SEATTLE OFFICE FOR CIVIL RIGHTS

Seattle Office for Civil Rights Rules
Chapter 70

Practices for administering paid sick time and paid safe time under SMC 14.16

GENERAL PROVISIONS

SHRR 70-001 Purpose

These Rules (Chapter 70) govern the practices of the Seattle Office for Civil Rights in administering the provisions of the Paid Sick Time and Paid Safe Time Ordinance (Ordinance), Seattle Municipal Code (SMC) 14.16.

SHRR 70-010 Definitions

(1) “Adverse action” means the discharge, suspension, discipline, transfer, demotion or denial of promotion by an employer of an employee for any reason prohibited by SMC 14.16.040.

(2) “Business” and “engaging in business” have the same meanings as in SMC 5.30.

(3) “Calendar year” means the period of a year beginning January 1 and ending December 31 and is not interchangeable with a fiscal year or rolling year that is different than this definition.

(4) “City” shall mean the City of Seattle.

(5) “Charging party” means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.

(6) “Clear instance or pattern of abuse” includes one or more situations when an employee has used paid sick/safe time in a pattern without legitimate reason (e.g. repeated absences or absences that precede or follow regular days off) or has obtained, attempted to obtain or used paid sick/safe time improperly.

(7) “Client” means any employer that enters into a professional employer agreement with a professional employer organization.

(8) “Combined or universal leave policy” means a policy, such as a paid time off (PTO) policy, that is defined in writing or practice as providing employees with a single amount of paid leave and permitting employees to use available paid leave regardless of the reason.

(9) “Department” means the Seattle Office for Civil Rights.

(10) “Director” means the Director of the Seattle Office for Civil Rights.

(11) “Eating and/or drinking establishment” means a place where food and/or beverages are prepared and sold at retail for immediate consumption either on- or off-premise, but excludes food and beverage service sites such as cafeterias, that

are accessory to other activities and primarily serve students, patients and/or on-site employees.

(12) “Employ” means to engage, suffer or permit to work.

(13) “Employee” shall mean any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Individuals performing services under a work study agreement are not covered by this chapter. Employees are covered by the Ordinance if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by the Ordinance only if he or she performs more than 240 hours of work in Seattle within a calendar year. An employee who is not covered by the Ordinance is still included in any determination of the size of the employer. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be an employee of the staffing agency for all purposes of this chapter, except as provided in SMC 14.16.010(T)(4)(b)

(14) “Employer” shall mean, as defined in SMC 14.04.030(K), any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. Employer size shall be determined as provided in SMC 14.16.010(T). For purposes of the Ordinance, "employer" does not include any of the following:

a. The United States government;

b. The State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;

c. Any county or local government other than the City.

(15) “Employment agency” or “staffing agency” means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

(16) “Enterprise” means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units, including departments of an establishment operated through leasing arrangements but not including the related activities performed for such enterprise by an independent contractor.

(17) “Exempt employee” means an employee who is exempt from overtime payment under federal or state law.

(18) "Full-time" means an eight-hour day and a five-day week or as full-time is defined, in writing or practice, by the employer. There is no minimum number of hours for full-time; it is an employer-specific determination. An employer may define full-time differently for exempt and nonexempt employees.

(19) "Full-time equivalent" shall mean the number of hours worked for compensation that add up to one full-time employee, based either on an eight-hour day and a five-day week or as full-time is defined, in writing or in practice, by the employer.

(20) "Health care professional" shall mean any person authorized by the City, any state government and/or the federal government to diagnose and treat physical or mental health conditions, including a doctor, nurse, emergency medical care provider, and/or a public health clinic worker, so long as that person is performing within the scope of their practice as defined by the relevant law.

(21) "Hours worked" means time that an employee performs work for the employer and does not include paid or unpaid leave.

(22) "Integrated enterprise" means an enterprise in which the operations of two or more separate entities are considered so intertwined that they can be considered the single employer of the employee.

(23) "Joint employer" means a relationship in which two or more separate entities exercise some control over the work or working conditions of the employee.

(24) "Nonexempt employee" means an employee who is not exempt from overtime payment under federal or state law.

(25) "Normal work week" means an employee's regular schedule of work hours (e.g. 40 hours at full-time, etc.).

(26) "Ordinance" means the Paid Sick Time and Safe Time Ordinance, Seattle Municipal Code (SMC) 14.16.

(27) "Paid sick time" and/or "paid sick days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in SMC 14.16.030(A)(1), for which time an 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. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked.

a. For purposes of determining eligibility for "paid sick time," "family member" shall mean, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

i. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) under 18 years of age; or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability.

ii. "Grandparent" means a parent of a parent of an employee.

iii. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

iv. "Parent-in-law" means a parent of the spouse of an employee.

v. "Spouse" means husband, wife or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships as well as to marital relationships and married persons to the extent that such interpretation does not conflict with federal law. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in city or state registered domestic partnerships.

