



**City of Seattle**  
**Paid Sick and Safe Time Ordinance • SMC 14.16**  
**Questions and Answers**

As of September 1, 2012, employers with more than four full-time equivalent employees worldwide must provide paid sick and safe time (PSST) for employees who work in Seattle. Employees can use PSST hours to take paid leave from work to care for themselves or a family member for a physical or mental health condition, medical appointment, or a critical safety issue. All employees are eligible for the benefit, including full time, part-time, temporary, and seasonal workers.

The Office of Labor Standards (OLS) administers the PSST ordinance, providing outreach, technical assistance and enforcement services to workers and employers.

Our Questions and Answers document addresses some of the most common questions about the ordinance. This version includes updates of existing guidance and explanation of new requirements resulting from the Wage Theft Prevention and Labor Standards Harmonization Ordinance that was signed into law on December 17, 2015 and went into effect on January 16, 2016.

Do you have a question that isn't covered by this Q&A? Visit our [Paid Sick and Safe Time web site](#). Call 206-684-4500 or reach us electronically:

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

**A. General provisions**

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**1. What does the ordinance do?**

Seattle Municipal Code (SMC) [14.16](#) establishes minimum standards for employers to provide PSST to employees who work within Seattle City limits. The ordinance also prescribes penalties, remedies and enforcement procedures.

**2. When did the PSST ordinance take effect?**

The PSST ordinance took effect on September 1, 2012.

**3. Which City department is responsible for administering and enforcing this ordinance?**

The Office of Labor Standards is responsible for administering the PSST ordinance as well as Seattle's other labor standards. OLS also provides support for workers and employers. For more information, please call 206-684-4500. Workers can submit questions on our [online inquiry form](#). Employers can submit questions to [laborstandards@seattle.gov](mailto:laborstandards@seattle.gov).

#### 4. What is the difference between sick time and safe time?

An employee can use **sick time** for the following reasons:

- An employee's mental or physical illness, injury, health condition, 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's need to provide care for a family member with an illness, injury or medical appointment, etc.

An employee can use **safe time** 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's need 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, the employee's family member or the employee's housemate.

#### 5. The address for an employer says Seattle, but the [map on your web site](#) shows that it is outside of city boundaries. I'm confused – is the employer inside or outside of Seattle?

Trust the map. The federal government requires postal addresses in unincorporated areas to include the name of the nearest city – so some addresses read "Seattle" even though they're located outside Seattle city limits.

Here's how to use [the interactive map](#): On the left side of the page, scroll down to "Zoning" (the third section) and click on "Detailed Zoning." That click will add shading to all areas within Seattle city limits. The color of the shading doesn't matter – any shading that shows up will be Seattle.

Want to check a specific address? Enter the address in the open field at top left of the page. Click on "Building Outlines" in "Base Map Layers" to view specific lots; zoom in on the map itself to read street names.

## B. Employees

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### 1. (UPDATE) Which employees are covered by the PSST ordinance?

Employees are covered if they work within Seattle city limits regardless of employment status (e.g. full-time, part-time, temporary, and seasonal) or the location of the employer.

Employees who are typically based outside of Seattle and work in the city on an "occasional basis" are covered once they have worked more than 240 hours of work in Seattle for a particular employer within a benefit year.

*(See Questions 13 – 19 in this section for more information on occasional basis employees.)*

**Example #1:** Nicole works as a bartender for a restaurant in Seattle for 30 hours per week. Nicole is a covered employee because she performs work in Seattle.

**Example #2:** Sanford is a sales rep located in Spokane, WA. From time to time, his work takes him to Seattle for meetings and conferences on an ad hoc basis. Sanford is an “occasional basis employee” – he must work more than 240 hours in Seattle within a benefit year to be eligible for PSST. At that point, the hours he previously worked in Seattle will count toward his accrual of PSST for that employer and he will be covered for accrual and use of PSST with that employer going forward.

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

Only City of Seattle employees are covered by the ordinance. Federal, state and other local government employees are not covered.

**Example #1:** Kim works for the Seattle Department of Transportation. She is covered by the ordinance because she is a City of Seattle employee.

**Example #2:** 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 #3:** 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 by the PSST ordinance. Work study means a job placement program that provides students in secondary or post-secondary educational institutions with employment opportunities for financial aid and/or vocational training.

**Example #1:** Theresa is a student in a culinary program and is working at a restaurant for school credit. Theresa is not covered by the PSST ordinance because she is a work study participant.

**Example #2:** Damien is a high school student who found a part-time job at a children’s summer day camp. He is writing a paper about his experiences, but Damien is not a work study participant and therefore his part-time work is covered by the PSST ordinance.

For more information about the classification of state and federal work study participants, visit the [Washington State Work Study Program](#) and [US Department of Education Web site](#) web sites.

**4. What about interns?**

Paid interns are covered by the PSST ordinance (unless they are work study participants); unpaid interns are not covered.

**5. Are volunteers covered by the PSST ordinance?**

No, only employees are covered. In some circumstances, however, volunteers might be considered employees. For example, volunteer firefighters who receive compensation for their work. OLS will use Fair Labor Standards Act (FLSA) criteria to determine this issue on a case-by-case basis. [For more information click here.](#)

**6. Does PSST coverage include independent contractors?**

No. The PSST ordinance only applies to employees. 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 (FLSA) and the Washington State Minimum Wage Act (MWA). 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?

[For more information on the “Economic Realities” test, see the United States Department of Labor Administrator’s Opinion 2015-1.](#)

**7. Who can I contact to clarify whether someone is an employee, a contractor or an employer?**

The Small Business Liaison at Washington State Department of Labor and Industries is a resource for answers to questions about small businesses. Call 800-987-0145 or visit [www.SmallBusiness.Lni.wa.gov](http://www.SmallBusiness.Lni.wa.gov).

**8. What about owners, partners, shareholders or board members? Are they counted as 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:

- Whether and, if so, to what extent the organization supervises the individual's work

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- Whether the individual reports to someone higher in the organization
- Whether and, if so, to what extent the individual is able to influence the organization
- Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts
- Whether the individual shares in the profits, losses, and liabilities of the organization

**Example #1:** Janelle works for an accounting firm and holds the title of partner. The firm pays her a salary and she is supervised by an individual at a higher level. Janelle receives a share of the firm’s profits in addition to her salary, but she does not have any input into decisions made by the firm, which are made by higher-level partners. While Janelle has the title of partner, she should be counted as an employee for PSST purposes.

**Example #2:** Chris is an officer with a small corporation. He is the head of one of the corporation’s divisions and has no supervisor, although his actions are reviewed by the Board of Directors. He does not draw a salary, but receives a share of the corporation’s profits. Chris has the right to vote on decisions taken by the corporation, although his vote does not count as much as those of other individuals. Chris is considered to be an employer for PSST purposes.

**9. Are undocumented employees entitled to PSST?**

All employees who perform work in Seattle are covered, including employees who are not legally authorized to work in the United States. Per City of Seattle policy, OLS does not ask people about their immigration status, and we investigate complaints without regard to an individual’s immigration status.

**10. Does the PSST ordinance cover household employees like nannies, cooks, maintenance workers, gardeners, etc.?**

Yes, if more than four full time equivalent employees are employed in the household. In this situation, the employer would be considered a Tier One employer.

**11. Will tracking an exempt employee’s hours jeopardize the employee’s exempt status under the FLSA and state minimum wage?**

Federal and state minimum wage laws permit employers to track the hours of exempt employees. Tracking hours does not conflict with federal and state minimum wage laws as long as the employer guarantees the employee’s annual salary, regardless of tracked hours. Click [here \(U.S Department of Labor\)](#) for more information.

**12. Are family members who work for a parent, spouse or child covered by the PSST ordinance?**

Yes, if the family member is an employee, as opposed to someone just “helping out.” Employees are covered by the ordinance.

**13. Does the PSST ordinance cover employees based outside of Seattle who work in Seattle on an occasional basis?**

Yes, the PSST ordinance applies to “occasional basis employees” – employees who are based outside the City of Seattle, but who work inside the city limits on an ad hoc, irregular basis. Employers must track all hours worked in Seattle by occasional basis employees.

Once an occasional basis employee has worked more than 240 hours in Seattle in a benefit year, all previously worked hours in Seattle for that benefit year count toward accrual of PSST; and the employee remains covered by the PSST ordinance for the duration of employment with that employer.

Only the hours worked in Seattle count toward accrual of PSST, and an employee who wants to use accrued PSST hours can do so only if the employee is working in Seattle during that time.

