

CITY OF SEATTLE LABOR LAWS

Author: Patricia Lee

Updated: March 9, 2016

The City of Seattle has enacted four local labor laws. In addition, the City clarified, enhanced and coordinated the enforcement and remedies provided in these four laws in the Wage Theft and Labor Standards Harmonization Ordinance, 124960, which it passed in December 2015.

This paper provides an overview of the:

- I. Benefits or protections provided for workers by each of the City's four labor laws,
- II. Enforcement process and remedies common to all four labor laws,
- III. Structure of the Office of Labor Standards (OLS) that enforces these laws, and
- IV. Labor Standards Advisory Commission, a 15-person citizen body that advises the OLS Director on these laws.

INTRODUCTION

Labor laws enacted at the federal or state level, such as the Fair Labor Standards Act (FLSA) passed in 1934, provide a uniform system of benefits and regulations for workers and businesses. However, attempts to build on the FLSA, to increase the minimum wage and to provide worker protections reflective of changing business practices, have been stalled at the federal and state level. The City of Seattle decided it could not wait. These four laws provide benefits and protections beyond those provided in federal and state law.

A consistent theme in the City's ordinances is recognition of the differing impact these laws may have on different types and sizes of employers, particularly small businesses operated by new business owners, and a phase-in of the benefit to allow these small businesses time to accommodate the changes. The City provided funding to the OLS to do significant outreach and education with both employers and workers about the requirements and benefits of these laws. The City also provided funding to OLS to effectively enforce these laws so that compliant businesses are not at a competitive disadvantage and that all workers receive their appropriate benefits.

Table 1 below identifies Seattle's four labor laws and is only intended to identify the benefit or protection. Section I of this memo provides more detailed information on the benefits provided by these laws which vary depending on various factors such as employer size. Also as issues in this area are very fact specific, OLS is available to answer questions regarding a specific situation. Information can also be found on the OLS website <http://www.seattle.gov/laborstandards>.

Table 1. Seattle’s Local Labor Laws

Labor Law	Synopsis	Effective Date
Paid Sick and Safe Time	Provides most employees paid leave due to medical, domestic violence, sexual assault or stalking issues	Effective September 1, 2012 SMC 14.16 et. seq
Fair Chance Employment	Regulates when and how an employer can use criminal background information in making an employment decision	Effective November 1, 2013 SMC 14.17 et. seq.
Minimum Wage and Minimum Compensation	Provides workers a local minimum wage that will reach \$15 an hour in 2018 for large employers and \$15 an hour in 2021 for smaller employers. Minimum compensation will reach \$15 an hour in 2019.	Effective April 1, 2015 SMC 14.91 et. seq.
Wage Theft	Provides civil remedy for a worker not receiving full or accurate compensation	Effective April 1, 2015 SMC 14.20 et. seq

I. SUMMARY OF WHO IS COVERED BY EACH LABOR LAW AND THE BENEFIT OR PROTECTION PROVIDED

Paid Sick and Safe Time (PSST)

Benefit provided

Employers with more than four full-time equivalent employees (FTEs) must provide Paid Sick and Safe Time (PSST) to employees who work within Seattle’s city limits. Employees can use PSST hours to take an absence from work due to an illness or medical appointment for either the employee or a family member; employees may also use PSST hours to deal with a critical safety issue (e.g., domestic violence, sexual assault or stalking). The benefit is scaled to the size of the employer, with larger employers required to provide a greater benefit. See Table 2 below.

Table 2. Paid Sick and Safe Time

	Tier 1 Employers	Tier 2 Employers	Tier 3 Employers
FTEs	5-49 employees	49-249 employees	250+ employees
Rate of PSST accrual	1 hour per 40 hours worked	1 hour per 40 hours worked	1 hour per 30 hours worked
Available Use of PSST per year	40 hours/calendar year	56 hours/calendar year	72 hours/calendar year
Amount that can be carried over to the next year	40 hours/calendar year	56 hours/calendar year	108 hours/calendar year

Employers covered

Employers in the City of Seattle, except other government entities, with more than four full-time equivalent employees.

