

# Improving Access to Medical Care for Hotel Employees Ordinance

## Questions and Answers

Seattle’s Improving Access to Medical Care for Hotel Employees Ordinance, Seattle Municipal Code (SMC 14.28) requires covered employers to make healthcare expenditures to or on behalf of covered employees to increase their access to medical care.

The **Seattle Office of Labor Standards (OLS)** is responsible for administering this law. OLS provides outreach, compliance assistance and enforcement services.

If you have a question that this Q&A does not cover, visit the [Office of Labor Standards website](#). You may also call 206-256-5297 or reach us electronically:

- Employees with questions and complaints – submit an [online inquiry form](#).
- Employers with requests for technical assistance – submit an [online inquiry form](#).

*OLS created this document to provide an explanation of the law. Note: Information provided by OLS does not constitute legal advice, create an agency decision, or establish an attorney-client relationship with the reader.*

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## General Information

### 1. What is the Improving Access to Medical Care for Hotel Employees Ordinance?

This law requires covered employers to make healthcare expenditures to or on behalf of covered employees to increase their access to medical care. Covered employers have several ways that they can make healthcare expenditures, including through monthly ordinary income payments, payments towards employer-sponsored health insurance, or payments to other things like health savings accounts, flexible savings accounts, and health reimbursement arrangements.

### 2. Where can I access a copy of the law and the rules that apply to this law?

The language of the law can be viewed by clicking [here](#). To view the rules, visit the Office of Labor Standards Hotel Employee Protection webpage and download a copy of the [Seattle Human Rights Rules, Chapter 190](#).

### 3. When does this law go into effect?

Ancillary hotel businesses that contract, lease, or sublease with a covered hotel and that have between 50 to 250 employees worldwide must comply with this law starting on July 1, 2025, or at the earliest annual open enrollment period for health coverage (if the employer offers health coverage to their employees).

All other covered employers must comply with the law starting on July 1, 2020, or at the earliest annual open enrollment period for health coverage (if the employer offers health coverage to their employees).

For more information about the covered employers, including ancillary hotel businesses and hotel employers, please see the Employer Section of this document.

### 4. Which City department administers this law?

The City of Seattle's Office of Labor Standards (OLS) administers this law. OLS provides a range of services for employees and employers including education and compliance assistance. OLS also investigates potential violations of this law.

### 5. Where do employees call with questions? Can employees remain anonymous?

Employees can call 206-256-5297, email [workers.laborstandards@seattle.gov](mailto:workers.laborstandards@seattle.gov), or submit an [online inquiry](#). Upon request, and to the extent permitted by law, OLS protects the identifying information (e.g. name, job title) of employees who report violations and witnesses who provide information during investigations. OLS will not disclose the person's identifying information during or after the investigation, to the extent permitted by law. OLS may need to release names of employees who are owed payment as a result of an investigation.

### 6. What happens when employees call OLS?

Employees may call OLS with questions or complaints. When employees call OLS, they will be directed to an intake investigator who will provide information about the law or gather information about issues at the workplace. If employees wish to make a complaint, OLS may collect information from additional witnesses and/or request documents from employees. After reviewing information provided by employees, OLS will decide if and how it can help, which may take a variety of forms, including simply providing information to the employer, trying to informally resolve the issue without a full investigation, or conducting a formal investigation. If OLS decides to investigate, and if OLS cannot investigate the employer immediately, it may place the case on a waitlist.

### 7. Does an employee's immigration status impact coverage or application of the law?

No, immigration status does not impact coverage or application of the law. As a matter of policy, the City of Seattle does not ask about the immigration status of anyone using City services. Read [OLS' Commitment to Immigrant and Refugee Communities](#) for more information.

Seattle Office of Labor Standards – 6/22/2020; Revised: 11/16/2020, 3/1/2021.

