



## Paid Sick and Safe Time Ordinance Questions and Answers

Seattle’s Paid Sick and Safe Time (PSST) Ordinance requires employers operating in Seattle to provide all employees with paid leave to care for themselves or a family member with a physical or mental health condition, medical appointment, or a critical safety issue.

The **Seattle Office of Labor Standards (OLS)** is responsible for the administration of this ordinance, providing outreach, compliance assistance and enforcement services to workers and employers

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 – send an email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov) or submit an [on-line inquiry form](#).

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## A. General information

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

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

**2. (UPDATED) When did the original PSST ordinance take effect?**

The original PSST ordinance took effect on September 1, 2012. The law was also amended several times since its effective date. The most recent amendments took effect on March 18, 2020, when the law was amended to expand the situations for which PSST can be used.

**3. Which City department administers this ordinance?**

The City of Seattle's Office of Labor Standards (OLS) implements this ordinance. OLS provides a range of services for employees and employers including education, training, and compliance assistance.

**4. 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 workers who are owed payment as a result of an investigation.

**5. 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 can't investigate the employer immediately, it may place the case on a waitlist.

**6. Does an employee's immigration status impact coverage or application of the ordinance?**

No, immigration status does not impact coverage or application of the ordinance. 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.

**7. 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 identify of employers with our enforcement team. Phone conversations and email conversations are kept separate from the investigation process.

**8. 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 help employers attain full compliance with Seattle's labor standards and we will answer many types of labor standards questions. OLS



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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 entirely separate from the investigation process.

## 9. (UPDATED) What is the difference between sick time and safe time?

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

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

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

- For reasons related to domestic violence, sexual assault or stalking that affect the employee, the employee's family member or the employee's housemate.
- An employee's need to care for a family member whose school or place of care has been closed.
- An employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material.
- For businesses of 250 or more full-time equivalent employees worldwide: when their place of business has reduced operations or closed for any health or safety reason.

## B. Interaction between Seattle & Statewide Paid Sick Leave

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### 1. When did statewide requirements for paid sick leave take effect? Was the Seattle law amended as a result?

Statewide paid sick leave requirements took effect on January 1, 2018. These requirements cover overtime-eligible employees working in Washington state. For more information visit the Washington State Department of Labor and Industries' [Paid Sick Leave website](#). The Seattle law was amended to incorporate statewide paid sick leave requirements. These amendments took effect on January 14, 2018.

### 2. Do employers have to comply with Seattle PSST or statewide paid sick leave?

Employers operating in Seattle and employing overtime-eligible employees are covered by both Seattle PSST and statewide paid sick leave. By complying with Seattle PSST, employers will also satisfy the requirements of statewide paid sick leave.

### 3. (UPDATED) What is the difference between Seattle PSST and statewide paid sick leave?

Seattle's PSST ordinance and rules largely mirror statewide paid sick leave, but Seattle PSST has some requirements that are more protective for employees of medium and large employers. For a detailed overview of the differences, [review this chart](#) of Seattle and statewide sick leave differences. Key differences between the two laws include:



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Issue	2018 ♦ State	2018 ♦ Seattle
<b>Employee coverage</b>	Overtime-eligible employees	Overtime eligible <i>and overtime-exempt employees.</i>
<b>Accrual</b>	One hour for every 40 hours worked	Tier 1 & 2 ⇄ 1 hour per 40 hours worked Tier 3 ⇄ 1 hour per 30 hours worked.
<b>Carry-over</b>	40 hours	Tier 1 Employers ⇄ 40 hours Tier 2 Employers ⇄ 56 hours Tier 3 Employers ⇄ 72 hours Tier 3 Employers with PTO ⇄ 108 hours.

Additionally, on March 18, 2020, the City enacted amendments to the Paid Sick and Safe Time law that expanded the situations covered by PSST. First, employees who perform work in Seattle may now use their PSST for an absence caused by the closure of any family member’s school or place of care. Employees no longer need this closure to be the result of an order by a public official or for a health reason. Secondly, employees of Tier 3 businesses may also take PSST if their business reduces operations or is closed for any health or safety related reason.

**4. Can employees who accrue Seattle PSST use it when scheduled to work outside of Seattle?**

It depends.

**Overtime Eligible Employees.** Overtime-eligible employees have the right to use Seattle PSST accrued at the statewide rate (i.e. one hour for every 40 hours worked) for work scheduled anywhere in Washington state. Employees have the right to use the portion of Seattle PSST accrued at a higher rate than statewide requirements (i.e. one hour for every 30 hours worked for tier 3 employers) or carried over at a higher rate (i.e. 56, 72 or 108 hours, for tier 2 and tier 3 employers) only for work hours scheduled in Seattle.

**Example:** An overtime-eligible employee of a tier 3 employer who works 2,080 hours in a year would accrue 52 hours under statewide requirements and 69.34 hours of Seattle PSST. The employee has a right to use 52 hours anywhere in the state, but may only use the balance accrued in excess of state requirements (17.34 hours) in Seattle.

Nevertheless, employers can allow employees to use their accrued PSST regardless of where they are scheduled to work.

**Overtime-Exempt Employees.** Overtime-exempt employees are not covered by statewide paid sick leave requirements. Accordingly, employers are not required to allow an overtime- exempt employee to use PSST hours when scheduled to work outside of Seattle.



## C. Employees

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

Seattle's PSST ordinance covers overtime-eligible and overtime-exempt employees who work within Seattle city limits regardless of employment status (e.g. full-time, part-time, temporary, and seasonal), the location of the employer, or employer size.

### 2. The address for an employer says Seattle, but the [map on your web site](#) shows that it is outside of city boundaries. I'm confused – is the employer inside or outside of Seattle? Trust the map. The federal government requires postal addresses in unincorporated areas to include the name of the nearest city – so some addresses read "Seattle" even though they're located outside Seattle city limits.

### 3. Does PSST coverage include all government employees who work in Seattle?

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

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

**Example #2:** Scott works for the University of Washington Seattle campus. He is not covered by the PSST ordinance because he is a state employee working for a state institution.

**Example #3:** Lars works as a Metro bus driver in the Seattle area. He is not covered by the PSST ordinance because he is a King County employee.