**Example #1:** Jamal works for a company based in New York. He lives in New York, but occasionally travels to Seattle to lead training seminars. The hours that Jamal works in Seattle count toward accrual of PSST. Jamal’s employer must provide PSST to Jamal if he works more than 240 hours in Seattle within a benefit year. The hours that Jamal works in New York do not count toward the minimum number of hours to qualify for PSST in Seattle.

**Example #2:** Ricardo works as a security guard. His company is based in Seattle, but Ricardo receives assignments to different locations throughout the region – Seattle, Everett, Shoreline, etc. Although his employer is based in Seattle, Ricardo is covered only for the hours that he works in Seattle – his Everett or Shoreline hours do not count for accrual or use of PSST.

**Example #3:** All-Star Uniforms is based in Tukwila. The company sends sales representatives to Seattle to market merchandise to local businesses and deliver uniforms. While the sales representatives are performing work in Seattle, their Seattle hours count toward initial coverage or toward on-going PSST accrual if have already met the 240 hour threshold. If the sales representatives qualify for PSST, All-Star Uniforms is only required to permit use of the paid leave for work scheduled in Seattle.

**14. An employee works as an electrician for a company based in Issaquah. Normally the employee works outside Seattle, but the employee has just been scheduled to work for the next two months at a site in Seattle. Does the employee have to work 240 hours before he is covered by the PSST ordinance and begins to accrue PSST?**

If the employee is on a regular schedule to work in Seattle, then the employee is not an occasional basis employee. The employee will accrue PSST from the start of this period of work in Seattle, and is eligible to use it immediately, provided that 180 calendar days have passed since the employee’s hire date with his employer.

**Example #1:** Carla works for an employer that operates stores in Renton and Seattle. Carla primarily works for the Renton store, but she also works some regularly scheduled shifts in Seattle. Because these shifts are regularly scheduled, Carla is considered a part-time employee in Seattle, and the hours that she works in the Seattle store immediately count

toward her accrual of PSST. Carla's employer is only required to permit Carla's use of PSST for the work scheduled in Seattle, not Issaquah.

**15. (UPDATE) An employee who is based in Everett and works once or twice a month in Seattle has reached the employee's 240-hour threshold in a benefit year. What happens next?**

The next time the employee works in Seattle, the employee has officially worked "more than 240 hours in a benefit year" and is covered by the PSST ordinance. All previously worked hours in Seattle for that benefit year count toward accrual of PSST; and the employee remains covered by the PSST ordinance for the duration of employment with that particular employer.

**Example #1:** Clara started work for a Tier One employer in 2013 and works in Seattle on an occasional basis. On May 1, 2016, she works her 241st hour in Seattle and is covered by the PSST ordinance. She immediately accrues 6.025 PSST hours that she can use for work scheduled in Seattle. She can continue to accrue and use PSST hours for her work in Seattle for the duration of her employment with that employer.

**16. An employee is based in Renton and works from time to time in Seattle. How do employees know if they are "occasional basis" employee, or just employees who work part-time in Seattle? When does the 240-hour threshold come into play?**

If an employee is based outside of Seattle and works in the city on a regularly scheduled basis (e.g. one shift every two weeks), then the employee is a "regular basis" Seattle employee, and is immediately covered by the PSST ordinance. In this type of situation, the employee does **not** need to satisfy the 240-hour requirement.

If an employee is based outside Seattle and works in the city on an irregular basis (for example, a sales rep who works in Seattle once or twice a month, but not on a regular schedule), then the employee is an "occasional-basis" Seattle employee, and is not covered by the PSST ordinance until meeting the 240-hour threshold.

**17. An employer runs a trucking company based outside Seattle. The drivers make deliveries all over King County, including Seattle. Is there a way for the employer to estimate the time for trips in Seattle, so she doesn't have to track her drivers' trips by the minute?**

Yes. An employer may develop written policies that specify standard time estimates for trips in Seattle and use them to tally your drivers' hours in Seattle. An employer may add time to standard estimates to accommodate unforeseen circumstances (e.g. flat tire, traffic accident) or cushion the trip estimates with extra time to account for such circumstances.

**18. How should employers track the hours of occasional basis employees?**

Employers are responsible for tracking the hours of employees who work occasionally in Seattle, as well as for notifying them of hours worked toward the 240-hour threshold. Employers are free to implement their own internal system to track these hours. A few suggestions:

- Employers may delegate the recording task to employees, and set up a system for employees to report that information to the employer.

- Employers can establish a set “schedule” of times for certain tasks (such as making a delivery, handling sales calls etc.) that are common to their lines of business.

**19. Who is responsible for tracking the hours of an occasional basis employee: the employer or the employee?**

Employers may require their employees to track their own hours – especially if the employee’s work involves frequent passages in and outside Seattle city limits. Employers ultimately are responsible for providing employees with information about the PSST ordinance and ensuring that employees know how track their hours and have the means to do it.

**20. Does the 180-day waiting period apply to accrual, use or both?**

The 180-day waiting period applies to **use** of accrued PSST hours, not to accrual. Here’s how the 180-day waiting period works:

- After September 1, 2012, **all** covered employees begin to accrue PSST from their first day of work.
- Employers may impose a 180-day waiting period before new employees can begin to use their accrued PSST. The 180-day waiting period is not mandatory. Employers are free to eliminate a waiting period or impose a period that is less than 180-days.
- This waiting period is retroactive; employers should count calendar days after date of hire **prior to** September 1, 2012.

**Example #1:** Janelle began working on February 15, 2012. She has already worked for 180 days, and therefore can use her accrued PSST immediately.

**Example #2:** Simeon began working on October 1, 2012. He began to accrue PSST on his first day, but his employer can impose up to a 180-day waiting period before he can use his accrued hours – on or around April 1, 2013.

**21. How is the “180 day provision” different from the “240-hour provision” for occasional basis employees?**

The 180-day provision applies to **all** employees who are eligible to accrue PSST. Employees begin to accrue PSST from their date of hire, but 180 days must transpire from date of hire for the employee to have a right to use accrued PSST.

The 240-hours provision **only** applies to employees who are based outside of the city and work in Seattle on an occasional basis – i.e. people who work primarily outside Seattle, but who perform work inside the city limits on an ad-hoc, irregular basis. Occasional basis employees must work a total of 240 hours within Seattle in a benefit year before they are covered by the PSST ordinance.

**Example #1:** Jim is a driver for a delivery company based in Edmonds. His routes are mostly outside Seattle, but occasionally he makes deliveries within Seattle city limits. The hours that Jim works in Seattle count toward his 240-hour threshold as an occasional basis employee. Once he reaches that threshold in a benefit year, he is covered by the PSST ordinance for all future hours worked in Seattle and he immediately accrues PSST for the previous hours worked in Seattle for that benefit year.



**Example #2:** Maria just started working for Qwikwich, a sandwich shop at 143<sup>rd</sup> and Aurora. Because her workplace is inside Seattle’s city limits, she is eligible to begin accruing PSST starting on her first day of work. But her employer can require Maria to wait up to 180 days before allowing her to use any of her accrued PSST.

## C. Employers

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### 1. Which employers are covered by the PSST ordinance?

All employers with employees performing work in Seattle are covered by some aspects of the ordinance (such as the anti-retaliation provision of the law). However, only employers **with more than 4 “full-time equivalent employees” (FTEs) worldwide**, are required to provide PSST to their employees. An employer’s specific obligations depend on the number of FTE employees:

- **Tier One** – Employers with an average of more than 4 and up to 49 FTEs per calendar week during the previous calendar year.
- **Tier Two** – Employers with an average of 50 to 249 FTEs per calendar week during the previous calendar year.
- **Tier Three** – Employers with an average of 250 or more FTEs 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.

### 2. 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.

### 3. (UPDATE) How is an employer’s tier size calculated?

To calculate an employer’s tier size, count the average number of FTEs who worked for compensation per calendar week during the previous calendar year for any and all weeks during which at least one employee worked for compensation. All employees worldwide are counted for FTE determination, including:

- Full-time employees.
- Part-time employees.
- Temporary employees.
- Seasonal employees
- Employees in a joint employer relationship (e.g. employees who are made available by a temporary service staffing agency).
- Employees who work outside of Seattle.

### 4. (UPDATE) How do new employers determine the number of FTEs?

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Employers with no employees during the previous calendar year determine their tier size by calculating the average number of FTEs worldwide who worked for compensation per calendar week during the first 90 days of the current year of business.

**5. If an employer has employees working in Seattle and outside the city, does the employer need to count all employees to determine tier size?**

Yes. To determine tier size, employers must count the compensated hours of **all** employees who perform work in Seattle and outside the city (including worldwide).

