

## **SEATTLE OFFICE OF LABOR STANDARDS**

### **Seattle Labor Standards Rules Chapter 140**

#### **Practice and Procedure for Labor Standards Enforcement**

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## **GENERAL PROVISIONS**

### **SHRR 140-005. APPLICABILITY OF RULES**

- (1) These Rules (Chapter 140) govern the practices and procedures of the Seattle Office of Labor Standards in conducting investigations and appeals under the following laws:
  - (a) Paid Sick Time and Safe Time Ordinance (PSST), SMC 14.16;
  - (b) Fair Chance Employment Ordinance (FCE), SMC 14.17;
  - (c) Minimum Wage Ordinance (MW), SMC 14.19;
  - (d) Wage Theft Ordinance (WT), SMC 14.20;
  - (e) Secure Scheduling (SS) Ordinance, SMC 14.22;
  - (f) Any other ordinance in effect that provides the Agency with the power to investigate violations and promulgate rules; and
  - (g) Applicable provisions of Ordinance No. 124643 establishing the Office of Labor Standards.
- (2) These Rules replace SHRR Chapter 40, the previous rules governing practices and procedures for conducting investigations under the Seattle Labor Standards Ordinances.
- (3) These Rules govern the procedure of conducting investigations from initiation through closure, appeals, and referral to the City Attorney for filing of a civil action.
- (4) These Rules and any amendment to these Rules shall apply retroactively to investigations of all violations that occurred or were alleged to have occurred prior to the Rules taking effect and investigations pending before the Agency when the Rules are or the amendment is adopted, except that anything already done need not be redone to comply with the Rules or with the amendment.

### **SHRR 140-010. RELATION TO ORDINANCES**

These Rules supplement the provisions of the Ordinances outlined in [SHRR 140-005](#)(1) and shall have the force and effect of law.

### **SHRR 140-015. DEFINITIONS**

As used in this Chapter 140, the following definitions shall apply:

- (1) "Investigation" means the proceedings before the Agency regarding potential violations of one or more Labor Standards Ordinance(s). Investigations include complaint-based and directed proceedings.
- (2) "Notice of Investigation" means any document initiating an investigation into a Respondent's compliance with one or more Labor Standards Ordinance(s).
- (3) "Complainant" is a person who claims an injury as a result of an alleged violation of one or more Labor Standards Ordinance(s).
- (4) "Agency" means the Office of Labor Standards.
- (5) "Director" means the Director of the Office of Labor Standards or the Director's designee.

- (6) "Issued" means signed and dated by the Director.
- (7) "Labor Standards Ordinances" includes the following Ordinances:
  - (a) Paid Sick Time and Safe Time (PSST) Ordinance, SMC 14.16;
  - (b) Fair Chance Employment (FCE) Ordinance, SMC 14.17;
  - (c) Minimum Wage (MW) Ordinance, SMC 14.19;
  - (d) Wage Theft (WT) Ordinance, SMC 14.20;
  - (e) Secure Scheduling (SS) Ordinance, SMC 14.22; and
  - (f) Any other ordinance in effect that provides the Agency with the power to investigate violations and promulgate rules.

(8) "Respondent" means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof whose compliance with one or more of the Labor Standards Ordinances is or has been investigated by the Agency.

**SHRR 140-020. PRACTICE WHERE RULES DO NOT GOVERN**

If a matter arises in administering the Seattle Labor Standards Ordinances that is not specifically governed by these Rules, the Director shall exercise discretion to specify the procedure to be followed to promote the just and speedy determination on the merits of all investigations before the Agency.

**SHRR 140-025. CONSTRUCTION OF RULES**

These Rules shall be liberally construed to permit the Agency to accomplish its administrative duties and to secure the just and speedy determination on the merits of all investigations before the Agency.

**SHRR 140-030. EXCEPTIONS TO THESE RULES**

On the Director's own motion or at the request of a party, the Director may grant an exception to a rule in a specific instance where special circumstances are such that a literal application of the rule would not accomplish the purposes of the Seattle Labor Standards Ordinances. If an exception to a rule is granted, the Director shall notify the parties within five (5) days that the exception has been granted. The notice shall state the procedure that will be followed in lieu of the excepted rule.

**SHRR 140-035. SEVERABILITY**

If any of these Rules or any part of a rule is determined to be invalid, the remaining Rules or part of the rule affected shall continue in full force and effect.

**SHRR 140-040. COMPUTATION OF TIME**

In computing any period of time prescribed or allowed by these Rules, by order of the Director, or Labor Standards Ordinances, the last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday officially recognized by the City of Seattle. In that event, the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday officially recognized by the City.

