Seattle Office of Labor Standards

SEATTLE OFFICE OF LABOR STANDARDS
Seattle Human Rights Rules - Chapter 190

Practices for administering hotel employee protections under
Seattle Municipal Codes 14.26, 14.27, 14.28, and 14.29

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GENERAL PROVISIONS

SHRR 190-010 Purpose and applicability of Rules

These Rules (Chapter 190) govern the practices of the Seattle Office of Labor Standards in administering requirements for the following laws (collectively referred to as the "Hotel Employee Protections"):

1. Hotel Employees Safety Protections Ordinance, Seattle Municipal Code (SMC) 14.26;
2. Protecting Hotel Employees from Injury Ordinance, SMC 14.27;
3. Improving Access to Medical Care for Hotel Employees Ordinance, SMC 14.28; and
4. Hotel Employees Job Retention Ordinance, SMC 14.29.

SHRR 190-020 Practice where Rules do not govern

If a matter arises in administering these Hotel Employee Protections that is not specifically covered by these Rules, the Director of the Seattle Office of Labor Standards shall specify the practices to be followed.

SHRR 190-030 Construction of Rules

These Rules shall be liberally construed to permit the Seattle Office of Labor Standards to accomplish its administrative duties in implementing and carry out the purposes of the Hotel Employee Protections.

SHRR 190-040 Severability

These Rules are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of these rules or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of these rules, or the validity of the application of the rules to other persons or circumstances.

EMPLOYEES

SHRR 190-050 Confidential Employee

The term "confidential employee," as used in SMCs 14.28 and 14.29, means an employee who assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies about labor relations or regularly substitute for employees that have such duties. Mere access to confidential labor relations material or personnel records does not make an employee a "confidential employee."

SHRR 190-060 Manager

The term "manager," as used in SMCs 14.28 and 14.29, means an employee who has authority to formulate, determine, and effectuate employer policies by expressing and making operative the decisions of the employer and who has discretion in the performance of their job independent of the employer's established policies.

SHRR 190-070 Supervisor

The term "supervisor," as used in SMCs 14.28 and 14.29, means any individual having authority, in the interest of the employer and in use of independent judgment, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action.

EMPLOYERS

SHRR 190-080 Joint employers

1. In general. "Employer" means any individual, partnership, association, corporation, business, trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer.

2. Joint employer. Separate entities may be treated as joint employers under the Hotel Employee Protection ordinances. Joint employers may be separate and distinct entities with separate owners, managers, and facilities.

3. Determination of joint employment. Determining whether employment is joint employment, or separate and distinct employment, depends upon all the facts in the particular case. Where the employee performs work that simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:
   a. Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or
   b. Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or
   c. Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

4. Joint and several liability. If the facts establish that the employee is jointly employed by two or more employers, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the law(s) with respect to the entire employment for the particular work week and pay period.

SHRR 190-090 Ancillary Hotel Business

1. Ancillary Hotel Businesses. The following Rules apply to the meaning of "ancillary hotel business" as defined in SMC 14.26.020, SMC 14.28.020, and SMC 14.29.020.

   a. Meaning of "business." The word "business," as used in the definition of "ancillary hotel business," means the portion of the business enterprise that provides services to guests or at the site of the hotel.

   b. Meaning of "services." The term "services," as used in SMCs 14.26.060, 14.28.020, and 14.29.020 and in these Rules, refers to the provision of a direct, specific benefit to a guest as opposed to an indirect benefit that serves the general welfare of guests. The sale of goods is not a "service."

   c. Meaning of "routinely contracts." A business that has an isolated and/or short-term business relationship will not be considered to "routinely contract" with the hotel. A business will not be considered to "routinely contract" if the business relationship is in existence for less than one year.

d. Meaning of "site of the hotel." The "site of the hotel" includes any building, structures, or grounds that are kept, used, maintained, advertised, or held out to the public to be a part of the hotel.

e. Entrance within the hotel premises. An ancillary hotel business has an entrance "within the hotel premises" when the entrance opens into the hotel premises and is promoted and used by the business's guests as an access point into the business. On the other hand, a passage that is promoted as and used by the business's customers to access a restroom facility located within the hotel premises is not considered an "entrance within the hotel." A sign identifying the business for purpose of navigation to and from the restroom facility is not "promoting" the business.