### 4. Does PSST coverage include independent contractors?

No. The PSST ordinance only applies to employees. Whether an individual is an employee or independent contractor is determined by the "Economic Realities Test" that is used by the Fair Labor Standards Act and the Washington State Minimum Wage Act. If there is a dispute regarding a worker's status, the employer is responsible for proving that the worker is an independent contractor rather than an employee (i.e., the law favors employee status and an employer must prove otherwise). Under the Economic Realities test, factors for distinguishing an employee from an independent contractor include:

- **Is the work an integral part of the employer's business?** (If the answer is yes, this factor weighs in favor of employee status);
- **Does the worker's managerial skill affect the worker's opportunity for profit or loss?** (If the answer is yes, this factor weighs in favor of independent contractor status);
- **How does the worker's relative investment compare to the employer's investment?** (If the worker's investment is less than the employer's, this factor weighs in favor of employee status);
- **Does the work performed require special skill and initiative?** (If the answer is yes, this factor weighs in favor of independent contractor status);
- **Is the relationship between the worker and the employer permanent or indefinite?** (If the relationship is permanent or indefinite, this factor weighs in favor of employee status); and



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- **What is the nature and degree of the employer's control?** (If the employer exercises control over the way the work is performed, this factor weighs in favor of employee status).

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

**5. Does PSST cover domestic workers such as nannies, babysitters, and housekeepers?**

It depends. The ordinance covers all employees. If the domestic worker qualifies as an employee, and not an independent contractor, that worker is covered by the ordinance. For more information on determining whether a worker is an employee or independent contractor, see our [Worker Classification Fact Sheet](#).

**6. Does coverage include work study participants who work in Seattle?**

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

**7. What about interns?**

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

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

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

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

Whether owners, partners, officers and shareholders are considered employees must be decided on a case-by-case basis. In the context of an investigation, OLS will make this determination using guidance from the [EEOC's Compliance Manual](#) for investigation of discrimination claims.

EEOC guidance states that in most circumstances, individuals who are partners, officers, members of boards of directors, or major shareholders will not qualify as employees.

However, the final determination is not made on the basis of a person's title and the following factors will be considered:

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

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



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PSST purposes.

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

## **10. Are undocumented employees entitled to PSST?**

All employees who perform work in Seattle are covered by PSST, including employees who are not legally authorized to work in the United States. Per City of Seattle policy, OLS does not ask people about their immigration status, and we investigate complaints without regard to an individual's immigration status. For more information, see our [Commitment to Immigrant and Refugee Communities](#).

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

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

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

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

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

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

Employees who are typically based outside of Seattle and work in the city on an "occasional basis" are covered once they have worked for a particular employer more than 240 hours in Seattle in one year. PSST coverage begins on the employee's 241<sup>st</sup> hour of work in Seattle and continues for the duration of employment with that employer.

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

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



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**Example #1:** Jamal works for a company based in Idaho. He lives in Idaho, but occasionally travels to Seattle to lead training seminars. Jamal’s employer must track his hours worked in Seattle and comply with PSST requirements if Jamal works more than 240 hours in Seattle in one year. Note that the hours that Jamal works in Idaho do not count toward the minimum number of hours to qualify for PSST in Seattle. Note also that Washington State has a different standard for coverage under statewide paid sick leave provisions. [Contact Washington Labor and Industries for more details.](#)

**Example #2:** Ricardo works as an overtime-eligible, security guard for a Tier 3 employer. His company is based in Seattle, but Ricardo receives assignments to different locations throughout the region – Seattle, Everett, Shoreline, etc. Although his employer is based in Seattle, Ricardo is covered only by Seattle’s higher accrual requirement (i.e. one hour for every 30 hours worked) for the hours that he works in Seattle – his Everett or Shoreline hours do not count for Seattle accrual rates. Notably, however, Ricardo is covered by statewide paid sick leave requirements when he works in Everett and Shoreline and his employer must accrue paid sick leave at the statewide accrual rate (i.e. one hour for every 40 hours worked).

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

Employers are responsible for tracking the hours of employees who work occasionally in Seattle.

Employers are free to implement their own internal system to track these hours. A few suggestions:

- Employers may delegate the recording task to employees and set up a system for employees to report that information to the employer.
- Employers can establish a set “schedule” of times for certain tasks (such as making a delivery, handling sales calls etc.) that are common to their lines of business.
- If employers provide sick leave to employees, regardless of their work location, that meets or exceeds the requirements of the PSST ordinance, they are not required to track hours worked in Seattle.

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

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

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

The 90-day waiting period applies to the **use** of accrued PSST hours, not to accrual which starts when an employee commences employment. Here’s how the 90-day waiting period works:

- Employers may impose a 90-day waiting period before new employees can begin to use their accrued PSST. The 90-day waiting period is not mandatory. Employers are free to eliminate the waiting period or impose a period that is less than 90-days.
- This waiting period starts when an employee commences employment and is not tied to the



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implementation date of statewide paid sick leave requirements (January 1, 2018) or recent Seattle PSST amendments (January 14, 2018).

**Example #1:** Janelle began working for an employer with two employees on August 15, 2017. On January 1, 2018 Janelle became covered by Seattle PSST due to the recent amendments that reduced the threshold number of employees for coverage. Janelle has already been employed for 90 days and therefore can use her accrued PSST immediately.

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

## D. Employers

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### 1. Which employers are required to provide PSST?

All employers with employees performing work in Seattle are required to provide their employees with PSST. An employer's specific obligations depend on the number of Full-time equivalent (FTE) employees:

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

### 2. An employer owns a small business and only has two employees. Is this employer covered by PSST?

Yes. All employers with employees performing work in Seattle are covered by the ordinance and are required to provide PSST to their employees.

### 3. I thought that employers were only covered if they had four full-time equivalent (FTE) employees?

From 2012-2017, that was correct—the floor for coverage was four FTEs. But in 2018, due to in the implementation of statewide paid sick leave requirements (following passage of Initiative 1433), Seattle amended the PSST ordinance to apply to all employers with employees performing work in Seattle, regardless of employer size.

### 4. What does the ordinance mean by “full time equivalent” (FTE)?

“Full time equivalent” (FTE) refers to the number of hours worked for compensation that add up to one full-time employee, based either on a 40-hour work week or on how an employer defines “full-time” in writing or practice.

### 5. How is an employer's tier size calculated?

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

- Full-time employees.



