapter

A. "Adverse action" means the discharge, suspension, discipline, transfer, demotion or denial of promotion by an employer of an employee for any reason prohibited by 14.16.040.

B. "Agency" shall mean the Seattle Office for Civil Rights.

C. "Business" and "engaging in business" has the same meanings as in Chapter 5.30.

D. "City" shall mean the City of Seattle.

E. "City department" means any agency, office, board or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.

F. "Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.

G. "Commission" means the Seattle Human Rights Commission.

H. "Director" means the Director of the Office for Civil Rights.

I. "Eating and/or drinking establishment" means a place where food and/or beverages are prepared and sold at retail for immediate consumption either on- or off-premise, but excludes food and beverage service sites, such as cafeterias, that are accessory to other activities and primarily serve students, patients and/or on-site employees.

J. "Employee" shall mean any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Individuals performing services under a work study agreement are not covered by this chapter. Employees are covered by this chapter if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by this chapter only if he performs more than 240 hours of work in Seattle within a calendar year. An employee who is not covered by this Chapter is still included in any determination of the size of the employer. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be deemed to be an employee of the staffing agency for all purposes of this chapter, except as provided in subsection 14.16.010.T.4.b.

K. "Employer" shall mean, as defined in subsection 14.04.030.K, any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. Employer size shall be determined as provided in subsection 14.16.010.T. For purposes of this act, "employer" does not include any of the following:

1. The United States government;

2. The State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;

3. Any county or local government other than the City.

L. "Employment agency" or "staffing agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

M. "Full-time equivalent" shall mean the number of hours worked for compensation that add up to one full-time employee, based either on an eight-hour day and a five-day week or as full-time is defined, in writing or in practice, by the employer.

N. "Health care professional" shall mean any person authorized by the City, any state government and/or the federal government to diagnose and treat physical or mental health conditions, including a doctor, nurse, emergency medical care provider, and/or a public health clinic worker, so long as that person is performing within the scope of their practice as defined by the relevant law.

O. "Paid sick time" and/or "paid sick days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in 14.16.030.A.1 of this chapter, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked.

1. For purposes of determining eligibility for "paid sick time," "family member" shall mean, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

a. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

b. "Grandparent" means a parent of a parent of an employee.

c. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

d. "Parent-in-law" means a parent of the spouse of an employee.

e. "Spouse" means husband, wife or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships as well as to marital relationships and married persons to the extent that such interpretation does not conflict with federal law. Where necessary to implement this chapter,

gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in city or state registered domestic partnerships.

P. "Paid safe time" and/or "paid safe days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in 14.16.030.A.2, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

1. For the purposes of determining eligibility for "paid safe time":

a. "Family or household members" shall mean, as defined in RCW 49.76.020, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

b. "Domestic violence" shall mean:

1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2) sexual assault of one family or household member by another; or

3) stalking, as defined below in subsection 14.16.010.P.1.c, of one family or household member by another family or household member.

c. "Stalking" shall be defined as in RCW 9A.46.110,

d. "Dating relationship" shall mean, as defined in RCW 49.76.020, a social relationship of a romantic nature.

e. "Sexual assault" shall be defined as in RCW 49.76.020.

Q. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Office for Civil Rights.

R. "Person," as used in this chapter, includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, or any

group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.

S. "Respondent" means any person who is alleged or found to have committed a violation of this chapter.

T. "Tier One," "Tier Two," and "Tier Three" employers are defined as follows:

1. "Tier One employer" shall mean an employer that employs more than 4 and fewer than 50 full-time equivalents on average per calendar week.

2. "Tier Two employer" shall mean an employer that employs at least 50 and fewer than 250 full-time equivalents on average per calendar week.

3. "Tier Three employer" shall mean an employer that employs 250 or more full-time equivalents on average per calendar week.

4. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:

a. work performed outside of the City; and

b. compensated hours made available by part-time employment, temporary employment or through the services of a temporary services or staffing agency or similar entity.

5. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

14.16.020. Accrual of Paid Sick Time and Paid Safe Time

A. All employees of Tier 1, Tier 2 and Tier 3 employers have the right to paid sick time and paid safe time as provided in this section.