2. Hotel's Purpose. The following Rules apply to the meaning of "hotel's purpose" as defined in SMCs 14.26.020, 14.28.020, and 14.29.020.

a. Recreational Services. "Recreational services" include but are not limited to indoor and outdoor fitness and leisure activities.

b. Convention Services. "Convention services" are services related to the coordination and facilitation of a gathering of persons that meet for a common purpose. These services include but are not limited to event planning and coordination, provision of food and beverage, and facility set up and tear down.

PROTECTING HOTEL EMPLOYEES FROM VIOLENT OR HARASSING CONDUCT ORDINANCE – RULES SPECIFIC TO SMC 14.26

SHRR 190-100 Panic Button – Effectiveness Criteria

1. Effectiveness Criteria. An employer shall be considered to have violated its obligation to provide a panic button if the panic button fails to meet the effectiveness criteria set forth in SMC 14.26.020 and as further clarified by this Rule.

a. Easy activation. An employee must be able to easily activate the panic button. A panic button will not be considered "easy to activate" if it requires continued effort by the employee to sustain a signal or if activation is delayed as in situations where the employee must enter passcodes, click through multiple screens or applications, or wait for the system to turn on.

b. Employee's specific location. The panic button must provide enough information about the employee's location to allow responders to accurately identify their specific location.

c. Reliability. The panic button must reliably work in all locations that the employee performs their work and during all shifts that the employee works.

d. Signal clarity. The panic button's signal must be distinguishable from other sounds or other audible or visual alarms. The activation of one panic button must not obscure the activation of others.

SHRR 190-110 Panic button –Providing access to ancillary hotel business employees

A hotel employer must allow an employee of an ancillary hotel business to use the hotel's panic buttons when the employee works in, or makes deliveries to, one of the hotel's guest rooms. A hotel employer must inform the ancillary hotel business how to obtain and operate the hotel's panic buttons and of details of the hotel's response to an activated panic button. The hotel must promptly inform the ancillary hotel business of any change in this information.

SHRR 190-120 Guest Notification – Other means for special circumstances

1. Individual notice. Consistent with SMC 14.26.070.A.2, an employer must inform guests of its policy against violent or harassing conduct by guests prior to or at time of guest check in and through other means for special circumstances. Employers shall use a method reasonably designed to provide individual notice to guests. Examples of methods reasonably designed to provide individual notice:

    a. Verbal or written notification. An employer provides a written copy or verbally notifies guests of the hotel's policy at time of check-in.

    b. In-room guest materials. An employer may display a written policy in the guest room or include the policy in in-room welcome materials.

    c. Electronic notification. An employer may distribute the policy by electronic notification by a booking/reservation confirmation email, pre-booking terms of service, or booking/reservation confirmation webpage.

    d. Distribution to person other than guest ("guest agent"). An employer distributes the policy to a guest's agent and requires that the guest agent distribute the policy to the guest.

SHRR 190-130 Paid time – In additional to other required paid leave

The 16-hours referenced in SMC 14.26.090.A.4 must be provided in addition to any time provided pursuant to local, state, or federal paid sick and safe leave requirements, including but not limited to Seattle's Paid Sick and Safe Time Ordinance, SMC 14.16, the Domestic Violence Leave Act, RCW 49.76, and the Washington Minimum Wage Requirements and Labor Standards Act, RCW 49.46.

