

SEATTLE OFFICE OF LABOR STANDARDS

Chapter 160

**Practices for administering the Domestic Workers Ordinance requirements
under Seattle Municipal Code 14.23**

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GENERAL PROVISIONS

SHRR 160-010 Purpose

These Rules govern the practices of the Seattle Office of Labor Standards in administering the requirements of the Domestic Workers Ordinance under Seattle Municipal Code (SMC) 14.23 (the “Domestic Workers Ordinance”).

SHRR 160-020 Practice where rules do not govern

If a matter arises in administering the Domestic Workers Ordinance 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 160-030 Construction of rules

These Rules shall be liberally construed to permit the Seattle Office of Labor Standards to accomplish its administrative duties in implementing the Domestic Workers Ordinance, including providing technical assistance, determining if a violation has occurred, and proscribing penalties and remedies.

SHRR 160-040 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.

SHRR 160-050 Encouragement of more generous practices

Nothing shall be construed as discouraging or prohibiting an employer or hiring entity from adopting or retaining practices that provide more generous domestic worker labor standards than the protections established by SMC 14.23.

DOMESTIC WORKERS - DEFINITIONS

SHRR 160-060 Nanny

A nanny is someone who provides care and protection, during any part of the 24-hour day, to infants and children under the age of 18 in or about a private home.

SHRR 160-070 House cleaner

A house cleaner is someone who provides cleaning services for an individual or household in or about a private home.

SHRR 160-080 Home care worker

1. **In general.** Home care workers are those who, in or about a private home, provide personal care services to people who have functional disabilities, or those are ill, elderly, or otherwise vulnerable, helping them perform “activities of daily living.” In addition to helping with activities of daily living, home care workers might also assist with “instrumental activities of daily living.” Home care workers include, but are not limited to, those certified by the State Department of Health under RCW 18.88B.

- a. "Activities of daily living" means self-care abilities related to personal care including, but not limited to, bathing, body care, bed mobility, eating, locomotion, medication assistance, use of the toilet, personal hygiene, dressing, and transfer.
- b. "Instrumental activities of daily living" means routine activities performed in the home or the community including, but not limited to, meal preparation, shopping, house cleaning, laundry, maintaining employment, travel to medical services, use of the telephone, and management of personal finances.

SHRR 160-090 Gardener

A gardener is someone who provides landscape care or maintenance services for the garden, yard or grounds in or about a private home, for an individual or household.

SHRR 160-100 Cook

A cook is a worker who prepares food for eating for an individual or household in or about a private home. Cooks may also be referred to as private chefs.

SHRR 160-110 Household manager

A household manager manages the daily operation of a private home, including planning, organizing, and coordinating events, managing household calendars and schedules, arranging appointments, scheduling and supervising home maintenance projects, running errands, paying household bills, and similar activities.

SHRR 160-120 In or about a private home

1. **Private home.** A private home is a separate and distinct dwelling occupied by an individual or household. An apartment house, condominium, or hotel may constitute a private home. A temporary dwelling constitutes a private home. Temporary dwellings include, but are not limited to, hotels, vacation homes, and short-term rentals.
2. **In or about a private home.** Domestic services performed "in or about a private home" encompasses work at the dwelling, as well as work outside the dwelling that is related to the provision of domestic services. Examples include, but are not limited to, taking a child to a playground, running errands, picking up groceries, and driving a client to a doctor's appointment.

SHRR 160-130 Casual Basis

1. **In general.** Seattle Municipal Code 14.23.010 sets out the two-part test to determine whether a worker is excluded from coverage because the worker is working on a casual basis. A worker is engaged in casual work when that work is: 1) irregular, uncertain, or incidental in nature and duration, and 2) different in nature from the type of paid work in which the worker is customarily engaged.
2. **Irregular, uncertain, or incidental.** The irregular, uncertain, or incidental nature of the work will be determined on a case-by-case basis by looking at the scope, duration, and continuity of work engaged by the worker. The frequency and duration of the type of domestic work are not dispositive factors in determining whether a worker is working on a casual basis.

3. Customarily Engaged in Domestic Work

- a. **Presumption.** It shall be presumed that a worker is “customarily engaged” in the type of domestic work for which they are being paid, unless the worker voluntarily discloses otherwise to a hiring entity.
 - i. **Voluntary disclosure.** A voluntary disclosure means that the worker has not been unduly pressured, manipulated, or coaxed into asserting that their work is different in nature from the type of paid work in which they are customarily engaged.