(28) "Paid safe time" and/or "paid safe days" shall mean accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in SMC 14.16.030(A)(2), for which time an 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.

a. For the purposes of determining eligibility for "paid safe time":

i. "Family or household members" shall mean, as defined in RCW 49.76.020, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons 16 years of age or older with whom a

person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

ii. “Domestic violence” shall mean:

1. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2. sexual assault of one family or household member by another; or

3. stalking, as defined below in SMC 14.16.010(P)(1)(c), of one family or household member by another family or household member.

4. “Stalking” shall be defined as in RCW 9A.46.110,

5. “Dating relationship” shall mean, as defined in RCW 49.76.020, a social relationship of a romantic nature.

6. “Sexual assault” shall be defined as in RCW 49.76.020.

(29) “Part-time” means the number of hours that constitute a part-time work schedule as defined in writing or practice by the employer.

(30) “Party” includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Seattle Office for Civil Rights.

(31) “Person” includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.

(32) "Professional employer agreement" means a written contract by and between a client and a professional employer organization that provides for the joint employment of covered employees; and for the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees. See RCW 82.04.540(3)(e).

(33) "Professional employer organization" means any person engaged in the business of providing professional employer services as defined by RCW 82.04.540(3)(f).

(34) "Tier One," "Tier Two," and "Tier Three" employers are defined as follows:

a. "Tier One employer" shall mean an employer that employs more than four and fewer than fifty full-time equivalents on average per calendar week.

b. "Tier Two employer" shall mean an employer that employs at least fifty and fewer than 250 full-time equivalents on average per calendar week.

c. "Tier Three employer" shall mean an employer that employs 250 or more full-time equivalents on average per calendar week.

d. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:

i. work performed outside of the City; and

ii. compensated hours made available by part-time employment, temporary employment or through the services of a temporary services or staffing agency or similar entity.

e. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

(35) "Work Study" means a job placement program that provides students in secondary and/or post-secondary educational institutions with employment opportunities for financial aid and/or vocational training.

SHRR 70-020 Practice where rules do not govern

If a matter arises in administering the Ordinance that is not specifically governed by these rules, the Director shall, in the exercise of his or her discretion, specify the practices to be followed.

SHRR 70-030 Construction of rules

These rules shall be liberally construed to permit the Department to accomplish its administrative duties and to secure the just and efficient determination of the merits of all charges and complaints received by the Department.

EMPLOYEES

SHRR 70-040 Alternative and limited Seattle schedules

(1) Employer location. Employees who perform work in Seattle are covered by the Ordinance regardless of where their employer is located.

(2) Telecommuting in Seattle. Employees who perform work for an employer by telecommuting are covered by the Ordinance for hours that they telecommute in Seattle.

(3) Telecommuting outside Seattle. Employees who perform work for an employer by telecommuting are not covered by the Ordinance for hours that they telecommute outside of Seattle.

(4) Work outside of Seattle. Employees who perform work outside of Seattle, even if the employer is based in Seattle, are not covered by the Ordinance for hours worked outside of Seattle.

(5) Occasional basis. Employees who typically perform work outside of Seattle but work in Seattle on an occasional basis are covered by the Ordinance if they perform more than 240 hours of work in Seattle within a calendar year.

a. Employees who perform work in Seattle on an occasional basis are distinguished from traditional employees, temporary workers and part-time employees with a reasonable expectation of performing more than 240 hours of work in Seattle.

b. Once an employee who performs work in Seattle on an occasional basis is covered by the Ordinance, that employee shall remain covered by the Ordinance for the current and following calendar year.

c. The requirement to track hours of occasional basis employees starts on the date this Ordinance goes into effect, September 1, 2012.

i. Tracking hours worked in Seattle may be delegated to employees if the employer meets Ordinance requirements for notice and posting and provides employees with a reasonable system for tracking hours.

ii. Tracking total hours worked, rather than hours worked in Seattle, is permitted if the employer meets Ordinance requirements for provision of paid sick/safe time regardless of where work is performed.

(6) Stopping in Seattle. Employees who travel to Seattle and make a stop as a purpose of their work (e.g., to make pickups, deliveries, sales calls, etc.) are covered by the Ordinance for all hours that they perform work in Seattle, including travel within the city to and from the work site(s).

(7) Travelling through Seattle.

a. Employees who travel through Seattle, but do not stop in the city as a purpose of their work (e.g. to make pickups, deliveries, sales calls, etc.) are not covered by the Ordinance for the time spent travelling through Seattle.

b. Employees who travel through Seattle and only make incidental stops (e.g. purchasing gas or changing a flat tire) are not making a stop as a purpose of their work.