B. Employees shall accrue paid time, to be used as either paid sick or safe time, as follows:

1. Employees of a Tier One or Tier Two employer shall accrue at least one hour of paid time for every 40 hours worked.

2. Employees of a Tier Three employer shall accrue at least one hour of paid time for every 30 hours worked.

C. No Tier One employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 40 hours in a calendar year. No Tier Two employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 56 hours in a calendar year. No Tier Three employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 72 hours in a calendar year.

D. In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. section 201 et seq.) (hereinafter referred to as "FLSA" exempt employees), no employer shall be required to accrue leave for such employees for hours worked beyond a 40-hour work week. If their normal work in a work week is less than 40 hours, paid sick time and paid safe time accrues based upon that employee's normal work week.

E. Paid sick time and paid safe time as provided in this section shall begin to accrue at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect. Accrual rates shall not apply to hours worked before this ordinance takes effect.

F. Except as provided in Section 14.16.090, employees shall be entitled to use accrued paid sick time or safe time beginning on the 180th calendar day after the commencement of their employment. When an employee is separated from employment and rehired within seven months of separation by the same employer, the previous period of employment shall be counted for purposes of determining the employee's eligibility to use accrued sick time or safe time under this subsection, provided that if separation does occur, the total time of employment used to determine eligibility must occur within two calendar years.

G. Unused paid sick time and paid safe time shall be carried over to the following calendar year; however, no Tier One employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 40 hours, no Tier Two employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 56 hours and no Tier Three employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 72 hours.

H. A Tier One or Tier Two employer with a combined or universal paid leave policy, such as a paid time off (PTO) policy, is not required to provide additional paid sick and safe leave, provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time as set forth in Section 14.16.030; and

2. Paid leave is accrued at the rate consistent with subsection 14.16.020.B.1; and

3. Use of paid leave within any calendar year is limited to no less than the amounts specified respectively for Tier One and Tier Two employers in subsection 14.16.020.C; and

4. Any accrued but unused paid leave may be carried over to the following calendar year consistent with subsection 14.16.020.G.

I. A Tier Three employer with a combined or universal paid leave policy, such as a paid time off (PTO) policy, is not required to provide additional paid sick and safe leave, provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time as set forth in Section 14.16.030; and

2. Paid leave is accrued at a rate consistent with subsection 14.16.020.B.2; and

3. Use of paid leave within any calendar year is limited to no less than 108 hours; and

4. Any accrued but unused paid leave may be carried over to the following calendar year; however no Tier Three employer with a combined or universal leave policy shall be required to carry over unused leave in excess of 108 hours.

J. Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick and safe time that has not been used.

K. If an employee is transferred to a separate division, entity, or location within the City, or transferred out of the City and then transferred back to a division, entity, or location within the City, but remains employed by the same employer, the employee is entitled to all paid sick and safe time accrued at the prior division, entity, or location and is entitled to use all paid sick and safe time as provided in this section.

L. When there is a separation from employment and the employee is rehired within 7 months of separation by the same employer, previously accrued paid sick and safe time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick and safe time and accrue additional sick and safe time immediately upon the re- commencement of employment, provided that the employee had previously been eligible to use paid sick and safe time. If there is a separation of more than 7 months, an employer shall not be required to reinstate accrued paid sick and safe time and for the purposes of this chapter the rehired employee shall be considered to have newly commenced employment.

M. Subject to terms and conditions established by the employer, the employer may, but is not required to, loan paid sick time and paid safe time to the employee in advance of accrual by such employee.

14.16.030. Use of Paid Sick Time and Paid Safe Time

A. 1. Paid sick time shall be provided to an employee by an employer for the following reasons:

a. An absence resulting from an employee's mental or physical illness, injury or health condition; to accommodate the employee's need for medical diagnosis care, or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care;

b. To allow the employee to provide care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

2. Paid safe time shall be provided to an employee by an employer for the following reasons:

a. When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material,

b. To accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason.

c. For any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030:

1) To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2) To enable the employee to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

3) To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4) To enable the employee to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or

5) To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

B. Paid sick time and paid safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural

requirements for absences and/or requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid leave is foreseeable, a written request shall be provided at least 10 days, or as early as possible, in advance of the paid leave, unless the employer's normal notice policy requires less advance notice;

2. If the paid leave is unforeseeable, the employee must provide notice as soon as is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, provided that such requirements do not interfere with the purposes for which the leave is needed.