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

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

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

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

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

*Example:* NW Food Company is headquartered in Oregon and has locations in Portland, Seattle, and Boise. To determine tier size, NW Food Company must count the compensated hours of its employees in all three locations – even though only employees who work in Seattle are eligible to accrue and use PSST.

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

Separate entities that form an integrated enterprise are considered to be a single employer under the ordinance (e.g. a single entrepreneur with multiple businesses or a corporation with subsidiaries in Seattle).

To help decide this question, employers should assess the degree of control exercised by one entity over the operation of another entity. The factors in this assessment include, but are not limited to:

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

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

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

## 10. Does this ordinance require employers to provide health insurance for their employees in Seattle?

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



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## **11. Can employers offer more protective PSST policies than required by the Ordinance?**

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

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

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

## **13. How is a temporary worker obtained through a staffing agency counted for tier size? Is the temporary worker counted as an employee of both the staffing agency and the contracting employer?**

If the staffing agency and contracting employer are joint employers of the temporary workers, then both employers count the temporary worker to determine tier size. The temporary worker is counted twice for this purpose.

## **13. What are joint employers?**

Separate business entities (with separate owners, managers and facilities) may be treated as joint employers under this ordinance. An individual may also be a joint employer.

While a joint employment relationship generally exists when an employee performs work that benefits two or more employers, the final determination depends on a number of nonexclusive factors that are part of an **"economic realities test."** The five primary factors are:

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

Other factors include:

- Whether the work is a specialty job on the production line;
- Whether responsibility between a labor contractor and an employer passes from one labor contractor to another without material changes;
- Whether the premises and equipment of the employer are used for the work;
- Whether the employees have a business organization that shifts as a unit from one work site to another;
- Whether the work is piecework and not work that requires initiative, judgment or foresight (i.e. considering if the service rendered requires a special skill);
- Whether the employee has an opportunity for profit or loss depending upon the employee's managerial skill;
- Whether there is permanence in the working relationship; and



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- Whether the service rendered is an integral part of the employer's business.

For more information on joint employment, see the United States Department of Labor [Administrator's Interpretation No. 2016-1](#). Although this document was withdrawn by the Department of Labor on June 7, 2017, OLS continues to find it's reasoning persuasive and consistent with caselaw.

## **14. How do joint employers determine tier size?**

Employees who are jointly employed must be counted by all joint employers, regardless of whether the employee is maintained on only one of the employers' payrolls.

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

Yes.

## **16. If a temporary staffing employee accrues PSST while working at the staffing company's client and is later hired directly by the client, must the client honor the employee's accrued PSST balance?**

Yes, if a joint employment relationship exists between the client company and the temporary staffing employee, that client company must maintain the employee's PSST balance accrued while jointly employed.

## **E. Accruing PSST**

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

Employees who work in Seattle begin to accrue PSST from the commencement of employment.

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

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

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

### **3. Can employers use any fixed, consecutive 12-month period of time for accrual and carry over of PSST?**

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

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

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

### **5. Do employees accrue PSST when they are on paid leave or while they are not working, but still receiving a salary (e.g. while using PSST or vacation, leaving early)?**



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**Overtime-eligible** employees do not accrue PSST while on paid leave. PSST only accrues based on “hours worked” and paid leave does not constitute “hours worked”.

**Overtime-exempt** employees accrue PSST based on the employee’s normal workweek, regardless of the number of hours actually worked. An employee whose normal work week is 40 hours, accrues PSST based on a 40-hour work week regardless of whether the employee takes a vacation day, leaves several hours early, or uses PSST.

**6. What is the accrual rate for employees who are overtime-exempt under state minimum wage laws and/or the Fair Labor Standards Act (FLSA)?**

Overtime-exempt employees accrue PSST based on the employee’s normal work week (up to 40 hours per week), regardless of hours worked.

**Example 1:** An employee whose normal work week is 40 hours, accrues PSST based on a 40- hour work week regardless of whether the employee works *fewer than 40 hours* (e.g. takes a vacation day, leaves several hours early, uses PSST) or *more than 40 hours*.

**Example 2:** An employee whose normal work week is 30 hours, accrues PSST based on a 30- hour work week regardless of whether the employee works *fewer than 30 hours* or *more than 30 hours*.

**7. An employee just quit. What does an employer do with the employee’s unused PSST?** Hang on to those records: if the employee returns to work within 12 months, the employee is entitled to pick up where the employee left off. If the employee was eligible to use PSST hours prior to separation, the employee will have access to those leftover PSST hours from the previous period of employment. That previous employment also would count toward the employee’s eligibility to use PSST.

**8. What about seasonal employees?**

If an employee is laid off and rehired by the same employer within 12 months of separation, then the employee is entitled to pick up where the employee left off.

**Example #1:** During his summers off from school, Aziz works in a restaurant from May through September. Aziz will retain his previously accrued hours of PSST (and will accrue more hours as he continues to work) as long as the period between Aziz’s departure and return to work is no longer than 12 months.

**Example #2:** Caprice works full-time and accrues 20 hours of PSST. She leaves her job to pursue a master’s degree. 11 months later she is rehired by the same company and begins to work on a part-time basis. When Caprice returns to work, all of her previously accrued PSST hours are reinstated and she will accrue more hours as she continues to work.

**9. When an employer reinstates PSST after an employee's break in service, is the reinstatement limited by the carry-over requirement if the break in service extends to the next year?**

Yes. If the employee's reinstatement happens in the following year, employers are not required to



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reinstate more PSST than the carry over amount.

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

Yes, as long as the PTO system meets or exceeds the requirements of the ordinance. In addition, Tier 3 employers must permit employees to carry over up to 108 hours of unused PTO to the next year.

**11. Can employers set up separate PSST policies for our overtime-eligible and overtime- exempt employees? Or must employers have one policy for all employees, no matter what their status?**

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

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

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

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

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

PSST accrual continues to build from one pay period to the next. One way to manage accrual is to assign a fractional value of accrued PSST for every hour worked (i.e. Tier 1 and Tier 2 employees will accrue .025 for each hour worked; Tier 3 employees will accrue .0333 for each hour worked).

**14. An employer frontloads an employee's PSST at the beginning of the year. Is that allowed under the ordinance?**

Yes. Frontloading is allowed. Employers must base the amount of frontloaded PSST on a reasonable estimation of the number of hours the employer anticipates that a particular employee will work in a year. Employers must monitor an employee's actual hours worked and adjust the amount of frontloaded PSST as necessary. Employers who frontload PSST also must carry over unused PSST hours to the next year commensurate with the requirements of the employer's tier size.

