



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

Questions and Answers

On September 1, 2012, Seattle’s Paid Sick and Safe Time (PSST) ordinance went into effect for employers with more than four full-time equivalent employees.

On January 1, 2018, statewide paid sick leave requirements, established by voter-passed initiative 1433, went into effect and created a new baseline. Now, all employees working in Washington state have access to this critical benefit. 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 PSST, including full time, part-time, temporary, and seasonal workers. The Office of Labor Standards (OLS) is the City of Seattle agency that administers the PSST ordinance by providing outreach, technical assistance and enforcement services to workers and employers.

Our Questions and Answers document addresses some of the most common PSST questions. This version includes updates of existing guidance and explanations of new changes required by statewide paid sick leave requirements. Due to recent ordinance amendments, Seattle’s PSST ordinance incorporates all statewide requirements and retains several more generous requirements that apply to large employers

Do you have a question that isn’t covered by this Q&A? Visit our [Paid Sick and Safe Time web site](#). Call 206-256-5297 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 business.laborstandards@seattle.gov.

A. General provisions

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. (UPDATE) When do statewide requirements for paid sick leave take effect?

Statewide paid sick leave requirement take effect on January 1, 2018.

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4. (UPDATE) When do the recent PSST amendments take effect?

On December 11, 2017, Seattle City Council approved legislation containing amendments to the PSST ordinance that incorporate the more generous requirements of statewide paid sick leave. Mayor Jenny A. Durkan signed this legislation on December 15, 2017. These amendments take effect on January 14, 2018.

5. 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 206-256-5297. Workers can submit questions on our [online inquiry form](#) or send an email to workers.laborstandards@seattle.gov. Employers can submit questions to business.laborstandards@seattle.gov. For general information about OLS, visit our website at www.seattle.gov/laborstandards.

6. 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.

7. 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.

Click here to [view instructions for using the mapping interactive map](#).

B. Employees

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), the location of the employer, or employer size.

Employees who are typically based outside of Seattle and work in the city on an “occasional basis” are covered once they have worked a certain threshold number of hours in Seattle for a particular employer within a benefit year. The exact number of hours will be determined through a rulemaking process that will begin in January 2018. While these rules are being developed, the threshold number of hours is 240 hours in a year per current rules.

(See Questions 12-14 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 is covered only if he works over a threshold number of hours in Seattle within a year. 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. (UPDATE) Does coverage include work study participants who work in Seattle?

Yes. As of January 1, 2018, work study employees are covered. Originally, work study employees were exempted from Seattle’s PSST ordinance. However, statewide paid sick leave does not allow such exemptions. Now, work study employees are covered by all statewide and Seattle PSST requirements.

4. What about interns?

Yes. Paid interns are covered by the PSST ordinance; unpaid interns are not covered.

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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 and Washington Minimum Wage Act 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 and the Washington State Minimum Wage Act. If there is a dispute regarding a worker’s status, the employer is responsible for proving that the worker is an independent contractor rather than an employee (i.e., the law favors employee status and an employer must prove otherwise). Under the Economic Realities test, factors for distinguishing an employee from an independent contractor include:

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

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

7. 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
- 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

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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.

8. Are undocumented employees entitled to PSST?

All employees who perform work in Seattle are covered by PSST, 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. For more information, see our [Commitment to Immigrant and Refugee Communities](#).

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

Yes. In this situation, the employer would be considered a Tier 1 employer.

10. 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.

11. 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.

12. 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.

Employees who are typically based outside of Seattle and work in the city on an "occasional basis" are covered once they have worked a certain threshold number of hours in Seattle for a particular employer within a year. Once the employee has reached that threshold, the

employee remains covered by the PSST ordinance for the duration of employment with that employer. The exact number of hours will be determined through a rule-making process that will begin in January 2018. While these rules are being developed, the threshold number of hours is 240 hours in a year per current rules.

Because the accrual and carryover requirements for Tier 1 employers mirror statewide sick leave requirements, occasional basis coverage is most relevant for Tier 2 and Tier 3 employers who need to determine whether the higher carryover and accrual requirements apply to their employees. It is also relevant for Tier 1 employers with salaried, exempt employees as statewide sick leave does not apply to these employees.