**SHRR 140-045. SERVICE AND FILING OF PAPERS**

- (1) Service.
  - (a) Who Served. The Director shall cause to be served or delivered all notices issued by the Agency. Parties shall be responsible for serving their own notices.
  - (b) How Served. Service of papers may be made personally; by first-class mail; by certified or registered mail with return receipt requested; by facsimile transmission; by email; or by leaving a copy with a person of suitable age and discretion at the office, principal place of business, or residence of the person or entity to be served.
  - (c) Service by Mail. If service is made by mail, the papers shall be mailed via the United States Postal Service (USPS) and addressed to the person upon whom they are served with postage prepaid. Service by mail shall be deemed complete, and documents received, on the third day following the day the papers are placed in the mail, unless the third day is a Saturday, Sunday or legal holiday officially recognized by either the City of Seattle or USPS, in which event service shall be deemed complete on the first day that is not a Saturday, Sunday or legal holiday following the third day.
  - (d) Service by Other Means. Service by all other means shall be deemed complete, and documents received, on the same day the papers are emailed, faxed, or personally served.
  - (e) Proof of Service. Proof of service may be made by written acknowledgment of service; by the affidavit of the person who personally served the papers or who mailed, emailed, or faxed the papers; by the affidavit of a person who has direct knowledge of service made in person, by mail, email, or fax; or by a certificate of mailing signed by the person who caused the papers to be mailed.
  - (f) Upon Whom Served. All papers served by the Agency or by any party shall be served upon all parties or upon the agent designated by a party or by law.
- (2) All Notices to be in Writing. All notices issued by the Agency in the implementation of the Seattle Labor Standards Ordinances shall be in writing and shall be served upon parties to an investigation in accordance with subsection (1) of this section.

**SHRR 140-050. WHO MAY REPRESENT PARTIES**

- (1) A party may designate an individual over the age of eighteen (18) to be the party's representative, and must inform the Agency in writing of that individual's name, address, and telephone number. The designated representative will exercise the rights of the party. Communication with the designated representative is communication with the party. A party may also be represented by a bona fide

officer, partner, agent or full time employee of an association, partnership or corporation.

- (2) An attorney entering their appearance or withdrawing as a party's representative for any person shall notify the Agency and all parties of their appearance or withdrawal in writing.

**SHRR 140-055. AGENCY'S FUNCTION**

- (1) The Agency administers the Seattle Labor Standards Ordinances to accomplish their purposes.
- (2) The Agency receives complaints and initiates investigations to determine whether a violation has or has not occurred based on a preponderance of the evidence. If the Director determines that a violation has occurred, the Director will issue a Determination of Violation and a Directors Order per SHRR 140-140 that shall state with specificity the amounts due for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest. Such remedy may be compensatory, corrective or proscriptive. See Appendix A. Determining the remedy appropriate to eliminate and to prevent the recurrence of an unlawful practice is a matter within the discretion of the Director until or unless:
  - (a) The investigation is referred to the City Attorney;
  - (b) The investigation is certified to the Hearing Examiner; or
  - (c) The complainant brings a civil action under SMC 14.16.110, 14.19.110, 14.20.090, or 14.22.125.

**SHRR 140-060. ETHICS AND CONFLICTS OF INTEREST**

- (1) In addition to the conduct prohibited by the City's Code of Ethics, SMC Chapter 4.16, no Agency employee shall conduct an investigation against a party with which the employee or a member of the employee's immediate family:
  - (a) Has a substantial financial relationship or close personal relationship;
  - (b) Has a current application for employment;
  - (c) Is employed; or
  - (d) Is a tenant.
- (2) The Agency shall refer to the United States Department of Labor (DOL) or the Washington State Department of Labor and Industries (LNI), as appropriate, investigations involving Agency employees, except in those investigations in which neither DOL nor LNI has jurisdiction over the matters alleged, or Agency employees choose otherwise. When neither DOL nor LNI has jurisdiction over an investigation involving an Agency employee, the Director may designate a third party, who in the Director's judgment is impartial and qualified, to investigate and to recommend a Determination for the investigation.

**INVESTIGATIONS**

**SHRR 140-065. WHERE TO MAKE A COMPLAINT**

Complaints shall be made to the Seattle Office of Labor Standards.

#### **SHRR 140-070. STATUTE OF LIMITATIONS**

Where an investigation is initiated because the Agency has reason to believe that a violation has occurred, the investigation must commence within three (3) years of the alleged violation(s) of the Seattle Labor Standards Ordinances. See SMC 14.16.070, SMC 14.17.045, SMC 14.19.070, SMC 14.20.050, and SMC 14.22.085.