**Example:** If a Tier 1 employer anticipates that a part-time employee will work 1,040 hours in a year, the employer must frontload 26 hours of PSST (1,040 hours x accrual rate of 1 hour per 40 hours worked).The employer could choose to frontload the entire amount at the beginning of the year or in several installments as long as the timing of the installments correspond with the timing of the employee's accrual rate (e.g. 13 hours on January 1 and 13 hours on June 1).

**15. What if an employer frontloads too few hours? When does the employer have to correct it?**

As soon as practicable, but no later than thirty days after identifying the discrepancy.



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**16. What if an employer frontloads too many PSST hours? Can an employer make a deduction from wages either during the course of employment or at termination?**

No. An employer may not seek reimbursement of frontloaded PSST hours. Note that this restriction differs from the statewide requirement, which allows for reimbursement at termination with mutual agreement.

**17. How should an employer calculate the amount of frontloaded PSST for overtime-exempt employees?**  
Employers must frontload PSST hours based on an overtime-exempt employee's normal work week.

*Example:* An overtime-exempt employee works for a tier one employer and has a 40-hour normal work week. The employer must frontload 52 PSST hours (2,080 hours x accrual rate of 1 hour per 40 hours worked).

**18. If employers frontload the full amount of PSST at the beginning of the year, do they still need to allow carry over?**

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

**19. Can employers have programs that reward employees (with money or other benefits) for not using PSST?**

It depends. Any incentive program that restrains an employee from using their unused PSST for an authorized purpose could violate the ordinance's retaliation provisions because such program could restrain or interfere with an employee's lawful right to use their PSST (e.g. an employee could be dissuaded from using PSST for fear of missing-out on the incentive).

Nevertheless, at separation of employment or at the end of the year, an employer may cash-out unused PSST in excess of the applicable carry over requirement.

**20. An employer uses QuickBooks to do payroll. She is a Tier 1 employer and wants to comply with the ordinance, but QuickBooks won't let her! It distributes 40 hours of PSST in equal amounts in each paycheck over the course of a year – which does not always match her employees' actual hours worked. What can she do?**

Sorry, we are not QuickBooks experts. But you do have another option: frontload the estimated number of hours the employee will accrue at the beginning of the year. The employer should still track hours worked and adjust employee's PSST balance if the employee works more hours than the amount the employer estimated.

**21. How can employees learn about their balance of PSST hours?**

Employers must share this information every time wages are paid. Specifically, employers must provide employees with information about their: (1) total PSST accrued, (2) amount of available PSST hours; and (3) amount of PSST used since the last notification. Employers may choose a reasonable system for providing this information, such as stating accrued, available, and used PSST via each pay stub, an on-line system, e-mail, memo, etc. Employers are not required to provide notification to an employee if the employee has no hours worked since the last notification.



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

Sorry, afraid not. Employers must provide employees with a written record of available PSST each time wages are paid.

**23. If an employer provides more paid leave than required by the PSST ordinance, does the employer need to identify which PSST hours are subject to PSST protections on the written notification?**

If the employer intends to restrict the use of paid leave that is used in excess of the PSST requirements (e.g. by having an absence control policy for an employee's use of paid leave that is not covered by the PSST ordinance), the employer must identify the amount of paid leave available that is covered by the PSST ordinance.

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

Yes. Employers are not required to provide paid holidays or vacation time. Holidays and vacation are optional benefits.

**25. Do new small and medium employers have a two-year exemption from PSST requirements?**

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

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

**26. Does a successor employer need to retain PSST hours of existing employees?**

Yes. When a business is acquired by a successor employer, existing employees retain all previously accrued PSST hours and they are available for use. Successor employers must immediately comply with PSST requirements and are not considered "new employers" under the ordinance. The limited Tier 1 and Tier 2 "new employer" two-year exemption does not apply to successor employers.

## F. Using PSST

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

Employers can impose a waiting period of up to 90 days after an employee's hire date. Employees are eligible to start using PSST on the 90<sup>th</sup> day of employment. An employer may also choose to impose a shorter waiting period or not impose a waiting period at all.



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

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

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

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

**Tier 1** – Employees can carry over up to 40 hours of unused PSST hours. **Tier 2** –

Employees can carry over up to 56 hours of unused PSST hours. **Tier 3** – Employees can

carry over up to 72 hours of unused PSST hours.

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

## **4. What time increments are overtime-eligible employees allowed to use PSST?**

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

## **5. Will OLS recognize variances issued by Washington State Department of Labor & Industries from increments of use requirements for work performed in Seattle?**

No, OLS will not recognize a variance issued by Washington State Department of Labor & Industries

## **6. What time increments can overtime exempt employees use PSST?**

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

## **7. Can employers count an employee's vacation leave toward minimum requirements for PSST?**

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

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

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

- An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.
- An employee providing care for a family member with an illness, injury or medical appointment, etc.

## **9. (UPDATED) Who are considered family members for SICK time purposes?**

For paid sick time, "family member" is defined as a child, grandparent, grandchild, parent, parent-in-law, sibling, spouse, or registered domestic partner. "Child" includes a biological child, adopted child, foster



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child, stepchild, or a child for whom an employee stands *in loco parentis*, is a legal guardian, or is a de facto parent. “Parent” includes a biological parent, adoptive parent, de facto parent, foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered partner, or a person who stood *in loco parentis* when the employee was a minor.

## 10. (UPDATED) What are acceptable reasons for using paid SAFE time?

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

- For reasons related to domestic violence, sexual assault or stalking that affect the employee or the employee’s family or household member. For example, an employee may take safe time for: medical treatment for physical or mental health injuries caused by domestic violence for self or family member impacted by DV (e.g. psychological counseling); relocation and other safety planning; seeking a restraining order; or participating in a legal proceeding.
- When an employee’s place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material.
- For an employee of a Tier 3 business: When the employee’s place of business has reduced operations or closed for any health or safety reason.\*\*
- When an employee needs to care for a family member whose school or place of care has been closed.\*\*

\*\* Prior to the March 2020 amendments, employees could use PSST when their *child’s* place of care or school was closed due to the order of a public health official for a health-related reason. Now, an employee may use PSST if any *family member’s* place of care or school is closed. Also, the law no longer requires that the closure be for a health-related reason or that a public official order the closure.