The information provided in this document is not intended as legal advice and should not be used as a substitute for laws and regulations. If there is any discrepancy between the information in this document and SMC 14.28 and SHRR Chapter 190, SMC 14.28 and SHRR Chapter 190 governs.

**8. Can employers call OLS with their questions?**

Yes! OLS provides compliance assistance and training for employers. Employers can call 206-256-5297, send an email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov), or submit an [online inquiry form](#). OLS does **not** share information about the identity of employers with our enforcement team. Phone conversations and email conversations are kept separate from the investigation process.

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

OLS encourages employers to call or email their questions to our office. Our goal is to help employers attain full compliance with Seattle’s labor standards and we will answer many types of labor standards questions. OLS has staff dedicated to business engagement who respond to inquiries and who are not members of the enforcement team. Phone conversations and email exchanges with the business engagement staff are kept separate from the investigation process.

**10. Does OLS provide language interpretation for its services?**

Yes. If OLS staff do not speak your preferred language, OLS will arrange for an interpreter to help with the conversation. OLS’s services are free of charge regardless of whether interpretation services are required.

## Employees

**11. Which employees are protected by this law?**

The law applies to hourly employees who work an average of 80 hours or more per month for a covered employer.

Hourly employees are those employees who are entitled to Seattle’s Minimum Wage, [Seattle Municipal Code 14.19](#). For more information about employees who are entitled to Seattle’s Minimum Wage, visit OLS’s [Seattle Minimum Wage webpage](#).

**12. How does an employer determine whether an employee works an average of 80 hours or more per month?**

To determine whether an employee works for an average of 80 hours or more per month, an employer must make a reasonable estimate of the average monthly hours that the employee will work over the course of the calendar year, or over the course of the period of employment if the employee will be working for a period shorter than a year (e.g. temporary or seasonal work).

**a. What happens if the employer underestimates the number of hours the employee works?**

An employer’s estimate will be unreasonable if it results in an underestimation of the actual average hours worked by the employee over the course of the calendar year or over the period of employment for employment that is less than a year. In this circumstance, the employer is responsible for making retroactive healthcare expenditures in the form of ordinary income to the employee, plus interest.

**b. What happens if the employer overestimates the number of hours the employee works?**

If an employer’s estimate results in an overestimation of the average work hours, an employer is prohibited from recovering any healthcare expenditures from the employee resulting from such overestimation.

**13. What are considered “hours” for the purpose of the calculation of an employee’s average hours?**

The law defines “hours” as:

- Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and
- Each hour for which the employee is paid, or entitled to payment, by the employer for a period during which no

duties are performed due to vacation, illness, legally required paid leave, incapacity (including disability), layoff, jury duty, military duty, or leave of absence.

#### **14. Are any employees exempted or excluded from this law?**

Yes. The following categories of employees are excluded from coverage:

1. Employees who voluntarily waive the rights granted by the ordinance,
2. Employees who are managers, supervisors, or employees who help to create or effect management policies about labor relations (who are also known as “confidential employees”),
3. Those who are not entitled to Seattle’s Minimum Wage, and
4. Those who do not work at least an average of 80 hours per month.

Additionally, newly hired employees that are subject to a waiting period for enrollment in an employer-sponsored health plan are temporarily exempted from the law for 60 days or the expiration of the waiting period, whichever is shorter.

#### **15. How does an employee voluntarily waive coverage of this ordinance?**

If an employee is receiving health coverage from another source, the employee is permitted to sign the OLS Voluntary Ordinance Waiver (ORD Waiver). The ORD Waiver verifies that the employee is receiving health coverage through another source other than the employee (such as a spouse/domestic partner or parent’s employer, or an employee’s second job) and that the employee knowingly and voluntarily waives the right to have their (covered) employer make healthcare expenditures to them or on their behalf.

Employers must use the OLS ORD Waiver form, which OLS developed to ensure that the employee understands their rights under the law, so that the waiver is a knowing and voluntary one. Employers may not alter the form in any manner, other than to complete the portions designated for the employer to complete. Other forms provided by third-party vendors or health insurance carriers cannot be used in lieu of OLS’s form.