#### **SHRR 140-075. REQUEST TO TERMINATE THE INVESTIGATION**

- (1) Where the allegations under investigation pertain to a single complainant, that complainant may request that the investigation be terminated at any time before the Director issues a Determination of Violation by giving the Agency written notice of the complainant's request to withdraw their complaint.
- (2) Upon receipt of the appropriate withdrawal notice under subsection (1) of this section, the Director may make inquiries to ascertain whether the complainant gave the notice voluntarily and with an understanding of the consequences. Unless the Director determines that the withdrawal request is coerced or uninformed, or that other people may have been impacted by the alleged violation, the Agency shall terminate its investigation and notify the complainant and respondent that the complaint has been withdrawn and the investigation terminated.
- (3) A complainant who withdraws a complaint with benefits or upon receipt of benefits from a respondent may not file another complaint that alleges the same facts and violation(s) as the withdrawn complaint. The complaint shall be dismissed with prejudice. A complainant who withdraws a complaint without benefits may file another complaint that alleges the same facts and violation as the withdrawn complaint, within the statute of limitations. The investigation will be dismissed without prejudice.

#### **SHRR 140-080. CONSOLIDATION OF INVESTIGATIONS**

The Director may order investigations involving a common question of law or fact, or involving a common party or parties, to be consolidated for investigation on any or all of the matters at issue in the investigations.

#### **SHRR 140-085. COMPLAINT BASED AND DIRECTED INVESTIGATIONS**

- (1) The Director may initiate investigations, including individual and company-wide investigations, to determine the extent to which any potential respondent is complying with the Seattle Labor Standards Ordinances.
- (2) An investigation may be initiated by the Director following the receipt of a report or complaint filed by an employee or other person (i.e., complaint-based investigation), or without a complaint (i.e., directed Investigation).
- (3) An investigation may be initiated by a notice of investigation or through other means (e.g., verbally or in-person). If an investigation is initiated through other

means, the Director will serve a notice of investigation per SHRR 140-045 upon the respondent within seven (7) days of the investigation being initiated.

- (4) All investigatory and discovery procedures available to the Agency may, at the discretion of the Director, be utilized in investigations.
- (5) At the conclusion of an investigation, unless an investigation is dismissed or administratively closed, the Director will issue a Determination, and where a violation has been established, an Order per SHRR 140-140.

#### **SHRR 140-090. SOURCES OF INFORMATION – INVESTIGATIONS**

- (1) An investigation may be initiated through receipt by the Agency of a report of a violation filed by an employee or other person.
- (2) The Agency may also initiate an investigation in situations including, but not limited to, when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a business or class of businesses because the workforce contains significant numbers of employees who are vulnerable to labor standards violations or because the workforce is unlikely to volunteer information regarding such violations.
- (3) The Director may assign and reassign investigations to Agency staff members or other designees. During an investigation, the Director may utilize information gathered under federal, state, or local laws or by federal, state, or local agencies that are charged with the administration or enforcement of fair employment practices, public accommodations practices, fair housing practices, fair contracting practices, protected leave, the use of criminal records in employment, wage payment, minimum wage and compensation, or other labor standards.

#### **SHRR 140-095. FACT FINDING AND SETTLEMENT CONFERENCES**

- (1) At such times as are deemed appropriate by the Director, the Director may hold fact finding and settlement conferences. Such conferences are part of the investigation. All parties deemed by the Director as relevant to the investigation shall attend the conference. The purpose of the conference may include:
  - (a) To identify the undisputed elements of the allegations or violations;
  - (b) To define and, if possible, resolve the disputed elements of the allegations or violations; and
  - (c) To attempt to settle the allegations or violations.
- (2) Participants at fact finding conferences may be accompanied by a representative per SHRR 140-050, but the role of the representative is advisory only. The Director will conduct the conference. The representative will not be allowed to question or cross-examine parties or other witnesses.
- (3) Respondent's representatives at a fact finding conference shall include:
  - (a) A person with knowledge of the facts pertaining to the investigation; and
  - (b) A person with authority to negotiate a settlement.



- (4) If OLS and the parties agree to an appropriate settlement, the Director will draft a predetermination settlement (PDS) agreement as provided in SHRR 140-135.

#### **SHRR 140-100. SCOPE OF INVESTIGATION**

In an investigation, the Director may require a person or entity to submit information and may request, or require upon the issuance of a subpoena, access to Respondent's business premise(s), witnesses, and records to determine whether a labor standards violation has occurred. The Director may enter and inspect such places, inspect and make copies of such records, question such persons, and investigate such facts, conditions, practices, or matters as the Director may deem appropriate to determine whether any person has violated any provision of the Labor Standards Ordinances, or which may aid in the enforcement of the provisions of these Ordinances.