C. For employees covered by the overtime requirements of the FLSA, accrued paid sick time and paid safe time may be used in hourly increments or smaller increments if an employer so designates. For FLSA exempt employees, an employer may make deductions of paid sick time and paid safe time in accordance with the FLSA. For FLSA exempt public employees, paid sick time and paid safe time must be used in accordance with a pay system established by statute, ordinance or regulation or by a policy or practice established pursuant to the principles of public accountability

D. When the use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of sick or safe time in a manner that does not unduly disrupt the operations of the employer.

E. For use of paid sick time of more than three consecutive days for a reason set out in subsection 14.16.030.A.1, an employer may require reasonable documentation that the sick time is covered by subsection 14.16.030.A.1. Documentation signed by a health care provider indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested documentation. These expenses are limited to the cost of services provided by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. An employee who has declined to participate in the health insurance program offered by his or her employer shall not be entitled to reimbursement for out-of-pocket expenses.

F. For use of "paid safe time" of more than three consecutive days for a reason set out in subsection 14.16.030.A.2,

1. an employer may require that requests under subsections 14.16.030.A.2.a and 14.16.030.A.2.b be supported by verification of a closure order by a public official of the employee's child's school or childcare establishment, and the employee may satisfy this verification request by providing notice of the closure order in whatever format the employee received the notice;

2. an employer may require that requests under subsection 14.16.030.A.2.c be supported by verification that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, and that the leave taken was for one of the purposes covered by subsection 14.16.030.A.2.c. As set out in RCW 49.76.040(4), an employee may satisfy this verification requirement by one or more of the following methods:

a. a police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

b. a court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

c. documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional. The provision of documentation under this section does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subsection c; or

d. an employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes of subsection 14.16.030.A.2.c.

G. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick or safe time for the original missed hours or shifts. However, the employer may not require the employee to work such additional hours or shifts. Should the employee work additional shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay.

H. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange assigned hours or "trade shifts".

I. When paid sick or safe time is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, may be deducted from the employee's accrued sick and safe time. Should the employee work the substitute hours or shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

J. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued paid sick leave to another employee.

K. Each time wages are paid, employers shall provide, in writing, information stating an updated amount of paid time available to each employee for use as either sick time or safe time. Employers may choose a reasonable system for providing this notification, including, but not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information.

14.16.040. Exercise of Rights Protected; Retaliation Prohibited

A. It shall be a violation for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

B. It shall be a violation for an employer to take adverse action or to discriminate against an employee because the employee has exercised in good faith the rights protected under this chapter. Such rights include but are not limited to the right to use paid sick time and/or paid safe time pursuant to this chapter; the right to file a complaint with the Agency about any employer's alleged violation of this chapter; the right to inform his or her employer, union or similar organization, and/or legal counsel about an employer's alleged violation of this section; the right to cooperate with the Agency in its investigations of alleged violations of this chapter; the right to oppose any policy, practice, or act that is unlawful under this section; and the right to inform other employees of his or her potential rights under this section.

C. It shall be a violation for an employer's absence control policy to count paid sick or safe time covered under this chapter as an absence that may lead to or result in any adverse action taken against the employee.

D. The protections afforded under subsection 14.16.040.B shall apply to any person who mistakenly but in good faith alleges violations of this Section 14.16.040.

14.16.050. Notice and Posting

A. Employers shall give notice that employees are entitled to paid sick time and paid safe time; the amount of paid sick and safe time and the terms of its use guaranteed under this chapter; that retaliation against employees who request or use paid sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if paid sick time or paid safe time as required by this section is denied by the employer or the employee is retaliated against for requesting or taking paid sick time or paid safe time.

B. The Agency shall create and make available to employers a poster and a model 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 subsection. The poster shall be printed in English and Spanish and any other languages that the Agency determines are needed to notify employees of their rights under this chapter.

C. Employers may comply with this section by displaying the Agency's poster in a conspicuous and accessible place in each establishment where such employees are employed.

D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

E. To meet the requirements of paragraph D of this section, employers may duplicate the text of the Notice or may use another format so long as the information provided includes, at a minimum, all of the information contained in that Notice.

F. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

14.16.060. Employer Records

A. Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of two years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter.