SHRR 190-140 Paid Time – Reasonable notice

1. Reasonable Notice. Consistent with SMC 14.26.090.A.5, an employer may require employees to give reasonable notice of an absence from work for the use of paid time for an authorized purpose under SMC 14.26.090.A.4. Employers may require employees to comply with the employer's notification policies, as long as such policies do not interfere with an employee's lawful use of this paid time.

    a. Advance notice for foreseeable leave. When the use of paid time is foreseeable, the employee shall make a reasonable effort to schedule the use of paid time in a manner that does not unduly disrupt the operations of the employer. And, an employee shall give advance oral or written notice of the employee's intention to take leave under SMC 14.26.090.A.4 as early as practicable in advance of the use of the paid leave.

    b. Notice for unforeseeable leave. If the need for paid leave is unforeseeable, the employee must provide notice as soon as possible before the required start time of their shift. The employee must generally comply with an employer's reasonable, normal notification policies and/or call-in procedures, unless it is not practicable to do so. In the event it is impracticable for the employee

to provide notice in compliance with the employer's normal policy and procedure, the employee, or a person on the employee's behalf, should provide notice to the employer. Such notice must be provided no later than the end of the first day that the employee takes such leave.

2. Inquiries into request for paid leave. If the employee does not volunteer sufficient information to identify their request as one for the use of paid leave granted under SMC 14.26 as opposed to a request for use of other paid leave, an employer may make a general inquiry as to whether the leave is granted by this ordinance. However, an employer may not ask the employee to explain, specify, or clarify the specific nature of the use. If an employer obtains any health information about an employee, the employer must treat such information in a confidential manner consistent with applicable privacy laws.

3. Conflict with other law. Nothing in this rule shall require an employer to violate requirements of Seattle's Paid Sick and Safe Time Ordinance, SMC 14.16, the Domestic Violence Leave Act, RCW 49.76, and the Washington Minimum Wage Requirements and Labor Standards Act, RCW 49.46.

SHRR 190-150 Other legal requirements

Nothing in this Chapter or in SMC 14.26 shall be construed to cause violations of RCW 19.48.020, which requires guest arrivals and departures to be recorded for one year, or to prevent an employer from disclosing records with identifying information about guests to comply with a lawful subpoena or court order.

PROTECTING HOTEL EMPLOYEES FROM INJURY ORDINANCE – RULES SPECIFIC TO SMC 14.27

SHRR 190-160 Strenuous room cleaning – 36-hour calculation

The start of the 36-hour period referenced in SMC 14.27.020 begins when a clean room is first occupied by a guest(s).

SHRR 190-170 Workday

A workday is a fixed and regularly recurring period of 24 hours. It may begin on any hour of the day. Once the beginning time of an employee's workday is established it remains fixed but may be changed if the change is intended to be permanent and is not designed to evade premium pay requirements or the health and safety policy goals of SMC 14.27. In the absence of a workday established by an employer, the workday automatically defaults to the 24-hour period starting at 12:00 a.m. and ending at 11:59 p.m.

SHRR 190-180 Team cleaning

1. Performing room cleaning together ("team cleaning"). As set forth in SMC 14.27.050, "if more than one employee performs the room cleaning together, the guest room floor space is divided equally based on the number of employees performing the room cleaning." Employees will be considered to have performed the room cleaning "together" if more than one employee contributed to completing the room cleaning.

2. Team cleaning – Voluntariness. Employers may only assign employees to perform team cleaning if the employee has agreed to perform team cleaning. An employer shall not imply or indicate that an employee must agree to team cleaning.

    a. Reasonable method for requesting. An employer may develop a reasonable system to determine whether an employee voluntarily agrees to team clean and to track the employee's consent or

refusal. Any approach taken must inform employees how to withdraw their consent and whether the agreement is time limited.

b. **Employee's right to refuse.** An employee may refuse an employer's request to perform team cleaning unless required for employee safety or by law as defined in SHRR 190-180.3.

c. **Withdrawal of consent**. An employee may withdraw their consent to team clean at any time unless it is a situation required for employee safety or by law as defined in SHRR 190-180.3. The employer shall give effect to that withdrawal no later than seven calendar days after the withdrawal or the employee's next work schedule occurring after the withdrawal, whichever is shorter.

d. **Employer's discretion**. An employer maintains its discretion to determine whether team cleaning will be performed and which consenting employees are assigned together.

e. **Records**. An employer must document an employee's consent to perform team cleaning and an employee's withdrawal of consent. An employer must retain this documentation for three years.