**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 – even though only employees who work in Seattle are eligible to accrue PSST.

**6. An entrepreneur owns a hair salon, a barber shop, and a café as separate businesses. To determine tier size, should the employer consider each of these businesses as completely separate from one another, or do they count as one business?**

Separate entities that form an integrated enterprise are considered to be a single employer under the ordinance – for example, a single entrepreneur with multiple businesses or a corporation with subsidiaries in Seattle.

To help decide this question, employers should assess 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:

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

**7. Does the owner of a local independent franchise need to include all the employees of other franchises across the country to determine tier size?**

It depends on the relationship between the local franchisee and the franchisor and whether the entities are an integrated enterprise or joint employers of the local employees.

**8. Does this new law mean that employers need to provide health insurance for their employees in Seattle?**

No. The ordinance does not require employers to provide health insurance for their employees. The ordinance requires employers to provide their employees with PSST. Click [here \(IRS.gov\)](#) for information about employer health insurance responsibilities under the Affordable Care Act.

**9. If an employer does not provide other benefits to employees, does the employer still have to comply with the ordinance?**

Yes. Employees are covered by the ordinance even if an employer does not provide other benefits to employees.

**10. Can employers offer more generous PSST policies than required by the Ordinance?**

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Yes. The ordinance sets the minimum requirements for PSST; it does not prevent employers from establishing more generous policies.

**11. A temporary staffing agency supplies employees to a federal government facility in Seattle. Are temp employees who are assigned to a federal agency covered by Seattle's PSST ordinance?**

Yes. The staffing agency is still responsible for providing the PSST, even if the federal employer is not covered by the ordinance.

**12. (UPDATE) How is a temporary worker obtained through a staffing agency counted for tier 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 tier size. The temporary worker is counted twice for this purpose.

**13. (UPDATE) 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:

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

Other factors include:

- Whether the work is a specialty job on the production line;
- Whether responsibility between a labor contractor and an employer passes from one labor contractor to another without material changes;
- Whether the premises and equipment of the employer are used for the work;
- Whether the employees have a business organization that shifts as a unit from one work site to another;
- 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);
- Whether the employee has an opportunity for profit or loss depending upon the employee's managerial skill;
- Whether there is permanence in the working relationship; and

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- 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 [webpage on Joint Employment](#) and [Administrator's Interpretation No. 2016-1](#).

**14. (UPDATE) How do joint employers determine tier 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.

**15. (UPDATE) Are both joint employers responsible for complying with the ordinance (e.g. workplace poster, provision of PSST, record-keeping)?**

Yes.

**16. In 2011, a small business had enough employees to qualify as Tier One for 2012. In 2012, the business cut back and now it has just four FTEs – not enough to qualify as a Tier 1 employer. Does the employer have to carry over the employees' unused PSST hours into 2013? Do the employees have the right to use those hours in 2013?**

The employer does **not** have to allow its employees to use those PSST hours in a year when the number of FTEs is four or fewer. But it **does** need to carry over those hours and maintain them on the books, in case the business qualifies as a Tier One employer in the future. If that happens, the employer will need to reinstate those hours for the employees.

**D. Accruing paid sick and safe time (PSST)**

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**1. When do employees begin to accrue PSST?**

As of September 1, 2012, employees who work in Seattle begin to accrue PSST from the start-date of employment. Accrual does not apply to hours worked before September 1, 2012.

**2. How much PSST do employees accrue?**

Employees accrue PSST based on their employer's tier size:

- **Tier One and Two:** Employees accrue at least one hour of PSST for every 40 hours worked.
- **Tier Three:** Employees accrue at least one hour of PSST for every 30 hours worked.

**3. (UPDATE) Can employers use a "benefit year" for accrual, use and carry over of PSST?**

Yes, employers can use any fixed, consecutive 12-month period of time for accrual, use and carry-over of PSST hours. A benefit year can be a calendar year (i.e. January 1 through December 31), a tax year, fiscal year, contract year, or the year running from an employee's one-year anniversary date of hire.

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

Employees accrue PSST in one amount and can use it for either sick or safe purposes.

**5. One of my employees just quit. What do I do with the employee's unused PSST?**

Seattle Office of Labor Standards (last updated 07/26/16)

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Hang on to those records: if your employee returns to work with you within seven months, the employee is entitled to pick up where the employee left off. If the employee was eligible to use PSST hours prior to separation, the employee will have access to those leftover PSST hours from the previous period of employment. That previous employment also would count toward the employee's eligibility to use PSST.

**6. What about seasonal employees?**

If an employee is laid off and rehired by the same employer within seven months of separation, then the employee is entitled to pick up where the employee left off.

***Example #1:*** During his summers off from school, Aziz works in a restaurant from May through September. Aziz will retain his previously accrued hours of PSST (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 seven months.

***Example #2:*** Caprice works full-time and accrues 20 hours of PSST. She 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, all of her previously accrued PSST hours are reinstated and she will accrue more hours as she continues to work.

**7. What about employees who are exempt from overtime under state minimum wage laws and/or the Fair Labor Standards Act (FLSA)?**

Exempt employees do not accrue PSST for hours worked beyond a 40-hour work week. If an exempt employee's normal work week is less than 40 hours, PSST accrues based on the employee's normal work week. If an exempt employee's normal work week is 40 hours or more, PSST still accrues based on a 40-hour work week.

**8. Does universal paid time off (PTO) satisfy the requirements of the ordinance?**

Yes, as long as the PTO system meets or exceeds the requirements of the ordinance. In addition, Tier Three employers must permit employees to use up to 108 hours of paid time off within a calendar year and/or carry over up to 108 hours of unused paid time off to the next calendar year.

**9. Can I set up separate PSST policies for our non-exempt and our exempt employees? Or do we have to have one policy for all employees, no matter what their status?**

Yes, you can set up different PSST policies based on factors such as exempt/non-exempt, length of tenure, etc. – just as long as **all** policies meet minimum PSST requirements.

**10. My drivers sometimes make deliveries inside Seattle; other times they pass through the city without stopping for more than gas or a tire change. Which scenarios require PSST accrual?**

Employees who stop in Seattle as a purpose of their work (e.g. to make a pickup or delivery) are covered by the ordinance, and those hours need to be counted and tracked. If an employee passes through Seattle without stopping, or if the driver makes only incidental stops (e.g. for gas, a tire change, etc.) then the driver is not considered to be working in Seattle. Those hours do not need to be counted.

**11. A bookkeeper is responsible for compliance with the ordinance. Does the bookkeeper calculate PSST as a stand-alone accrual every pay period, or does PSST continue to build based on hours worked?**

PSST accrual continues to build from one pay period to the next. One way to manage accrual is to assign a fractional value of accrued PSST for every hour worked (i.e. Tier 1 and Tier 2 employees will accrue .025 for each hour worked; Tier 3 employees will accrue .033 for each hour worked).

**12. An employer frontloads employees' paid leave at the beginning of the benefit year. Is that allowed under the ordinance?**

Yes. Frontloading is allowed, so long as you frontload at least the minimum number of hours that you are required to let your employees use during the benefit year. When you frontload your employees' PSST hours at the beginning of the benefit year, you eliminate the need to track accrual and carry over hours from one pay period to the next.

**13. If employers frontload the full amount of PSST at the beginning of the benefit year, do they still need to allow carryover?**

No. Employers who frontload PSST at the start of benefit year do not have to allow carryover of unused hours because employees already have the mandated number of hours for use during the benefit year, so long as the practice will continue the following benefit year.

**14. An employer uses QuickBooks to do payroll. She is a Tier One employer and wants to comply with the ordinance, but QuickBooks won't let her! It distributes 40 hours of PSST in equal amounts in each paycheck over the course of a year – which does not always match her employees' actual hours worked. What can she do?**

Sorry, we are not QuickBooks experts. But you do have another option: frontload the balance of hours at the beginning of the benefit year (for example, a Tier One employer could frontload all 40 hours).

**15. How can employees learn about available hours of PSST?**

Employers must provide employees with the amount of their available PSST during every pay period. Employers may choose a reasonable system for providing this information, such as stating available PSST on each pay stub, an on-line system, e-mail, memo, etc.

**16. Can employers require employees to ask Human Resources, the bookkeeper or a manager for a PSST balance?**

Sorry, afraid not. Employers must provide employees with a written record of available PSST during every pay period.

**17. An employer informed employees that they will lose their paid holidays to help the business pay for PSST. Is that allowed?**

Yes. Employers are not required to provide paid holidays or vacation time. Holidays and vacation are optional benefits. PSST is the only paid leave that employers must provide to their Seattle employees.