B. Employers shall not be required to modify their recordkeeping policies to comply with this section, as long as records reasonably indicate employee hours worked in Seattle, accrued paid sick and safe time, and paid sick and safe time taken. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to an employee under this chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick and safe time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this chapter.

C. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members, created for purposes of this chapter, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA confidentiality requirements.

14.16.070. Regulations

The Agency shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines or regulations for such purposes.

14.16.080. Enforcement

A. Powers and duties

1. of Agency

a. The Agency shall receive, investigate, and pass upon charges alleging violations of this chapter as defined herein, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this chapter; and shall have such powers and duties in the performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Agency shall further assist other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.

b. The Director of the Agency is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code.

2. of Commission

The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy thereof. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in subsections 14.16.080.H and 14.16.080.I. The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law.

B. Charge filing, timing, amendments, notice and investigation.

1. A charge alleging a violation of this chapter shall be in writing on a form or in a format determined by the Agency, and signed by or on behalf of a charging party, and shall describe the violation complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.

2. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made.

3. A charge shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.

4. A charge alleging a violation of this chapter or pattern of such violations may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

5. Charges filed under this chapter must be filed within 180 days after the occurrence of the alleged violation of this chapter with the Agency.

6. In addition to any relief authorized by this chapter, liability may accrue and an aggrieved person may obtain relief as provided in this chapter, including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful practices that have occurred during the charge filing period are similar or related to unlawful practices with regard to sick time or safe time that occurred outside the time for filing a charge.

7. The charging party or the Agency may amend a charge to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The amendment must be filed within 180 days after the occurrence of the additional violation and/or retaliation and prior to the Agency's issuance of findings of fact and a determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Agency will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Agency with evidence concerning such allegations before the issuance of findings of fact and a determination.

8. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.

9. The investigation shall be directed to ascertain the facts concerning the violation of this Chapter alleged in the charge, and shall be conducted in an objective and impartial manner.

10. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include the taking of interrogatories and oral depositions.

11. The Director may require a fact finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and charging party during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal counsel present if desired.

C. Findings of fact and determination of reasonable cause or no reasonable cause.

1. The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that a violation

of this chapter has been or is being committed, which determination shall also be in writing and issued with the written findings of fact. Where a City department is a respondent the Director shall issue such findings and determination only after having submitted proposed findings and determinations to the respondent and charging party for review and comment. With respect to the findings and determination, "issued" shall be defined as signed and dated by the Director.

2. The findings of fact and determination shall be furnished promptly to the respondent and charging party.

3. Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Seattle Human Rights Commission after an appeal taken pursuant to Section 14.16.080.D or 14.16.080.G provided, that the Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.

D. Determination of no reasonable cause -- Appeal from and dismissal.

If a determination is made that there is no reasonable cause for believing a violation of this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error. The Commission shall promptly deliver a copy of the statement to the Agency and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or remanding it to the Director with appropriate instructions. In considering such appeals the Commission shall only review whether the investigation was adequate and the Director's findings are supported by a preponderance of the evidence. The burden shall be on the charging party to demonstrate that the matter should be remanded to the Director. In the event no appeal is taken or such appeal results in affirmance, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Agency.

E. Determination of reasonable cause -- Conciliation and settlement of cases involving all respondents except City departments.

1. In all cases except a case in which a City department is the respondent, if a reasonable cause determination is made, the Director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. Conditions of settlement may include (but are not limited to) the elimination of the unlawful practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Any settlement agreement shall be reduced to writing and signed by the Director, the charging party and the respondent. An order shall then be entered by the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.

2. In case of failure to reach an agreement and of conciliation and upon a written finding to that effect furnished to the charging party and respondent, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this chapter pursuant to Section 14.16.080.H.

F. Determinations of reasonable cause -- Conciliation, settlement and conclusion of cases involving City departments as respondents.

In all cases in which a City department is a respondent:

1. A determination of reasonable cause by the Director shall be deemed a finding that an unlawful practice has been committed by respondent and is dispositive of this issue for all future proceedings under this chapter, unless appealed, reversed and remanded as provided in this chapter.

2. Within sixty days of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which remedy may include (but is not limited to) hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Such remedy shall be reduced to writing in an order of the Director.

3. The charging party must sign a release in the form and manner requested by the Department, releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.