#### **SHRR 140-105. ORAL INTERVIEWS**

- (1) The Director may interview the complainant, the respondent, and any persons who may provide information concerning the investigation.
- (2) Except at the request of the person interviewed, the complainant, the complainant's representative, the respondent, and the respondent's representative will not be present during interviews of potential witnesses.
- (3) The Director may record statements of persons only with the person's consent. A person may, at their own expense, make a copy of their own recorded statement.
- (4) The Director may provide any person interviewed with a copy of any existing transcript or summary of the interviewed person's own statement or summary. The Director may request the person interviewed to confirm by their signature that a written interview transcript or a summary thereof is an accurate representation of their statement. The person interviewed may submit additional comments regarding their statement to the Agency.

#### **SHRR 140-110. REQUESTS FOR PRODUCTION, INTERROGATORIES, ACCESS, AND SUBPOENAS**

- (1) The Director may request a respondent or witness to provide documents, records, files, or other sources of evidence to the Agency. The respondent or witness shall provide such documents, records, files or other materials to the Agency within seven (7) days of service of the Director's initial request and within five (5) days for all subsequent requests.
- (2) The Director may issue interrogatories to a respondent or witness. The respondent or witness shall provide complete answers to the interrogatories to the Agency within seven (7) days of service of the interrogatories.
- (3) If a respondent or witness is unable to provide the material requested or to completely answer the interrogatories issued by the Director by the deadlines outlined in subsections (1) and (2) of this section, the respondent or witness shall notify the Director within three (3) days of the date of service of the initial request or interrogatories and within two (2) days for all subsequent requests. The

notification shall be written and shall state the specific time, not to exceed ten (10) days beyond the original due date, when the material will be provided or the interrogatories will be answered. The Director has discretion to grant, deny or modify requests for extensions.

- (4) The Director may access a respondent's business premises to conduct investigations as outlined in SHRR 140-100.
- (5) The Director will seek voluntary compliance with requests for production, interrogatories, requests for access to a respondent's business premises, to relevant evidence, and to sources of evidence. If a person or entity does not voluntarily comply, the Director may apply by affidavit or declaration to the Hearing Examiner to issue a subpoena to order the person or entity to provide the requested material, to completely answer interrogatories, and/or to allow access to the respondent's business premises, to relevant evidence, or to sources of evidence within five (5) days of the issuance of the subpoena.
- (6) If, in the Director's judgment, the circumstances of a particular investigation require an accelerated response to the Agency's request for production, to answers to interrogatories, for access to the respondent's business premises, for relevant evidence, or for sources of evidence, the Director may shorten the time in which a person must respond to such a request. Likewise, where an accelerated response to a subpoena is necessary, the Director may request that the Hearing Examiner order a response to the subpoena within fewer than five (5) days. The Director shall make such a request in their affidavit or declaration, and provide information as to why the situation warrants a shortened response time.
- (7) An order or subpoena issued pursuant to this subsection may be transmitted to the City Attorney's Office which may take appropriate action to secure compliance with the order or subpoena.

**SHRR 140-115. FAILURE TO RESPOND**

- (1) If a respondent fails to respond to a notice of investigation, or request for information within ten days, or fails to maintain and provide records that establish compliance with the relevant Ordinance(s), and the respondent has been served pursuant to SHRR 140-045, the Director may enter a Default Determination and Order that the respondent has violated the Ordinance(s) as alleged.
- (2) A Default Determination and Order shall have the force and effect of a Determination of a Violation and Director's Order. A Default Determination and Order may be enforced in the same manner as a Director's Order. See SHRR 140-140. The Director may seek to enforce a Default Order in a court of competent jurisdiction.

**SHRR 140-120. NON-DISCLOSURE**

- (1) In accordance with SMC 14.16.070(B), 14.17.045(B), 14.19.070(B), 14.20.050(B), and 14.22.085(B), information that in the judgment of the Director would tend to identify persons who have requested non-disclosure and have furnished information to the Agency regarding alleged violations of law or have cooperated

in an investigation shall be maintained and protected from disclosure, to the maximum extent permitted by applicable laws, except as provided in subsection (3) of this section.

- (2) The Director shall maintain and protect from disclosure, to the maximum extent permitted by applicable laws, information that would tend to identify persons who furnished information about alleged violations of law or have cooperated in an investigation relevant to matters before the Office of the Hearing Examiner.
- (3) Information that would tend to identify persons who have requested non-disclosure and who have furnished information about alleged violations of law to the Agency or have cooperated in an investigation may only be disclosed under these Rules pursuant to an agreement to disclose such information between the person to be identified and the Director.