The waiver must be provided to employees in their primary language. To assist with employer compliance with the language requirements of the ordinance, OLS intends to translate the waiver in several languages. Employers are not required to provide the waiver in languages other than English until OLS makes the necessary translation available. Employers are encouraged to notify OLS of the need for additional translations. For more information about this waiver and the rules governing its validity, please view the waiver by downloading it from the OLS website and viewing Seattle Human Rights Rule 190-220.

#### **16. What makes a Voluntary Ordinance (ORD) Waiver form valid?**

For a waiver form to be valid, the employee must fully understand their rights under the law, and the waiver must be voluntarily completed by the employee without pressure or coercion from coworkers, the employer, or anyone connected to the employer.

The form will be invalid if the employee fails to state that they are receiving health coverage through another source or leaves that section of the waiver blank or fails to sign the waiver. A completed waiver is effective on the date it is signed by the employee and is valid for one year. Employees who wish to waive their rights for more than one year must sign a new waiver each year when the prior form expires.

Employees have the right to cancel the voluntary waiver during any period of annual open enrollment in the covered employer’s employer-sponsored plan or due to a qualifying life event.

An electronic signature is acceptable on the ORD Waiver form so long as:

1. The form is an exact replica of the official OLS ORD Waiver,

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2. The employee can view the entire form at the same time as they sign it (the information is not broken up into multiple click-through screens and/or the signature is not on a separate page), and
3. No language on the website suggests the employee must sign the form.

Employers must keep a copy of the signed form for record retention requirements. Employees are encouraged to keep a signed copy of the form.

#### 17. What is an open annual enrollment period?

An annual open enrollment period is a period during which an individual may enroll or change health coverage.

#### 18. What is a qualifying life event?

A qualifying life event is an event(s) that allows enrollment in health coverage outside the annual open enrollment period of an employer-sponsored health plan. These events are typically set forth in an employer's health plan document and could include things like: marriage, divorce, new child, etc.

#### 19. Can an employee cancel their voluntary waiver?

Yes. Employees have the right to cancel the voluntary waiver during any period of annual open enrollment in the covered employer's employer-sponsored plan or due to a qualifying life event.

## Employers

#### 20. Which employers are *covered employers* and must follow this law?

This law applies to:

- Employers that own, control, or operate a Seattle hotel or motel with 100 or more guest rooms (referred to as a large hotel or covered hotel); and
- Ancillary hotel business employers with 50 or more employees worldwide.

#### 21. What is an *ancillary hotel business*?

An ancillary hotel business is a business that has one or more of the following relationships with a covered hotel:

- Routinely contracts with a hotel to provide services in conjunction with the hotel's purpose;
- Leases or subleases space at the site of the hotel to provide services in conjunction with the hotel's purpose; or
- Provides food and beverages to hotel guests and to the public and has an entrance within the hotel.

#### 22. *Ancillary Hotel Businesses – Routine contract: What does it mean to routinely contract with a hotel?*

A routine contracting relationship contemplates a business relationship that is sustained and longer in nature. A business that has an isolated and/or short-term business relationship will not be considered to routinely contract with a hotel. A business relationship that is in existence for less than one year is not a routine contract.

#### 23. *Ancillary Hotel Businesses – Entrance within hotel: What does it mean to have an entrance within the hotel premises? Does an entrance that is primarily used to gain access to a restroom that is located within the hotel count as an entrance within the hotel?*

An ancillary hotel business has an entrance within the hotel premises when the entrance is promoted and used by the business's guests as an access point into the business.

A passage that is promoted as and used by the business's customers to access a restroom facility located within the hotel is not considered an entrance within the hotel premises. A sign identifying the business for purposes of navigation to and from the restroom facility is not promotion of the business.