Employees covered

Full-time, part-time and temporary employees who: (a) work only in Seattle and (b) who occasionally work in the City performing more than 240 hours of work during a benefit year. Benefit year acknowledges that some employers use a fiscal year that differs from a calendar year.

Fair Chance Employment (originally enacted as the Job Assistance Ordinance)

Benefit provided

Employers are prohibited from categorically excluding an individual from consideration for a job or job promotion or transfer because an individual has a criminal conviction or arrest record. An employer may not inquire about criminal history or conduct a criminal background check until after the employer has screened and eliminated unqualified applicants. Employers must have a legitimate business reason to deny a job or job action based on a conviction or arrest record, and must give the individual an opportunity to explain or correct criminal history information.

Employers covered

All employers in the City are covered except for other government entities. The law does not apply to jobs with unsupervised access to children under 16, individuals with developmental disabilities or vulnerable adults.

Job Applicants and Employees covered

Individuals who apply, are a candidate for employment or other employment action and are employed full-time, part-time or as a temporary employee working in the City of Seattle and at least 50% of their work is within the geographical boundaries of Seattle.

Minimum Wage

Benefit provided

The ordinance sets the minimum compensation and minimum wage that covered workers in Seattle must receive.

The minimum compensation and minimum wage will be increased on a phased-in schedule depending on the size of the employer as illustrated below:

Schedule 1 Employers – have more than 500 employees

Year	Hourly Minimum Wage without health care benefits (Can include commissions and non-discretionary bonuses)	Hourly Minimum wage with health care benefits
2015	\$11.00	Goes into effect in 2016
2016	\$13.00	\$12.50
2017	\$15.00	\$13.50
2018	\$15.00 (+ inflation)	\$15.00

After 2019, payment of health care benefits will not affect the hourly minimum wage of Schedule 1 employers.

Schedule 2 Employers have 500 or fewer employees

Schedule 2 employers must pay a minimum compensation rate as well as a minimum wage. The minimum compensation rate can be met with the minimum wage plus tips and money paid toward an employee’s health plan.

Year	Hourly Minimum Wage (Can include bonuses, commissions, piece rate)	Hourly Minimum Compensation (Wages plus tips and/or health care)
2015	\$10.00	\$11.00
2016	\$10.50	\$12.00
2017	\$11.00	\$13.00
2018	\$11.50	\$14.00
2019	\$12.00	\$15.00
2020	\$13.50	\$15.75
2021	\$15.00	Equals the minimum wage for Schedule 1 employers and beginning in 2025 minimum compensation will no longer be applicable

Employers covered

Schedule 1 employers employ more than 500 employees worldwide, including franchisees associated with a franchisor that employs more than 500 employees.

Schedule 2 employers employ less than 500 employees worldwide.

Employees covered

Full-time, part-time and temporary employees who (a) work only in Seattle and (b) employees who occasionally work in Seattle if they perform more than two hours of work during a two-week period in the City of Seattle. Work-study students are also covered.

The OLS Director may provide a different minimum wage for workers under 18 years of age that is lower than the City’s minimum wage, but is at least the state’s minimum wage. In addition,

the Director may authorize an employer to pay a wage that is lower than the City's minimum wage and that is at least the state's minimum wage, if the employer has received a special state certificate for a worker with a disability, student learner or apprentice.

Wage Theft

Benefit Provided

Wage theft is a criminal offense. In addition, City laws create a civil pathway for individuals to recover unpaid wages, tips or other compensation.

Employers covered

All Employers in the City of Seattle.

Employees covered

Full-time, part-time and temporary employees who (a) work only in Seattle and (b) employees who occasionally work in Seattle if they perform more than two hours of work during a two-week period in the City.

II. PROVISIONS COMMON TO ALL FOUR LABOR LAWS

Protection Against Retaliation

Workers must feel they will be protected if they make an inquiry about their wages, benefits or other working conditions. All four laws prohibit employers from taking an adverse action against a worker who exercises their rights under these laws. If an employer takes an adverse action, e.g., reduces a worker's scheduled hours within 90 days of the protected activity, there is a rebuttable presumption, i.e., it is legally presumed that it was a retaliatory action.