SHRR 70-050 Temporary workers

(1) In general. Temporary workers are covered by the Ordinance if they perform work in Seattle. See 14.16.010(J).

(2) Off assignment. If a temporary worker is not on assignment in Seattle, an employer is not required to permit his or her use of paid sick/safe time.

(3) Staffing Agencies.

a. In general. A temporary worker supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, shall be an employee of the staffing agency for all purposes of the Ordinance except as provided in SMC 14.16.010(T)(4)(b) to determine employer tier size. See SMC 14.16.010(J).

b. Tier size. Temporary workers supplied by a staffing agency shall be counted for tier size of the staffing agency and the contracting employer.

c. General responsibility. Absent a contractual agreement stating otherwise, a staffing agency is responsible for complying with the Ordinance's requirements for providing paid sick/safe time.

d. Situational responsibility. Absent a contractual agreement stating otherwise, the contracting employer is not responsible for providing paid sick/safe time if a staffing agency is not a covered employer under the Ordinance (e.g. a staffing agency is a federal, state or other local government employer).

e. Assignment. After a temporary worker uses paid sick/safe time, the staffing agency may return the temporary worker to the original assignment or the next available assignment if the original assignment is no longer available. A staffing agency's inability to provide a temporary worker with an assignment immediately following use of paid sick/safe time shall not be presumed an adverse action unless there is evidence of retaliation or discrimination due to the temporary worker's good faith exercise of rights under the Ordinance.

EMPLOYERS

SHRR 70-060 Integrated enterprises

(1) Single employer. Separate entities that form an integrated enterprise shall be a single employer under the Ordinance. Examples of an integrated enterprise include but are not limited to a single entrepreneur with multiple businesses, a corporation with subsidiaries in Seattle, a corporation with franchises in Seattle, etc.

(2) Determination. The Department will determine the existence of an integrated enterprise by assessing 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:

a. Degree of interrelation between the operations;

b. Degree to which the entities share common management;

c. Centralized control of labor relations; and/or

d. Degree of common ownership or financial control over the entities.

(3) Tier Size. Employees of all separate entities that form an integrated enterprise shall be counted for the integrated enterprise's tier size.

SHRR 70-070 Joint employers

(1) Joint employer. Separate entities that exercise some control over the work or working conditions of the employee may be treated as a joint employer under the Ordinance. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. An example of a joint employer includes a client and professional employer organization that have entered into a professional employer agreement.

(2) Determination. The Department may determine that separate entities are joint employers when an employee performs work which simultaneously benefits two or more employers and/or an employee works for two or more employers at different

times during the workweek. The determination will be made on a case by case basis and will examine the entire relationship between the entities.

(3) Tier size for joint employers created by professional employer agreements. When a client enters into a professional employer agreement with a professional employer organization, only employees of the client (and not the employees of the professional employer organization) shall be counted for the client's tier size.

SHRR 70-080 Newly-acquired employers

A newly-acquired employer shall not be a "new employer" under the Ordinance. The provisions of the Ordinance for paid sick/safe time shall immediately apply to newly-acquired Tier One and Tier Two employers without a 24 month waiting period because the hire date of the first employee will relate back to the former employer. See SMC 14.16.090.

For example, a new company purchases an existing company's assets and retains the existing company's employees. The former company's employees are all retained by the new company. The new company is a newly-acquired employer and is responsible for immediate compliance with the Ordinance.

SHRR 70-090 Full-time equivalents

(1) In general.

a. A full-time equivalent shall mean the number of hours worked for compensation that adds up to one full-time employee. See SMC 14.16.010(M).

b. The employer tier size for the current calendar year will be calculated based on the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. See SMC 14.16.010(T)(4).

c. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted. See SMC 14.16.010(T)(4).

(2) Compensated Hours. Employers shall count compensated hours for all hours worked and are not required to count paid leave as compensated hours.

(3) Nonexempt employees and overtime. Employers shall count all hours worked by nonexempt employees, including overtime hours.

(4) Exempt employees. Employers shall count all hours worked by exempt employees based on hours for a full-time or part-time normal work week (up to 40 hours per week) rather than tracking actual hours worked.

For example, if an exempt employee has a full-time normal work week of 40 hours per week, the employer counts "hours worked for compensation" based on 40 hours per week, regardless of whether the exempt employee worked more than 40 hours per week.

(5) Fractions of full-time equivalents. Employers shall count fractions of full-time equivalents.

For example, if an employer defines full-time as working 40 hours per week and has six employees who each work 30 hours per week, this employer has 4.5 full-time equivalents and is a Tier One employer.

