



**City of Seattle**  
**Minimum Wage Ordinance • SMC 14.19**

**Questions & Answers**

Seattle's Minimum Wage Ordinance establishes minimum wage standards for employees working within Seattle city limits. The City of Seattle's Office of Labor Standards administers this ordinance, providing outreach, compliance assistance and enforcement services to workers and employers.

Our Q&A document addresses some of the most common questions about the ordinance. This version includes updates resulting from revisions to the Minimum Wage Rules, SHRR Ch. 90, that went into effect on September 29, 2017.

Do you have a question that isn't covered by this Q&A? Visit our [Minimum Wage web site](#). Call 206-256-5297 or reach us electronically:

- Workers with questions and complaints – submit an [online inquiry](#) or send an email to [workers.laborstandards@seattle.gov](mailto:workers.laborstandards@seattle.gov).
- Employers with requests for technical assistance – send an email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov).

**A. General Information**

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**1. When did the Seattle Minimum Wage Ordinance take effect?**

The original Seattle Minimum Wage ordinance took effect on April 1, 2015.

**2. When did the last ordinance amendments take effect?**

An amended ordinance took effect on January 16, 2016. For more information, please see our [2016 Guide for Seattle Workers and Employers: Changes to Seattle Labor Standards Laws](#).

**3. When did the last rule revisions take effect?**

Revisions to the [Minimum Wage Rules \(SHRR Ch. 90\)](#) went into effect on September 29, 2017.

**4. What City department is implementing the ordinance?**

The City of Seattle's Office of Labor Standards (OLS) has authority to implement the following ordinances:

- Minimum Wage ([SMC 14.19](#));

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- Wage Theft ([SMC 14.20](#));
- Paid Sick and Safe Time ([SMC 14.16](#));
- Fair Chance Employment (formerly known as the Job Assistance Ordinance) ([SMC 14.17](#));
- Secure Scheduling ([SMC 14.22](#)); and
- Hotel Employees Health and Safety Initiative ([SMC 14.25](#))

**5. Where do employees call with questions?**

Employees can call 206-256-5297, submit an [online inquiry](#), or email [workers.laborstandards@seattle.gov](mailto:workers.laborstandards@seattle.gov).

Upon request, and to the extent permitted by law, OLS protects the identifying information (e.g. name, job title) of employees who report violations and witnesses who provide information during investigations. OLS may need to release names of employees who are owed payment as a result of an investigation.

**6. Where do employers call with questions?**

Employers can call 206-256-5297 or send an email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov).

OLS does **not** share information about employer questions with our enforcement team. Phone conversations and email conversations with employers are kept separate from the investigative process.

**7. Does immigration status impact coverage/application of the ordinance?**

No. As a matter of policy, the City of Seattle does not ask about the immigration status of anyone using City services. In addition, it is a violation of the ordinance for an employer to tell or suggest to a person filing a labor standards complaint that the employer will report suspected citizenship or immigration status of an employee or a family member to a government agency. Read [OLS' Commitment to Immigrant and Refugee Communities](#) for more information.

**8. Will OLS protect the identifying information of workers who contact the office with questions or complaints?**

Yes. At first point of contact, OLS will ask employees and other complainants if they would like to protect their identifying information (e.g. name, job title). If so, OLS will not disclose the person's identifying information during and after the investigation, to the extent permitted by law. OLS may need to release names of employees who are owed payment as a result of an investigation.

**9. What happens when an employer calls OLS with a question about compliance?**

OLS has two full-time business liaisons who handle employer inquiries. The business

liaisons are not members of the enforcement team. Phone conversations and email exchanges with the business liaisons are kept entirely separate from the investigation process.

OLS encourages businesses to call or email their questions to our office; our goal is help employers attain full compliance with Seattle’s labor standards and we will answer all types of labor standards questions.

## **B. Employees**

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### **1. What is the definition of employee?**

An employee means any individual employed by an employer, including full-time, part-time, seasonal, temporary employees, and employees who are jointly employed by one or more employers (e.g. employee hired through the services of a staffing agency or similar entity). Some occupations are excluded from both the State of Washington’s and Seattle’s minimum wage laws, such as certain agricultural workers, casual laborers, exempt “white collar” workers, volunteers, newspaper vendors/carriers, railroad workers, live-in workers and others. See [SMC 12A.28.200](#) for more details on the definition of employee in Seattle’s Minimum Wage Ordinance. See [RCW 49.46.010](#) for more information on the (identical) definition of employee in the State of Washington’s Minimum Wage Act.

Please note that “employee” is defined more broadly in Seattle’s other labor standards: [Paid Sick and Safe Time](#), [Fair Chance Employment](#), and [Wage Theft](#).

### **2. Which employees are covered by the ordinance?**

The ordinance covers hourly employees who perform work in Seattle and applies to all hours worked within city limits.

The ordinance does not apply to employees excluded under the definition of employee in [SMC 12A.28.200.B](#).

The ordinance does not apply to hours worked outside of Seattle.