Note that Washington State has a different standard for coverage of out of state employees under statewide paid sick leave provisions. [Contact Washington Labor and Industries for more details.](#)

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. Jamal’s employer must track his hours worked in Seattle and comply with PSST requirements if Jamal works over a certain threshold of hours in Seattle in a year. The exact number of hours will be determined through a rulemaking process that will begin in January 2018. While these rules are being developed, the threshold number of hours is 240 hours in a year per current rules. Note that the hours that Jamal works in New York do not count toward the minimum number of hours to qualify for PSST in Seattle. Note also that Washington State has a different standard for coverage under statewide paid sick leave provisions. [Contact Washington Labor and Industries for more details.](#)

Example #2: Ricardo works as a security guard for a Tier 3 employer. 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 by Seattle’s higher accrual requirement (i.e. one hour for every 30 hours worked) for the hours that he works in Seattle – his Everett or Shoreline hours do not count for Seattle accrual rates. Notably, however, Ricardo is covered by statewide paid sick leave requirements when he works in Everett and Shoreline and his employer must accrue paid sick leave at the statewide accrual rate (i.e. one hour for every 40 hours worked).

13. 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 occasional basis 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.

- If employers provide sick leave to employees, regardless of their work location, that meets or exceeds the requirements of the PSST ordinance, they are not required to track hours worked in Seattle.

14. 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.

15. Does the 90-day waiting period apply to accrual, use or both?

The 90-day waiting period applies to **use** of accrued PSST hours, not to accrual. Here’s how the 90-day waiting period works:

- Employers may impose a 90-day waiting period before new employees can begin to use their accrued PSST. The 90-day waiting period is not mandatory. Employers are free to eliminate a waiting period or impose a period that is less than 90-days.
- This waiting period is retroactive; employers should count calendar days after date of hire **prior to** January 1, 2018.

Example #1: Janelle began working on August 15, 2017. On January 1, 2018 she has already been employed for 90 days and therefore can use her accrued PSST immediately, even though she has not yet been employed for 180 days.

Example #2: Simeon began working on February 15, 2018. He began to accrue PSST on his first day, but his employer can impose up to a 90-day waiting period before he can use his accrued hours – on or around May 16, 2018.

C. Employers

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

All employers with employees performing work in Seattle are covered by the ordinance and are required to provide PSST to their employees. An employer’s specific obligations depend on the number of FTE employees:

- **Tier 1** – Employers with one employee and up to 49 FTEs per calendar week during the previous calendar year.
- **Tier 2** – Employers with 50 to 249 FTEs per calendar week during the previous calendar year.
- **Tier 3** – Employers with 250 or more FTEs per calendar week during the previous calendar year.

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

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

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- 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 ordinance require employers 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. Can employers offer more generous PSST policies than required by the Ordinance?

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

10. 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.

11. 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. 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.

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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
- 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 Fact Sheet # 35.

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

Yes.

D. Accruing paid sick and safe time (PSST)

1. When do employees begin to accrue PSST?

Employees who work in Seattle begin to accrue PSST from the start-date of employment.

2. How much PSST do employees accrue?

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

- **Tier 1 and 2:** Employees accrue at least one hour of PSST for every 40 hours worked.
- **Tier 3:** Employees accrue at least one hour of PSST for every 30 hours worked.

3. Can employers use any fixed, consecutive 12-month period of time 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 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.

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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?

Hang on to those records: if your employee returns to work with you within 12 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 12 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 12 months.

Example #2: Caprice works full-time and accrues 20 hours of PSST. She leaves her job to pursue a master's degree. 11 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 more or 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 3 employers must permit employees to 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

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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.

However, the employee is still covered by statewide paid sick leave requirements.

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. (UPDATE) An employer frontloads employees' paid leave at the beginning of the year. Is that allowed under the ordinance?

Yes. Frontloading is allowed. Under changes required by statewide paid sick leave, employers must monitor an employee's actual hours worked and adjust the amount of frontloaded PSST as necessary. Employers who frontload PSST also must carry over unused PSST hours to the next year commensurate with the requirements of the employer's tier size.

13. (UPDATE) If employers frontload the full amount of PSST at the beginning of the year, do they still need to allow carry over?

Yes. Employers who frontload PSST must still carry over unused PSST hours to the next year commensurate with the requirements of the employer's tier size.

14. An employer uses QuickBooks to do payroll. She is a Tier 1 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 estimated number of hours the employee will accrue at the beginning of the year. The employer should still track hours worked and adjust employee's PSST balance if the employee works more hours than the amount the employer estimated.

15. (UPDATE) How can employees learn about available hours of PSST?