ACCRUAL

SHRR 70-100 Accrual of paid sick/safe time

Employees of Tier One or Tier Two employers shall accrue at least one hour of paid time for every 40 hours worked in Seattle. Employees of Tier Three employers shall accrue at least one hour of paid time for every 30 hours worked in Seattle. See SMC 14.16.020(B).

SHRR 70-110 Accrual of combined or universal leave

Employees of employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall accrue at least one hour of paid time at the rate required for the employer's tier size. See SMC 14.16.020(H)(2)-(3) and SMC 14.16.020(I)(2)-(3).

SHRR 70-120 Start of Accrual

(1) Except as modified in section two of this rule, employees who perform work in Seattle, including traditional employees, temporary workers, part-time employees and employees who work in Seattle on an occasional basis shall begin to accrue paid sick/safe time on the date this Ordinance goes into effect on September 1, 2012 or at the commencement of their employment if they are hired after September 1, 2012.

(2) Employees who work in Seattle on an occasional basis shall begin to accrue paid sick/safe time upon coverage by the Ordinance (i.e. when they have worked more than 240 hours of work in Seattle within a calendar year).

SHRR 70-130 Existing Policy

(1) An employer that has an existing policy for paid sick/safe time on the date the Ordinance goes into effect on September 1, 2012 is not required to provide additional paid sick/safe time for the remainder of the 2012 calendar year provided that the existing policy meets the minimum requirements of the Ordinance, including but not limited to:

a. The existing policy provides paid leave for the same purposes and under the same conditions as paid sick/safe time as stated by SMC 14.16.030;

b. The existing policy provides paid leave that is accrued at the rate consistent with SMC 14.16.020(B), SMC 14.16.020(H)(2) and SMC 14.16.020(I)(2);

c. The existing policy provides use of paid leave within any calendar year that is limited to no less than the amounts specified respectively for Tier One, Tier Two or Tier Three employers in SMC 14.16.020(C), SMC 14.16.020(H)(3) and SMC 14.16.020(I)(3);

d. The existing policy provides carry over of unused paid leave to the following calendar year that is limited to no less than the amounts specified respectively for Tier One, Tier Two or Tier Three employers in SMC 14.16.020(G), SMC 14.16.020(H)(4) and SMC 14.16.020(I)(4); and

e. Records show the employee's accrual, use and carry over of the paid sick/safe time for the 2012 calendar year is consistent with the above requirements.

SHRR 70-140 Paid leave

Employers are not required to permit accrual of paid sick/safe time during an employee's use of paid leave.

SHRR 70-150 Unpaid leave

Employers are not required to permit accrual of paid sick/safe time during an employee's use of unpaid leave

SHRR 70-160 Overtime

Employers are required to permit accrual of paid sick/safe time when a nonexempt employee works overtime hours.

SHRR 70-170 Frontloading

An employer's provision of paid sick/safe time in advance of accrual shall be permissible frontloading, provided that the frontloading meets the Ordinance requirements for accrual, use and carry over.

SHRR 70-180 Carry over

(1) In general. Unused paid sick/safe time shall be carried over to the following calendar year according to Ordinance requirements.

a. Tier One employers shall permit employees to carry over unused paid sick/safe time up to 40 hours. Tier Two employers shall permit employees to carry over unused paid sick/safe time up to 56 hours. Tier Three employers shall permit employees to carry over unused paid sick/safe time up to 72 hours. See SMC 14.16.020(G).

b. Tier One or Tier Two employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to carry over unused paid leave in accordance with carry over requirements for Tier One and Two employers. See SMC 14.16.020(H)(4).

c. Tier Three employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to carry over up to 108 hours of unused paid leave, See SMC 14.16.020(I)(4).

(2) Amount of carry over. Employers are not required to permit employees to carry over unused paid sick/safe time beyond the provisions of SMC 14.16.020 (G)-(I).

(3) Accrual after carry over. Employers are required to permit employees to maintain and/or use their carried over paid sick/safe time while concurrently accruing new paid sick/safe time for every hour worked. However, employers are not required to permit use of paid sick/safe time beyond the provisions of SMC 14.16.020(C).

USE

SHRR 70-190 Waiting period

(1) 180 calendar days. Except as provided in the Ordinance for new employers, employees shall be eligible to use accrued paid sick/safe time beginning on the 180th calendar day after the commencement of their employment. The waiting period for eligibility relates back to the employee's commencement of employment, not the first day the Ordinance goes into effect on September 1, 2012.

(2) Occasional basis. Employees who perform work in Seattle on an occasional basis shall be eligible to use accrued paid sick/safe time beginning on the 180th calendar day after the commencement of their employment, provided that they have met the

initial coverage requirements of performing more than 240 hours of work in Seattle within the current or preceding calendar year.