### **3. Does the ordinance apply to Independent contractors?**

No. Whether an individual is an employee or independent contractor is determined by the “Economic Realities Test” that is used by the Fair Labor Standards Act and the Washington State Minimum Wage Act. If there is a dispute regarding a worker’s status, the employer is responsible for proving that the worker is an independent contractor rather than an employee (i.e., the law favors employee status and an employer must

prove otherwise). Under the Economic Realities test, factors for distinguishing an employee from an independent contractor include:

- Is the work an integral part of the employer's business?
- Does the worker's managerial skill affect the worker's opportunity for profit or loss?
- How does the worker's relative investment compare to the employer's investment?
- Does the work performed require special skill and initiative?
- Is the relationship between the worker and the employer permanent or indefinite?
- What degree of control does the employer exercise or retain?

For more information, see our [Classification Fact Sheet](#).

**4. Does the ordinance cover the following employees:**

**a. Work study?**

Yes. 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.

**b. Paid interns?**

Yes. Seattle's minimum wage requirements apply to paid interns.

**c. Independent contractors?**

No. The Ordinance only applies to employees. See above answer to question 3.

**d. Salaried employees?**

The ordinance covers non-exempt salaried employees, but it does not cover exempt salaried employees, such as an employee in a bona fide, executive administrative, professional or outside sales position. For more information, see [SMC 12A.28.200.B](#).

**e. Family members who work for a business?**

Yes. The ordinance applies to family members who work for a business, provided those family members qualify as employees as defined by the ordinance. See the Washington State Department of Labor and Industries document, ["If family members work for you, know your obligations"](#) in English, Spanish, Russian, and Thai.

**f. Employees who are required to live and/or sleep on-site as part of their job such as on-site apartment managers?**

No. The definition of employee excludes, "Any individual whose duties require that [the individual] reside or sleep at the place of his or her employment or who

otherwise spends a substantial portion of [the individual's] work time subject to call, and not engaged in the performance of active duties.”

**g. Casual babysitters?**

No. The definition of employee excludes “Any individual employed in **casual labor** in or about a private home, unless performed in the course of the employer's trade, business, or profession.”

**5. Where can I find a map of Seattle city boundaries?**

- a. [View a map showing Seattle's census tracts and zip code areas;](#)
- b. [View an interactive map showing Seattle's boundary lines;](#)
- c. [View instructions for using the interactive map.](#)

**6. What does it mean to work in Seattle on an occasional basis?**

Employees who are typically based outside of the Seattle and perform work in Seattle on an irregular basis (i.e. not regularly scheduled) are considered to work in Seattle on an occasional basis. Employees who work in Seattle on an occasional basis are covered by the Seattle minimum wage after working more than two hours within Seattle city limits during a two-week period. Once employees meet this threshold requirement, all hours worked in Seattle are covered by the Seattle minimum wage for that pay period.

**7. How does an employer determine what two-week period to use for occasional basis employees?**

Employers can choose how to determine a two-week period as long as it is consecutive and consistently applied. The two-week period can be a calendar period, pay period, or a rolling period measured forward or backward from the first hour worked in Seattle. ([See SHRR 90-040.3 Two-week period.](#))

**8. Who is responsible for tracking the hours of an employee who occasionally works in Seattle?**

Employers may require employees to track their own hours. However, employers are responsible for providing their employees with information about the Minimum Wage Ordinance. They also must make sure that their employees have the ability to track the hours they work in Seattle. Additionally, it is the employer's responsibility to retain records documenting payment of the Seattle minimum wage and minimum compensation for all Seattle hours.

**9. Does the ordinance cover employees who travel through Seattle?**

Employees who are simply traveling through Seattle (from a starting point outside Seattle to a destination outside of Seattle) are not covered by the ordinance. Incidental stops to refuel, eat a meal or take care of an errand are not considered employment-related stops. Employees who work in Seattle on an occasional basis and make work-

related stops in Seattle may be covered by the ordinance, depending on how many hours of work they perform in Seattle during a two-week period (see questions 6, 7, and 8 in this section).

**10. When are owners, partners, officers and shareholders considered employees?**

Whether owners, partners, officers and shareholders are considered employees must be decided on a case-by-case basis. In the context of an investigation, OLS will make this determination using guidance from the [EEOC's Compliance manual](#) for investigation of discrimination claims.

EEOC guidance states that in most circumstances, individuals who are partners, officers, members of boards of directors, or major shareholders will not qualify as employees. However, the final determination is not made on the basis of a person's title and the following factors will be considered:

- a. Whether and, if so, to what extent the organization supervises the individual's work
- b. Whether the individual reports to someone higher in the organization
- c. Whether and, if so, to what extent the individual is able to influence the organization
- d. Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts
- e. Whether the individual shares in the profits, losses, and liabilities of the organization

**11. Can individuals or unions waive minimum wage requirements?**

No.