#### **24. Ancillary Hotel Businesses – Services: What is meant by providing services?**

For the purposes of the ancillary hotel business definition, services provide a direct, specific benefit to the guest. The *services* contemplated in this definition excluded anything that provides an indirect benefit that benefits the general welfare of guests.

For example:

- Direct benefit: A business that provides the hotel with an employee who helps guests navigate the elevator (e.g. directs guests to different floors). This business provides a direct benefit to a guest and provides services for the purpose of determine whether the business is an ancillary hotel business.
- Benefits the general welfare: A business that has a contract with the hotel to maintain and repair the guest elevators. This business provides an indirect benefit serving the general welfare of guests who are able to use working elevators. This business does not provide services for the purpose of determine whether the business is an ancillary hotel business.

The sale of goods is not a “service.”

#### **25. Ancillary Hotel Businesses – Hotel’s purpose: What does it mean to provide services in conjunction with the hotel’s purpose?**

A hotel’s purpose is defined as services that further the hotel’s provision of short-term lodging, which include food or beverage services, recreational services, conference rooms, convention services, laundry services, and parking.

#### **26. Ancillary Hotel Businesses – Multiple locations: When a business has multiple locations, but where only one location has a relationship described in the ancillary hotel business definition, which locations are covered?**

The portion of the business enterprise that provides services to guests or at the site of the hotel is covered. For example, where a restaurant has many locations, but where only one location has an entrance within a covered hotel, only the location that has an entrance within the hotel is covered.

## **Healthcare Expenditures**

#### **27. What does the law require employers to do? What is a healthcare expenditure?**

A covered employer must make a monthly healthcare expenditure to or on behalf of each covered employee. A healthcare expenditure is a certain amount of money that a covered employer must pay to an employee or on behalf of the employee that will enable the employee, their spouse/domestic partner, and/or dependents to access healthcare services.

#### **28. What are healthcare services?**

Healthcare services are medical care, services, or goods that may qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue Code, or medical care, services, or goods having substantially the same effect as such deductible expenses. For the purposes of this law, healthcare services do not include vision or dental services.

**29. Does this law require an employer to provide health coverage to its employees?**

No. This law does not mandate that an employer provide health coverage to its employees or regulate health insurance plans. These kinds of requirements are regulated by federal law.

This law requires an employer to make payments to or on behalf of their employee to enable the employee and their spouse, domestic partner, and dependents (if applicable) to access healthcare services. One of several ways in which an employer can meet its healthcare expenditure obligations is to make payments towards health insurance for the employee (and their spouse, domestic partner, and/or dependents).

**30. How much is a covered employer required to spend on healthcare expenditures for each covered employee?**

There are four monthly rates. The rate applicable to an individual employee is determined by the employee’s family composition, as categorized below:

- Employee with no spouse, domestic partner or dependents (single employee);
- Employee with only dependents (any number);
- Employee with only a spouse or domestic partner; and
- Employee that has both a spouse/domestic partner and dependents.

These rates are adjusted each year based on a “medical inflation rate.” OLS announces the new rate each year. To ensure notification of the change in rate, please sign up for [OLS’s newsletter](#).

**31. What are the 2020 rates?**

Employee with no spouse/domestic partner or children	\$420
Employee with only dependents (any number)	\$714
Employee with only a spouse/domestic partner	\$840
Employee with spouse/domestic partner and any number of dependents	\$1,260

**32. 2021 Update: What are the 2021 rates?**

Employee with no spouse/domestic partner or children	\$437
Employee with only dependents (any number)	\$743
Employee with only a spouse/domestic partner	\$874
Employee with spouse/domestic partner and any number of dependents	\$1,310

**33. Who are dependents?**

A dependent is any person who would be considered as a “qualifying child” or a “qualifying relative” for tax purposes (26 U.S.C. §151-153). To find more information, please visit the Internal Revenue Service’s webpage and view [IRS Publication 501](#) that provides more information about these kinds of dependents.