SHRR 70-200 Location of use

All covered employees, including traditional employees, temporary workers, part-time employees and employees who perform work in Seattle on an occasional basis, shall be entitled to use paid sick/safe time during times that they are scheduled to perform work in Seattle.

SHRR 70-210 Paid safe time

(1) In general. Paid safe time can be used when an employee's place of business, or the school/place of care of an employee's child, has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material. See SMC 14.16.030(A)(2)(a)-(b).

(2) Inclement weather, loss of power or loss of water. Employees are not entitled to use of paid safe time when an employee's place of business, or when the school or place of care of an employee's child, has been closed due to inclement weather, loss of power or loss of water. The use of paid safe time shall be limited to the specific circumstances described in the Ordinance.

SHRR 70-220 Rate of pay

(1) In general. When using paid sick/safe time, an employee shall be compensated at the same hourly rate as the employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked. See SMC 14.16.010(O).

(2) Minimum wage. Employees may not be compensated for paid sick/safe time at a rate of pay that is less than the state minimum wage, except as modified by SHRR 70-240(1).

(3) Nonexempt employees

a. Hourly rate of pay. For nonexempt employees paid an hourly wage, the hourly rate of pay shall be the same hourly wage the employee would have earned during the time which paid sick/safe time is taken.

b. Overtime hours. For nonexempt employees who use paid sick/safe time for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's hourly rate of pay.

i. **Mandatory overtime.** Employers are required to permit use of paid sick/safe time for mandatory overtime hours that an employee was scheduled to work.

ii. **Voluntary overtime.** Employers are not required to permit use of paid sick/safe time for voluntary overtime hours that the employee elected or agreed to add to his or her schedule.

c. **Annual Salary.** For nonexempt employees paid an annual salary, the hourly rate of pay shall be determined by dividing the annual salary by the number of weeks worked per year to get the weekly salary and dividing the weekly salary by 40 or fewer hours, even if the non-exempt employee regularly works more than 40 hours per week.

(4) Exempt employees

a. **Annual Salary.** For exempt employees who are paid an annual salary, the hourly rate of pay shall be determined by dividing the annual salary by the number of weeks worked per year to get the weekly salary and dividing the weekly salary by the number of hours of the employee's normal work week.

(5) Two or more jobs for same employer. For employees who perform work for two or more jobs at different rates of pay for the same employer, the hourly rate of pay shall be equal to the scheduled rate of pay for the job during which paid sick/safe time is taken.

(6) Fluctuating rate of pay for same job. For employees whose rates of pay fluctuate for the same job (e.g. wage augmentation other than commission, tips or overtime), the hourly rate of pay shall be equal to the scheduled rate(s) of pay for the job during which paid sick/safe time is taken.

(7) Commissions and piecework. For employees who are paid on a commission (whether base wage plus commission or commission only) or piecework basis (whether base wage plus piecework or piecework only), the hourly rate of pay shall be the base wage or applicable minimum wage, whichever is greater.

SHRR 70-230 Shifts of indeterminate length

For employees who are scheduled to work a shift of indeterminate length (e.g. a shift that is defined by business needs rather than a specific number of hours), the employer may determine payment for paid sick/safe time 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.

SHRR 70-240 On-call shifts

(1) For employees who are scheduled for on-call shifts and are compensated for the scheduled time, regardless of whether work is performed, employers must permit use of paid sick/safe time.

(2) For employees who are scheduled for on-call shifts and are compensated only if work is performed, employers may, but are not required to, permit use of paid sick/safe time.

SHRR 70-250 Shift swapping

(1) In general.

a. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick or safe time for the original missed hours or shifts. See SMC 14.16.030(G).

b. When paid sick/safe time is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, may be deducted from the employee's accrued sick/safe time. See SMC 14.16.030(I).

(2) Signed Agreement. A shift-swapping arrangement may be memorialized in a signed agreement. Should questions arise about the nature of an arrangement, a signed agreement may serve as an accurate reflection of the interest and intentions of all involved parties.

(3) Employer discretion in eating and/or drinking establishments. In an eating or drinking establishment, the employer shall have the discretion to deduct an employee’s accrued sick/safe time for hours worked during a substitute shift only for employer-managed shift-swaps and only upon mutual consent by the employer and employee.

SHRR 70-260 Concurrent leave

An employee’s use of paid sick/safe time also may qualify for concurrent leave under federal, state or other local laws (e.g. leave for family medical leave, family care, reasonable accommodation, workplace injury, domestic violence, etc.).

SHRR 70-270 Disciplinary leave

Employers are not required to permit use of paid sick/safe time when an employee is suspended or otherwise on leave for disciplinary reasons.

SHRR 70-280 Other paid leave in lieu of paid sick/safe time

An employer may permit employees to use other paid leave for the purposes of paid sick/safe time (e.g. vacation leave) provided that the employer meets the minimum requirements of the Ordinance, including but not limited to requirements for accrual, use, carry over, employee notification and record keeping.