## 11. (UPDATED) Who are considered family members and household members for SAFE time purposes?

For paid safe time absences, “family member” is defined the same as for SICK time. “Family member” is defined as a child, grandparent, grandchild, parent, parent-in-law, sibling, spouse, or registered domestic partner. “Child” includes a biological child, adopted child, foster child, stepchild, or a child for whom an employee stands *in loco parentis*, is a legal guardian, or is a de facto parent. “Parent” includes a biological parent, adoptive parent, de facto parent, foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered partner, or a person who stood *in loco parentis* when the employee was a minor.

For paid safe time used for absences related to domestic violence, sexual assault, or stalking, “household member” includes current and former spouses and domestic partners, persons who have a child in common, adult persons related by blood or marriage, adult persons who have resided or are residing together (including roommates), and persons 16 years of age or older who are or were residing together and who are or were in a dating relationship. See [RCW 49.76.020](#) for more information.

## 12. Are there any age limitations when taking PSST to care for a family member?

No. Employees can use PSST hours to care for a child or other covered family member of any age.

## 13. (NEW Q&A) Can an employee use PSST if their *place of work* is closed because of a public health emergency or concern like COVID-19 or other infectious agent?



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Yes, under the following circumstances:

- All employers must allow employees to take PSST if their place of work is closed by order of a public official for a health-related reason.
- Employers of 250 or more full-time equivalent employees worldwide (Tier 3 employers) must allow employees to take PSST if their place of work *reduces operations or closes* for any health or safety related reason. The closure does not have to be ordered or recommended by a public official.

#### 14. (NEW Q&A) Who is a public official?

A public official is a government employee who is granted the authority to close a place of business or school. This can include local, state, or federal authorities and public health officials (e.g. Seattle - King County Public Health, the Centers for Disease Control and Prevention, or the State Department of Health) or the superintendent or principal of a public school.

#### 15. (NEW Q&A) Can an employee use PSST if their *family member's school or place of care is closed*?

Yes. An employee may use PSST if their family member's school or place of care has been closed. Prior to the amendments made in March 2020, employees could use PSST when their *child's* place of care or school was closed due to the order of a public health official for a health-related reason. Now, an employee may use PSST if any *family member's* place of care or school is closed. Also, the law no longer requires that the closure be for a health-related reason or that a public official order the closure.

#### 16. Can parents use PSST for parental leave following the birth of their child?

A birth parent can use PSST during any period of sickness or disability following childbirth. A family member can use PSST to care for the birth parent during this period. Parents and family members also can use PSST to care for a child's illness. To use PSST to care for birth parent, the non-birth parent must be a spouse or registered domestic partner of the birth parent. Parents **cannot** use PSST for "bonding" purposes—this differs from FMLA, which does permit leave for the purpose of bonding with a newborn or newly adopted child.

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

#### 17. (NEW Q&A) What kind of absences are related to domestic violence, sexual assault, or stalking?

The law allows employees to use PSST for a broad range of situations related to domestic violence, sexual assault, or stalking. These situations include:

- To seek legal or law enforcement assistance or remedies to ensure their own health and safety or that of their family or household member.
- To prepare for, or participate in, a civil or criminal legal proceeding.
- To seek healthcare treatment for their own physical or mental injuries or to assist a family or household member to do the same.
- To obtain, or to assist a family or household member in obtaining, services from a domestic violence shelter, rape crisis center, or other similar social services program.
- To obtain, or to assist a family or household member in obtaining, mental health counseling related to an incident in which the employee or their family or household member was a victim or survivor.
- To participate in safety planning, to relocate their housing, or take other actions to increase the



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safety of the employee or that of their family or household member.

Download a list of domestic violence and sexual assault resources by visiting [our Paid Sick and Safe Time webpage](#).

**18. (UPDATED) Can employees use PSST to assist a roommate who is being stalked or was sexually assaulted?**

Yes, adults and people 16 and older who are roommates count as household members under the ordinance. An employee can use PSST to care for a household member for a variety of reasons related to stalking or sexual assault.

**19. (NEW Q&A) Can an employee use PSST to meet with an attorney or go to court to seek a domestic violence protection order?**

Yes. An employee can take time off to seek legal or law enforcement assistance to ensure their own safety or that of a family or household member. This includes preparing for and participating in any civil or criminal legal proceeding related to domestic violence, sexual assault, or stalking.

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

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

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

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

**22. If an employee does not want to use PSST hours for a covered absence, can the employer require the employee to use accrued PSST or PTO?**

No. An employer cannot require an employee to use PSST for an absence that is otherwise covered by the ordinance. But if an employee chooses to not use PSST, the employee’s absence is not subject to PSST protections, and the employer may treat the absence as an unexcused absence and discipline the employee. Note that if the absence is for a reason covered by the Family Medical Leave Act (FMLA), the employer may be able to require the use of PSST under the FMLA’s regulations. See [29 CFR 825.207\(a\)](#).

**23. (NEW Q&A) Can an employer require an employee to go home when sick?**

The PSST law does not prohibit an employer from sending an employee home because of illness. Other state and local laws may determine whether it is lawful or a requirement to send someone home. For instance, Department of Health regulations require an employer to send a food service worker home if they have symptoms like vomiting or a sore throat with fever. For more information, see [Washington Administrative Code 246-215](#) or contact [Seattle-King County Public Health Department](#).

**24. May employees donate their unused PSST to a company-wide, paid leave donation plan?**



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Yes. Employers' written PSST policy must include a description of their donation program if they choose to allow PSST donations. Such donations can be made in any amount consistent with the employer's policy.

**25. (NEW Q&A) What if an employee has used all their accrued PSST or is a new employee?**

An employer is only required to allow an employee to use accrued hours of PSST. In their discretion, employers can provide more paid leave or allow the use of vacation or other accrued leave. Other laws may require an employer to provide employees with leave; including: the Family and Medical Leave Act, Washington State Paid Family Medical Leave, and federal, state, and local disability laws.

New employees accrue PSST from the beginning of employment. Employers can, but do not have to, impose a waiting period of up to 90 days before an employee may use their accrued PSST. An employer may, at their discretion, choose to have a shorter or to not impose a waiting period at all.