## **TERMINATION OF INVESTIGATIONS**

### **SHRR 140-125. DISMISSAL OF AN INVESTIGATION WITHOUT DETERMINATIONS**

- (1) The Director may dismiss an investigation without issuing a Determination pursuant to SHRR 140-140 when the Director determines dismissal is appropriate, including, but not limited to, investigations where:
  - (a) The Director determines that the commencement of an investigation was not timely made or that the Agency does not otherwise have jurisdiction;
  - (b) A civil action has been filed and is being actively litigated in a court which seeks relief on the same facts as are under investigation;
  - (c) The complainant fails to provide necessary information requested by the Director, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate with the Director to the extent that the Director is unable to complete the investigation and at least seven (7) days have elapsed since the Director sent notice of intent to dismiss the investigation; or
  - (d) The complainant cannot be located by the Director after reasonable efforts have been made to locate the complainant, including notice to the complainant at their last known mailing or email address of the Director's intent to dismiss the investigation, and at least seven (7) days have elapsed since the Director sent notice of intent to dismiss the investigation.
- (2) Upon dismissal under subsection (1) of this section, the Director will notify the complainant and respondent that the investigation has been dismissed.

### **SHRR 140-130. ADMINISTRATIVE CLOSURE OF INVESTIGATIONS**

- (1) The Director may administratively close an investigation when it is appropriate, including, but not limited to, investigations where a predetermination settlement agreement has been reached pursuant to SHRR 140-135.

- (2) An administrative closure of an investigation terminates the action of the Director and the Agency on the investigation. The Agency will not investigate a complaint filed that alleges the same facts and violation(s) as those previously investigated after the investigation has been administratively closed, except where permissible by law.
- (3) Upon administrative closure under subsection (1) of this section, the Director will notify the complainant, where applicable, and respondent that an investigation has been administratively closed.

### **SHRR 140-135. PRE-DETERMINATION SETTLEMENTS**

- (1) The Agency and the respondent may resolve the investigation by agreement at any time before issuing a Determination pursuant to SHRR 140-140.
- (2) If, before issuing a Determination, the parties agree upon a settlement and the Director believes the remedy afforded to the affected employees is appropriate, the Agency will draft a pre-determination settlement (PDS) agreement. The agreement may include, but need not include or be limited to, the following provisions:
  - (a) The agreement constitutes a violation of the relevant ordinance;
  - (b) The parties accept the terms of the agreement as a resolution of the investigation;
  - (c) The specific action(s) the respondent will take to effectuate settlement of the investigation and the time within which the action(s) will be taken;
  - (d) The Agency shall not initiate another investigation against the respondent for the specific matters that were investigated and remedied or could have been remedied in the settlement agreement;
  - (e) The respondent shall not discriminate or retaliate against any person because of opposition to violations of Labor Standards Ordinances, or because of the filing of a complaint, giving of testimony or assistance, or participation in any manner in an investigation;
  - (f) The Agency may investigate any alleged breach of the agreement;
  - (g) If litigation is initiated to enforce the agreement, the City shall be awarded its reasonable attorney's fees and costs incurred in bringing the action;
  - (h) The Agency may monitor compliance for a minimum period of one year; and
  - (i) The agreement can be disclosed to the public.
- (3) If the respondent signs the PDS agreement, the agreement will be incorporated in an Order of the Director which will state that the respondent shall comply with the terms of the PDS agreement.
- (4) The Director will require proof of compliance with the terms of the PDS agreement.
- (5) An order incorporating a PDS agreement will have the force and effect of a Director's order. A PDS agreement may be enforced in the same manner as a Director's order. See SHRR 140-140. The Director may seek to enforce the terms of a PDS agreement in a court of competent jurisdiction.

- (6) In those instances in which a complainant or member of the class claimed to be aggrieved by the practices alleged in an investigation does not receive a full remedy to the alleged violation in a PDS agreement, the agreement shall not in any way prejudice the rights of such person to proceed in any forum against the respondent.

**SHRR 140-140. DETERMINATIONS OF VIOLATION OR NO VIOLATION**

- (1) Investigations in which Determinations are Required. In all investigations where the investigation has not been dismissed or administratively closed, the Director will issue a written Determination that includes findings of fact, conclusions of law, and a statement of whether a violation of the Labor Standards Ordinances has or has not occurred based on a preponderance of the evidence.
  - (a) Investigations in which there is a Violation. Where the Director determines a violation has occurred or is occurring, the Director shall issue and serve a Director's Order contemporaneously with the Determination of Violation and provide the respondent with notice of the respondent's right to appeal the decision, subject to SHRR 140-155. The Director's Order shall conform with the requirements of SMC 14.16.075(C); 14.17.050(C); SMC 14.19.075(C); 14.20.055(C); and 14.22.090(C).
  - (b) Investigations in which there is No Violation. Where the Director has determined a violation has not occurred and the investigation was initiated by a complainant, the Director shall provide the complainant with notice of the complainant's right to appeal the decision, subject to SHRR 140-150.
- (2) Standard of Proof. The Director shall issue a Determination of Violation and Director's Order when a preponderance of the credible evidence before the Director establishes that an unlawful practice has occurred or is occurring.
- (3) Procedure.
  - (a) In all investigations, the Director will issue written Determinations.
  - (b) The Director will cause to be served the documents required by subsections 1(a)-(b) of this section on the parties to the investigation within five days of the Director's signature.
- (4) Conciliation or Conference Efforts are Not Required. Post-determination conciliation or conference efforts are not required in labor standards investigations.