SHRR 70-290 Use of combined or universal leave

(1) Tier One or Tier Two employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to use paid leave within any calendar year in accordance with requirements for Tier One and Two employers. See SMC 14.16.020(H)(3).

(2) Tier Three employers with a combined or universal leave policy, such as a paid time off (PTO) policy, shall permit employees to use up to 108 hours of paid leave within any calendar year, See 14.16.020(I)(3).

(3) If an employee uses all paid leave for a reason not related to paid sick/safe time, the employer is not obligated to provide additional leave for paid sick/safe time under this Ordinance, though other federal, state or local laws may provide paid or unpaid leave for similar purposes.

SHRR 70-300 Breaks in service

(1) In general. Except as provided in the Ordinance for new employers, employees shall be entitled to use accrued paid sick/safe time beginning on the 180th calendar day after the commencement of their employment. When an employee is separated from employment and rehired within seven months of separation by the same employer, previously accrued and unused paid sick/safe time shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee's eligibility to use accrued paid sick/safe time provided that if separation does occur, the total time of employment used to determine eligibility must occur within two calendar years. See SMC 14.16.020(F) and (L).

(2) Separation prior to eligibility. When an employee is separated from employment before becoming eligible to use paid sick/safe time and is rehired by the same employer within seven months of separation, the prior period of employment counts towards the 180 calendar day waiting period. The 180 calendar days do not have to be continuous or consecutive, but must have occurred within two calendar years.

(3) Separation after eligibility. When an employee is separated from employment after becoming eligible to use paid sick/safe time and is rehired by the same employer within seven months of separation, the employee is not subject to the 180 calendar day waiting period.

(4) Reinstatement.

a. When an employee is separated from employment and is rehired by the same employer within seven months of separation, the employer shall immediately reinstate previously accrued and unused paid sick/safe time, regardless of whether the employee has met eligibility requirements for use of paid sick/safe time.

b. The employer is not required to reinstate accrued and unused paid sick/safe time that an employee previously cashed out. Cashed out paid sick/safe time is the equivalent of used paid sick/safe time.

SHRR 70-310 Employee Notification

(1) In general. Each time wages are paid, employers shall provide written notification in physical and/or electronic form of an updated amount of paid leave available to each employee for use as sick/safe time. See SMC 14.16.030(K).

(2) Notification to all potentially eligible employees. Employers must provide written notification of paid leave available for paid sick/safe time to all employees who perform work in Seattle, regardless of whether the employee has met eligibility requirements (e.g. 180 calendar day waiting period) for use of paid sick/safe time.

EMPLOYEE NOTICE

SHRR 70-320 Reasonable notice policy and procedures

(1) An employer may require an employee to provide reasonable notice of an absence for paid sick/safe time if the notice requirements do not interfere with the purpose of the leave.

(2) Reasonable notice may include compliance with an employer's usual and customary notice and procedural requirements, normal notice requirements, reasonable normal notification policies and/or call-in procedures for absences and/or requesting leave, provided that such requirements do not interfere with the purposes of the leave.

(3) If an employer does not have an existing policy and procedure for providing reasonable notice, the employer should establish such policy and/or procedure, preferably in writing. The policy and procedure should enable the employee to effectively provide reasonable notice in a way that can be documented.

SHRR 70-330 Reference to ordinance

An employee may provide reasonable notice of an absence for paid sick/safe time without explicitly referencing the Ordinance or using the terms “paid sick time” or “paid safe time.” An employer may inquire further to determine whether the absence qualifies for paid sick/safe time, provided that the inquiry does not violate the privacy and confidentiality provisions of the Ordinance or federal, state or local medical privacy laws.

SHRR 70-340 Notice for foreseeable leave

(1) In general. If the reason for paid sick/safe time is for a pre-scheduled or foreseeable absence, the employee shall provide a written request at least 10 days, or as early as possible, in advance of the paid leave, unless the employer’s normal notice policy requires less advance notice. See SMC 14.16.030(B)(1).

(2) Written request. An employer may require that the written request state the reasons for leave as paid sick time or safe time, the anticipated duration of the leave and the anticipated start of the leave as well as designate a specific individual for point of contact. An employer may not require that the notice explain the nature of the illness or other reason for the absence.

SHRR 70-350 Notice for unforeseeable leave

(1) In general. If the reason for paid sick/safe time is unforeseeable, the employee shall provide notice as soon as is practicable. In all cases, whether an employee can practicably provide notice depends upon the individual facts and circumstances of the situation. See SMC 14.16.030(B)(2).