**34. How does an employer determine the employee’s healthcare expenditure rate?**

The rates set by the law are based on the presence or absence of a spouse, domestic partner, or dependent(s), regardless of whether that spouse, domestic partner, or dependent(s) is covered or eligible to be covered by an employer’s group health plan.

An employer must make reasonable efforts to obtain accurate information to determine the employee’s rate. If an employer is unable to obtain the information to determine the employee’s rate, the employer may assume that the employee qualifies for the rate for an employee with no spouse/domestic partner or dependents, until otherwise

notified by the employee. An employer may request that an employee notify them of a change that would impact their rate (e.g. divorce, marriage, additional or removal of a dependent).

Caution: An employer's efforts to obtain this information must not violate local, state, or federal laws. Employers must use caution when asking for the personal information needed to determine the employee's applicable rate. Employers are encouraged to provide enough information about the reason for their inquiry and only ask for information after the employee has been hired. Improper inquiries about family status during the hiring process and in some other employment contexts may constitute unlawful discrimination. For more information, please visit the [Seattle Office for Civil Rights](#).

### **35. What methods can an employer use to meet the expenditure?**

An employer may make the monthly expenditure through any one or more of the following ways:

- Ordinary income payments (additional compensation) paid directly to the employee.
- Payments to a third-party for the purposes of providing healthcare services to the employee or to the covered employee's spouse, domestic partner, or dependents (if applicable). These include, but are not limited to, payments to an insurance carrier or trust, or into programs that reimburse employees for out-of-pocket healthcare costs ("tax-favored health program").
- Average per-capita monthly expenditures for healthcare services made to or on behalf of covered employees or their spouse, domestic partner, or dependents (if applicable) by the employer's self-insured/self-funded insurance program.

### **36. Does an employee get to choose how the employer makes the expenditure?**

No. The employer has the discretion as to which method(s) of the monthly healthcare expenditure they choose to make for their employees. Whichever method(s) the employer chooses, the employer must satisfy the entire expenditure owed to the employee.

### **37. Are there any circumstances in which an employer will be deemed to have satisfied its obligation to provide an expenditure, but not have made any payments?**

There is one limited situation where this can occur. An employer will be deemed to have satisfied its obligation with respect to an employee if:

- The employer makes an offer of a healthcare expenditure that fully satisfies the relevant monthly expenditure rate for the employee (which will necessarily include payments toward an employer-sponsored health insurance plan);
- The employee is not required to pay more than an amount equaling 20% of the single employee healthcare expenditure rate (in 2020, \$84/month) towards the employer-sponsored health insurance plan; and
- The employee voluntarily waives the offer of healthcare expenditure in writing using the OLS Voluntary Expenditure (EXP) Waiver Form.

Employers must use OLS's EXP Waiver Form. The waiver must be provided to employees in their primary language. To assist with employer compliance with the language requirements of the ordinance, OLS intends to translate the waiver in several languages. Employers are not required to provide the waiver in languages other than English until OLS makes the necessary translation available. Employers are encouraged to notify OLS of the need for additional translations. For more information about this waiver and the rules governing its validity, please view the waiver by downloading it from the OLS website and by viewing Seattle Human Rights Rule 190-250.

NOTE: This waiver is separate and distinct from a waiver of an offer of employer-sponsored health insurance. This is a waiver of the ordinance's grant of a healthcare expenditure.

### **38. What makes a Voluntary Expenditure (EXP) Waiver valid?**

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For a waiver form to be valid, the employee must fully understand their rights under the law, and the waiver must be voluntarily completed by the employee without pressure or coercion from coworkers, the employer, or anyone connected to the employer.

The form will be invalid if the employee fails to complete the form in its entirety. A completed waiver is effective on the date it is signed by the employee and is valid for one year. Employees who wish to waive their rights for more than one year must sign a new waiver each year when the prior form expires.

Employees have the right to cancel the voluntary waiver during any period of annual open enrollment in the covered employer's employer sponsored plan or due to a qualifying life event.