**SHRR 140-145. WITHDRAWAL AND AMENDMENT OF FINDINGS, DETERMINATIONS, AND ORDERS**

Final Determinations and Orders issued under SHRR 140-140 may not be withdrawn or amended without the agreement of the parties except:

- (1) Upon a remand order of the Hearing Examiner following an appeal pursuant to SHRR 140-150; or

- (2) Upon a Director's order made on the Director's initiative or in response to a motion of a party made to the Director to correct clerical or procedural mistakes or errors arising from oversight or omission.

**SHRR 140-150. EMPLOYEE APPEALS TO HEARING EXAMINER**

- (1) Challenge of Dismissals and Administrative Closures. Complainants may challenge the dismissal or administrative closure of an investigation issued pursuant to SHRR 140-125 or SHRR 140-130 by filing a written statement appealing the dismissal or administrative closure with the Hearing Examiner within fifteen (15) days of being served with the Agency's decision.
  - (a) In considering such an appeal, the Hearing Examiner will only assess whether the Agency abused its discretion when it dismissed or administratively closed the investigation.
  - (b) The Hearing Examiner shall not make a finding on the merits of the investigation. The Hearing Examiner may either affirm the Agency's decision or remand the investigation to the Agency to reconsider its decision to dismiss or close the investigation. An investigation that is remanded under this provision may not be appealed to the Hearing Examiner under subsection (2) of this section below.
  - (c) Unless the Agency failed to exercise due diligence, only the information known to the Agency at the time the Director signed the dismissal or administrative closure can be used in determining whether the Agency's decision was an abuse of its discretion.
- (2) Appeal of Determination of No Violation. Complainants may appeal Determinations of No Violation by filing a written statement of appeal with the Hearing Examiner within fifteen (15) days of being served with the Agency's decision.
  - (a) In considering appeals of Determinations of No Violation, the only issue before the Hearing Examiner is whether the Director's Determination of No Violation is supported by a preponderance of the evidence.
  - (b) The statement of appeal shall state specifically the grounds for appeal, and discuss how the Director's determination was not supported by a preponderance of the evidence. The appeal statement shall fully describe any evidence that the appellant thinks the Agency should have considered.
- (3) Appeal of Determinations of Violation and No Violation. For investigations into multiple allegations that result in a combination Determination of Violation and No Violation, complainants may solely appeal the Determination of No Violation portion of the investigation before the Hearing Examiner in accordance with subsection (2) of this section above.
- (4) Procedures for Employee Appeals.
  - (a) Standing. To have standing to appeal a dismissal, administrative closure, or Determination of No Violation, the appellant must demonstrate that if the alleged violation under investigation did occur, the appellant would have been injured by the violation.

- (b) Filing. A statement of appeal may be filed with the Hearing Examiner in hard copy, in electronic format through the e-File page of the Hearing Examiner's website ([www.seattle.gov/examiner](http://www.seattle.gov/examiner)), or by facsimile.
  - (i) Documents are deemed filed with the Hearing Examiner on receipt at the Office of the Hearing Examiner on business days during regular business hours. Documents filed in any format on non-business days, or outside regular business hours, are deemed filed on the next business day.
  - (ii) All filings must comply with the Hearing Examiner's Rules of Practice and Procedure, Section 2.05.
  - (iii) All documents filed with the Hearing Examiner must also be served on the Agency. Service of appeal documents shall be made personally; by first-class, registered, or certified mail; by email; or by facsimile.
- (c) Timeline.
  - (i) Within fifteen (15) days of service of the Agency's decision, a complainant may file a statement of appeal with the Hearing Examiner. No extensions under this subsection are permitted.
  - (ii) Within five (5) days of the Hearing Examiner's receipt of an employee appeal, it will notify and provide a copy of the appeal statement to the Agency.
  - (iii) The Agency and respondent will have forty-five (45) days from the date they received notice and a copy of the appeal to submit a response to the appeal to the Hearing Examiner. Responses to appeals shall be served on all parties to the appeal.
  - (iv) The Hearing Examiner shall act upon employee appeals, issue a written decision, and provide a copy to each party within ninety (90) days of the Hearing Examiner's receipt of the appeal.
  - (v) The Hearing Examiner may extend the time requirements listed in subsection (iii) above if the requesting party files a written request and the Hearing Examiner determines the party has established good cause for granting an extension. If the Hearing Examiner grants an extension, they shall notify all parties in writing. Except in circumstances that would otherwise result in manifest injustice:
    1. The Hearing Officer may grant no more than one thirty (30) day extension; and,
    2. The extension request must be filed before expiration of the time limit in question
- (d) Burden. The burden is on the appellant to convince the Hearing Examiner to exercise the Hearing Examiner's discretion to remand the investigation. The Hearing Examiner will not make a finding on the merits of the investigation, but will issue a written order either affirming the Agency's dismissal, administrative closure, or Determination of No Violation; or remanding the investigation to the Agency for further consideration or investigation.