3. **Team cleaning – When required "for employee safety or by law."** In accordance with SMC 14.27.050, an employer may require multiple employees to perform team cleaning without their consent if such assignment is required "for employee safety or by law."

   a. **Meaning of "required for employee safety."** Employers are permitted to assign team cleaning if it is required to preserve the employee's safety. For example, an employer may assign team cleaning if a room cleaning work task would likely cause injury if performed alone or in the situation where team cleaning is required to successfully assign an employee light duty in accordance with RCW 51.31.090. To the extent that training or performance coaching is required for employee safety, employers may assign team cleaning under these circumstances.

   b. **Meaning of "required by law."** Employers are permitted to assign team cleaning if required to meet the requirements of a local, state or federal law. For example, if an employee's reasonable accommodation for a disability involves team cleaning, an employer's actions must comport with local, state, and federal employment discrimination laws (e.g. Seattle's Fair Employment Practices Law, SMC 14.04, Washington's Law Against Discrimination, RCW 49.60, and the Americans with Disabilities Act, 42 U.S.C. Chapter 126).

SHRR 190-190 Employee request to leave work early

SMC 14.27.050.H applies to situations when an employee's request to leave work early causes the employee to exceed the maximum floor space allowed by the ordinance.

INCREASING HOTEL EMPLOYEE'S ACCESS TO MEDICAL CARE ORDINANCE – RULES SPECIFIC TO SMC 14.28

SHRR 190-200 Definitions

1. **Definitions.** The following definitions apply to those terms as used in SMC 14.28 and SHRR 190-200-250.
   a. **Annual open enrollment.** "Annual open enrollment" is a period during which an individual may enroll or change health coverage.

b. **Dependents.** The term "dependent" means any person for whom the employee is allowed an exemption under the "qualifying child" or "qualifying relative" tests of the Internal Revenue Code, 26 U.S.C. §151-153.

c. **Domestic partner.** "Domestic partner" has the same meaning as set forth for "state registered domestic partners" in Revised Code of Washington 26.60.

d. **Ordinary income.** "Ordinary Income" means compensation paid in cash, direct deposit, or check that can be converted into cash.

e. **Plan year.** A "plan year" is the calendar, policy, or fiscal year of benefits coverage as established by an employer's group health plan.

f. **Special enrollment period.** "Special enrollment period" means a period during which an individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, health coverage outside of the initial and annual enrollment periods.

g. **Tax-favored health programs.** "Tax-favored health programs" include flexible spending arrangements, as defined by the Internal Revenue Code 26 USC §125, health reimbursement arrangement plans, as defined by 29 C.F.R. 54.9815-2711(d)(6)(i), health savings accounts, as defined by the Internal Revenue Code, 26 USC §223, or substantially similar programs.

h. **Workweek**. "Workweek" has the same meaning as set forth in the Washington Administrative Code 296-128-015.

SHRR 190-210 Employee Coverage – Calculating the 80-hour average

1. **Reasonable estimate of average.** To determine whether an employee works for an average of 80 hours or more per month, an employer must make a reasonable estimate of the average monthly work hours of an employee for the calendar year or over the course of the period of employment for employment that is less than a year. If that reasonable estimate shows that an employee is expected to work an average of 80 hours or more in a month, the employee is covered employee by SMC 14.28.

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

3. **Prohibition on recovering overestimated expenditure.** If an employer's estimate results in an overestimation of the average work hours, an employer is prohibited from recovering any healthcare expenditures from the employee resulting from such overestimation.

4. **Separation from employment.** Unless otherwise required by law or by contract, an employer is not required to make a final monthly required healthcare expenditure to or on behalf of an employee who separates from employment prior to the end of a calendar month. "Separates from employment" means the end of the last day on which an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace.