An electronic signature is acceptable on the EXP Waiver form so long as:

1. The form is an exact replica of the official OLS EXP Waiver,
2. The employee can view the entire form at the sign time as they sign it (the information is not broken up into multiple click-through screens and/or the signature is not on a separate page), and
3. No language on the website suggests the employee must sign the form.

Employers must keep a copy of the signed form for record retention requirements. Employees are encouraged to keep a signed copy of the form.

### **39. What if the employee continues to decline the expenditure, but refuses to sign the EXP Waiver form?**

In the event the employee refuses to sign the waiver and the employer seeks to show that the employee continued to decline the healthcare expenditure, the employer must have proof that the employee received the waiver and evidence that the employee continued to decline the healthcare expenditure. If the employer has the affirmative evidence of declination, the employer will be deemed to have satisfied the expenditure for that employee. In the absence of such affirmative evidence of declination, the employer shall provide the healthcare expenditure to the employee.

Examples of proof that the employee received the waiver include but are not limited to a written, sworn statement under penalty of perjury affirming that the Expenditure Waiver was given to the employee and the date upon which such service was made.

Examples of evidence of continued declination include but are not limited to:

- A written statement from the employee indicating that the employee declines the expenditure that is dated after the date the waiver was provided to the employee;
- The employee's refusal to authorize a payroll deduction for a premium payment after being given a reasonable opportunity to do so.

The employer must keep evidence of proof of service of the EXP Waiver and any evidence of continued declination for three years.

### **40. Hypothetical Situation: An employer plans to meet their obligations through payments to an insurance carrier to provide health insurance to an employee and their spouse. The employee wants to enroll in the health insurance plan, but does not want to enroll their spouse in their employer's health insurance plan and, therefore, declines the expenditure in part. Their employer wants to honor the employee's desire to enroll themselves and to decline spousal enrollment but doesn't want to violate the ordinance. What happens?**

In this situation, the employer can provide the employee with the OLS EXP Waiver and give them the opportunity to waive their right to the expenditure. If the employee signs the waiver or refuses to sign but continues to decline part of the expenditure, the employer will be deemed to have satisfied their obligations under this law. However, even

though the employee has waived rights under this ordinance, the employer may still offer the employee the opportunity to individually enroll in the health insurance.

As noted before, a waiver of the right to an expenditure under this law is separate and distinct from a waiver of employer-sponsored health insurance. Nothing in this law prevents an employer from offering an employee employer-sponsored health insurance and nothing in this law requires an employer to offer or provide employees with health insurance.

**41. What if the amounts paid toward any given method do not reach the minimum healthcare expenditure required by the law?**

The employer must meet its full obligation to the employee for each month the employee is considered covered by the ordinance. If the payment toward one method does not cover the entire obligation, the employer must make up the difference via a different expenditure method.

Take this hypothetical example of a single employee who is owed the 2020 monthly expenditure of \$420/month. The employer decides to meet its obligation to this employee through payments to a third-party insurance carrier to provide the employee with health insurance. However, the monthly premium only costs \$400/month. The employer must make up the difference through one of the other methods to make up the \$20 monthly shortfall. This could take the form of ordinary income payments or payments towards a tax-favored health program.

**42. How does an employee know which rate applies to them?**

On an annual basis, an employer must notify covered employees, including those who have previously waived their rights to the ordinance, of:

- The rate for which the employee is eligible,
- How an employee should notify the employer of a change that would impact the employee's rate,
- Which healthcare expenditure form(s) the employer will use to satisfy its obligations under the law, and
- If an employer uses payments into a tax-favored health plan to meet some or all of its obligations: information about the tax-favored health plan, how to access information about the plan, how to contact the plan administrator (if applicable), any carryover requirements, grace periods, and whether funds revert back to the employer at any time.