**12. Can employers pay less than Seattle's minimum wage to certain employees?**

Yes, but only in specific situations. Employers can pay subminimum wage only to employees under age 16 years and to employees who qualify for a Seattle Special Certificate (e.g. student learners, apprentices, and messengers). Employers may *not* pay subminimum wage to workers with a disability. OLS prohibited paying subminimum wage to workers with a disability in the 2017 Minimum Wage rule revisions.

Employees performing work in Seattle with a Seattle Special Certificate still must be paid above the Washington State minimum wage. Employers also must obtain a Seattle Special Certificate from OLS before paying the subminimum wage. The first step in obtaining a Seattle Special Certificate is to obtain a state Special Certificate to pay less than the state minimum wage (OLS will apply to same percentage reduction to the Seattle minimum wage). For more information on the criteria for a state Special Certificate, call Washington State Labor & Industries at 360-902-5552. For more information on the criteria for a Seattle Special Certificate, call OLS at 206-684-4536.

## C. Employers

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**1. Which employers are required to pay minimum wage to its employees?**

Employers with employees performing work in Seattle are covered by the ordinance.

**2. Are non-profits covered by the ordinance?**

Yes. Minimum wage requirements are the same for non-profit and private employers.

**3. How do employers determine their minimum wage requirements?**

Minimum wage requirements are based on a “schedule size” determined by an employer’s number of employees.

**4. What are employer schedules?**

The ordinance uses the term “schedule” to set different requirements and timelines for implementing the minimum wage based on an employer’s number of employees. There are two schedules – Large and Small Employers.

**a. What is a Large Employer (schedule 1)?**

A Large Employer employs 501 or more employees worldwide. Large Employers include all franchisees associated with a franchise or a network of franchises that together employ more than 500 employees in aggregate.

**b. What is a Small Employer (schedule 2)?**

A Small Employer employs 500 or fewer employees worldwide. Franchisee employers that are associated with a franchisor or a network of franchises that together employ fewer than 500 employees in aggregate are considered small employers.

**5. How is employer “schedule size” determined?**

An employer determines schedule size by calculating the average number of employees who worked for compensation each calendar week during the prior calendar year. An employer should include any week during which at least one employee worked. Employers should not include weeks where no employees worked. All employees worldwide are counted, including:

- Full-time employees.
- Part-time employees.
- Temporary or seasonal employees, including employees of a staffing agency or similar entity.
- Jointly-employed employees.
- Paid interns
- Work study employees

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- All employees of a franchise or a network of franchises in the United States. For more information on jointly-employed employees, see question 10 in this section.

**6. Does an employer's schedule size count employees working outside of Seattle?**

Yes. An employer's schedule size counts all employees worldwide.

**7. Does an employer's schedule size count full-time equivalents (FTEs) or heads?**

An employer's schedule size counts "heads" – that is, each employee counts as one employee regardless of whether that employee is full-time, part-time, temporary, etc.

**8. How do new employers determine the number of employees?**

Employers that did not have any employees during the previous calendar year count the average number of employees employed per calendar week during the first 90 calendar days of the current year of business.

**9. How is a temporary worker obtained through a staffing agency counted for schedule size? Is the temporary worker counted as an employee of both the staffing agency and the contracting employer?**

If the staffing agency and contracting employer are joint employers of the temporary workers, then both employers count the temporary worker to determine schedule size. The temporary worker is counted twice for this purpose.

**10. What are joint employers?**

Separate business entities (with separate owners, managers and facilities) may be treated as joint employers under this ordinance. An individual may also be a joint employer.

While a joint employment relationship generally exists when an employee performs work that benefits two or more employers, the final determination depends on a number of nonexclusive factors that are part of an "**economic realities test.**" The five primary factors are:

- a. The nature and degree of control of the workers;
- b. The degree of supervision (direct or indirect) of the work;
- c. The power to determine the pay rates or the methods of payment of the workers;
- d. The right (directly or indirectly) to hire, fire or modify the employment conditions of the workers; and
- e. Preparation of payroll and the payment of wages.

Other factors include:

- a. Whether the work is a specialty job on the production line;
- b. Whether responsibility between a labor contractor and an employer passes from one labor contractor to another without material changes;
- c. Whether the premises and equipment of the employer are used for the work;
- d. Whether the employees have a business organization that shifts as a unit from one work site to another;
- e. Whether the work is piecework and not work that requires initiative, judgment or foresight (i.e. considering if the service rendered requires a special skill);
- f. Whether the employee has an opportunity for profit or loss depending upon the employee's managerial skill;
- g. Whether there is permanence in the working relationship; and
- h. Whether the service rendered is an integral part of the employer's business.

For more information on joint employment, see the United States Department of Labor's [Factsheet on Joint Employment](#).

**11. How do joint employers determine schedule size?**

Employees who are jointly employed must be counted by all joint employers, regardless of whether the employee is maintained on only one of the employers' payrolls.

**12. How is the pay rate determined for employees who are jointly employed by joint employers?**

The Schedule size of the joint employer with the most employees determines the hourly rate for the employee who is jointly employed.