**18. (UPDATE) Do new small and medium employers have a two-year exemption from PSST requirements?**

Yes. New Tier One and Tier Two employers are not covered by PSST ordinance until 24 months after the hire date of the first employee. This means that new employers are not required to permit accrual or use of PSST until 24 months after the hire date of the first employee.

**Example #1:** Enrique started working for a new Tier One employer on February 18, 2012. The employer hired its first employee on January 10, 2012. Enrique will begin to accrue PSST on January 10, 2014 (24 months after the employer's hire date of its first employee) and can use it immediately.

**19. (UPATE) Does a successor employer need to retain PSST hours of existing employees?**

Yes. When a business is acquired by a successor employer, existing employees retain all previously accrued PSST hours and they are available for use. Successor employers must immediately comply PSST requirements and are not considered "new employers" under the ordinance. The Tier One and Tier Two "new employer" two-year exemption does not apply to successor employers.

**E. Using paid sick and safe time (PSST)**

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**1. When can employees start using PSST?**

Employers can impose a waiting period of up to 180 days after an employee's hire date. An employer may also choose to impose a shorter waiting period or not impose a waiting period at all.

**2. How much PSST can an employee use in a benefit year?**

Use of PSST depends on the employer's tier size:

**Tier One** – Employees can use up to 40 hours of unused PSST hours per benefit year.

**Tier Two** – Employees can use up to 56 hours of unused PSST hours per benefit year.

**Tier Three** – Employees can use up to 72 hours of unused PSST hours per benefit year.

(Note: employees of Tier 3 employers who offer a Paid Time Off (PTO) plan can use up to 108 hours of unused PSST hours per benefit year.)

**3. What happens to unused PSST at the end of the benefit year?**

Employers must permit employees to carry over unused PSST to the next benefit year. However, the number of hours depends on the employer's tier size:

**Tier One** – Employees can carry over up to 40 hours of unused PSST hours.

**Tier Two** – Employees can carry over up to 56 hours of unused PSST hours.

**Tier Three** – Employees can carry over up to 72 hours of unused PSST hours.

(Note: employees of Tier Three employers who offer a Paid Time Off (PTO) plan can carry over up to 108 hours of unused PSST hours per benefit year.)

**4. (UPDATE) What time increments are hourly employees allowed to use PSST?**

For hourly employees, employers must permit use of PSST in the smaller of hourly increments or, if feasible by the employer's payroll system, 15 minute increments. For the latter, employers must round up or down to the nearest 15 minute increment (much like employers do with time clocks for employee hours worked) if necessary to prevent an absence control policy from counting the PSST as an absence that could lead to an adverse action.

**5. (UPDATE) What time increments can overtime exempt employees use PSST?**

For overtime exempt employees, employers can establish a policy regarding deductions of PSST that is in accordance with state and federal laws for overtime exempt employees.

**6. Can employers count other forms of paid leave (e.g. vacation) toward minimum requirements for PSST?**

Yes. The employer must track an employee's use of vacation leave for the purposes of PSST. The employer also must comply with all other requirements of the ordinance, such as notice to employees that vacation can be used for the purposes of PSST, notification of available vacation leave during each pay period, carryover of unused vacation leave to the following calendar year, etc.

**7. Why is there a discrepancy between an employee's accrual of PSST and use of PSST in a benefit year? The numbers don't match up.**

The City of Seattle designed the ordinance with clear caps on use and carryover of PSST hours. But there is no cap on employees' accrual of PSST hours. The only limitation on accrual is the number of available hours for work in a benefit year.

Think of "accrual" and "use" as two separate concepts. Accrual of PSST will vary from one employee to another based on hours worked. Some employees may accrue more PSST than they are permitted to use in a benefit year. Employers may choose to cap **use** of PSST according to the ordinance.

**Example #1:** Marienela works for a Tier One employer. By the end of 2013, she has accrued 50 hours of PSST and has used 40 hours. Her employer must permit carryover of the unused balance of 10 hours to the following benefit year. Marienela can use the carried over PSST as soon as the New Year begins. For example, Marienela's son is sick for two days in February 2014. To care for her son during his illness, Marienela can use the 10 PSST hours from 2013 plus the six PSST hours that she has accrued in 2014. After using these 16 hours, she has the right to use 24 hours of PSST for the remainder of the benefit year.

**8. Can an employer discontinue an employee's PSST accrual once the employee reaches the maximum amount available for use in a benefit year? Or do the hours keep accruing, even though an employee won't be able to use it?**

No. There is no cap on accrual within a benefit year. Employers must allow employees to continue accruing PSST hours, even if the total is more than annual use requirements. If employees have unused hours left over at the end of the benefit year (e.g. December 31<sup>st</sup> for a benefit year that is based on the calendar year), the employees are allowed to carry



over the hours into the following benefit year, up to the amount mandated by the employer's tier size.

#### **9. What are acceptable reasons for using paid SICK time?**

An employee can use paid sick time 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.

#### **10. What are acceptable reasons for using paid SAFE time?**

An employee can use paid safe time for the following reasons:

- For reasons related to domestic violence, sexual assault or stalking that affect the employee or the employee's family or household member. For example, an employee may take safe time for: medical treatment for physical or mental health injuries caused by domestic violence for self or family member impacted by DV (e.g. psychological counseling); relocation and other safety planning; seeking a restraining order; or participating in a legal proceeding.
- When 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.
- When 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.

**Note:** For paid safe time, "family or household member" includes a child, grandchild, or stepchild, parent, stepparent, parent-in-law, or grandparent, current and former spouses and domestic partners, persons who have a child in common, adult persons related by blood or marriage, adult persons who have resided or are residing together, and persons 16 years of age or older who are or were residing together and who are or were in a dating relationship. See RCW [49.76.020](#) for more information.

Note: For more resources related to Safe time, [Click here](#).

#### **11. Can PSST be used to care for a sick adult child over the age of 18?**

Employees can use PSST hours to care for adult children when the adult child (18 years of age or older) is "incapable of self-care" because of a mental or physical disability. The disability does not need to be a chronic or permanent condition. Traumatic injuries, surgery, illness, and some conditions relating to pregnancy may cause a temporary disability for an individual. A disabling condition is one that prevents an individual from engaging in activities such as bathing, dressing, eating, cooking, shopping or using public transportation without active assistance. A parent of an adult child who is "incapable of self-care" is allowed to use

**Seattle Office of Labor Standards (last updated 07/26/16)**

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earned paid leave to care for the child when the adult child has a health condition that requires treatment or supervision. [Click here for more guidance from Washington State Department of Labor and Industries.](#)

**12. Can parents use PSST for parental leave following the birth of their child?**

A birth parent can use PSST during any period of sickness or disability following childbirth. The other parent can use PSST to care for the birth parent during this period. Parents also can use PSST to care for a child's illness. Parents **cannot** use PSST for "bonding" purposes -- this differs from FMLA, which does permit leave for the purpose of bonding with a newborn or newly adopted child.

For more information, visit [WA labor and industries' link to information about pregnancy and parental leave.](#)

**13. I know that a doctor's appointment falls under the ordinance. Does a dentist or eye doctor appointment also count?**

Yes. Eyes and teeth both fall under the category of "physical health condition."

**14. Under an employer's PTO policy, can employees use all of their accrued time for vacation and not leave any "cushion" for PSST?**

Yes. Under an employer's PTO policy, employees can choose to use their paid time off for any reason permitted under the policy -- vacation, PSST, holidays, personal days, etc. Once an employee uses all available paid time off, the employee does not have a right to additional PSST for that calendar year -- even if the employee becomes sick. However, depending on the illness and situation, other laws may apply to cover the absence (e.g. anti-discrimination laws that require a reasonable accommodation for a disability).

**15. How does an employer compensate hourly employees who use PSST for hours that would have been overtime?**

Employers may compensate employees at their regular rate of pay for use of PSST for overtime hours. Employers are not required to pay overtime rates for use of PSST.

**16. (UPDATE) If an employer pays overtime to employees, can the employer deduct used PSST at the rate of 1.5 hours?**

No. The employer must deduct the used PSST based on the clock-time that the employee was scheduled to work in the smaller of hourly or, if feasible by the payroll system, quarter hour increments. An employer is not permitted to deduct more PSST if an employee used the hours for scheduled overtime .

**17. Are employees allowed to donate their unused PSST to a company-wide, paid leave donation plan?**

Yes.