**43. Is an employee owed a healthcare expenditure if they separate from employment before the end of the month?**

Unless otherwise required by law or by contract, an employer is not obligated to make a final monthly required healthcare expenditure to or on behalf of an employee who separates from employment prior to the end of a calendar month.

**Note:** this only means the employer is not obligated to comply with the requirement of SMC 14.28 to make a healthcare expenditure for that final month; however, employers may be required by other laws, by contract, or their own policies to make payments (e.g. for an employee's health insurance premium, tax-favored health program, or to pay out claims as with self-funded health insurance programs).

## Ordinary Income

**44. What is ordinary income?**

Ordinary income is compensation paid in cash, direct deposit, or check that can be converted into cash.

**45. If an employer chooses to meet some or all its expenditure obligations by paying ordinary income to an employee,**

### when is the amount due?

Whether the ordinary income payment satisfies all or a portion of the employer's expenditure obligation, this amount must be paid to the employee no later than the employee's last regular pay date of following calendar month. An employer may choose to make this ordinary income payment earlier, or more frequent, than once per month.

## Payments to a Third-Party for Healthcare Services

### 46. What is a third-party payment? Which kinds of third-party payments qualify?

A third-party payment is a sum of money paid to a third-party that is made for the purpose of providing healthcare services to the employee or to the employee's spouse, domestic partner, or dependents (if applicable).

These kinds of third-party payments include, but are not limited to:

- Payments to an insurance carrier for health insurance coverage,
- Payments into a trust health plan, and
- Payments into a tax-favored health program that allows for reimbursement for out-of-pocket costs for healthcare services.

### 47. What is a tax-favored health program?

A tax-favored health program includes programs like flexible spending arrangements, health reimbursement arrangement plans, health savings accounts, or substantially similar programs. For information about these kinds of tax-favored health plans, please visit the [Internal Revenue Service website](#) and look at the most current version of Publication 969.

### 48. When must the payment to a third-party be made?

The timing of the employer's payment to the third-party may vary depending on the contractual arrangement that the employer has with the third-party or on employee-specific situations. Regardless of the timing of the employer's payment to a third-party, the employee must receive the *benefit* of that expenditure every month that the employee is considered an employee covered by the ordinance.

For example:

- An employer may pay the health insurance carrier retroactively for multiple months of an employee's health insurance premium.
- An employer may pay a lump sum to a third-party for an employee's access to health services over multiple months.

Although the employer's payment was not made monthly, the employee received the benefit of that payment in each month that the employee was covered by the law.

### 49. How does an employer calculate a lump sum payment to a third-party that will provide healthcare services to an employee for multiple months?

If an employer makes a lump sum payment to a third-party that will provide healthcare services to the employee over multiple months, the employer may divide that sum by the number of months that the employee will be provided healthcare services.

## Payments to an Employer's Self-funded Insurance Program

### 50. What is a self-funded or self-insured insurance program?

A self-funded insurance program (also known as a self-insured plan) is one where the employer assumes the financial risk for providing health care benefits for its employees. Employers pay for claims as they are presented instead of

paying a pre-set premium to an insurance carrier. Because the amount of claims each year varies, an employer must use some method to estimate how much it must earmark to pay claims that are incurred during the year.

**51. What is an “average per-capita” monthly expenditure for healthcare services by the employer’s self-funded/insured program?**

The “average per-capita monthly expenditures” means the average cost of healthcare services paid by the employer for each employee who participates in the same health plan during a plan year. This amount includes costs for participating spouses, domestic partners, and/or dependents. This amount does not include any premium payments made by employees or refunds or credits given to an employer at the end of the plan year. An employer may choose whether to base the “average per-capita monthly expenditures” on all participating employees in the plan or upon only covered employees who participate in the plan. The “same health plan” means a plan with the same benefit design for each enrolled covered employee, including but not limited to the same co-pay requirements, out-of-pocket maximums, deductibles, coverage tiers, and eligibility criteria.