**13. Are both joint employers responsible for complying with the ordinance (e.g. workplace poster, payment of minimum wage, records-keeping)?**

Yes.

**14. How do employers determine if they are part of a franchise? Some business agreements use words like "affiliate" or "chapter," rather than franchise.**

A franchise is a written agreement in which:

- a. A person is granted the right to sell or distribute goods or services under a marketing plan prescribed or suggested in substantial part by a grantor or its affiliate.
- b. The business operation is substantially associated with a trademark, trade name, advertising, or other symbols owned or licensed by the grantor or its affiliate.
- c. The person is required to pay a franchise fee. [See RCW 19.100.010 for more details.](#)

### **15. How do employers determine if they are a part of an integrated enterprise?**

An integrated enterprise is a business relationship in which one separate entity controls the operation of another entity. To determine schedule size, separate entities that form an integrated enterprise are considered a single employer. Factors to consider in making this assessment include (but are not limited to):

- a. Degree of interrelation between the operations of multiple entities;
- b. Degree to which the entities share common management;
- c. Centralized control of labor relations; and
- d. Degree of common ownership or financial control over the entities.

Separate legal entities that share some degree of interrelated operations and common management are generally considered separate employers (i.e. not integrated enterprises) for the purposes of this ordinance **as long as** they are substantially in separate physical locations from one another and each separate legal entity has partially different ultimate ownership.

## **D. Wages and Compensation**

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### **1. What are wages?**

Wages include salary, hourly pay, piece rate pay, commissions, and non-discretionary performance bonuses. Tips and employer payments toward medical benefits plans are not wages.

### **2. What are the minimum wage requirements for LARGE EMPLOYERS?**

Large employers are employers with 501 or more employees worldwide, including franchises with 501 or more employees across the franchise network. When Seattle's minimum wage initially went into effect on April 1, 2015, large employers minimum wage obligations started at \$11.00/hour and gradually rose to \$15.00/hour in 2017 or 2018, depending on whether they paid toward an individual employee's qualifying medical benefits. Once minimum wage reaches \$15.00/hour, it is adjusted annually for inflation. The City of Seattle calculates percentage changes to the minimum wage based on the Consumer Price Index (CPI) for the Seattle-Tacoma-Bremerton-Area and announces the upcoming year's minimum wage increase by September 30<sup>th</sup> of every year.

**On January 1, 2018, the minimum wage for Large employers increased to \$15.45/hour.** Large employers can meet this requirement in two ways:

- a. Pay an hourly minimum wage of \$15.45/hour; or
- b. Pay a reduced hourly minimum wage of \$15.00/hour if they pay towards an individual employee's qualifying medical benefits plan.

Every year, the minimum wage increases on January 1. By 2019, all Large employers will pay a single minimum wage and payments toward medical benefits will no longer impact minimum wage requirements.

**LARGE EMPLOYERS**

YEAR	MINIMUM WAGE only	MINIMUM WAGE with payments toward employee's medical benefits
2015 (April 1 <sup>st</sup> )	\$11.00	\$11.00
2016 (January 1 <sup>st</sup> )	\$13.00	\$12.50
2017 (January 1 <sup>st</sup> )	\$15.00	\$13.50
2018 (January 1 <sup>st</sup> )	\$15.45	\$15.00

**3. What are the minimum wage requirements for SMALL EMPLOYERS?**

Small employers are employers with 500 or fewer employees worldwide, including franchises with 500 or fewer employees across the franchise network. Small employers will reach the \$15.00/hour minimum compensation by 2019 or 2021, depending on whether they pay toward an individual employee's medical benefits and/or if an employee earns tips.

Starting on April 1, 2015, Small employers were required to pay a minimum compensation of \$11.00/hour.

**On January 1, 2018, the minimum compensation requirement for Small employers increased to \$14.00/hour.** Small employers can meet this requirement in two ways:

- a. Pay hourly minimum compensation of \$14.00/hour; or
- b. Pay an hourly minimum wage of \$11.50/hour and make up the balance with employee tips reported to the IRS and/or payments toward an employee's qualifying medical benefits plan.

In 2025, minimum compensation requirements will expire. Small employers will pay the same minimum wage as Large employers and will no longer count employee tips and/or payments toward an employee's medical benefit plan. The City of Seattle will calculate percentage changes to the minimum wage based on the Consumer Price Index (CPI) for the Seattle-Tacoma-Bremerton area.