SHRR 160-140 Family relationship – close association

1. **In general.** A domestic worker whose close association with the hiring entity is substantially similar in nature to a family relationship is exempt from coverage under Seattle Municipal Code 14.23.
2. **Presumption.** It shall be presumed that a domestic worker does not have a close association with a hiring entity that is substantially similar in nature to a family relationship, unless otherwise demonstrated.
3. **Close association.** Whether a close association is “substantially similar in nature to a family relationship” depends on the totality of the circumstances and can be determined by factors like:
 - a. A demonstrated association that pre-exists a work arrangement; or
 - b. The worker’s knowing and voluntary assertion of such an association.
 - i. **Knowing assertion.** A knowing assertion means that the worker has been informed of the potential consequences of asserting a close association that is substantially similar in nature to a family relationship and in a language that the worker is most comfortable using.
 - ii. **Voluntary assertion.** A voluntary assertion means that the worker has not been unduly pressured, manipulated, or coaxed into asserting a close association that is substantially similar in nature to a family relationship.

SHRR 160-150 Public Funds

1. **Definition.** Public funds mean payments provided by local, state, and federal governments including, but not limited to, Medicare, Medicaid, the Older Americans Act, and the Veterans Administration.
2. **Complete public funding.** Home care work paid in full through local, state or federal funds is not covered under the ordinance.
3. **Partial public funding.** If a worker is compensated through both public and private funds, the portion of their work compensated by private funds is covered.

HIRING ENTITIES

SHRR 160-160 Hiring entity definition

1. **In general.** As established in SMC 14.23.010, a “hiring entity” means any individual, partnership, association, corporation, business trust, or any entity, person, or group of persons that pays a wage or pays for the services of a domestic worker. It includes any such entity or person acting directly or indirectly in the interest of a hiring entity in relation to the domestic worker.

2. **Acting directly or indirectly in the interest of a hiring entity in relation to the domestic worker.** An entity shall be considered to be acting in the interest of another hiring entity depending on the facts of a particular case. Examples of an entity acting in the interest of a hiring entity include, but are not limited to:
 - a. Having the power to determine the amount that hiring entities pay for domestic services;
 - b. Having the power to determine the amount that domestic workers receive for services provided;
 - c. Having the power to facilitate or terminate the domestic worker's relationship with the hiring entity, including the addition, removal, or promotion of the worker on an online platform; or
 - d. Engaging a subcontractor to perform all or part of the agreed upon services.

SHRR 160-170 Hiring entity liability

1. **Joint and several liability if multiple hiring entities.** If the facts establish that a worker is engaged by two or more hiring entities for the same work assignment, all joint hiring entities are responsible, both individually and jointly, for compliance with all of the applicable provisions of the ordinance with respect to the entirety of the assigned work, except when an individual or household contracts with a separate hiring entity that employs the domestic worker(s) to provide domestic services.
2. **When an individual or household contracts with a separate hiring entity that employs the domestic worker(s) to provide domestic services.** As established in SMC 14.23.010, when an individual or household contracts with a separate hiring entity that employs the domestic worker(s) to provide domestic services, the separate hiring entity is solely liable for violations of SMC 14.23 unless the individual or household interferes with the rights established for domestic worker(s) in SMC 14.23.
3. **Interference.** An individual or household shall have interfered with the rights of a domestic worker, for the purpose of determining liability under Chapter 14.23, if the individual or household engages in any of the following:
 - a. The individual or household expressly denies or interrupts a worker from receiving any of the protections provided under Chapter 14.23, including the right to minimum wage, meal periods, or rest breaks;
 - b. The individual or household impedes or discourages a worker from exercising their rights or coerces a worker into not exercising their rights. This determination shall be made based on the totality of the circumstances, including, but not limited to:
 - i. Assigning a workload that would not reasonably be expected to be completed in the given timeframe, without skipping the meal period or break;
 - ii. Indicating an expectation that the worker must work through a meal period, break, or day of rest; and
 - iii. Surveilling or monitoring the worker while they are on break, such that the worker does not reasonably feel free to make personal choices as to how they spend their time; or
 - c. The individual or household has direct knowledge that the worker is not receiving their rights under Chapter 14.23 and engages in an action or communication with the hiring entity that initiates or perpetuates such practice.
4. **Employers subject to federal, state, and municipal laws.** A hiring entity who is an employer remains bound by the obligations imposed by local, state, and federal laws.