SHRR 190-220 Employee Coverage Exclusions – Waiver, health coverage from another source

1. **SMC 14.28 Ordinance Voluntary Waiver Form ("Ordinance Waiver") – Requirements.** For an employee's waiver of the ordinance to be considered valid, all conditions set forth in SMC 14.28.030.B must be met, as well as the following conditions:
   a. Except for as set forth in SHRR 190-220.2, employers must use the Ordinance Waiver provided by the Office of Labor Standards. This Ordinance Waiver is available at the department's office or on its website at: www.seattle.gov/laborstandards.
   b. The employer may not alter the Ordinance Waiver in any manner or use other forms, including those provided by third-party vendors or health insurance carriers.
   c. The employee must be provided the Ordinance Waiver in the employee's primary language.
   d. The Form must be voluntarily completed in full by the employee without pressure or coercion from the employee's coworkers or the employer, including, supervisor(s), manager(s), or their agents.
   e. If any portion of the waiver is incomplete, the waiver is invalid.
   f. The employer may not state, suggest, or imply that the employee is required to sign the form.

2. **Electronic version of Ordinance Waiver.** Employers may use an electronic version of the Ordinance Waiver. For such a waiver to be valid, all the conditions described in SMC 14.28.030.B. and SHRR 190-220.1 must be satisfied, as well as the following conditions:
   a. The text of the electronic form must be identical to the Ordinance Waiver;
   b. The signature, electronic signature, or other authorization must be on the same screen as the text of the form, such that the employee can view the entirety of the form at the same time as the employee provides an electronic signature or authorization;
   c. The website containing the form may not state or imply that the employee is required to sign the form.

3. **Period of Effectiveness and Revocation.** An Ordinance Waiver is valid for one year after which the employee may choose to sign a new voluntary waiver. Employees may revoke their voluntary waiver during any period of annual open enrollment or due to a qualifying life event. The revocation must be in writing.

4. **Employer Records.** An employer must retain copies of all waivers and any written revocation of a waiver for three years.

SHRR 190-230 Determining an employee's healthcare expenditure rate

1. **Rates.** The rates set forth in SMC 14.28.060.A are based upon the presence or absence of a spouse, domestic partner, or dependent(s) regardless of whether that spouse, domestic partner, or dependent(s) is covered or eligible to be covered by an employer's group health plan.

2. Determination of rate. An employer must make reasonable efforts to obtain accurate information to determine the employee's rate. If an employer is unable to obtain the information to determine the employee's rate, the employer may assume that the employee falls into the rate for an employee with no spouse, domestic partner, or dependents, until otherwise notified by the employee. An employer may request that an employee notify them of a change that would impact their rate (e.g. divorce, marriage, addition or removal of a dependent). An employer's efforts to obtain this information must not violate local, State, or federal laws.

3. Employee notification. On an annual basis, an employer must notify covered employees, including employees who have previously waived as allowed by SMC 14.28.030.B.2 or 14.28.060.D, of the following information:
   a. the rate for which the employee is eligible;
   b. how an employee should notify the employer of a change that would impact the employee's rate;
   c. which healthcare expenditure form(s) the employer will use to satisfy its obligations under SMC 14.28;
   d. if an employer uses payments into a tax-favored health plan to meet some or all of its obligations: information about the tax-favored health plan, including: how to access information about the tax-favored health plan, how to contact the plan administrator (if applicable), any applicable carryover requirements, grace periods, and whether funds revert back to the employer at any time.

SHRR 190-240 Calculating and making healthcare expenditures

1. Full satisfaction required. Employers must make the full healthcare expenditure to or on behalf of each covered employee. If the contributions to one form, as described in SMC 14.28.060.B, do not satisfy the employer's entire obligation, an employer must contribute to one or more of the other forms.

2. Employer-paid portions. An employer may count only the employer's payments toward healthcare coverage or services for the employee or the employee's spouse, domestic partner, and/or dependents if the employee has a spouse, domestic partner, or dependents. Payments originating from the employee do not count toward an employer's obligation. These payments include but are not limited to premium payments paid by the employee and an employee's tax-deductible contributions into a tax-favored health plan.

3. Amounts otherwise required to be paid by federal, state, or local law. The required healthcare expenditure is in addition to, and shall not be deemed satisfied by, any amount otherwise required to be paid by federal, state or local law. These amounts include but are not limited to payments made to meet an employer's obligations under local, State, or federal minimum wage or compensation laws and regulations or payments made to directly or indirectly to obtain worker's compensation, unemployment insurance, disability insurance, Social Security, Medicare, and Washington's State Paid Family and Medical Leave.