**SMALL EMPLOYERS**

<b>YEAR</b>	<b>MINIMUM COMPENSATION</b>	<b>MINIMUM WAGE with tips and/or payments toward employee's medical benefits</b>
2015 (April 1 <sup>st</sup> )	\$11.00	\$10.00
2016 (January 1 <sup>st</sup> )	\$12.00	\$10.50
2017 (January 1 <sup>st</sup> )	\$13.00	\$11.00
<b>2018 (January 1<sup>st</sup>)</b>	<b>\$14.00</b>	<b>\$11.50</b>
2019 (January 1 <sup>st</sup> )	\$15.00	\$12.00
2020 (January 1 <sup>st</sup> )	TBD	\$13.50
2021 (January 1 <sup>st</sup> )	TBD	\$15.00
2022 (January 1 <sup>st</sup> )	TBD	\$15.75
2023 (January 1 <sup>st</sup> )	TBD	\$16.50
2024 (January 1 <sup>st</sup> )	TBD	\$17.25

**4. (UPDATE) Are there situations when employers can pay less than minimum wage?**

Employers can pay a subminimum wage only to employees under age 16 years and to employees who qualify for a Seattle Special Certificate (i.e. student learners, apprentices, and messengers). In both instances, employees must still be paid above the state minimum wage.

Employers may *not* pay subminimum wage to workers with a disability; OLS prohibited paying subminimum wage to workers with a disability in the 2017 Minimum Wage rule revisions.

**5. What are the minimum wage requirements for minors?**

**a. Employees who are 16-17 years old**

Employees who are 16-17 years old earn the same Seattle minimum wage as adults.

**b. Employees who are under 16 years old**

Employees who have not yet reached 16 years can earn 85% of the hourly rate required by the Seattle minimum wage ordinance.

**6. How does an employer obtain a Seattle Special Certificate to pay a subminimum wage for learners, apprentices, messengers?**

The Director of the Office of Labor Standards (OLS) has the authority to issue a Seattle Special Certificate authorizing an employer to pay a wage less than the hourly rate defined in this ordinance, but above the Washington State minimum wage, for learners, apprentices, and messengers as described in [RCW 49.46.060](#). See [WAC 296-128](#) for more information. **Please note that OLS does not permit payment of subminimum wage to workers with a disability; OLS prohibited this practice in the 2017 Minimum Wage Rule Revisions.**

**a. Applications**

Applications to pay less than Seattle minimum wage to learners, apprentices, and messengers must include an approved state Special Certificate from Washington State Labor & Industries and must be submitted to the OLS Director in writing. They will be considered on a case-by-case basis.

**b. Limitations**

If an application is approved, the OLS Director may issue a Seattle Special Certificate for payment of less than the Seattle minimum wage, provided that the hourly rate is above the Washington State minimum wage.

**7. Where can I find more information about the process for obtaining a state Special Certificate from Washington State Department of Labor & Industries?**

The state Special Certificate application is available on the [Washington State Department of Labor and Industries web site](#). For more information, call Labor & Industries at 360-902-5552 and read about the criteria in [Washington Administrative Code \(WAC\) 296-128](#).

- a. Adult Learners: 296-128-100.
- b. Student Learners: 296-128-175.
- c. Student Workers: 296-128-275.
- d. Apprentices: 296-128-225.

**8. Tips and Service Charges**

**a. What tips can be counted toward minimum compensation?**

Small employers can pay an hourly minimum wage and make up the minimum compensation balance with employee tips and/or payments toward an employee's medical benefits plan. To use tips to make up the balance of minimum compensation, the tips must be (a) actually received by the employee **and** (b) reported to the Internal Revenue Service. Note: employers must provide employees with notice of their tip policy at the time of hire (as required by the City of Seattle's [Wage Theft Ordinance](#)).

**b. How do Small employers report tips to the IRS?**

Small employers who are using tips to meet minimum compensation requirements may use methods established by the IRS for reporting tips and must also keep records of tips in pay roll records. See the IRS Publication, "[Reporting Tip Income - Restaurant Tax Tips](#)," for more information.

Also, both Large and Small employers must provide employees working in Seattle with written notice of earned tips every pay day. This is a requirement of the [Wage Theft Ordinance](#).

**c. Can tips be averaged over a pay period?**

Yes, but only for the tipped position. When an employee is performing work in both a tipped position and a non-tipped position for the same Small Employer, tips count toward hourly minimum compensation only for those hours worked in the tipped position. For more information, see question 8(g) in this section.

**d. Can employers apply tips earned in a pay period toward an employee's participation in a mandatory staff meeting?**

If participation in a mandatory staff meeting is a requirement of a tipped employee's position, the employer can count tips for the entire pay period toward the minimum compensation payment for the hours worked during the meeting.

**e. (UPDATE) Are employers allowed to require tip pooling?**

Employers are permitted to require employee participation in a valid tip pool. Under a 2011 U.S. Department of Labor (DOL) rule, tip pools may only include employees who "customarily and regularly" receive tips. See 29 C.F.R. § 531.52. DOL examples of employees who "customarily and receive tips" include servers, bussers, service bartenders, counter personnel who serve customers, and bellhops (i.e. front of house employees), but do not include cooks, janitors and dishwashers (i.e. back of house employees).

On December 5, 2017, [the DOL announced that it was considering changes to tip pooling rules](#). Further, the DOL is no longer enforcing the 2011 tip pooling rule. Employers should monitor these proposed rule changes. For more information, see DOL [Fact Sheet #15A: Ownership of Tips Under the Fair Labor Standards Act \(FLSA\)](#).