Employers must provide employees with the following information on PSST each time wages are paid: (1) total PSST accrued, (2) amount of available PSST hours; (3) amount of PSST used since the last notification. 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 each time wages are paid.

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?

Only a partial exemption. New Tier 1 and Tier 2 employers have a two-year exemption only for the PSST requirements that are more generous than statewide paid sick leave requirements, including but not limited to higher carry over for Tier 2 employers.

Example #1: Enrique started working for a new Tier 2 employer on February 18, 2018. The employer hired its first employee on January 10, 2018. Enrique will begin to accrue PSST on his first day of employment due to statewide paid sick leave requirements that are not subject to any exemptions. During the first two years of operation, the employer is required to carry-over 40 hours of accrued, but unused PSST. But starting in 2020, the employer's exemption from Seattle PSST expires and the employer must carry-over up to 56 hours of accrued, but unused PSST.

19. 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 with PSST requirements and are not considered "new employers" under the ordinance. The limited Tier 1 and Tier 2 "new employer" two-year exemption does not apply to successor employers.

E. Using paid sick and safe time (PSST)

1. (UPDATE) When can employees start using PSST?

Employers can impose a waiting period of up to 90 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. (UPDATE) How much PSST can an employee use in a year?

Employers may not cap the use of PSST. As long as employees have accrued and unused PSST, they may use it without limit.

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

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

Tier 1 – Employees can carry over up to 40 hours of unused PSST hours.

Tier 2 – Employees can carry over up to 56 hours of unused PSST hours.

Tier 3 – Employees can carry over up to 72 hours of unused PSST hours.

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

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

For hourly employees, employers must permit use of PSST in the smallest increment in which compensation is tracked not to exceed one hour.

5. 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, carry over of unused vacation leave to the following calendar year, etc.

Example #1: Marienela works for a Tier 1 employer. By the end of 2017, she has accrued 50 hours of PSST and has used 40 hours. Her employer must permit carry over of the unused balance of 10 hours to the following 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 2018. To care for her son during his illness, Marienela can use the 10 PSST hours from 2017 plus the six PSST hours that she has accrued in 2018.

7. 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 as a child, grandparent, grandchild, parent, parent-in-law, sibling, spouse and registered domestic partner.

8. 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

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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.

9. (UPDATE) Can PSST be used to care for a sick adult child over the age of 18?

Yes. Employees can use PSST hours to care for a child of any age.

10. 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](#).

11. 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.”

12. Under an employer’s PTO policy, can employees use all accrued PSST for vacation and not leave any “cushion” for sick or safe time absences?

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).

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

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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.

14. 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 smallest increment in which compensation is tracked not to exceed one hour. An employer is not permitted to deduct more PSST if an employee used the hours for scheduled overtime.

15. (UPDATE) Are employees allowed to donate their unused PSST to a company-wide, paid leave donation plan?

Yes. Employers' written PSST policy must include a description of their donation program if they choose to allow PSST donations.

16. 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.

17. 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. Please note that our office will likely revise this guidance during our 2018 rulemaking process.

18. How does an employer compensate an employee whose hourly rate of pay fluctuates?

If the employer cannot determine the hourly rate of pay the employee would have earned if the employee worked, the employer should average the employee's hourly rate of pay in the current or preceding thirty days, whichever yields the higher hourly rate.

19. 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.

20. 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.

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

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

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

Employees are entitled to compensation for lost commissions. Employers should calculate the lost commissions by dividing the total earnings by the total hours worked in the full pay periods in the prior ninety days of employment to determine an employee’s normal hourly compensation including compensation based on commissions. In all cases, employers must ensure that the employee’s rate of pay follows Seattle minimum wage requirements. Find more information on our [Minimum Wage Website](#). Please note that our office will address the issue of whether the employer owes lost tips in our 2018 rulemaking process.

23. (UPDATE) Are cash-outs permitted under the ordinance?

Partial cash-outs are permitted at the end of the year and full cash-outs upon separation from employment. At the end of the year, employers may cash out PSST balances in excess of the carry over requirements commensurate with the employer’s tier size, provided the employee agrees. Upon separation, employers may cash out any portion of the PSST balance (including the full balance) with mutual-agreement in writing.

24. 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 and employees.

25. 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)

1. 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. 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

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miss my shift today” or “I need to use my PSST.” Employees also can say, “I need paid sick leave” for safe time absences and do not need to identify the reason as a “safe time” reason.