OLS will also keep the identity of the individual who contacted them anonymous to the extent possible.

Immigration

To encourage workers to inquire about possible violations without fear of retaliation, employers are prohibited from stating or implying they will inquire about or report on a worker's, or their family's citizenship or immigration status. Where appropriate, workers can also apply for a U-Visa, which is a non-immigrant status visa, for themselves and family members.

Notice and posting

Employers are required to post notice of the benefits, wages, and rights provided by these laws in English and in the primary languages of the employees at their workplace. In addition, at the time of hire employers must provide written information to the employee identifying the employer's name, address and contact information; and the employee's rate of pay, tip policy, pay basis, and pay day. With every pay check, employers must give employees written

information containing the number of hours worked, rates of pay, tip compensation, pay basis, gross wages, deductions, and any other information required by the OLS Director's Rules.

Records

Employers are required to keep pertinent records for three years.

Education and Outreach.

OLS assists businesses and workers in understanding their responsibilities and benefits through a variety of printed, electronic, and in-person methods. The City provided funding both to business associations and to community-based organizations that have established working relationships in the relevant areas and are trusted avenues of communication for businesses and workers.

Enforcement

When these ordinances were originally enacted, the enforcement provisions were modeled on the enforcement provisions in the City's anti-discrimination ordinances. While the Office of Civil Rights (OCR) was empowered to initiate investigations without an individual complaint (e.g., the fair housing audit), the more typical genesis for initiating an investigation had been for an individual to contact OCR with a question or complaint. An OCR investigator would investigate the complaint, resulting in a decision on whether a potential violation has occurred. If a decision is made that a violation did occur, then this is followed by a settlement conference or enforcement action by the OCR Director and either a settlement agreement or a judgment.

One of the major and most significant changes in the Wage Theft and Labor Standards Harmonization Ordinance passed in December 2015 is a change in this paradigm. Similar to workplace safety rules the local labor laws should be in place in every workplace. OLS, among other things, is a regulatory department with a regulatory function similar to the state or federal Department of Labor. They have the authority and responsibility to ensure these laws are implemented whether or not a specific individual complaint has been brought.

The OLS Director also has the authority to initiate an investigation with or without a complaint for all four ordinances.

Similarly if an individual complaint or inquiry is made to OLS, OLS will investigate the business to ensure they are in compliance with all of the city's labor laws, for all workers, not just the individual making the initial inquiry or complaint.

Statute of Limitations

Three years for all four laws.

Private right of Action

Individual employees may choose to bring a legal action against an employer, i.e., a private right of action, rather than going to the OLS for violations of the PSST, Minimum Wage, and Wage Theft.

The private right of action is effective April 1, 2016 for businesses with 50 or more employees and April 1, 2017 for businesses with fewer than 50 employees.

Remedies can include:

- Legal and equitable relief without limitation (an example of equitable relief is re-instatement to a job)
- Up to three times unpaid wages or compensation plus interest
- Up to \$5,000 penalty paid to the worker for retaliation
- Attorney fees and costs

Remedies, Penalties and Fines for Administrative OLS Process

Remedies

For 1st violations the OLS Director has discretion on the amount of the remedy and can take into consideration the nature and severity of the violation. However, the ordered remedy must always be sufficient to pay the worker what they are owed. Subsequent remedies increase in severity and the OLS Director's discretionary authority is removed.

For PSST, MWO and WT

- | | |
|---------------------------|--|
| 1 st Violation | OLS Director has discretion to order up to three times unpaid wages or compensation + interest |
| 2+Violations | OLS Director will order three times unpaid wages or compensation + interest |

Fair Chance Employment

- | | |
|---------------------------|--|
| 1 st Violation | Mandatory up to \$500 to each aggrieved party |
| 2 nd Violation | Mandatory up to \$1000 to each aggrieved party |
| 3+ Violations | Mandatory up to \$5000 to each aggrieved party |

Retaliation – for all four laws

All legal and equitable remedies without limitation including re-instatement and up to three times front pay, i.e., compensation in lieu of reinstatement

Penalties and Fines

Penalties are intended to encourage compliance and discourage violations. Similar to penalties they increase with subsequent violations and the Director's discretion is removed. However, in order to encourage payment to the worker the Director can mitigate the amount of penalties and fines an employer owes depending on how quickly they pay the worker. The Director will never waive or reduce unpaid wages owed a worker.