**f. Can employers require tipped employees to share their tips with managers and shift supervisors?**

Employers are *not* allowed to require tip sharing with managers and/or shift supervisors who have the authority to hire and fire employees.

Depending on the circumstances, however, shift supervisors *may* share in tip pools if they do *not* have the authority to hire and fire and have duties primarily consisting of customer service tasks rather than managerial duties.

**g. What if an employee works two or more positions for an employer and one position does not receive tips?**

When an employee is performing work in both a tipped and non-tipped position for the same Small Employer, tips count toward hourly minimum compensation only for those hours worked in the tipped position.

**Example:** Simon works as a server and host for a restaurant. Since Simon does not earn tips in the host position, his employer can only count his tips earned as a server for his hours worked in the server position.

**h. (UPDATE) Do service charges count toward minimum wage and minimum compensation?**

Service charges are automatic, separately designated amounts added to customers' bills that appear to be for services provided by employees. Service charges include but are not limited to automatic charges designated on receipts as a "service charge," "automatic gratuity," "delivery charge," or "portage charge."

Service charges are not tips. Employers can count service charges paid to the employee as commissions but only for the employee's earnings above the state minimum wage. Employers can also count service charges paid to the employee toward Seattle minimum wage and minimum compensation requirements but only for the employee's earnings above the state minimum wage.

If an employer discloses a service charges on a menu and/or receipt to the customer as not payable to the employee (i.e. payable to the house), the employer is not bound by these restrictions. In other words, when an employer informs customers that service charges are not payable to the employee, then service charges are simply revenue in the same way that customer payments for food are revenue. The employer is free to decide how to use this revenue.

**i. What are the disclosure requirements for service charges?**

Employers who include automatic service charges must disclose the percentage of the automatic service charge that is paid directly to the employee or employees serving the customer. The disclosure must appear both on itemized receipts and on any menus provided to the customer. These disclosure requirements are established by state law. For more information, see [RCW 49.46.160](#).

**j. Does applying a "Seattle Surcharge" trigger disclosure requirements?**

It depends how the surcharge is described. If the business implies to customers that the surcharge is for services provided by employees, then the employer must follow disclosure requirements. If the language that the employer uses to describe the surcharge does not suggest that the amount is being collected for services, and that the amount will not be paid to the employee, then the employer is not required to follow disclosure requirements.

For more information on surcharges, see [2015 Surcharge Guidance](#) from the Washington State Attorney General's Office.

## 9. Medical Benefits

### a. What is a qualifying medical benefits plan?

A qualifying medical benefits plan must meet the requirements of a silver level or equivalent plan under the Affordable Care Act by providing at least 70% of the full actuarial value of the benefits provided under the plan (see [42 U.S.C. § 18022.d](#)).

### b. Does an employer pay the higher minimum wage or minimum compensation rate when an employee declines an employer-offered medical benefits plan?

Yes. If an employee declines a medical benefit plan, then the employer must pay the higher minimum wage or minimum compensation rate to that employee.

### c. Does an employer pay the higher minimum wage or minimum compensation rate when an employee has not yet completed an eligibility period (e.g. 90 days) to qualify for medical benefits?

Yes. The employer must pay the new employee the higher minimum wage or minimum compensation rate until the employee completes the eligibility period and enrolls in the employer-offered medical benefits plan. This situation may also arise with a current employee if the employee's enrollment status changes for some reason.

### d. Are there exceptions to the requirements to pay the higher minimum wage if the employee is not actually enrolled and eligible for medical benefits?

Yes, there are limited exceptions. Under the 2017 Minimum Wage Rule revisions, there are two exceptions for the requirement to pay the higher minimum wage if an individual employee was not actually enrolled and eligible for the medical benefits.

- 1) The employer is paying toward an individual employee's medical benefits plan during the employee's waiting period for enrollment and eligibility; or
- 2) The employer is paying toward an individual employee's medical benefits under a multi-employer health and welfare benefit plan established under section 302(c)(5) of the Labor Management Relations Act of 1947 29 U.S.C. § 401-531 (i.e. Taft-Hartley Act).

## 10. Miscellaneous issues

### a. What are permissible deductions from wages?

Washington state regulations establish permissible deductions from wages. For more information, see [WAC 296-126-025](#) and [WAC 296-126-028](#).

### b. Can an employer add the cost of employee housing to wages to meet minimum wage requirements?

No. Under state minimum wage law, an employer cannot add the cost of housing to meet minimum wage requirement. Housing is deemed a benefit, not part of wages.

However, if an employer pays minimum wage, the cost of housing can be deducted with a written agreement that complies with [RCW 49.52.060](#) (i.e. authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of the employee). In this situation, the employer would have paid minimum wage and the cost of housing would be considered a benefit. Notably, employers also would also be responsible for reporting the employee's pay to IRS and employment security. For more information, See Washington State Department of Labor and Industries Administrative Policy [ES.A.2](#).