**18. An employee got sick in the middle of a scheduled vacation. Can the employee use PSST hours for the period of sickness?**

No. The PSST ordinance does not entitle the employee to use PSST in this situation because the employee was not scheduled to work during the vacation.

**19. When can on-call employees use their accrued PSST?**

If an on-call employee is paid for a scheduled shift regardless of whether the employee actually works the shift, the employer must permit use of PSST. If an on-call employee is paid for a scheduled shift only if the employee actually works the shift, the employer may permit use of PSST, but is not required to permit use.

**20. How does an employer compensate an employee who uses PSST for a shift of indeterminate length?**

An employer may determine payment 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.

**21. Can an employee trade shifts or work additional hours instead of using PSST?**

Yes. With mutual employer and employee consent, employees may work additional hours or shifts during the same or next pay period instead of using PSST.

**22. What pay does an employee earn during use of PSST?**

Employers must pay employees for PSST at the same hourly rate and with the same benefits, (including health care benefits) as during regular work hours.

**23. Are employees entitled to tips or commission that would have been earned?**

Employees are not entitled to lost tips or commissions during use of PSST. However, employers must ensure that the employee's rate of pay follows Seattle minimum wage requirements. Find more information on our [Minimum Wage Website](#).

**24. Are cash-outs permitted under the ordinance?**

Yes. With the mutual consent of the employer and employee, unused PSST may be cashed out.

**25. Is cash-out required when employees leave their job?**

No. Employers are not required to cash out unused PSST upon an employee's termination, resignation, retirement or other separation from employment. Cash-out is a discretionary option for employers.

**26. Can employees use PSST to assist a roommate who is being stalked?**

Yes, adults and people 16 and older who are roommates count as household members under the ordinance.

## **F. Requesting use of paid sick and safe time (PSST)**

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### **1. (UPDATE) How does an employee request use of PSST?**

The method for requesting PSST depends on an employer's policies. Employees are required to comply with an employer's notice policy for absences and/or leave requests, provided that those policies do not interfere with the purpose of PSST. As part of the new written PSST policy requirement (effective April 1, 2016), employers are required to provide employees with a written description of how they must give notice for PSST absences.

- 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.

### **2. Must employees specifically ask to use PSST?**

Employees are not required to specifically ask for "paid sick and safe time" or reference the ordinance when requesting PSST. Instead, employees simply must state their need for an absence for a reason covered by the ordinance. It can be as simple as "I am sick and need to miss my shift today." Employers are not permitted to ask about the nature of the illness. Employers must recognize the covered reasons, and can then deduct PSST from the employee's leave bank. If an employee calls in sick, the employer can assume the employee intends to use accrued PSST, unless the employee asks the employer to consider another arrangement.

The bottom line? Employees have a right to use PSST, and employers must have enough information to make it happen. Employers also can ask employees if they want to swap shifts to make up hours instead. Swapped shifts must be mutually agreed upon by the employee and the employer.

### **3. Can employers ask for details of the reason why an employee is requesting PSST?**

No. Employees are not required to disclose details of their situation that would violate the confidentiality provision of the ordinance. Employers may request documentation to support the reason for the absence after the employee has used PSST for more than three consecutive work days, or if there is a clear instance or pattern of abuse.

4. **An employee schedules a doctor’s appointment a week ahead of time, but forgets to let the employer know about it until a day in advance. The employer’s policy requires seven days of notice for foreseeable absences. Can the employer deny use of PSST because the absence was foreseeable and the employee did not provide adequate notice?**

Yes. An employer can require employees to comply with notice policies and procedures if the absence is foreseeable and if notice does not interfere with PSST use. If an employee does not comply with notice policies and there is no evidence of mitigating factors or retaliation by the employer, an employer can deny use of PSST.

5. **Does a PTO policy change notice requirements for foreseeable and unforeseeable PSST?**

No. Employers with PTO policies can require employees to comply with their notice policies for using PSST if the absence is foreseeable and if giving notice doesn’t interfere with the purpose of the absence.

**G. Employee documentation for using paid sick and safe time (PSST)**

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1. **Does an employee have to provide documentation for use of PSST?**

An employee does not need to provide documentation for use of paid sick or safe time unless the employee is absent for more than three consecutive work days. For sick time, for use beyond three consecutive work days, an employer may require documentation from the employee demonstrating the sick time is covered (including but not limited to documentation signed by a health care provider that sick time is necessary). For safe time, for use beyond three consecutive work days, the following documentation applies:

- 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.

2. **Who pays for documenting use of PSST after more than three consecutive work days?**

If the employer does not offer health insurance to the employee, then the employer and the employee 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.

**3. If an employer observes an employee during a shift and believes that the employee has a contagious illness, can the employer ask questions about the illness?**

In this situation, the ordinance does not permit an employer to ask for information about the illness or require use of PSST. However, other laws (e.g. American with Disabilities Act, Washington Law Against Discrimination) may apply and take precedence over the ordinance. In such cases, the employer may be able to ask questions about the illness and/or request medical documentation before the employee has used PSST for more than three consecutive days.

**4. An employer provides employees with a defined contribution towards the purchase of individual health coverage (i.e. a Health Reimbursement Arrangement or HRA). Does this qualify as “offering health insurance” such that the employer does not need to cover half the cost of documenting a PSST absence of longer than three days?**

OLS will decide whether this employer qualified as “offering health insurance” on a case-by-case basis during an investigation of a PSST complaint. As a general rule, if an employer does not provide direct health care coverage, the employer would need to cover a substantial amount of the employee’s health care costs through the HRA in order to qualify as “offering health care coverage” to an employee.

**5. How does PSST overlap with Worker's Compensation? My understanding is that Worker's Compensation starts three days after the date of injury and then pays 60% of normal wage. Can PSST fill in the gap from those three days and be used somehow during the rest of the time loss?**

As with other laws that permit leave of absence for medical reasons (e.g. FMLA, ADA etc.), there is potential for PSST and Workers Compensation to overlap. It is up to the employer to determine how that happens – as long as the employer permits the employee to use PSST according to basic requirements.

In this situation, it seems reasonable for an employee to use PSST for the first three days of incapacitation and then a combination of PSST and Workers Compensation for the other absences. OLS does not enforce Workers Compensation; for more information visit [Washington State Labor and Industries](http://Washington State Labor and Industries).

**6. An employee has intermittent, approved FMLA for a personal medical condition. Can the employer ask for medical documentation to support that employee’s use of PSST?**

Yes, the employer can ask if the use of PSST was for a reason related to the approved FMLA.

- If the employee says, “Yes,” then the absence is covered by PSST **and** FMLA. The employer may ask for medical documentation as permitted by FMLA.
- If the employee says, “Yes,” but provides medical documentation that fails to support the approved FMLA condition, then the employer must decide if the absence meets the criteria for PSST.
- If the employee says, “No,” then the absence is just covered by PSST. The employer may ask the employee for medical documentation only if they suspect the employee is abusing the use of PSST or if the employee is absent for more than three consecutive

work days. If the medical documentation shows that the absence was used for sick time, then the absence is covered by PSST.

- If the medical documentation does not show that the absence was used for sick time, then the employer may take reasonable disciplinary action toward the employee.

**7. An employee needs to schedule a weeklong PSST absence for surgery. The employer requests a doctor's note in advance of the procedure. Is that permissible?**

Yes. The employee's planned absence will last longer than three consecutive work days, so the employer can request advance documentation. If the employer does not provide health insurance, then the employer will be responsible for covering 50% of the cost of documenting the absence. That's 50% of the cost of documentation, by the way – not half the cost of the surgery itself.

**H. (UPDATE) Employer notice and posting requirements**

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**1. (UPDATE) What are the notice and posting requirements of the PSST ordinance?**

As of April 1, 2016, employers must display a [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.

**2. (UPDATE) 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 a physical or electronic format that is reasonably conspicuous and accessible.

**3. (UPDATE) 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. (UPDATE) 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. Employers may also pick up the poster at our office or at one of the City of Seattle's Customer Service Centers.

**5. (UPDATE) What are the new requirements for providing employees with a written PSST policy?**

Effective April 1, 2016, employers must provide employees working in Seattle with a written policy that describes how the employer is meeting the requirements of the PSST ordinance. Examples of policy provisions include the employer's choice of benefit year; tier size; rate of accrual, use and carry-over of paid sick and paid safe time hours; manner of providing employees with an updated amount of available paid sick and safe time hours each time

wages are paid; and notification requirements for absences and requesting leave. Use our [sample PSST policy](#) to make sure that your PSST policy is on track to meet ordinance requirements and help employees access this critical benefit.

