SEATTLE OFFICE OF LABOR STANDARDS
STEP BY STEP CHART ✦ 2017 LABOR STANDARDS ORDINANCE

PSST & Secure Scheduling Amendments ✦ Effective January 14, 2018

In fall 2017, the Seattle Office of Labor Standards proposed legislation that amended the Paid Sick and Safe Time (PSST) and Secure Scheduling (SS) ordinances. City Council voted and passed the legislation on December 11, 2017 and the Mayor signed on December 15, 2017 with an effective date of January 14, 2018. In early 2018, OLS will start a rulemaking process for PSST and SS rules to reflect the amendments.

PSST amendments applied the more generous requirements of voter-passed, Washington Initiative 1433 establishing statewide paid sick leave to hourly employees *and* overtime-exempt employees working in Seattle. **SS amendments** clarified employer coverage in response to changes in federal NAICS codes.

Effective date. Statewide paid sick leave requirements for hourly employees working in Seattle are effective on January 1, 2018. Seattle PSST requirements for hourly and overtime-exempt employees are effective on January 14, 2018.

STEP-BY-STEP CHART OF AMENDMENTS

PAID SICK AND SAFE TIME

Section of Ordinance	Issue	Amendment	Reason for amendment
Definitions	Benefit year	Replace "benefit year" with *year* to align with definition in 1433 rules.	**Drafting decision** to align this definition with the term used in 1433.
	Eating and drinking establishment provision	Remove definition because 1433 does not permit limitations on use of PSST in these types of establishments.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
	Employee	Remove work study exemption because 1433 does not permit any exemption of paid sick leave provisions.	**1433 mandate** for hourly employees.
	Employment agency or staffing agency	Remove these definitions because they are not referenced in SMC 14.16 (the previous reference to these definitions was removed in the Wage Theft Prevention and Labor Standards Harmonization Ordinance of 2015).	**Drafting decision** to remove this unnecessary definition from the ordinance.

	Health care professional	Remove definition because it is not defined in 1433 or the 1433 rules. Current definition could be more restrictive than 1433. Change references from "health care professional" to *health care provider* to mirror 1433 rules.	**1433 mandate** for hourly employees that permits employers to require verification from a health care provider but no definition of this term. **Policy decision** to remove this definition because it is not defined in 1433 or the 1433 rules. Current definition in SMC 14.16 could be more restrictive than 1433. OLS will clarify in PSST rules.
	Normal hourly compensation	Replace "same hourly rate" with *normal hourly compensation* because 1433 uses the latter term.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
Paid Sick Time • Additional Family members		Add child *of any age* Add sibling Add grandchild	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
	• Child	Add *regardless of age or dependency status.*	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
	• Parent and Parent in law	Add "parent in law" to the definition of "parent" to mirror 1433 language. Remove separate definition of "parent in law."	**Drafting decision** to mirror 1433 language**.**
	• Spouse	Remove definition because it is not defined in 1433 or the 1433 rules. The current PSST definition could be more restrictive than 1433. Clarify "registered domestic partner" in the list of family members.	**1433 mandate** for hourly employees that permits employees to use paid sick leave for "spouse" which is an undefined term. **Policy decision** to remove this definition because it is not defined in 1433 or the 1433 rules. Current definition in SMC 14.16 could be more restrictive than 1433. OLS will clarify in PSST rules.

	• Registered domestic partner	Clarify "registered domestic partner" in the list of family members rather than in the definition of spouse.	**Drafting decision** to mirror 1433 language.
	• Grandparent	Remove definition because it is not defined in 1433 or the 1433 rules. The current PSST definition in SMC 14.16 could be more restrictive than 1433.	**1433 mandate** for hourly employees to cover "grandparent" (but there is no definition of this term). **Policy decision** to remove this definition because it is not defined in 1433 or the 1433 rules. Current definition in SMC 14.16 could be more restrictive than 1433. OLS will clarify in PSST rules.
	Paid Safe Time. . . for closure of employee's child's school or place of care • Child	Add definition of "child" that mirrors definition of "child" for paid sick time (i.e. child of any age).	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
	Paid Safe Time. . . for reasons related to RCW 49.76.030 • Family member	Technical error – Add definition of "family member" from RCW 49.76.020.	**Drafting decision** to fix technical error.
	• Household member	Technical error – Add "household member" to all references to safe time. In the original version of PSST, paid safe time included "household member" in the definitions sections, but did not consistently mention "household member" through-out the ordinance. Technical error - add reference to RCW 26.50.010 in the definition of household member. RCW 49.76.020 does not explicitly use term, "household member." Rather, RCW 49.76.020 includes a definition of "domestic violence" that references to RCW 26.50.010 that defines "household member."	**Drafting decision** to fix technical error.