On March 18, 2020, the U.S. government passed emergency legislation that may provide some employees with access to sick leave for COVID-19 related reasons, even if the employees do not have any accrued PSST. This legislation takes effect on or around April 2, 2020. OLS will update this Q&A as new information is available.

**26. An employee got sick during a scheduled vacation. Can the employee use PSST hours for the period of sickness?**

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

**27. Can employees use PSST for on-call shifts?**

Yes, employees can use PSST for on-call shifts.

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

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

**29. (NEW Q&A) Does an employee have to find someone to cover the hours that they need to take PSST?**

No. An employer cannot require an employee to find someone to cover their PSST hours.

**30. (NEW Q&A) Can an employer permit an employee to use PSST for reasons other than that protected by the law?**

Yes. An employer can allow the use of PSST for reasons not covered by the law.



## G. Rate of Pay & Cash-Out

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### 1. What is the employee's rate of pay for using PSST?

Employers must pay employees their normal hourly compensation, including the same benefits, (e.g. health care benefits) as during regular work hours. The term "same benefits" does not include a right to accrue vacation, where such accrual is based on hours worked. For more information, see questions 25-32 of this section.

### 2. Are employees entitled to payment for lost tips or service charges when taking PSST?

Employees are not entitled to lost tips or service charges when using PSST.

### 3. If an employer uses tips to satisfy a portion of the employer's minimum wage obligations, must the employer pay additional compensation when an employee takes PSST or can the employer average tips over the pay period?

Under [Seattle's Minimum Wage Ordinance](#), small employers with 500 or fewer employees may use tips to meet their minimum wage requirements.

Employers may average tips over the pay period to satisfy Seattle minimum wage requirements. If the employee's hourly rate falls below Seattle minimum wage requirements, the employer must make up the difference through additional compensation.

**Example #1:** In 2018, Ahmed works as a server at a small Seattle restaurant with 15 employees and earns \$11.50 per hour in wages and is paid on a weekly basis. He also earns tips, which his employer can credit towards the 2018 minimum wage requirement of \$14 per hour. Ahmed gets sick with the February flu and takes 6 hours of PSST during a week in which he worked 34 hours and earned \$10 per hour in tips. What is Ahmed's PSST pay rate? **Must the employer pay additional compensation to satisfy Seattle minimum wage requirements?**

The employer may average Ahmed's tips over the pay period. Ahmed must earn a total of \$14 an hour to comply with minimum compensation requirements. Since he is paid a base wage of \$11.50 per hour, his hourly tips must average to at least \$2.50 an hour. Here, Ahmed earns \$10 per hour in tips during the 34 hours worked (\$340 total in tips) and takes an additional 6 hours of PSST. His average hourly tips for the total 40 compensated hours is \$8.50 ( $\$340 \text{ in tips} / 40 \text{ hours} = \$8.50$ ). Accordingly, Ahmed's employer has complied with minimum wage requirements and need only pay Ahmed his base wage of \$11.50 per hour for the PSST hours.

**Example #2:** Jo Jin works as a server at a small Seattle restaurant with 10 employees and earns \$11.50 per hour in wages and is paid on a weekly basis. She also earns tips, which her employer can credit towards it's 2018 minimum wage obligations of \$14 per hour. Jo Jin gets sick and takes 8 hours of PSST during a week in which she worked 20 hours and earned \$8 per hour in tips. What is the Jo Jin's PSST pay rate? **Must the employer pay additional compensation to satisfy Seattle minimum wage requirements?**

The employer may average Jo Jin's tips over the pay period. Jo Jin must earn a total of \$14 per hour to



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comply with minimum wage requirements. Since she is paid a base wage of \$11.50 per hour, her hourly tip compensation average to equal at least \$2.50 an hour. Here, Jo Jin earns \$8 an hour in tips during the 20 hours she worked (\$160 total in tips) and takes an additional 8 hours of PSST. Her average hourly tips for the total 28 compensated hours is \$5.71 (\$160 in tips / 28 hours = \$5.71). Accordingly, her employer has complied with minimum wage requirements and need only pay Jo Jin her base wage of \$11.50 per hour for the PSST hours.

#### 4. Are employees entitled to payment for lost commissions when using PSST?

**Overtime-eligible employees** (i.e. employees who are covered by statewide paid sick leave) are entitled to compensation for lost commissions under that law. Employers should use a reasonable calculation to determine lost commissions. For example, to determine an employee's normal hourly compensation including compensation based on commission, an employer could divide the total earnings by the total hours worked in the full pay periods in the prior ninety days of employment. In all cases, employers must ensure that the employee's rate of pay follows Seattle minimum wage requirements. Find more information on [OLS's Minimum Wage Webpage](#).

**Overtime-exempt employees** (employees who are not covered by statewide paid sick leave) have no right to lost commissions when taking PSST.

#### 5. Are overtime-exempt employees who are compensated solely by commission (e.g. outside salesperson under [RCW 49.46.010 \(3\)\(c\)](#) and [WAC 296-128-540](#)) entitled to payment for lost commissions when using PSST?

No, overtime-exempt employees are not entitled to payment of lost commissions when using PSST. Overtime-exempt employees do not have a right to lost commissions under Seattle's PSST ordinance and are not covered by statewide paid sick leave requirements (i.e. statewide paid sick leave does not cover outside salespersons). In this situation, PSST effectively becomes protected leave (the employee can be absent from work without fear of retaliation), but does not entitle the employee to additional compensation.

#### 6. Are employees entitled to payment of shift differentials when using PSST?

Yes. Employees have a right to payment of shift differential rates for their use of PSST. A differential rate is a different rate paid for the same work performed under differing conditions (e.g. night shift). A differential rate is not a premium rate.

#### 7. Are employees entitled to payment of holiday pay and other premium rates when using PSST?

No, employees do not have a right to payment of holiday pay and other premium rates for their use of PSST.

#### 8. Must an employer compensate overtime-eligible employees who use PSST for hours that would have been overtime?

Yes, employers must compensate employees for use of PSST during scheduled overtime hours. Employers may compensate employees at their normal hourly compensation for use of PSST for overtime hours; employers are not required to pay overtime rates for use of PSST.



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

No. The employer must deduct the used PSST based on the clock-time that the employee was scheduled to work in the smallest increment in which compensation is tracked not to exceed one hour. An employer is not permitted to deduct more PSST if an employee used the hours for scheduled overtime.