4. In all cases where the remedy determined by the Director before or after any appeal includes a monetary payment which exceeds the sum of $5,000, the charge or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within 90 days, the Director shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.

5. Where the Director's order includes a monetary payment of $5,000 or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims.

G. Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.

In all cases in which a City department is a respondent:

1. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within 30 days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.

2. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either affirming the Director's determination or order or remanding it to the Director with appropriate instructions.

3. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.

4. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's determination or order only upon a finding that it is clearly erroneous.

H. Complaint and hearing of cases with all respondents except City departments.

1. Following submission of the investigatory file from the Director in cases involving all respondents under 14.16.080.E, the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement of the reasons therefore shall be filed with the Department, charging party and the respondent.

2. The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished to the charging party.

3. Within 20 days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

4. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than 90 days nor later than 120 days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

5. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to prepare their case with respect to additional or

expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

6. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with SMC Chapter 3.02 and the Hearing Examiner rules applicable to cases brought under this Title 14.

7. The Commission, within 30 days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.

8. The review of all matters properly brought under this subsection 14.16.080.H shall be de novo. Nothing in this paragraph shall be construed to limit or prevent de novo review of matters brought before the Hearing Examiner (or the Hearing Examiner and members of the Commission as the case may be) under Sections 14.04.170, 14.06.110, 14.08.170, or 14.10.130.

I. Decision and order.

1. Within 30 days after conclusion of the hearing, the Hearing Examiner presiding at the hearing (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the Agency.

2. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefore.

3. In the event the Hearing Examiner (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the purpose of this chapter, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Back pay liability shall not accrue from a date more than 2 years prior to the initial filing of the charge.

4. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Agency as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

K. Violation -- Penalty.

It is unlawful for any person to willfully engage in an unfair practice under this chapter or willfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.02 of the Seattle Criminal Code (Ordinance 102843, as amended), and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed $500.

14.16.090. New Employers

The provisions of this Chapter shall not apply to Tier One and Tier Two employers until 24 months after the hire date of their first employee. For the purposes of this section, employer tier shall be calculated based upon the average number of full-time equivalents employed per calendar week during the first 90 calendar days following the hire date of their first employee.

14.16.100. Confidentiality and Nondisclosure

A. Except as provided in subsection B of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe days under this section, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this act, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

B. Information given by an employee may be disclosed by an employer only if it is

1. requested or consented to by the employee;

2. ordered by a court or administrative agency; or

3. otherwise required by applicable federal or state law.

14.16.110. Encouragement of more generous sick time policies; no effect on more generous policies

A. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick and safe time policy more generous than the one required herein.

B. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick and safe time to an employee than required herein.

C. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding paid sick or safe time or use of sick or safe time as provided under federal or Washington state law, or the Seattle Municipal Code.

14.16.120. Waiver of the Provisions of the Chapter

The provisions of this chapter shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

Any waiver by an individual of any provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

14.16.130. Other Legal Requirements

This chapter provides minimum requirements pertaining to paid sick and safe time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick or safe time, whether paid or unpaid, or that extends other protections to employees; and nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

Section 3. Consistent with the duties established for the Seattle Human Rights Commission in Section 2 of this ordinance, subsection 3.14.931.E of the Seattle Municipal Code, last amended by ordinance 118392, is amended as follows:

3.14.931 Seattle Human Rights Commission -- Duties

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E. Hear appeals and hearings as set forth in Chapters 14.04 , ((~~and~~)) 14.08 , and 14.16 of the Seattle Municipal ((~~Court~~)) Code .

Section 4. Eighteen months after the effective date of this ordinance, the Seattle Office for Civil Rights and the Seattle Office of City Auditor will provide Council with a written evaluation of the impacts this ordinance has had on employees and employers. This evaluation will include an assessment of patterns and practices relating to shift swapping, the potential abuse of leave by employees who take time for other than the intended purposes, use of explicit waivers of the requirements of this ordinance in collective bargaining agreements, and of complaints and enforcement actions.

Section 5. This ordinance shall take effect on September 1, 2012.

Section 6. Severability. The several provisions of this ordinance are declared to be separate and severable and an order of any court of competent jurisdiction holding invalid any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or holding invalid the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this

_____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Ben Noble Leg - paid sick leave Sep 12, 2011 Version #6