4. Allowed administrative costs. Healthcare expenditures shall include administrative costs paid to a third party for the purpose of providing healthcare services or coverage for covered employees but shall not include administrative costs incurred by the employer, but not paid to a third party. Such costs are considered a business expense of the employer.

5. Deference to ERISA plan administration. Nothing in these rules is intended to supplant or alter any administrative scheme for a plan covered by the Employee Retirement Income Security Act, 29 USC Chapter 18.

6. Ordinary income paid directly to the employee - Timing. As set forth in SMC 14.28.060.E., each monthly payment of ordinary income must be made no later than the employee's last regular pay date of the following calendar month. Nothing shall prevent an employer from making payments earlier, or that are more frequent, than once per month.

7. Payments to a third-party for healthcare coverage or services. The following rules apply to healthcare expenditures satisfied in whole or in part by "payments to a third-party" as described in SMC 14.28.060.B.2.

    a. Timing - Benefit of expenditure. Regardless of the timing of the employer's payment to a third-party, the covered employee must receive the benefit of that expenditure every month that the employee is a covered employee. Nothing shall prevent an employer from making expenditures in advance of the month so that the employee may acquire healthcare services during the eligible month.

    b. Lump sum payments. If an employer makes a lump sum payment to a third-party that will provide healthcare services to the employee over multiple months, the employer may divide that sum by the number of months that the employee will be provided healthcare services for the purposes of determining the monthly healthcare expenditure.

8. Payments to a self-insured or self-funded insurance program. The following rules apply to monthly healthcare expenditures satisfied in whole or in part by "average per-capita monthly expenditures" as described in SMC 14.28.060.B.3.

    a. "Average per-capita monthly expenditures." "Average per-capita monthly expenditures" means the average cost of healthcare services, as defined in SMC 14.28.020, paid by the employer for each employee who participates in the same health plan during a plan year. This amount includes costs for participating spouses, domestic partners, and/or dependents. This amount does not include any premium payments made by employees or refunds or credits given to an employer at the end of the plan year. An employer may choose whether to base the "average per-capita monthly expenditures" on all participating employees in the plan or upon only covered employees who participate in the plan. For the purposes of this rule, the "same health plan" means a plan with the same benefit design for each enrolled covered employee, including but not limited to the same co-pay requirements, out-of-pocket maximums, deductibles, coverage tiers, and eligibility criteria.

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

        i. Actuarial certification. An employer that obtains an actuarial certification that verifies that its "monthly premium equivalent rate" is an accurate and reasonable estimate of its

"average per-capita monthly expenditures" may rely upon its estimate for the purposes of satisfying its obligation as set forth in SMC 14.28.060.

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

SHRR 190-250 Healthcare expenditure – Waiver, employee declining expenditure

1. **SMC 14.28 Expenditure voluntary waiver form ("Expenditure Waiver") -- Requirements.** For an employee's waiver of a healthcare expenditure to be considered valid, all conditions described in SMC 14.28.060.D must be met, as well as the following conditions:
   a. Except for as set forth in SHRR 190-250.2, employers must use the Expenditure Waiver provided by the Office of Labor Standards. This Expenditure Waiver is available at the department's office or on its website at: www.seattle.gov/laborstandards.
   b. The employer may not alter the Expenditure Waiver in any manner or use other forms, including those provided by third-party vendors or health insurance carriers.
   c. The employee must be provided the Expenditure Waiver in their primary language.
   d. The employer must fully and accurately complete the portions of the Expenditure Waiver designated for the employer.
   e. An employee may not be pressured or coerced into signing the waiver by the employee's coworkers or the employer, including, supervisor(s), manager(s), or their agents.