- (i) If the appellant fails to state valid grounds for appeal, or if the appeal is without merit on its face, frivolous, or brought merely to secure delay, the Hearing Examiner may dismiss the appeal without further proceedings.
- (ii) If the Hearing Examiner affirms the dismissal, administrative closure, or Determination of No Violation, the decision shall be final and the investigation terminated.
- (iii) If the Hearing Examiner remands for further consideration or investigation, the Hearing Examiner shall specify the information or evidence the Agency must obtain and consider upon further investigation in the remand order.
- (iv) If the Hearing Examiner remands for further consideration or investigation, the appellant shall not have a right to appeal the findings of the remand investigation unless the Agency fails to exercise due diligence in obtaining and considering the information or evidence specified by the Hearing Examiner in the remand order.
- (e) Evidence. The Hearing Examiner shall consider the appeal, the Agency's notice of investigation, findings of fact, appeal brief, and such other materials as the Hearing Examiner may request of the Agency, the appellant, or the respondent.
- (f) Oral Argument. In its discretion, the Hearing Examiner may request oral argument by the parties on the issues raised in the appeal.
  - (i) Oral arguments shall only serve the limited purpose of assisting the Hearing Examiner in determining whether:
    1. The Agency's decision to dismiss or administratively close the investigation was an abuse of discretion; or
    2. A preponderance of the evidence supports the Agency's Determination of No Violation that was appealed.
  - (ii) Any oral argument shall be electronically recorded and the recording made part of the Hearing Examiner's record.
  - (iii) Oral argument is not evidence and does not become part of the Agency's investigatory record.
  - (iv) The Hearing Examiner shall notify parties at least ten (10) days before the date scheduled for oral argument. Such notification shall specify the time, date, and place for oral argument; the time allotted to each party; and issues that may be addressed.
- (5) The appeals addressed in this section are not "contested case" within the meaning of SMC 3.02.

**SHRR 140-155. RESPONDENT APPEALS TO HEARING EXAMINER**

- (1) In Labor Standards investigations where the Director finds a violation, the respondent may appeal the Determination of Violation and Director's Order by requesting a contested hearing before the Hearing Examiner within fifteen (15) days of being served with the Director's Order. See SMC 14.16.085; SMC 14.17.060; SMC 14.19.060; SMC 14.20.070.



- (2) If a respondent fails to appeal the Determination of Violation and Director's Order within fifteen (15) days of service, the Determination and Director's Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.
- (3) Respondent appeals shall follow the Hearing Examiner Rules of Practice and Procedure available on the Hearing Examiner's website ([www.seattle.gov/examiner](http://www.seattle.gov/examiner)).

## APPENDIX A

### SECTION 1. BACK PAY AND INTEREST AWARDS

- (1) Back Pay. Once it has been determined that an awardee has sustained economic loss from a violation under the Seattle Labor Standards Ordinances, back pay shall be awarded. The issue in determining whether a back pay award is appropriate is whether the awardee was economically injured and requires back pay to be made whole.
- (2) Computation. Back pay awards shall be computed to include all earnings and benefits that would be due the awardee but for the respondent's unlawful acts or practices. The award shall be equal to what the awardee would have earned from the respondent plus interest, less legal deductions due as a result of the award.
  - (a) Interest. Interest shall accrue at the rate of twelve (12) percent per annum on the amount of back pay due and may, at the discretion of the Director based on the circumstances of the case, be computed on a monthly basis. Interest shall be assessed on all back pay awards. Such interest shall run from the date the back pay became due to the awardee as wages until the date the back pay is paid.
  - (b) Legal Deductions. Legal deductions due as a result of the award include mandatory contributions, such as FICA, that are required by law to be withheld from wages. The amount deducted under this section shall be paid to the appropriate fund on the awardee's behalf.
  - (c) Compensation Period. The compensation period for the calculation of back pay shall commence on the date the unlawful act or practice occurred or began, and shall continue until the date the unlawful act or practice ends or the date a Director's order under SHRR 140-140 is issued, whichever occurs first.

### SECTION 2. REMEDIES IN PAID SICK AND SAFE TIME (PSST) CASES

- (1) Remedies to Aggrieved Parties.