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

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

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

An employer may determine payment based on hours worked by a replacement employee in the same shift or similarly-situated employees who worked that same (or similar) shift in the past.

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

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

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

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

## H. Requesting PSST

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**1. How does an employee request use of PSST?**

The method for requesting PSST depends on an employer's policies. Employees are required to comply with an employer's notice policy for absences and/or leave requests, provided that those policies do not interfere with the use of PSST. Employers are required to provide employees with a written description of how they must give notice for PSST absences.

For leave that is **foreseeable**, a written request should be provided at least 10 days ahead of time (or as early as possible) unless the employer's customary notice policy requires less advance notice.

- If an employer does not provide 10 days advance notice of work schedules, the employee must request the use of PSST as soon as the schedule is available. For example, if an employee has a doctor's appointment on March 10, but the employer only provides the work schedule on March 3, the employee should request PSST use on March 3.
- If an employee's foreseeable leave occurs less than 10 days in the future (e.g. employee schedules doctor appointment one week in advance), the employee is permitted to provide less than 10 days of advance notice.



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For **unforeseeable** leave, the employee must provide notice as soon as is practicable and must generally comply with an employer's customary notice policies and/or call-in procedures.

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

Employees are not required to specifically ask for “paid sick and safe time” or reference the ordinance when requesting PSST. Instead, employees simply must state their need for an absence for a reason covered by the ordinance. It can be as simple as “I am sick and need to miss my shift today” or “I need to use my PSST.” Employees also can say, “I need paid sick leave” for safe time absences and do not need to identify the reason as a “safe time” reason.

Employers are not permitted to ask about the nature of the illness or the specific reason for the absence. Employers are responsible for recognizing when a request for time off implicates an authorized use of PSST. If an employee calls in sick, the employer can assume the employee intends to use accrued PSST, unless the employee asks the employer to consider another arrangement (e.g. shift swaps or unpaid leave). Swapped shifts must be mutually agreed upon by the employee and the employer and employers have the discretion to approve or deny unpaid leave.

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

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

No. Employees are not required to disclose details of their situation that would violate the confidentiality provision of the ordinance. Employers may request documentation to support the reason for the absence after the employee has used PSST for more than three consecutive work days.

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

No. The employer cannot deny the use of PSST even if the employee fails to follow the employer’s policy. However, the employer may discipline the employee for failing to comply with the reasonable notice policy.

## 5. **Does a PTO policy change notice requirements for foreseeable and unforeseeable PSST?** No. Employers with PTO policies can require employees to comply with their notice policies for using PSST if the absence is foreseeable and if giving notice doesn’t interfere with the purpose of the absence.

## I. Verification

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

An employer may not require verification for use of PSST until an employee has been absent (i.e. used PSST) for more than three consecutive work days. After three consecutive days of use, an employer may, but does



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not have to, request documentation that verifies that the use is authorized. The employee cannot be required to explain the nature of the use, only that the use was authorized. Employers do not have to request verification and we encourage employers to be as flexible as possible.

## 2. What kind of verification can an employer ask of an employee for sick time?

Under ordinary circumstances, for **sick time** use beyond three consecutive work days, an employer may require documentation signed by a health care provider that sick time is necessary (but the employer cannot require that the documentation explain the nature of the illness).

**Important:** On April 8, 2020, OLS issued a temporary, emergency rule that clarifies that employers may not require a doctor's note or healthcare provider verification because it is an unreasonable burden during the COVID-19 pandemic outbreak. Employers must identify and provide alternatives for the employee to meet the employer's verification requirement in a manner which does not result in an unreasonable burden or expense on the employee. To read the emergency rule, please visit our [Paid Sick and Safe Time webpage](#) and download a copy.

Alternate documentation could include: the employee's own statement, or documentation from other individuals like service providers, social workers, case managers, or legal advocates, stating that, to their knowledge, the employee's use of paid sick leave is for a covered purpose. Employees are not prevented from voluntarily using healthcare provider verification, including a doctor's note obtained through telemedicine, if it is available to them.

This emergency rule is temporary and is effective through June 7, 2020 (60 days). After that date, the rules will automatically revert to the version in effect prior to the emergency rule, unless the emergency rule is revoked sooner or extended beyond 60 days through formal rulemaking.

## 3. What kind of verification can an employer ask for use of safe time?

For **safe time** use beyond three consecutive work days, the following documentation applies:

- For verification of the closure of a school or place of care, an employee can provide notice of the closure in whatever format the employee received it.
- For verification of leave taken for domestic violence, sexual assault or stalking, an employee may provide the employee's own written statement; a police report; applicable evidence from the court or the prosecuting attorney; or documentation from an advocate, attorney, member of the clergy, medical or other professional.

**Note:** The verification provision for domestic violence, sexual assault or stalking does not waive confidentiality requirements.

## 4. Who pays for the cost of verification after an employee has used PSST for more than three consecutive workdays?

If the employer offers health insurance to the employee, the employee pays for the cost of obtaining verification, provided that the cost does not create an unreasonable burden.



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If the employer does not offer health insurance to the employee, then the employer must pay at least 50% of the cost of documentation. Expenses can include:

- Services provided by health care professionals.
- Services of health care facilities.
- Testing prescribed by health care professionals.
- Transportation to the location where such services are provided.

**5. What if the cost of verification creates an unreasonable burden for an employee regardless of whether the employee is covered by health insurance or if the employer is paying for 50% of the costs?**

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

**6. Does an employer's offer to pay half the cost of out-of-pocket expenses (for an employee who is not offered health insurance) automatically meet the requirement for not creating an unreasonable burden?**

No. What constitutes an unreasonable burden requires a case by case analysis based on the specific information provided by the employee.

**7. Can an employee who has declined to enroll in an employer's health insurance program still assert that verification results in an unreasonable burden or expense?**

Yes. Any employee covered by Seattle PSST has the right to assert that verification requirements result in an unreasonable burden or expense; the employer must make a reasonable effort to identify and provide alternatives for the employee to meet the verification requirements.

**8. Can an employer require early verification for absences of less than three days if there is a clear instance or pattern of abuse?**

No. Early verification is not permitted.

**9. What recourse does employer have if the employer believes an employee is abusing PSST?**

If an employer can demonstrate that an employee's use of PSST was for an unauthorized purpose, the employer may withhold payment for the PSST used, but may not deduct those hours from an employee's accrued, unused PSST balance. If an employer withholds payment for the unauthorized use of PSST, the employer must provide written notification to the employee.