	• Stalking	Technical error – Remove "as defined in subsection 14.16.010.P.1.c" Add RCW 49.76.020 to definition to stay consistent with stating the source of definitions.	**Drafting decision** to fix technical error.
	Tier 1 employer	Remove threshold criteria of "more than four FTEs" and replace with "at least one employee…" because 1433 covers all employees working in the state, regardless of the employer's size.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
	Two-year exemption for new Tier 1 and 2 employers	Revise provision to only allow two-year exemption for new tier one and tier two employers for provisions of PSST that are more generous than 1433 (e.g. more generous requirements for carry over for tier two employers under Section 14.16.025).	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
Employment in Seattle	Occasional basis	Remove threshold coverage criteria of 240 hours for employees who are typically based outside of Seattle and work in Seattle on an occasional basis. The PSST rules will clarify PSST coverage for occasional basis employees who are potentially covered by PSST requirements that are more generous than statewide paid sick leave (tier 2/3 carry over and tier 3 accrual).	**1433 mandate** for hourly employees. **Policy decision** for PSST rules to clarify PSST coverage for hourly employees potentially covered by more generous Seattle PSST provisions (tier 2/3 carry over and tier 3 accrual) and overtime exempt employees.
Employer tier determination	FTEs	Modify reference to FTEs to incorporate baseline of one employee.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
Accrual	Caps on Use • Tier 1 = 40 hrs • Tier 2 = 56 hrs • Tier 3 = 72 hrs or 108 hrs for PTO.	Remove caps on use. There is no limit on use under I-1433; the only limit is on carry-over.	**1433 mandate** for hourly employees accruing one hour for every 40 hours worked. **Policy decision** to apply the "no cap on use" for PSST hours accrued above-and-beyond the 1433 standard (tier 3 accrual is one hour for every 30 hours worked) and overtime exempt employees.

	Frontloading • Permitted in PSST Rules	Add ability of employer to frontload PSST if such frontloading meets or exceeds PSST requirements.	**1433 mandate** for hourly employees. **Drafting decision** to include this provision in the ordinance (already permitted in the PSST rules).
	Eligibility for use • 180 calendar days after employment commences.	Reduce waiting period to *90 days* to mirror 1433.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
	Breaks in service • Use previous period of employment for eligibility for use and reinstate previously accrued PSST for breaks in service of *7 months for same employer.*	Expand breaks in service to *12 months for same employer* to mirror 1433.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
	Paid safe time • Reasons for use.	Add language from I-1433 – "Employee is authorized to use paid sick leave for absences that qualify for leave under RCW 49.76."	**Drafting decision** to mirror 1433 language.
		Add language, *for any health-related reason*, to mirror 1433. "…due to order of a public official, *for any health-related reason*, to limit exposure to an infectious agent, biological toxin or hazardous material.	**Drafting decision** to mirror 1433 language.
	Employer must provide PSST to employee upon request.	Add requirement that *employer may not require, as a condition of an employee taking paid sick and paid safe time, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.*	**Drafting decision** to mirror 1433 language. OLS already interprets Seattle PSST to prohibit this practice.

	Increments of use **Hourly employees =** Hourly increments or, if feasible by the employer's payroll system, increments that round to the nearest quarter of an hour.	**Increments of use** **Hourly employees** = hourly increments or, if an employer's payroll system tracks compensation in increments of less than one hour, in the smallest increment in which compensation is tracked. This language mirrors 1433, although PSST does not permit a variance (i.e. an application to Washington State Department of Labor & Industries for an exemption).	**1433 rules mandate** for hourly employees (although the 1433 rules permit a variance from this requirement). **Policy decision** to not allow a variance from this requirement.
Documentation of absence	**Sick** = Employer may require *reasonable documentation*, including doc. signed by a health care provider indicating that sick time is necessary.	Add 1433 language re: *employer's requirements for verification may not result in an unreasonable burden or expense on the employee*.	**Drafting decision** to mirror 1433 language.
		Add statement that reasonable verification shall include…"and other evidence pursuant to rules issued by the Director."	**Hybrid 1433 mandate & Policy decision** to identify that PSST rules may clarify other forms of verification. The 1433 rules have a broad definition of "verification."
	Safe = Employer may require that employee satisfy the verification requirement by one or more of four methods.	Move the method of "employee's provision of a written statement" from the fourth option to the first option. Add reference to "household member" to description of verification methods.	**Drafting decision** to highlight the ability for employee to simply provide a written statement as verification.
Shift-swaps in eating or drinking establishments	When a manager at an eating or drinking establishment arranges a shift swap to facilitate an employee's use of PSST, the employer can deduct the employee's PSST for substitute shift.	Remove this provision because it is not addressed in 1433 and is not allowed under 1433 rules. Under 1433 rules, an employee may trade shifts "in lieu of using PSST" if there is mutual agreement by the employer and employee. There is no affirmative permission for an employer to unilaterally deduct PSST when an employee trades shifts.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees (in as much as this provision applies to overtime exempt employees).
Rate of pay	Employee shall be compensated at the *same hourly rate and with the same benefits, including health care benefits,* as the employee would have earned during the time the paid leave is taken.	Use 1433 language, *normal hourly compensation.*	**Drafting decision** to mirror 1433 language.
		Remove no "right to lost tips and commissions" In 1433 rules, this term *includes commissions, but does not include lost tips & service charges,* that employee would have earned	**1433 rules mandate** for hourly employees to include commissions in payment for paid sick leave.