(2) Paid sick and safe time. Except as modified in section three of this rule, an employee shall generally comply with an employer’s reasonable notice policy and/or call-in procedures for unforeseeable leave, recognizing that there are certain situations such as accidents or sudden illnesses for which such requirements might be unreasonable. If an employee is unable to provide notice personally, notice may be provided by the employee’s spokesperson (e.g. spouse, domestic partner, adult family member or other responsible party).

(3) Domestic violence, sexual assault or stalking. An employee shall provide oral or written notice to the employer no later than the end of the first day that the employee has used paid safe time for a reason related to domestic violence, sexual assault or stalking.

SHRR 70-360 Notice for combined or universal leave

When an employer offers a combined or universal leave policy, such as a paid time off (PTO) policy, the employer may require the employee to provide notice that the paid

leave is being used for foreseeable or unforeseeable paid sick/safe time. See SMC 14.16.030(B)(1)-(2).

EMPLOYEE DOCUMENTATION

SHRR 70-370 Reasonable documentation

(1) In general. When an employee uses paid sick/safe time for more than three consecutive days, an employer may require reasonable documentation that the sick/safe time is being used for a reason that is consistent with the Ordinance. See SMC 14.16.030(E).

(2) Paid sick time. Reasonable documentation for paid sick time shall consist of a signed statement by a health care provider indicating that sick time is necessary.

- **a. Confidentiality**. An employer may not require an explanation of the nature of the illness or other reason for the absence unless the absence is for a purpose covered by a federal, state, or other local law (e.g. leave for family medical leave, reasonable accommodation, workplace injury, etc.).

(3) Paid safe time for domestic violence, sexual assault or stalking. Reasonable documentation for paid safe time shall communicate that the employee or the employee's family member is experiencing domestic violence, sexual assault, or stalking and that the leave was taken for a purpose covered by the Ordinance. Reasonable documentation may include a police report, court order, documentation that the employee or the employee's family member is experiencing domestic violence, sexual assault, or stalking, or an employee's written statement. See SMC 14.16.030(F)(2), RCW 49.76.040(4) and WAC 296-135-070(3) and (4).

- **a. Confidentiality.** An employer may not require an explanation of the nature of the domestic violence, sexual assault or stalking.

- **b. Employee's written statement.** An employee's written statement, by itself, is acceptable documentation for use of paid safe time. An employee's written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity and, if applicable, the employee's relationship to the family member.

SHRR 70-380 Consecutive days

Consecutive days may be partial or full work days and are distinguishable from calendar days.

For example, an employee is scheduled to work on Mondays, Wednesdays and Fridays. The employee uses paid sick time for any portion of those three work days in a

row. If the employee uses paid sick time again on the following Monday, the employee would have used paid sick time for more than three consecutive days and could be required by his or her employer to obtain reasonable documentation from a health care provider.

SHRR 70-390 Payment for documentation

(1) In general. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested, reasonable documentation. These expenses are limited to the cost of services by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. See SMC 14.16.030(E).

(2) Health insurance. Employees who are offered insurance by the employer but do not meet eligibility requirements (e.g. hours per week, etc.) shall be considered as employees who are not offered health insurance by the employer.

(3) Out of Pocket Expense. The out-of-pocket expenses for employer-requested, reasonable documentation shall not be unduly burdensome for the employer or employee.

SHRR 70-400 Documentation for clear instance or pattern of abuse

When there is a clear instance or pattern of abuse, an employer may require reasonable documentation to verify that an employee's use of paid sick/safe time is consistent with the Ordinance regardless of whether the employee has used paid sick/safe time for more than three consecutive days.

SHRR 70-410 Relationship to other laws

(1) In general. The Ordinance does not preempt, limit or otherwise affect the applicability of federal, state or other local laws that permit employers to make medical inquiries, including requests for more detailed information; require medical examinations; and/or require documentation for absences from work. See SMC 14.16.130.

(2) Medical inquiries, medical examinations and documentation. When an employee provides notice, or an employer has reason to know, that use of paid sick/safe time is for a purpose covered by a federal, state or other local law (e.g. direct threat to health and safety of others, family medical leave, reasonable accommodation, workplace injury, etc.), the employer may inform the employee of other legal requirements for medical inquiry, medical examination and documentation before the employee has used paid sick/safe time for more than three consecutive work days.

(3) Employee response. An employee's response to an employer's medical inquiry, request for medical examination or request for documentation may impact the employee's rights under a federal, state or other local law, but the employee shall retain the right to use paid sick/safe time under the Ordinance provided that he or she has met Ordinance requirements.

EMPLOYER NOTICE AND POSTING

SHRR 70-420 Notice and posting requirements

(1) In general. Employers shall give notice in physical and/or electronic form of an employee's entitlement to paid sick/safe time; the amount of paid sick/safe time and the terms of its use guaranteed under the Ordinance; the prohibition of retaliation against employees who request or use paid sick/safe time; and each employee's right to file a complaint if paid sick time/safe time as required by the Ordinance is denied by the employer or if the employee is retaliated against for requesting or taking paid sick time or paid safe time. See SMC 14.16.050.