For PSST, MWO and WT

- | | |
|---------------------------|---|
| 1 st Violation | Discretionary up to \$500 or 10% of unpaid wages per aggrieved party |
| 2 nd Violation | Mandatory up to \$1000 or 10% of unpaid wages to each aggrieved party |
| 3 rd Violation | Mandatory up to \$5000 or 10% of unpaid wages to each aggrieved party |
| 4+ Violations | Mandatory up to maximum of \$20,000 to each aggrieved party |

Retaliation – all laws

Any violation - Up to \$1,000 fine payable to the agency per aggrieved party and up to \$5,000 to each aggrieved party(ies).

Fines

The OLS Director can assess fines for an employer’s failure to provide the required notice to employees.

Attorney Fees

The City can recover reasonable costs and attorneys fees.

Collection of funds owed

For all remedies and penalties OLS may:

- Refer unpaid orders to a collection agency.
- Require a bond or deposit of funds if the OLS Director believes a violation has occurred; this is partial protection against an employer who may not have funds when the remedy or penalty is ordered.
- The City may revoke the employer’s business license until the ordered amounts are paid.
- The City can debar an employer from bidding on City contracts until the ordered amounts are paid. The length of debarment increases for subsequent orders.
- The City Attorney’s Office can file liens and garnish wages.

III. OFFICE OF LABOR STANDARDS

Council approved the establishment of a new OLS with approval of the 2015 City Budget. Previously, the OCR implemented PSST and the Fair Chance Ordinance, while the Department of Finance and Administrative Services was charged with implementing the City’s minimum wage. The civil Wage Theft ordinance was legislated to begin in 2015. With the establishment of the OLS, implementation and enforcement of all of the City’s labor laws were consolidated in OLS.

In 2015 OLS was established as a division of OCR, with the OLS Director reporting both to the OCR Director and the Mayor. In 2016 OLS has a budget of \$2.2 million and 11.0 FTEs.

The 11 FTEs are comprised of:

- 1 Director
- 1 Senior Policy analyst
- 7 enforcement staff
- 2 Outreach staff

In addition, OLS shares some administrative support with OCR.

Council has been supportive of OLS funding and staffing requests and has added to them, notably accelerating the hiring of investigators and adding \$1 million for community based education and outreach to workers.

IV. LABOR STANDARDS ADVISORY COMMISSION

The Labor Standards Advisory Commission (Commission) was established with Council's approval of the 2015 City Budget. The 15 member Commission will draw from employers, employees and community members. Seven members will be appointed by the Mayor, seven by the Council, and a 15th member will be appointed by the Commission. All appointments will be confirmed by the City Council. The appointment of the Commission has been delayed due to work establishing the new office and work on the omnibus ordinance to strengthen and harmonize the enforcement and remedies amongst the four labor laws. The Commission should be established in early 2016.

Future work

In 2016, Council will review a potential dedicated funding source for OLS's work. As a first step OLS is evaluating its staffing model, and its budget and staffing levels to ensure the department can effectively provide education and outreach to workers and employers, as well as perform investigative work and enforcement, including Director initiated enforcement, of the City's labor laws. That discussion should happen in 2016.

It is also anticipated that in 2016 there will be additional requests from the community, workers and workers' advocates to add further worker protections and benefits. As Council considers this work, it may consider expanding OLS staffing capacity and to a lesser extent staffing capacity in the Law department.

Finally, the City has considered each of these labor laws separately. This resulted in incremental changes for workers and employers. The Council may want to consider an omnibus bill that would incorporate several benefits and protections the City would like all workers in Seattle to receive.