**52. How does an employer with a self-funded plan determine if its expenditures meet or exceed the required rate for a given employee?**

An employer may use the “monthly premium equivalent rate” (also known as a “premium budget rate”) to estimate its average per-capita monthly expenditures. The “monthly premium equivalent rate” is the *expected* “average per-capita monthly expenditure.”

An employer that obtains an actuarial certification that verifies that its “monthly premium equivalent rate” is an accurate and reasonable estimate of its “average per-capita monthly expenditures” may rely upon its estimate for the purposes of determining whether it has met its healthcare expenditure obligation for a given employee.

An employer that does not obtain an actuarial certification must conduct an audit at the end of the plan year to verify that covered employees received the expenditure owed. If the actual “average per-capita monthly expenditures” is less than its “monthly premium equivalent rate,” the employer must make up the shortfall by contributing to one or more of the other forms set forth in SMC 14.28.060.B. The audit must be completed by the end of the third month following the end of the plan year.

**53. What is a plan year?**

A plan year is a calendar, policy, or fiscal year of benefits coverage as established by an employer’s group health plan.

## **Notice, Posting, and Recordkeeping Requirements**

**54. What is the notice and posting requirement of this law?**

Employers must display one of two notice of rights posters that OLS will make available for electronic download on its website. One of the posters is for employees of hotels (Notice of Rights for Hotel Employees) and one is for employees of ancillary hotel businesses (Notice of Rights for Employees of Ancillary Hotel Businesses). These posters contain the information that employers must post to comply with the notice and posting requirements of all four hotel employee protection laws (Seattle Municipal Codes 14.26-14.29).

Employers must display the poster at any workplace or job site their employees work, in a visible and accessible location. Employers must display the poster in English and in the primary languages of employees at that workplace. Employers must make a good-faith effort to determine the primary languages of employees to post posters in the correct languages.

### 55. Where can employers get these posters?

These posters are available electronically on the [OLS website](#). OLS creates and updates these posters annually and will make them available for electronic downloading in English and other languages. Currently, OLS is unable to make printed versions available.

### 36. What if OLS does not have the poster(s) in a specific language?

To assist with employer compliance with the language requirements of the ordinance, OLS intends to translate posters in several languages. Employers are not required to provide these notices in languages other than English until OLS makes the necessary translation available. Employers are encouraged to notify OLS of the need for additional translations.

### 56. What records must an employer keep?

Employers must keep records that show compliance with the ordinance. These records must be kept for three years. At a minimum, these include:

- Proof of each required healthcare expenditure that was made each month to each current and former employee;
- Records related to Waiver Forms, including:
  - a. Copies of any signed forms,
  - b. Copies of signed cancellations (revocation) of waivers, and
  - c. For Waivers described in SMC 14.28.060, evidence of proof of service of the waiver form and, when applicable, records proving that the employee continued to decline the healthcare expenditure.

## Prohibition on Retaliation

### 57. Does the law prohibit retaliation?

Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action against employees who assert or exercise their rights in good faith.

These rights include (but are not limited to):

- Asking questions about the law or the rights given by the law,
- Informing someone about potential or actual violations of the law,
- Filing a complaint with the Office of Labor Standards or participating in an investigation about potential or actual violations of the law,
- Talking to the Office of Labor Standards or coworkers about the rights granted by this law, and
- Informing other employees about their rights.

An employee is still protected from retaliation even if they are mistaken about the right afforded.

### 58. What is considered an *adverse action*?

An adverse action is some action that negatively impacts any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms or condition of employment.

Some examples of adverse actions include: denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practice, filing of a false report with a government agency, changing employment status, or unlawfully discriminating against an employee.

## Collective Bargaining Agreement Waiver

### 59. Can employees who are a party to a collective bargaining agreement waive the protections of this law?

Employees covered by a bona fide collective bargaining agreement may waive the protections of this law if the waiver is express, clear, and unambiguous and if the ratified agreement contains alternative safeguards that meet the goals of this law.