(2) Tier size and employer location. Except as provided in section three of this rule, employers shall provide notice to all employees who perform work in Seattle regardless of employer tier size or employer location.

(3) Occasional basis. Employers with employees who perform work in Seattle on an occasional basis are not required to provide notice to all employees, provided that notice is provided to occasional basis employees reasonably in advance of their first period of work in Seattle.

(4) Conspicuous and accessible. Employers may choose whether notice is physical and/or electronic, but in either case, the notice shall be reasonably conspicuous and accessible to employees.

(5) Penalties. An employer who willfully violates the notice requirements of this section shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.

EMPLOYER RECORDS

SHRR 70-430 Employer records requirement

Employers shall retain records for a period of two years that reasonably indicate employee hours worked, accrued paid sick/safe time and used paid sick/safe time. See SMC 14.16.060.

SHRR 70-440 Records of hours worked

(1) Seattle hours. Employers that meet minimum Ordinance requirements for paid sick/safe time based on actual hours worked in Seattle must track and retain records of actual hours worked in Seattle starting on the date this Ordinance goes into effect, September 1, 2012.

a. Exempt employees

i. **Regular basis**. For exempt employees who work in Seattle on a regular basis, employers may retain records of hours worked for a part-time or full-time normal work week (up to 40 hours per week) rather than tracking actual hours worked in Seattle. The hours of a normal work week must be the actual basis for the employee's accrued and used paid sick/safe time.

ii. **Occasional basis**. For exempt employees who work in Seattle on an occasional basis, employers must retain records of actual hours worked in Seattle.

(2) Total hours. Employers that meet minimum Ordinance requirements for paid sick/safe time regardless of hours worked in Seattle (e.g. employers with unlimited leave policies, employers of occasional basis employees with leave policies commensurate with the Ordinance, etc.) may track and retain records of total hours worked rather than actual hours worked in Seattle.

a. Exempt employees. For exempt employees, employers may retain records of total hours worked for a part-time or full-time normal work week (up to 40 hours per week) rather than tracking actual hours worked.

SHRR 70-450 Records for combined or universal leave

(1) When an employer provides a combined or universal leave policy, such as a paid time off (PTO) policy, for a limited or unlimited amount of leave, the employer shall retain records for a period of two years that reasonably indicate employee hours worked, accrued leave and used leave.

(2) An employer providing a combined or universal leave, such as a paid time off (PTO) policy, is not required to maintain records showing employee reasons for use of the paid leave (e.g. vacation, paid sick/safe time, etc).

RETALIATION

SHRR 70-460 Individual and third party protection

The Ordinance's protections for exercise of rights and prohibition against retaliation shall extend to any person in the exercise or attempt to exercise any right protected under the Ordinance, including any person who has aided or encouraged another person in the exercise or attempt to exercise any right under the Ordinance.

SHRR 70-470 Absence control policies

The Ordinance's protections for exercise of rights and prohibition against retaliation shall apply in situations where an absence control policy, in writing or practice, counts paid sick/safe time covered under the Ordinance as an absence that may lead to or result in any adverse action taken against the employee.

SHRR 70-480 Response to clear instance or pattern of abuse

The Ordinance's protections for exercise of rights and prohibition against retaliation do not prevent an employer from taking reasonable action (e.g. discipline) when an employee's use of paid sick/safe time is not in good faith, such as a clear instance or pattern of abuse.

ENFORCEMENT

SHRR 70-490 Practice and procedures for enforcement of ordinance

(1) Investigations. For specific enforcement practices and procedures, see Seattle Office for Civil Rights Rules (SHRR) Chapter 40.

(2) Appeals. For specific appeals practices and procedures, see Seattle Human Rights Commission Appeals Rules (SHRR) Chapter 46.

WAIVER

SHRR 70-500 Collective bargaining agreement

(1) In general.

a. The provisions of the Ordinance shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. See SMC 14.16.120.

b. In the absence of clear and unambiguous terms that expressly waive Ordinance requirements in a collective bargaining agreement, employers must comply with the Ordinance's requirements for provision of paid sick/safe time when the Ordinance goes into effect on September 1, 2012.

(2) Clear and unambiguous terms. The terms that expressly waive Ordinance requirements shall be clear and unambiguous with explicit reference to the Ordinance.

(3) In the collective bargaining agreement. The terms that expressly waive Ordinance requirements shall be in the collective bargaining agreement as a provision within the agreement or as a separate addendum to the agreement, including a separate addendum to an agreement that is open for negotiation.