Employers are not permitted to ask about the nature of the illness or the specific reason for the absence. 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. For example, employees can ask other 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.

The bottom line? Employees have a right to use PSST, and employers must have enough information to make it happen.

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.

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)

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

An employee does not need to provide documentation for use of PSST 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 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:

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- 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 workdays?

The cost of obtaining documentation must not result in an unreasonable burden or expense on the employee. 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 the cost of obtaining documentation creates an unreasonable burden or expense on the employee, the employee may verify orally or in writing that (1) their use of PSST is for a covered purpose, and (2) verification would create an unreasonable burden or expense. The employer must then identify alternative verification methods (e.g. accept the employee's statement or identify lower cost medical verification).

If an employee has declined health insurance from an employer, the employee is not entitled to reimbursement for expenses. Nevertheless, if the documentation requirements *still* result in an unreasonable burden or expense, the employee may verify as described above.

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. For more information, see [EEOC Guidance on disability-related inquiries](#).

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

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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, an employee may 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.

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. Nevertheless, if the documentation requirements result in an unreasonable burden or expense, the employee may verify as described in question G(2).

H. (UPDATE) Employer notice and posting requirements

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

Employers must display a **11" x 17"** [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 1st of each year, and translating it into different languages.

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

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

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

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

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

The workplace poster is available electronically on our [publications Webpage](#) in printable color and black and white versions. 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?**

Employers must provide employees working in Seattle with a written policy that describes how the employer is meeting the requirements of the PSST ordinance. The policy should cover the following provisions:

- Employee's entitlement to paid sick leave;
- Employer's choice of year (i.e. fixed, 12-month period);
- Prohibition on retaliation;
- Tier size;
- Rate of accrual and carry-over of PSST hours;
- Manner of providing employees with an updated amount of available, accrued, and used PSST time hours each time wages are paid; and
- Notification requirements for absences and requesting leave.

If applicable, the policy also must describe

- Frontloading program;
- Verification requirements for using PSST for more than three consecutive days;
- Shared PSST program in which an employee may choose to donate unused PSST to a co-worker; and
- PTO program;

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Download a sample PSST policy from the [PSST website](#) 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)

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

Employers records must reasonably indicate:

- Date of commencement;
- Hours worked by employees;
- Accrued PSST;
- PSST used by employees;
- PSST available for use;
- PSST donated to a co-worker through a shared leave program; and
- PSST not carried over to the following year

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 our written PSST policy checklist on our [PSST webpage](#)); and
3. Provide notification of accrued, available, and reduced 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 year, frontload paid leave based on accrual estimates for hours worked over the upcoming year. Track employee hours worked and adjust this bucket of PSST hours depending on the actual hours worked. Also track use of this paid leave in your records. Provide notification every time that wages are paid (e.g. paystub) that meets notification requirements for accrual, use, and available

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balance. Such notification would reference the frontloaded amount of leave, the used leave, and the balance of protected hours. Employers also might want to add a statement that the employee also has “unlimited” hours for paid leave above and beyond PSST protections. Although employees will be allowed to use *unlimited* paid leave per year, your business can use this method to show compliance with PSST. If 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 meets notification requirements for accrual, use, and available balance. Such notification could show 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 since the last time wages were paid. Show that employee has an “unlimited” available balance;

J. Retaliation

1. 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 for a purpose covered by the ordinance. In such situations, it is wise to document the suspicions of abuse in case an employee alleges a violation of the ordinance

3. An employer has an absence control policy that employees will accrue points for absences that are “above and beyond” the PSST ordinance – for example, when an employee calls in sick for an eight-hour shift, but only has four PSST hours. Is that allowed?

Yes. Employers can have absence-control or discipline policies, but only for absences that are *not covered* by the PSST ordinance – for example, before an employee is eligible to use PSST, for a mix of PSST with unpaid leave because there is not enough PSST to cover the full absence, etc.

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

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. (UPDATE) Can employees waive PSST requirements as part of the collective bargaining process?

Employees covered by a bona fide collective bargaining agreement may waive PSST provisions that are more generous than statewide paid sick leave requirements under RCW 49.46 (e.g. higher accrual and carry over requirements for Tier 2 and Tier 3 employers under Section 14.16.025) through December 31, 2018 or the expiration date of a collective bargaining agreement in effect as of that date. Labor organizations must file waiver information with OLS. Thereafter, waivers are prohibited for all employees.

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.