2. **Electronic version of Expenditure Waiver.** Employers may use an electronic version of the Expenditure Waiver. For such a waiver to be valid, all the conditions described in SMC 14.28.060.D. and SHRR 190-250.1 must be satisfied, as well as the following conditions:
   a. The text of the electronic form must be identical to the Expenditure Waiver;
   b. The signature, electronic signature, or other authorization must be on the same screen as the text of the form, such that the employee can view the entirety of the form at the same time as the employee provides an electronic signature or authorization;
   c. The website containing the form may not state or imply that the employee is required to sign the form.

3. **Evidence of continued declination required.** In the event the employee refuses to sign the waiver and the employer seeks to show that the employee continued to decline the healthcare expenditure, the employer must have proof that the employee received the waiver and evidence that the employee continued to decline the healthcare expenditure. In the absence of such affirmative evidence of declination, the employer shall provide the healthcare expenditure to the employee.

   a. Examples of proof that the employee received the waiver include but are not limited to a written, sworn statement under penalty of perjury affirming that the waiver meeting the requirements set forth in SHRR 190-250.1 was given to the employee and the date upon which such service was made.

b. Examples of evidence of continued declination include but are not limited to:
   i. A written statement from the employee indicating that the employee declines the expenditure that is dated after the date the waiver was provided to the employee;
   ii. the employee's refusal to authorize a payroll deduction for a premium payment after being given a reasonable opportunity to do so.

4. Period of Effectiveness and Revocation. An Expenditure Waiver is valid for one year. Employees may revoke their voluntary waiver during any period of annual open enrollment or due to a qualifying life event. The revocation must be in writing.

5. Employer Records. An employer must retain copies of all waivers, evidence of proof of service and continued declination as described in SHRR 190-250.3, and written revocation of a waiver for three years.

6. Offer of employer-sponsored health insurance. Nothing in these rules shall prevent an employer from offering an employee employer-sponsored health insurance in the event that an employee waives the employer's offer of the monthly required healthcare expenditure as set forth in SMC 15.28.060.D. This ordinance also does not require an employer to offer or provide employees with health insurance.

   a. Example: An employee is eligible for the healthcare expenditure rate for an employee with spouse. The employer's plan to meet the monthly healthcare expenditure involves payments to a third party to provide health insurance to the employee and their spouse. The employee's spouse does not wish to receive employer-sponsored health insurance, but the employee does. The employee chooses to waive the employer's offer of healthcare expenditure and their rights under the law. Even though the employee has waived rights under SMC 14.28, the employer may still offer the employee the opportunity to individually enroll in the health insurance.

HOTEL EMPLOYEES JOB RETENTION ORDINANCE – RULES SPECIFIC TO SMC 14.29

SHRR 190-260 Meaning of seniority

"Seniority," as used in SMC 14.29.060.B.2 and 14.29.060.E.1, is determined by the employee's seniority within their most recent classification. If the employee's classification seniority is unavailable to the incoming employer, the employee's seniority is determined by the employee's start date of hire as indicated on the outgoing employer's preferential hiring list.

SHRR 190-270 Offer of employment - Ten business days calculation

1. Business Day. "Business day" means a day upon which normal business operations are conducted by the employer.

2. Delivery by personal service or in-person delivery. If the written offer of employment is delivered in person, the ten-business day period referenced in SMC 14.29.060.C begins on the day following the day the written offer is hand delivered to the employee.

3. Email or electronic delivery. If the written offer of employment is delivered by email or other electronic delivery, the ten-business day period referenced in SMC 14.29.060.C begins on the day following the day the written offer is emailed to the employee.

4. By mail, mail delivery service, or mailbox. If the written offer of employment is delivered by mail or mail delivery service, or left in a mailbox for pickup by the U.S. Postal Service, the ten-business days period referenced in SMC 14.29.060.C begins on the third day following the day the written offer is placed in the mail or mailbox, or provided to the mail delivery service.

SHRR 190-280 Discharge from employment for just cause

"Discharge for just cause," as referenced in SMC 14.29, requires that a fair and objective investigation produced evidence that the employee violated a reasonable and consistently applied workplace standard of which the employee knew or reasonably should have known, and that discharge was reasonably related to the seriousness of the employee's conduct and was the consistently applied punishment for a violation of that workplace standard.