## I. Employer records of paid sick/safe time (PSST)

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### 1. (UPDATE) What are employer record-keeping requirements for PSST?

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

- Hours worked by employees.
- Accrued PSST.
- PSST used by employees.

Employers must retain these records for **three years**.

### 2. If an employer offers unlimited leave to employees, does the employer still need to comply with PSST record-keeping and employee notification requirements?

Yes, employers are required to comply with PSST records and employee notification requirements regardless of their method for providing PSST (e.g. accrual, frontloading, unlimited PTO). These requirements are important to safeguard the employer (because records show compliance with the ordinance in the event of an enforcement action) *and* employees (because employees have more legal protections if they use paid leave that is covered by the ordinance).

Regardless of the type of paid leave policy, all employers must do the following:

1. Maintain records of hours worked in Seattle and PSST used for three years;
2. Describe the paid leave policy in a written document (see the on-line [written PSST policy checklist](#)); and
3. Provide notification of available balance of PSST every time that wages are paid.

For an unlimited paid leave policy, there are a number of options for showing an employee's use of PSST hours:

- At the beginning of the benefit year, frontload paid leave (up to 40, 56, 108 hours depending on your tier size). Track use of this paid leave in your records and show available balances during every pay period (e.g. pay stub). Although employees will be allowed to use *unlimited* paid leave per year, your business can use this method

**Seattle Office of Labor Standards (last updated 07/26/16)**

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to show compliance with PSST. In the event that an employee believed that a violation of PSST had occurred, your business could use this tracking & notification method to determine whether the leave was protected by the ordinance; **or**

- Provide notification every time that wages are paid (e.g. paystub) that employees have unlimited paid leave that can be used for personal and PSST reasons. Show a running balance of how much leave has been used year-to-date (up to 40, 56, or 108 hours depending on your tier size); **or**
- Provide notification every time that wages are paid (e.g. paystub) that employees have unlimited paid leave that can be used for personal and PSST reasons. Include an additional note on the paystub, or in your written paid leave policy, that employees can inform their manager whether they would like to designate their hours of paid leave (up to 40, 56, 108 hours depending on your tier size) as protected leave under the PSST ordinance. If employees do not designate their leave as PSST, then your records would show that they had not used it.

## **J. Retaliation**

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### **1. (UPDATE) Does the ordinance prohibit retaliation?**

Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against employees who assert their rights to PSST in good faith. These rights include (but are not limited to):

- Using PSST.
- Informing an employer, union or legal counsel about alleged PSST violations.
- Filing a complaint about alleged PSST violations.
- Participating in an investigation of alleged PSST violations.
- Informing other employees of their PSST rights.

Violations of the PSST retaliation provision now come with [monetary penalties and other forms of relief](#).

### **2. Can employers discipline employees who abuse PSST?**

Yes. Employers can take reasonable actions when there is suspicion that an employee has not used PSST in good faith, such as a clear instance or pattern of abuse (e.g. using PSST for a ski day, repeatedly using PSST on Fridays and Mondays, etc.). Employers should request documentation for PSST if there is perceived abuse, even if the absence is for less than three consecutive work days. In such situations, it is wise to document the suspicions of abuse in the event that an employee alleges a violation of the ordinance.

### **3. An employer has an absence control policy that issues an “occurrence point” for each absence without 7 days advance notice. The employer states that employees will continue to accrue points for absences that are “above and beyond” the ordinance – for example, when an employee calls in sick for an eight-hour shift, but only has four PSST hours. Is that allowed?**

Seattle Office of Labor Standards (last updated 07/26/16)

**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.

Yes. Employers are allowed to have absence-control or discipline policies, but only for absences that are not covered by the ordinance – for example, before an employee is eligible to use PSST, for a mix of PSST with other leave, etc.

#### **K. Waivers of paid sick/safe time (PSST)**

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**1. Can employees waive their rights to protections under the PSST ordinance?**

No, individual employees cannot waive their rights under the ordinance. Employees who are part of a bona fide collective bargaining agreement can waive their rights.

**2. A represented employee’s collective bargaining agreement (CBA) expires in three months. Under the current CBA, employees do not accrue PSST. Can the employer ignore PSST requirements until the CBA is up for negotiation in three months?**

No. The ordinance can only be waived by mutual agreement between the union and the employer. The two parties must enter into a written waiver (in the CBA, or an addendum to the CBA) that explicitly references the ordinance and the period covered; otherwise the employer is required to comply.

**3. Does the CBA have to be re-opened to negotiate a waiver?**

No. A PSST waiver can be in a brief addendum or Memorandum of Understanding (MOU) that is attached to the CBA, as long as the CBA permits such documents.

#### **L. Enforcement of PSST**

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**1. Complaints**

**a. (UPDATE) How does the Office of Labor Standards enforce the PSST Ordinance?**

OLS enforces the PSST ordinance using a variety of methods depending on the severity of the alleged violation. For all methods, our enforcement procedures:

- Provide options for nondisclosure of worker identity to the maximum extent possible under the law.
- Address individual and company-wide allegations of noncompliance.
- Require employers to provide written evidence of compliance.
- Seek to quickly remedy violations, provide a full remedy to workers, impose civil penalties and fines when appropriate and provide employer education.

If evidence shows noncompliance, OLS will seek a settlement agreement that includes a full remedy for all workers (i.e., back wages plus interest), civil penalties and fines when appropriate, an agreement to future compliance, and monitored compliance. In most circumstances, settlement agreements will also constitute a first violation of the ordinance.

If evidence shows noncompliance and OLS is not able to facilitate a settlement agreement, then the office will issue a “Director’s Order” that states the amount due for each violation. If the employer does not comply with the Director’s Order within 30 days, OLS will initiate collection proceedings which can include, among other actions, filing liens, garnishments, revoking a business license and requiring an employer to publically display a “Failure to Comply” notice.

**b. How does a person file a complaint?**

Employees can contact OLS by phone, in-person and on-line:

- 206-684-4500.
- 810 Third Avenue, Suite 750 in downtown Seattle.
- [On-line complaint form.](#)

**c. Will the Office of Labor Standards disclose a complainant’s identity to the employer?**

No, OLS will protect the complainant’s identity to the extent allowed under the law.

**b. How long does a person have to file a complaint?**

OLS can investigate violations that occurred on or after July 20, 2015. From that date forward, a person can file a complaint up to three years after the occurrence of the alleged violation.

**c. (UPDATE) What types of violations will be investigated?**

OLS will investigate any minimum wage violation, including:

- Failure to provide paid sick and safe time
- Failure to provide notification of available PSST hours every time that wages are paid.
- Failure to comply with notice and posting requirements that require providing a written PSST policy and displaying a workplace poster.
- Retaliation.

**d. (UPDATE) Can an employee file a lawsuit against an employer for failing to comply with the Seattle PSST ordinance?**

Yes. Employees (or their representatives) who suffer financial injury as a result of noncompliance, may file an individual or class action, complaint with a court of law, instead of filing a complaint with OLS.

This option went into effect on April 1, 2016 for workers in businesses with 50 or more employees, and will go into effect on April 1, 2017 for workers in businesses

with fewer than 50 employees. A judge may award up to 3x the unpaid wages due plus interest, up to \$5,000 payable to the employee (or other aggrieved party) for retaliation, reinstatement or 3x front pay in lieu of reinstatement for retaliation, and reasonable attorney fees and costs.

## **2. (UPDATE) Investigations**

### **a. What can parties expect in an investigation?**

The Office of Labor Standards is a neutral, fact-finding agency. OLS does not take sides or advocate for one party against another in matters while they are under investigation. All services are free.

OLS gathers evidence by conducting interviews, obtaining witness statements, and reviewing written information. Throughout the investigation, OLS can help the parties reach a settlement agreement for early resolution.

Settlement terms would include things such as back accrual and payout of paid sick and safe time, a paid sick and safe time policy, notice of rights to employees, restitution for retaliation, a commitment not to retaliate in the future, training, compliance monitoring, and any damages and penalties assessed. Most settlement agreements count as a violation of the ordinances involved.

If the parties do not settle, and a violation has been found, OLS will issue a Director's Order. By the time OLS issues an order, the employer has had numerous opportunities to settle the matter. Thus, OLS imposes more conditions and penalties after a violation is found. See also Question 3b below.

### **b. Who can represent a party in an investigation?**

The investigation is designed to be accessible and easy to navigate, so employees and employers involved in an investigation should not feel that they have to be represented. However, parties are free to engage attorneys to represent them. Parties also are free to invite other individuals (e.g. union representative, family member, etc.) to support or advocate for them during the process.