Note - OLS provides outreach documents to help employers comply with Seattle's Labor Standards and employees identify their rights to workplace protections and benefits. The information in this document should not be used as a substitute for laws and regulations. Employers are responsible for complying with all legal requirements.

	No compensation for lost tips or commissions. No compensation for hours that an employee was not scheduled to have worked.	during the time that the paid leave was taken. • Clarify intersection of tips, commission, and minimum wage and minimum compensation in PSST rules. • WAC 296-128-660(1).	**Policy decision** to remove reference to "no right to lost tips and commission" and clarify the intersection of tips, commission, and Seattle minimum wage in the PSST rules.
New employers	Two-year exemption for new Tier 1 and 2 employers	Amend provision to only allow two-year exemption for PSST provisions that are more generous than provisions requiring paid sick leave under RCW 49.46, including but not limited to more generous requirements for accrual and carry over for tier two employers under Section 14.16.025.	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
Employer records	Employer records [must] reasonably indicate • Employee hours worked in Seattle • Accrued paid sick and paid safe time • Used paid sick and paid safe time.	Add • Date of commencement • PSST available for use • PSST donated to a co-worker through a shared leave program • PSST not carried over to the following year • WAC 296-128-010	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
Notice and Posting	Written Policy Current required items • Benefit year • Tier size • Rate of accrual, use and carry-over of paid sick and paid safe time hours • Manner of providing notification • Requirements for requesting leave	Add requirements to written policy that are in 1433 rules. Employers must notify each employee of the following • Employee's entitlement to paid sick leave, • Retaliation [is prohibited] by the employer for the employee's lawful use of paid sick leave and other rights provided. Add other policy items from other 1433 rules • Use of frontloaded PSST • Verification for use of PSST for more than three consecutive days	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.

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		• Shared PSST program in which an employee may choose to donate unused PSST to a co-worker • PTO program.	
Retaliation	Absence control policies OLS interprets the ordinance's prohibition against retaliation to prohibit application of absence control policies for use of covered PSST as prohibited retaliation. Employers also must adjust increments of use of PSST to avoid application of absence control policies.	Add 1433 language, *Employer may not adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to or result in discipline against the employee.* Remove language about adjusting increments of use of PSST to avoid application of absence control policies because it is not necessary in combination with smaller increments of use and the prohibition against counting use of PSST toward absence control policy. Clarify in PSST rules.	**1433 mandate** for hourly employees. **Drafting decision** to mirror 1433 language. OLS already interpreted Seattle PSST to prohibit this practice (and addressed the issue in the increments of use section of the ordinance).
Notifications	Each time wages are paid, employer must provide notification of PSST available for use.	Add requirements to notification that are in 1433 rules. • PSST accrued • PSST reduced (e.g. used, donated to co-worker)	**1433 mandate** for hourly employees. **Policy decision** for overtime exempt employees.
Waiver	Waiver available only for employees covered by a bona fide collective bargaining agreement, so long as PSST requirements are waived in the CBA in clear and unambiguous terms.	Add requirement that time-limited CBA waivers are permitted only for PSST requirements that are more generous than statewide paid sick leave (e.g. tier 2 & 3 carry over, tier 3 accrual). Waivers are permitted through Dec. 31, 2018 or through expiration of CBA in effect as of that date. Labor organizations must file waiver info with OLS.	**1433 mandate** for hourly employees. 1433 does not permit waiver of statewide paid sick leave requirements. **Policy decision** to only allow time-limited waivers for hourly employees covered by more generous provisions of Seattle PSST and overtime exempt employees. **Policy decision** to require labor organizations to file waiver information with OLS.
SECURE SCHEDULING			
Definitions	Retail and Food Services Establishments	Add reference to 2017 NAICS codes (and subsequent NAICS codes) to the definition of food services and retail establishments.	**Policy decision** to clarify that 2017 NAICS codes establish employer coverage.

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Employer Coverage	Size	Technical error - Align employer size with franchise network; both need to state, "500 or more." Currently, the ordinance states that franchises are covered if they employ "more than 500" employees.	**Drafting decision** to fix technical error.
		Technical error - Clarify that determining employer size is based on counting all employees. Currently, ordinance bases calculation on all hours worked for compensation by all employees. This amendment aligns the Secure Scheduling ordinance with the Minimum Wage ordinance.	**Drafting decision** to fix technical error.