NOTICE, POSTING, AND REQUIRED NOTIFICATIONS

SHRR 190-290 Translation requirements

1. Primary language. "Primary language" means the language in which the employee feels most comfortable communicating. Employers shall make a good faith effort to determine the primary languages of employees at the particular workplace.

2. Employers.
   a. Notices. Employers shall provide the notices and documents required by the following ordinances in English and any language that the employer knows or has reason to know is the primary language of the employee(s) at the particular workplace:
      i. Notice of hotel employee rights, SMC 14.26.100.A.1, SMC 14.26.100.A.3, SMC 14.27.100.A.1., SMC 14.28.100.A.1, and SMC 14.29.100.A.1;
      ii. Notice of community and crime victim advocate services, SMC 14.26.100.A.2; and
      iii. The waivers and notice of rights referenced in SMC 14.28.030.B.2 and 14.28.060.D.2.

   b. Policy. As required by SMC 14.26.070.A, employers are required to provide the written policy against violent or harassing guest conduct in English. OLS encourages employers to provide notice to the employee and the customer in their primary language(s).

3. Office of Labor Standards. To facilitate employer compliance with translation requirements, OLS shall create and make available translated versions of the documents outlined in SHRR 190-290.2.a. Employers are not required to provide these documents in languages other than English until OLS makes the necessary translation available. Employers are encouraged to notify OLS of the need for additional translations.

INDIVIDUAL WAIVER AND COLLECTIVE BARGAINING AGREEMENT WAIVERS

SHRR 190-300 Individual employee waiver

1. Where prohibited. Any waiver by an individual employee of any provisions of SMC 14.26, SMC 14.27, or SMC 14.29 shall be deemed contrary to public policy and shall be void and unenforceable.

2. Where permissible. An individual employee may waive provisions of SMC 14.28 provided that all required steps outlined in SMC 14.28 and in these Rules are satisfied. See SMC 14.28.030.B. and SHRR 190-220, and 14.29.060.D and SHRR 190-250.

SHRR 190-310 Collective bargaining agreement waiver

1. Where prohibited. Any waiver by a party to a collective bargaining agreement of any provisions of SMC 14.26 shall be deemed contrary to public policy and shall be void and unenforceable.

2. Where permissible. The requirements under SMCs 14.27, 14.28, and 14.29 shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that the agreement contains a clear and unambiguous waiver, is ratified by the employees, and contains alternative safeguards that meet the public policy goals of the law being waived. A clear and unambiguous waiver also may be contained in an addendum to an existing agreement, including an agreement that is open for negotiation.

    a. Clear and unambiguous terms. A clear and unambiguous waiver must reference the ordinance by name and citation and reference the specific provision or provisions that are being waived by the collective bargaining agreement.

    b. Impasse. A waiver contained in a collective bargaining agreement implemented by an employer after a bargaining impasse does not constitute a valid waiver of these ordinances.

NON-DISCLOSURE

SHRR 190-320 Non-disclosure

1. Non-disclosure. In accordance with SMC 14.26.150.B.1, SMC 14.27.150.B.1, SMC 14.28.150.B.1, SMC 14.29.150.B.1, information that would tend to identify complainants, victims, or witnesses who have furnished information to the Seattle Office of Labor Standards regarding alleged violations of law and who have requested non-disclosure at the time of the complaint shall be protected from disclosure, to the maximum extent permitted by applicable laws, except as provided in SHRR 190-320.2.

2. Agreement to disclose. Unless otherwise required by law, or valid disclosure has been made by other means, the identification of persons described in SHRR 190-320.1 may only be disclosed under these Rules pursuant to an agreement to disclose such information between the person to be identified and the Director.

ENFORCEMENT

SHRR 190-330 Practice and procedure for enforcement of ordinances

The enforcement practices and procedures for these ordinances are determined by the Seattle Office of Labor Standards Rules, Chapter 140.

EFFECTIVE DATE OF RULES

SHRR 190-340 Effective date

These Rules shall take effect on date that they are filed with the City of Seattle Clerk or July 1, 2020, whichever is earlier.