DOMESTIC WORKERS LABOR STANDARDS

SHRR 160-180 Minimum Wage – deductions, charges, or allowances

1. **In general.** A hiring entity may deduct from wages when the worker expressly authorizes the deduction in writing and in advance for a lawful purpose for “the benefit of the employee.” These deductions may reduce the employee’s gross wages below the Seattle minimum wage.
2. **Written authorization of deductions.** To be a valid deduction, the written authorization of deductions must:
 - a. Be written in the language(s) that the worker and the hiring entity are most comfortable using;
 - b. Clearly and simply state that the worker authorizes a deduction from their wages;
 - c. Clearly and simply state the amount and nature of the deduction;
 - d. State the effective date(s) of the deduction;
 - e. State that the worker may rescind their authorization at a future date in writing; and
 - f. Be signed by the worker.
3. **Lodging deduction.** Whether a deduction for lodging is for “the benefit of the employee” will depend on the totality of circumstances, including, but not limited to:
 - a. The lodging provided is furnished in compliance with applicable federal, state, or local laws, and allows for private living quarters where the employee is able to leave their belongings, spend their off-duty time, and able to engage in normal private pursuits as they would in their own home; and
 - b. The amount deducted is equal to or less than either the reasonable cost to the hiring entity, or the fair market rate for the lodging provided, whichever is less.
 - i. The reasonable cost to the hiring entity may be calculated as a portion of the monthly mortgage or rental payments paid by the hiring entity.
 - ii. OLS may approximate the fair market rate of lodging by considering the average rental prices in the area for similar lodging, using a variety of sources of data, including but not limited to: fair market rent data for a particular locality as published by the U.S. Department of Housing and Urban Development, available at <http://www.huduser.org/portal/datasets/fmr.html>, searching for comparable rental units online, or requesting information from local real estate brokers or other experts.

SHRR 160-190 Meal period

1. **Definition.** A meal period is 30-minutes of uninterrupted time when a worker is completely relieved from work duties. The worker must be allowed to rest, eat and drink, make personal telephone calls, attend to personal business, or make other personal choices as to how they spend their time during their meal period.
2. **Timing of meal period.** The 30-minute meal period must be provided between the second and fifth working hour. If the meal period is not had by the fifth hour, it will be considered a missed meal period.
3. **Uninterrupted.** Uninterrupted means the worker is completely relieved of work duties and is not required to perform any tasks for a consecutive 30 minutes. Shorter periods may not be combined to make up a 30-minute meal period. If a meal period is interrupted, the meal period resets until the worker can take a consecutive 30-minute meal period.

4. **Completely relieved of work duties.** A worker shall not be deemed completely relieved of work duties if:
 - a. The worker was required to engage in physical work or mental vigilance during the meal period;
 - b. The worker was required to engage in discussion related to a work task; or
 - c. The worker was being surveilled and monitored while on their meal period, such that the worker did not reasonably feel free to make personal choices as to how they spent their time.

5. **Payment for meal periods.**
 - a. **In general.** Except as provided in SHRR 160-XXX(6)(b) and SMC 14.23.020(B), meal periods shall be unpaid and not considered hours worked.
 - b. **Paid Meal Periods.** Meal periods shall be paid and considered hours worked if the hiring entity requires the worker to remain at the prescribed work site, on-call, and ready to return to work when called. Paid meal periods must also meet all other factors for a meal period as provided in SHRR 160-190(1)–(5).

6. **Waiver of unpaid meal period permissible.**
 - a. **In general.** A worker may waive an unpaid meal period owed under Seattle Municipal Code 14.23.020(B)(1) if the worker does so knowingly and voluntarily, and for the worker’s benefit. A waiver shall be considered void if it was not knowing and voluntary.
 - b. **Knowing and voluntary.**
 - i. **Knowing.** To be a knowing waiver, the worker must be informed of the rights that they are waiving in the language that the worker is most comfortable using, the effective date(s) of the waiver, the consequences of waiving, and the right to rescind a waiver at any time.
 - ii. **Voluntary.** To be a voluntary waiver, the worker must not have been pressured, manipulated, or coaxed into waiving by the hiring entity.
 - iii. **Written Wavier.** A written and signed waiver that meets the conditions above may be produced as evidence that the waiver was knowing and voluntary.

7. **Waiver of meal period – where impermissible.** A worker may not waive a meal period if, had they not waived the meal period, they would have otherwise been entitled to a paid meal period, or entitled to additional compensation due to their work responsibilities making it impossible or infeasible to take a meal period.

8. **Duty to ensure a meal period.** Hiring entities have a duty to ensure that workers under their charge take their meal periods. Hiring entities are encouraged to develop a written meal period policy and schedule to help ensure that their workers can take their meal periods, and to provide a mechanism to confirm whether meal periods generally will be unpaid, paid, “impossible or infeasible,” or waived, in compliance with SMC 14.23.020 and SHRR Chapter 160, during the course of the work assignment.

SHRR 160-200 Rest breaks

1. **Definition.** A rest break is 10-minutes of uninterrupted time when a worker is completely relieved from work duties. The worker may stop work duties, exertions, or activities for personal rest and relaxation.

2. **Timing of Rest Break.** The 10-minute rest break must be provided no later than the end of the third working hour of a four-hour period of work. If the rest break is not had by the end of third hour, it will be considered a missed rest break.