**c. Do transportation benefits count toward minimum wage and minimum compensation requirements?**

No.

**d. Does the Seattle minimum wage apply to the rate of pay for hourly employees who use Paid Sick and Safe Time?**

Yes. Hourly employees who use Paid Sick and Safe Time must receive their normal hourly compensation, which must be no less than the Seattle minimum wage. Employees taking PSST are also entitled to compensation for lost commissions. Employers should calculate the lost commissions by dividing the total earnings by the total hours worked in the full pay periods in the prior ninety days of employment to determine an employee's normal hourly compensation including compensation based on commissions

Seattle's [Paid Sick and Safe Time Ordinance](#) requires paid leave for work absences due to an employee's need to care for a personal or family member's physical or mental health condition or critical safety issue.

**e. Does the Seattle minimum wage apply to the rate of pay for vacation and holiday leave?**

No. But employers who promise to pay vacation/holiday pay at a certain rate of pay and fail to pay for the use of the paid leave could be committing a wage theft violation. OLS would investigate these complaints under the [Wage Theft Ordinance](#).

**f. Does Seattle minimum wage apply to overtime rates?**

Yes, overtime requirements apply to Seattle's minimum wage and can be enforced under [Seattle's Wage Theft Ordinance \(SMC 14.20\)](#).

**\*For more information on the Department of Labor's final rule revisions of federal overtime requirements (effective December 1, 2016), see [Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees](#).**

**For time and a half overtime requirements**, hourly employees working in excess of 40 hours per work week must be paid at a rate that is not less than one and one-half time the regular rate that the person is employed (some employee exceptions apply). See [RCW 49.46.130](#).

**Large employers** must pay one and one-half times the applicable minimum wage, as determined by their payment toward an individual’s medical benefits.

**Small employers** must pay one and one-half the minimum compensation. However, if the minimum compensation includes employee tips and/or payment toward an individual’s medical benefits, the Small employer must pay one and one-half the minimum compensation minus the tip and/or medical benefit credit (e.g. In 2016,  $\$12.00 \times 1.5 - \$1.50 = \$16.50$ ).

**LARGE EMPLOYERS**

YEAR	MINIMUM WAGE only	MINIMUM WAGE with payments toward employee’s medical benefits
2015 (April 1 <sup>st</sup> )	\$11.00 Overtime = \$16.50	\$11.00 Overtime = \$16.50
2016 (January 1 <sup>st</sup> )	\$13.00 Overtime = \$19.50	\$12.50 Overtime = 18.75
2017 (January 1 <sup>st</sup> )	\$15.00 Overtime = \$22.50	\$13.50 Overtime = \$20.25
2018 (January 1 <sup>st</sup> )	\$15.45 Overtime = \$23.175 <sup>1</sup>	\$15.00 Overtime = \$22.50

<sup>1</sup> The 2018 overtime rate for large employers who do not pay towards medical benefits will require the employer to round up to the nearest two decimal increment. For example, if an employee works 5 hours of overtime, the employer would calculate the employee’s pay as  $\$15.45 \times 1.5 \times 5 \text{ hours} = \$115.875$ . The employee’s pay should be rounded up to \$115.88.

**SMALL EMPLOYERS**

<b>YEAR</b>	<b>MINIMUM COMPENSATION</b>	<b>MINIMUM WAGE with tips and/or payments toward employee's medical benefits</b>
2015 (April 1 <sup>st</sup> )	\$11.00 Overtime = \$16.50	\$10.00 Overtime = \$15.50
2016 (January 1 <sup>st</sup> )	\$12.00 Overtime = \$18.00	\$10.50 Overtime = \$16.50
2017 (January 1 <sup>st</sup> )	\$13.00 Overtime = \$19.50	\$11.00 Overtime = \$17.50
2018 (January 1 <sup>st</sup> )	\$14.00 Overtime = \$21.00	\$11.50 Overtime = \$18.50
2019 (January 1 <sup>st</sup> )	\$15.00 Overtime = \$22.50	\$12.00 Overtime = \$19.50
2020 (January 1 <sup>st</sup> )	TBD	\$13.50 Overtime = TBD
2021 (January 1 <sup>st</sup> )	TBD	\$15.00 Overtime = TBD
2022 (January 1 <sup>st</sup> )	TBD	\$15.75 Overtime = TBD
2023 (January 1 <sup>st</sup> )	TBD	\$16.50 Overtime = TBD
2024 (January 1 <sup>st</sup> )	TBD	\$17.25 Overtime = TBD

Employee complaints for failure to pay overtime can be filed with the Seattle Office of Labor Standards under the [Wage Theft Ordinance](#), with the [Washington State Department of Labor and Industries](#), with the [US Department of Labor](#), or with a court of competent jurisdiction.

**g. Is a store or restaurant manager exempt from overtime requirements? What about an assistant manager?**

It depends. To qualify for exemption from overtime requirements, an employee must meet both the salary test and the duties test.