**10. How does an employer "demonstrate" that an employee's use of PSST was for an unauthorized purpose?**

Generally speaking, an employer may not lawfully deny the employee's use of their accrued, unused PSST absent evidence that clearly shows that an employee is not using PSST for an authorized purpose.

**11. If an employer observes an employee during a shift and believes that the employee has a contagious**



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## **illness, can the employer ask questions about the illness?**

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

- 12. How does PSST overlap with Worker's Compensation? If Worker's Compensation starts three days after the date of injury and pays 60% of normal wage, can PSST fill in the gap from those three days and be used during the rest of the employee's absence from work?** As with other laws that permit leave of absence for medical reasons (e.g. FMLA, ADA etc.), there is potential for PSST and Workers Compensation to overlap. It is up to the employer to determine how that happens—as long as the employer permits the employee to use PSST according to basic requirements.

In this situation, an employee may use PSST for the first three days of incapacitation and then a combination of PSST and Workers Compensation for the other absences. OLS does not enforce Workers Compensation. Please visit the [Washington State Labor and Industries webpage](#) for more information .

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

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

- If the employee says, "Yes," then the absence is covered by PSST **and** FMLA. The employer may ask for medical documentation as permitted by FMLA.
- If the employee says, "Yes," but provides medical documentation that fails to support the approved FMLA condition, then the employer must decide if the absence meets the criteria for PSST.
- If the employee says, "No," then the absence is just covered by PSST. The employer may ask the employee for medical documentation only if they suspect the employee is abusing the use of PSST or if the employee is absent for more than three consecutive work days. If the medical documentation shows that the absence was used for sick time, then the absence is covered by PSST.
- If the medical documentation does not show that the absence was used for sick time, then the employer may take reasonable disciplinary action toward the employee.

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

No. An employer may not require verification from an employee until the employee has had an absence that exceeds three consecutive workdays.

## **J. Employer notice and posting requirements**

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

Employers must display a **11" x 17"** [workplace poster](#), updated annually, in a conspicuous and accessible location where any of their employees work. Employers must display the poster in English and in the



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primary language(s) of the employees at the particular workplace. OLS is responsible for creating the poster, providing annual updates by December 1<sup>st</sup> of each year, and translating it into different languages.

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

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

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

For employees who work in Seattle on an occasional basis, employers must comply with the workplace poster requirements once the employee is covered by the PSST ordinance (i.e. after performing 240 hours of work in Seattle).

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

A printable version of the workplace poster is available on our [publications Webpage](#). Employers may also pick up the poster at our office or at one of the City of Seattle's Customer Service Centers.

## **5. What are the requirements for providing employees with a written PSST policy?** Employers must provide employees working in Seattle with a written policy that describes how the employer is meeting the requirements of the PSST ordinance. The policy should cover the following provisions:

- Employee's entitlement to PSST;
- Employer's choice of year (i.e. fixed, 12-month period);
- Prohibition on retaliation;
- Tier size;
- Rate of accrual and carry-over of PSST hours;
- Manner of providing employees with an updated amount of available, accrued, and used PSST time hours each time wages are paid;
- Notification requirements for absences and requesting leave; and
- Right to be paid normal hourly compensation for using PSST (the written policy is not required to state any employee's *specific* rate of pay).

If applicable, the policy also must describe

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

Download a [sample PSST policy](#) and [PSST policy checklist](#) from the [PSST website](#) to make sure that your PSST policy is on track to meet ordinance requirements and help employees access this critical benefit.

## **6. Can employers distribute the written policy electronically?**



Yes. The ordinance allows for electronic distribution.

## K. Employer records

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

Employers are required to retain records that show compliance with the ordinance for **three** years. Employers must retain records that reasonably indicate:

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

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

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

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

- Maintain records of hours worked in Seattle and PSST used for three years;
- Describe the paid leave policy in a written document (see our [sample PSST policy](#) and [PSST policy checklist](#) on our [PSST website](#)); and
- Provide notification of accrued, available, and reduced PSST every time that wages are paid.

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

At the beginning of the year, frontload paid leave based on accrual estimates for hours worked over the upcoming year. Track employee hours worked and adjust this bucket of PSST hours depending on the actual hours worked. Also track use of this paid leave in your records. Provide notification every time that wages are paid (e.g. paystub) that meets notification requirements for accrual, use, and available balance. Such notification would reference the frontloaded amount of leave, the used leave, and the balance of protected hours. Employers also might want to add a statement that the employee also has "unlimited" hours for paid leave above and beyond PSST protections. Although employees will be allowed to use unlimited paid leave per year, your business can use this method to show compliance with PSST. If an employee believed that a violation of PSST had occurred, your business could use this tracking & notification method to determine whether the leave was protected by the ordinance; or



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Provide notification every time that wages are paid (e.g. paystub) that meets notification requirements for accrual, use, and available balance. Such notification could show that employees have unlimited paid leave that can be used for personal and PSST reasons. It should also show a running balance of how much leave has been used since the last time wages were paid and that employee has an “unlimited” available balance.

## L. Prohibition on retaliation

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### 1. Does the ordinance prohibit retaliation? What is retaliation?

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

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

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

If an employer can demonstrate that an employee's use of PSST was for an unauthorized purpose, the employer may withhold payment for the PSST used, but may not deduct those hours from an employee's accrued, unused PSST. If an employer withholds payment for the unauthorized use of PSST, the employer must provide written notification to the employee.

### 3. Can employers discipline employees who violate policies related to PSST?

Yes. Employers can take reasonable disciplinary action for violation of its policies, provided such discipline does not constitute an adverse action or discrimination based on a good faith assertion of PSST rights. Employers should consider appropriate documentation of discipline.

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

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

## M. Waivers

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



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No, individual employees cannot waive their rights under the ordinance.

- 2. (UPDATED) Can employees covered by a collective bargaining agreement waive PSST requirements?** As of January 1, 2019, or the expiration of a collective bargaining agreement in existence on December 31, 2018, waivers of PSST rights by employees covered by a bona fide collective bargaining agreement are prohibited.

Collective bargaining agreements executed or in existence prior to December 31, 2018 could contain a limited waiver of provisions that were more generous than that contained in the Washington State paid sick and safe leave law.