3. **Location of break.** A hiring entity may require a worker to remain at the worksite during a rest break.
4. **Uninterrupted.** Uninterrupted means the worker is completely relieved of work duties and is not required to perform any tasks for a consecutive 10 minutes. Shorter periods may not be combined to make up a 10-minute rest break. If a rest break is interrupted, the rest break resets until the worker can take a consecutive 10-minute rest break.
5. **Completely relieved of work duties.** A worker shall not be deemed completely relieved of work duties if:
 - a. The worker was required to engage in physical work or mental vigilance during the rest break;
 - b. The worker was required to engage in discussion related to a work task; or
 - c. The worker was being surveilled and monitored while on their rest break, such that the worker did not reasonably feel free to make personal choices as to how they spent their time.
6. **Payment for Rest breaks.** Rest breaks are considered hours worked and a hiring entity must pay for a worker's time while on a rest break.
7. **Waiver of rest break impermissible.** A worker may not waive a rest break owed under Seattle Municipal Code 14.23.020(B)(1).
8. **Duty to ensure a rest break.** Hiring entities have a duty to ensure that workers under their charge take their rest breaks. Hiring entities are encouraged to develop a written rest break policy and schedule to help ensure that their workers can take rest breaks.

SHRR 160-210 Impossible or infeasible to take a meal period or rest break

1. **In general.** As established in SMC 14.23.020, if the domestic worker's work responsibilities make it impossible or infeasible to take a meal period or rest break, the hiring entity shall provide additional compensation for the missed meal period or rest break.
2. **Impossible or infeasible meal periods and rest breaks.** It shall be considered impossible or infeasible for a domestic worker to take a meal period or rest break when:
 - a. The nature of the work doesn't permit a meal or rest break without endangering the health and safety of those under a worker's care; or
 - b. There are otherwise compelling circumstances that would have been unforeseen by the hiring entity at the time the work responsibilities were assigned.
3. **Additional payment for missed meal period.** If a domestic worker's work responsibilities make it impossible or infeasible to take a meal period, a hiring entity must compensate the worker for the missed meal period, as well as an additional 30 minutes of pay. These additional 30 minutes shall be considered hours worked. A hiring entity must provide this additional payment at the same time as when payment for that day or shift was due to the domestic worker.
4. **Additional payment for missed rest break.** If a domestic worker's work responsibilities make it impossible or infeasible to take a rest break, a hiring entity must compensate the worker for an additional 10 minutes' worth of pay for each missed rest break. These additional 10 minutes shall be considered hours worked. A hiring entity must provide this additional payment at the same time as when payment for that day or shift was due to the domestic worker.

SHRR 160-220 Day of rest

1. **In general.** No domestic worker who resides or sleeps at a place of employment shall be required to work more than six consecutive days for the same hiring entity without an unpaid, 24-hour period of consecutive rest.
2. **Period of consecutive rest.** A 24-hour period of consecutive rest means that the worker is completely relieved from work duties, not required to remain at the worksite, nor required to return to work if called.
3. **Consecutive days of work.** For purposes of determining the number of consecutive days worked by a worker, any amount of work in a 24-hour period qualifies as a day of work.
4. **Waiver of day of rest permissible.**
 - a. **In general.** A worker may waive a day of rest owed under Seattle Municipal Code 14.23.020(B)(3) if the worker does so knowingly and voluntarily. A waiver shall be considered void if it was not knowing and voluntary.
 - b. **Knowing and voluntary.**
 - i. **Knowing.** To be a knowing waiver, the worker must be informed of the rights that they are waiving in the language that the worker is most comfortable using, the effective date(s) of the waiver, the consequences of waiving, and the right to rescind a waiver at any time.
 - ii. **Voluntary.** To be a voluntary waiver, the worker must not have been unduly pressured, manipulated, or coaxed into waiving by the hiring entity.
 - iii. **Written Wavier.** A written and signed waiver that meets the conditions above may be produced as evidence that the waiver was knowing and voluntary.

RETALIATION

SHRR 160-230 Adverse Action

The term "adverse action" may include, but is not limited to, the following: denying a work assignment or promotion, demoting, terminating, failing to rehire after a seasonal interruption of a work assignment, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, or otherwise discriminating against any person for any reason prohibited by Seattle Municipal Code (SMC) 14.23.070. An "adverse action" for a worker may involve any aspect of work, including pay, work hours, responsibilities, or other material change in the terms and condition of employment or contract.

NON-DISCLOSURE

SHRR 160-240 Non-disclosure

1. In accordance with SMC 14.23.085(B), 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 subsection (2) of this section.

2. Unless otherwise required by law, or valid disclosure has been made by other means, the identification of persons described in subsection (1) of this section 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 160-250 Practice and procedure for this ordinance

Practice and procedure for this ordinance (SMC 14.23) are determined by the Seattle Office of Labor Standards Rules, Chapter 140.

EFFECTIVE DATE OF RULES

SHRR 160-260 Effective date

These rules shall take effect on November 1, 2019.