**I. Salary Test**

- Under the salary test, an employee must be paid on a salary basis and be compensated at a rate not less than \$455 a week (\$23,660 a year) in order to be exempt.

Seattle Office of Labor Standards (last updated 10/25/16, 12/21/2017)

**Note** - The questions and answers in this document should not be used as a substitute for laws and regulations. Businesses are responsible for complying with all legal requirements.

AND

## II. Duties Test

- There are several types of duties requirements that, if met along with the salary test, will make an employee exempt.
  - a. Executive Exemption: The most commonly used exemption for a manager or assistant manager is the “executive exemption.”
    - i. To qualify for the executive employee exemption, all of the following criteria must be met:
      1. The employee’s primary duty must be managing the employer’s workplace, or managing a recognized department or subdivision of the employer’s workplace;
      2. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
      3. The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.
    - ii. The U.S. Department of Labor publishes a fact sheet explaining how to apply these factors, which is available [here](#).
  - b. Administrative Exemption: A manager or assistant manager may also qualify for exemption under the “administrative exemption.”
    - i. To qualify for the administrative employee exemption, all of the following criteria must be met:
      1. The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
      2. The employee’s primary duty includes the exercise of discretion and independent choice without immediate supervision.
    - ii. For example, a manager or assistant manager primarily tasked with setting schedules, performance management, vendor management, or similar non-manual work requiring independent judgment may qualify for the administrative exemption. The U.S. Department of Labor publishes a fact sheet explaining how to

apply these factors, which is available [here](#). It is less likely that this exemption applies to a manager or assistant manager due to the requirement that the employee's primary duty be the performance of office or non-manual work.

Many managers and assistant-managers perform some tasks that fall within an overtime exemption and some that do not. Employers should proceed carefully when making a determination as to exempt status.

## **E. Notice and Posting**

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### **1. What are the notice and posting requirements of the ordinance?**

As of April 1, 2016, employers must display an 11" x 17" **OLS workplace poster**, updated annually, in a conspicuous and accessible location where any of their employees work. Employers must display the poster in English and in the primary language(s) of the employees at the particular workplace.

OLS is responsible for creating the poster, providing annual updates by December 1<sup>st</sup> of each year, and translating it into different languages. The poster provides notice of the following rights for minimum wage:

- a. Employees are entitled to the applicable rate of minimum wage and/or minimum compensation;
- b. Retaliation is illegal; and
- c. Employees have a right to file a [complaint](#) with the Office of Labor Standards or file a civil action if their employer does not pay them minimum wage and/or minimum compensation or if the employer retaliates against any person for exercising their rights under the ordinance.

### **2. How do employers comply with the workplace poster requirement if employees telecommute or work off-site with no central work location?**

If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

### **3. How do employers comply with the workplace poster requirement for out-of-town employees who work in Seattle on an occasional basis?**

For employees who work in Seattle on an occasional basis, employers must comply with the workplace poster requirements reasonably in advance of their first period of work in Seattle.

#### 4. Where can employers get the workplace poster?

The workplace poster is available electronically on our [publications Webpage](#) in printable color and black and white versions. The poster also is available in [City of Seattle neighborhood service centers](#).

## F. Payroll Records

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### 1. How long must employers retain payroll records?

Employers must retain payroll records for three years documenting minimum wages and minimum compensation paid to covered employees. See [SMC 14.19.050](#).

### 2. What information is required for payroll records?

Payroll records must contain information required for this ordinance and for Washington state minimum wage, including:

- a. Name, home address, occupation and date of birth (if under eighteen).
- b. Time of day and day of week on which the employee's workweek begins.
- c. Hours worked each workday and total hours worked each workweek.
- d. Total daily or weekly straight-time earnings or wages.
- e. Total overtime compensation for the workweek.
- f. Total additions to or deductions from wages paid each pay period.
- g. Total wages, including non-discretionary bonuses, commissions and piece-rate, paid each pay period.
- h. Date of payment and the pay period covered by payment.

Payroll records also must have information regarding **medical benefits and tips** that demonstrate the payment of Seattle minimum wages and minimum compensation to each employee. The records do not need to show an "hourly rate of pay" but must demonstrate that the sum total of wages, tips and payments toward medical benefits (if applicable) equal minimum wage and minimum compensation requirements. See [SMC 14.20.030](#) and [SHRR 90-110](#).

### 3. What information must be provided to the employee every pay period?

Under Seattle's [Wage Theft Ordinance](#), employers must provide employees with written notice of the following information each time that wages are paid:

- a. All hours worked with regular and overtime hours shown separately;
- b. Rate or rates of pay;  
Rate of pay is required whether employees are paid on hourly, salary, commission, piece rate or combination thereof, or other basis during the pay period. Employees paid on a rate other than hourly or salary are entitled to a detailed printed

- accounting of commissions, piece rate or other methods of payment earned during the pay period
- c. Tip compensation;
  - d. Pay basis (e.g. hour, shift, day, week, commission);
  - e. Gross wages; and
  - f. All deductions for that pay period. See [SMC 14.20.030](#)