### **c. Can a party be represented by a union?**

Yes. Employees can invite union representatives to support them during the investigation process. Employees must provide written notice of union representation for OLS to share updates with the union representative on the

investigative process.

**d. Will OLS open an investigation based on a third party complaint (e.g. union representative, family member)?**

OLS will open an investigation based on a third party complaint when the complaint has been confirmed by an employee who was directly affected by the alleged violation/s. If no employee will confirm the allegations made by the third party, OLS will not initiate an investigation. However, OLS will keep the information provided by the third party to help inform future directed investigations into PSST violations.

**e. How long does an investigation take?**

The length of an investigation will vary depending on the severity of the allegation and the complexity of the situation. All enforcement actions include evidence gathering and result in a written resolution (e.g. settlement agreement, Director's Order).

For allegations such as failure to comply with workplace poster requirements, OLS strives to complete the matter within 60 days.

For other allegations (e.g. failure to provide paid sick and safe time, retaliation) OLS strives to complete the matter within 180 days, but the investigation may last longer depending on the OLS investigator's workload and the complexity of the issues.

In most cases, OLS requires payment of amounts owed to workers within 30 days of a final settlement agreement or Director's Order.

**f. What information is an employer asked to provide?**

The information requested depends on the specifics of the alleged violation. Types of information may include:

- Demonstrated compliance with the workplace poster requirement;
- Written PSST policy;
- Statement of the average number per calendar week of employees who worked for compensation worldwide during the preceding calendar year;
- List of employees who work in Seattle with their current position, phone number and address;
- Original time cards which show the actual hours worked each day;
- Payroll records (see [SMC 14.20.030](#) and [SHRR 90-110](#) for specific information); and
- Other relevant documents.

**g. What happens if an employer does not respond to a request for information?**

OLS has the authority to issue subpoenas that require employers, witnesses and other parties to provide written and verbal testimony. Depending on the circumstances, OLS also may issue a default finding of violation.

### 3. (UPDATE) Resolutions

#### a. Are settlements available?

Yes. If evidence shows noncompliance, OLS will seek a settlement agreement that provides a full remedy for all workers (i.e., back wages plus interest), an agreement for future compliance, monitored compliance, and any damages or penalties assessed. This type of settlement agreement in most circumstances will also constitute a first violation of the ordinance.

#### b. What written documents are provided at the end of an investigation?

- **No Violation:** The Director issues a “**Determination of No Violation**” with notice of an employee or other aggrieved party’s right to appeal the decision.
- **Violation:** The Director issues a “**Director’s Order**” that states the amounts due for each violation, including, for violations that occur after January 16, 2016, payment of to 3x unpaid wages plus interest, up to \$5,000 to an employee (or other aggrieved party) for retaliation, reinstatement or 3x front pay in lieu of reinstatement for retaliation, civil penalties, and fines. The Director’s Order may permit waiver or reduction of civil penalties and fines due to the Agency if the employer quickly pays of remedy due to employees. The Director’s Order also can require corrective action, such as monitored compliance for a reasonable time period and employer training. The Director’s Order also includes notice of the right to appeal the decision within 15 days.
- **Settlement:** A settlement agreement is a binding contract signed by the OLS Director and employer(s) that lists agreed-upon terms for closing an investigation. OLS encourages settlement agreements as an efficient way to resolve complaints, obtain payment for workers and/or change employer practices to achieve compliance. Depending on the circumstances, a settlement can include all remedies, penalties and fines, that are available for Director’s Orders (e.g. for violations that occur after January 16, 2016, up to 3x wages owed, up to \$500 civil penalty per aggrieved party for first violation, mitigation of civil penalties and fines for quick payment to workers), employer training, a description of the steps necessary to achieve compliance, and a requirement for OLS compliance reviews for a reasonable time period.

### 4. (UPDATE) Appeals

#### a. What appeal rights do parties have if they disagree with the outcome of the investigation?

- **Employers:** An employer can appeal the Director's Order by requesting a contested hearing in writing within 15 days of service. If an employer fails to appeal the Director's order within 15 days of service, the Director's order is final and enforceable. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period runs until 5 p.m. on the next business day. In a contested hearing, the Office of Labor Standards has the burden of proof by a preponderance of the evidence before the Hearing Examiner.

- **Employees:** Employees may appeal a Director’s “Determination of No Violation” subject to administrative rules. While OLS is developing these rules, employees can request reconsideration within 30 days of the determination.

**5. (UPDATE) Employee Remedies**

**a. What happens if OLS finds that an employer is in violation of the ordinance?**

If evidence shows noncompliance, OLS will seek a settlement agreement that provides a full remedy for all workers, civil penalties and fines when appropriate, an agreement for future compliance, monitored compliance for a reasonable time period and employer training. This type of settlement agreement also constitutes a first violation of the ordinance in most circumstances . If the employer does not agree to settlement, then the Director will issue a Director’s Order.

**b. Does the Director have discretion in determining employee remedies and civil penalties and fines?**

Yes. While the OLS Director will *always* secure a full remedy for workers, the Director has discretion to determine additional amounts owed to employees for first violations, payments due to employees for retaliation and amounts due for civil penalties and fines up to a statutory cap. The Director’s discretion is guided by

- Total amount of unpaid wages, damages, penalties, fines, and interest due;
- Nature and persistence of the violations;
- Extent of the employer’s culpability;
- Nature of the violations;
- Size, revenue, and human resources capacity of the employer;
- Circumstances of each situation;
- Amount of penalties in similar situations; and
- Other factors established by administrative rules.

**c. What remedies are available to the employee?**

<b>Violation</b>	<b>Worker Remedy</b>
First Violation	<b>Payment of up to 3x wages owed plus interest.</b> For first violations, the OLS Director has discretion to award up to three times the amount owed plus interest.
Second Violation	<b>Mandatory 3x wages owed plus interest.</b> For subsequent violations within a ten-year time period, the Director will automatically award three times the amount owed plus interest.

Retaliation	<p><b>Payment of up to \$5000, and reinstatement or front pay of up to 3x wages owed plus interest.</b></p> <p>If OLS finds evidence of retaliation (e.g. termination, demotion, assignment of a less desirable shift) after an employee has asserted rights under one of the labor standards ordinances, the employee (or other aggrieved party) is entitled to a payment of up to \$5,000 and reinstatement or up to three times front pay (i.e. pay the employee would have earned if the employee had not been terminated, demoted, assigned a less desirable shift, etc.).</p>
Interest Rate	<p>12% per annum calculated monthly, the maximum rate permitted under RCW 19.52.020. It will start accruing from the date payment of the wages were due.</p>

**d. How are remedies paid to employee?**

Remedies will either be paid directly to employees by employers, or OLS will collect the amount from the employer and distribute it to workers.

**e. What is the City’s collection procedure for unpaid orders?**

If an employer fails to comply with a final settlement agreement, Director’s Order, or hearing examiner order within 30 days, OLS will refer the unpaid order to the City Attorney’s Office for collection proceedings which can include referral to a collections agency, filing liens and garnishing wages. OLS also will contact the City’s department of Finance and Administrative Services (FAS) to initiate revocation of the employer’s business license. FAS has authority to revoke a business license until the order is paid.

**f. Can the City revoke an employer’s business license for unpaid orders?**

Yes. If an employer fails to comply with a final settlement agreement, Director’s Order, or hearing examiner order within 30 days, OLS will contact the City’s department of Finance and Administrative Services (FAS) to initiate revocation of the employer’s business license. FAS has authority to revoke a business license until the order is paid.

**g. Can the City debar City contractors for unpaid orders and repeated violations?**

Yes. If an employer fails to comply with a final settlement agreement, Director’s Order or hearing examiner order within 30 days, the employer is not permitted to bid on any City contract until paying the full amount due. Additionally, if an employer is subject to a final order two times or more within five years, the employer is not allowed to bid on any City contract for two years. These restrictions are separate from debarment provisions for public works projects.



**g. Is there successor liability for minimum wage violations?**

Yes. If an employer sells or transfers a business, any person who becomes a successor to that business becomes liable for the full amount of a final unpaid order if the successor had actual knowledge of the order or had prompt, reasonable, and effective means of accessing the amount of the order.

**6. (UPDATE) Employer Civil Penalties**

**a. “Soft Launch” - Will OLS impose civil penalties and fines for new requirements resulting from the 2015 Wage Theft Prevention and Labor Standards Harmonization Ordinance?**

Until September 30, 2016, OLS will refrain from imposing civil penalties and fines for an employer’s failure to comply with certain requirements resulting from the 2015 Wage Theft Prevention and Labor Standards Harmonization Ordinance and certain notice requirements of the original Wage Theft Ordinance.

OLS will remedy the problem (by settlement agreement or Director’s Order, if necessary), but will not record the incident as a “violation” that incurs civil penalties and fines. OLS recognizes that employers are still in the process of learning about these requirements and our goal is to help employers achieve compliance. This “soft launch” of certain requirements includes:

- **All Labor Standards**
  - Displaying an OLS-created “Workplace Poster” with notice of rights in English and the primary language(s) of employees at the workplace.
- **Minimum Wage Ordinance**
  - Counting employees worldwide to determine schedule size.
- **Wage Theft Ordinance**
  - Providing written “notice of employment information” to every employee upon hire and upon change of employment.
  - Providing written notice of employment information to all existing employees as of April 1, 2016.
- **Paid Sick and Safe Time**
  - Providing employees with a written PSST Policy.

- Permitting use of PSST in 15 minute increments (if feasible by an employer’s payroll system).
- Following new accrual and coverage requirements for employees who work in Seattle on an occasional basis. Once “occasional basis employees” work 240 hours in Seattle in a benefit year, all previous 240 hours count toward PSST accrual and the employee remains covered by the PSST ordinance for the duration of employment with that particular employer.
- Retaining employees’ previously accrued PSST hours when the employer transitions to different “benefit year” (i.e. any fixed, consecutive 12-month period of time that is normally used by an employer for calculating wages and benefits, including: January 1 through December 31; a tax year, fiscal year, or contract year; or the year running from an employee’s one-year anniversary date of employment).
- Retaining records for three years.
- Retention of employee PSST hours by a successor employer.

For more information about these requirements, please see the guide, [Changes to Seattle’s Labor Standards Laws](#).

**a. (UPDATE) Can civil penalties and fines owed to the City of Seattle be waived or reduced if an employer quickly pays workers?**

Yes. The OLS Director has the discretion to waive or reduce civil penalties (i.e. penalties owed to the City) for prompt payment to workers after service of the final order.

- **Payment to workers within 10 days:** Penalties and fines waived 100%.
- **Payment to workers within 15 days:** Penalties and fines reduced by 50%.
- **Payment to workers after 15 days:** Penalties and fines must be paid 100%.

**b. What penalties can the OLS Director impose?**

<b>Violation</b>	<b>Penalty</b>
First violation	Discretionary civil penalty of up to \$500 per instance of improper payment of minimum wage (i.e. per employee)
Second violation	Mandatory civil penalty of up to \$1,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater
Third+ Violation(s)	Mandatory civil penalty of up to \$5,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. Maximum civil penalty is \$20,000 per employee
(Willful) Workplace Poster Violation	Mandatory civil penalty of \$750 for the first violation and \$1,000 for subsequent violations

Seattle Office of Labor Standards (last updated 07/26/16)

**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.

(Willful) Interference	Mandatory civil penalty of \$1000 to \$5000
Retaliation	Mandatory penalty payable to the aggrieved party of up to \$5,000 (in addition to an assessment of a \$1000 civil fine). This penalty cannot be waived or mitigated by the Director because it owed to the worker or other aggrieved party; only civil penalties owed to the City of Seattle can be waived or reduced.

**c. What discretionary *fin*es can the OLS Director impose?**

<b>Violation</b>	<b>Fine</b>
Failure to provide notification of available PSST hours every time that wages are paid.	\$500
Failure to provide employees with employers written PSST policy and procedure for meeting PSST requirements	\$500
Failure to provide employees with written notice of rights (i.e. workplace poster).	\$500
Failure to maintain payroll records for three years.	\$500 per missing record
Failure to comply with prohibitions against retaliation.	\$1,000 per aggrieved party
Failure to provide notice of investigation to employees.	\$500
Failure to provide notice of failure to comply with final order to the public.	\$500

**d. What does the City do with the money collected from civil penalties and fines?**

The money collected from civil penalties and fines is deposited in the City’s general fund which pays for a variety of City project and staffing needs.

**M. Outreach**

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**1. Workers**

Seattle Office of Labor Standards (last updated 07/26/16)

**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.

**a. How can workers learn more about Seattle’s minimum wage requirements and their rights under the ordinance?**

- Visit the [PSST Ordinance web site](#) for information and materials, including downloadable posters, fact sheets, etc.
- Call 206-684-4500 to report possible violations or ask a question.
- Submit an [on-line inquiry form](#), or join our [email list](#) (scroll down the left side of the webpage) to receive updates and announcements.

**b. What is the City of Seattle’s outreach plan for workers?**

The Office of Labor Standards wants every worker in Seattle to be familiar with the City’s minimum wage and other labor standards, and to know who to call to report problems. In addition to advertising and other outreach efforts, OLS has a [Community Outreach and Education fund](#) that contracts with community organizations to:

- Educate workers.
- Train service providers.
- Set up community sites where workers can receive information, counseling, referrals and help with filing claims and complaints.

The Office of Labor Standards has developed community partnerships with a number of organizations and groups. These partnerships strengthen the City’s impact to uphold labor standards for Seattle’s workers, particularly those workers most likely to experience labor standards violations – including female workers, workers of color, immigrant and refugee workers, LGBTQ workers, and youth. Activities include door-to-door outreach, hosting community-based education events, developing training materials to educate workers and other organizations about Seattle’s labor standards, and providing labor rights intake, counseling, and referral for workers experiencing labor standards violations. Each organization and partnership emphasizes reaching out to low-wage working communities who disproportionately experience workplace violations.

**c. (UPDATE) What organizations are part of the Community Outreach and Education Fund?**

In September 2015, OLS selected ten different organizations to receive \$1 million in funding for worker outreach and education. Organizations include:

- **Casa Latina and Eritrean Association** - \$319,000
  - Communities of Focus: Latino, LGBTQ, East African, and youth workers
  - Partners: Entre Hermanos, South Park Information and Resource Center, South Park Neighborhood Center, Washington Community Action Network, Wage Claim Project
- **Coalition of Immigrants, Refugees and Communities of Color** – \$65,000
  - Communities of Focus: Filipino, Ethiopian, Vietnamese, Khmer, and African American/black workers and at risk youth workers
- **Chinese Information and Service Center** – \$60,000

- Communities of Focus: Asian Pacific Islanders, Chinese, and other Asian workers
- **Eritrean Community** – \$60,000
  - Communities of Focus: East African workers and small business owners
- **El Centro de la Raza** – \$25,000
  - Communities of Focus: Latino workers
- **Fair Work Center** – \$376,000
  - Communities of Focus: Asian Pacific Islander, Somali, African American, Latino, youth, and LGBTQ workers
  - Partners: Al Noor Islamic, Somali Community Services, NAACP, Latino Community Fund, Got Green, 21 Progress, LGBTQ Allyship, Puget Sound Sage
- **Millionaire Club** - \$3,500
  - Communities of Focus: Workers with criminal backgrounds and temporary workers
- **NAACP** - \$60,000
  - Communities of Focus: African American and African workers
- **Washington Community Action Network** - \$20,000
  - Communities of Focus: Membership of 30,000 comprised of low income workers of color
- **Washington Wage Claim Project** - \$9,500
  - Communities of Focus: Low wage workers experiencing workplace violations

**d. (UPDATE) Where can I find more information about the Community Outreach and Education Fund?**

Visit our [Community Outreach and Education Fund web site](#). Call the OLS Community Liaison at 206-684-4500.

**6. Business**

**a. How can businesses learn more about minimum wage requirements?**

- Visit our [PSST Ordinance web site](#) for information and materials, including downloadable posters, fact sheets, etc.
- Call the OLS Business Liaison at 206-684-4500 for answers to specific questions about the Minimum Wage Ordinance and Seattle’s other labor standards.
- Email [laborstandards@seattle.gov](mailto:laborstandards@seattle.gov) with your questions or to request training, or join our [email list](#) (scroll down the left side of the webpage) to receive updates and announcements.

**b. Will there be an outreach and education fund for businesses?**

Yes. In addition to advertising and other outreach efforts, OLS has released a [Request for Proposals \(RFP\)](#) for \$275,000 in contracts with business organizations to expand outreach, education, and technical assistance to Seattle small businesses regarding the city’s minimum wage and other labor laws. The [Labor Standards Business Outreach and Education Fund](#) will provide technical assistance to small

businesses in order to increase compliance with Seattle’s labor standards. The fund will emphasize outreach to businesses owned by low-income and historically disenfranchised communities, who typically are not served by traditional outreach methods.