<b>Table 2-1. Remedies to Aggrieved Parties Under SMC 14.16.080</b>	
<b>Violation</b>	<b>Remedy to Each Aggrieved Party</b>
First and subsequent violations of the PSST Ordinance (any provision)	Liquidated damages of up to twice the unpaid wages.
Violation of PSST accrual requirements	For full-time employees, back pay for 30 PSST hours <sup>1</sup> for each year of noncompliance for up to three (3) years preceding the initiation of the investigation through the date of the Determination and Order or Pre-Determination Settlement, paid at the employee's rate of pay on the last day of each year of noncompliance, plus interest.
Violation of PSST use requirements (preclusion of use; nonpayment for use)	For part-time, temporary, and occasional basis employees working fewer than 2080 hours per year, the number of hours to be paid out will be prorated based on hours worked.
Violation of PSST carry-over requirements	This remedy may be prorated for the length and extent of noncompliance. For partial noncompliance where full-time employees are permitted to accrue and use at least 30 PSST hours per year (or the prorated equivalent for employees working fewer than 2080 hour per year), employees will receive back-PSST hours (see below), but not back pay.

<sup>1</sup> To calculate the equitable remedy, OLS will adjust number of hours paid out annually using the most recent data regarding "the frequency of work-loss days" for adults aged 18 and over as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), Summary Health Statistics for U.S. Adults.

	<p>Accrued PSST hours based on the applicable accrual rate and hours worked during each year of noncompliance for up to three (3) years preceding the initiation of the investigation through the date of the Determination and Order or Pre-Determination Settlement, less the number of PSST hours paid out as back pay, where applicable (see above).</p> <p>In cases where payroll records have not been maintained or provided, the maximum number of accrued PSST hours that the employee could have accrued during the period of noncompliance shall be awarded without carryover restrictions.</p> <p>This remedy may be prorated for the length and extent of noncompliance.</p>
Violation of PSST use requirements (where respondent is generally providing PSST but wrongfully denies use)	Full payment of unpaid wages due, plus interest.
Retaliation	Appropriate relief at law or equity, including but not limited to: reinstatement; front pay in lieu of reinstatement with full payment of unpaid wages plus interest; liquidated damages of up to twice the unpaid wages; and a penalty of up to \$5,000.

(2) Fines to the City of Seattle.

<b>Table 2-2. Fines and Penalties to the Agency under SMC 14.16.080</b>	
<b>Violation</b>	<b>Civil Penalties/Fines</b>
First, second, or subsequent violations of the PSST Ordinance (any provision)	<p>First violation: Up to \$500 per aggrieved party.</p> <p>Second violation: Up to \$1,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater.</p>

	Subsequent violations: Up to \$5,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. <sup>2</sup>
Willful failure to display the Labor Standards Ordinance poster	First violation: \$750. Subsequent violations: \$1,000.
Failure to provide notification each time wages are paid stating an updated amount of paid time available for use as PSST	\$500.
Failure to provide employees with written notice of rights under notice and posting requirements	\$500.
Failure to provide employees with employer's written policy and procedure for meeting PSST requirements	\$500.
Failure to comply with prohibitions against retaliation	\$1,000 per aggrieved party.
Failure to maintain employer records documenting hours worked by employees and PSST used by covered employees for three years	\$500 per missing record.
Failure to provide notice of investigation to employees	\$500.
Failure to provide notice of failure to comply with final order to public	\$500.
Willful interference with the investigation	Between \$1,000.00 and \$5,000.00.

- (3) Attorney's Fees. In addition to the unpaid wages, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing SMC 14.16, including but not limited to reasonable attorneys' fees.

<sup>2</sup> Maximum penalty for a violation is \$20,000 per aggrieved party or 10% of unpaid wages, whichever is greater.

### SECTION 3. REMEDIES IN FAIR CHANCE EMPLOYMENT (FCE) CASES

#### (1) Remedies to Aggrieved Parties.

<b>Table 3-1. Remedies to Aggrieved Parties under SMC 14.17.055</b>	
<b>Violation</b>	<b>Remedy to Each Aggrieved Party</b>
First, second, and subsequent violations of the FCE Ordinance (any provision) <sup>3</sup>	First violation: Up to \$500 to each aggrieved party. Second violation: Up to \$1,000 to each aggrieved party. Subsequent violations: Up to \$5,000 to each aggrieved party.
Retaliation	Appropriate relief at law or equity, including: reinstatement; front pay in lieu of reinstatement with full payment of unpaid wages plus interest; liquidated damages of up to twice the unpaid wages; and a penalty of up to \$5,000.

#### (2) Fines to the City of Seattle.

<b>Table 3-2. Fines and Penalties to the Agency under SMC 14.17.055</b>	
<b>Violation</b>	<b>Fine</b>
Failure to provide employees with written notice of rights under notice and posting requirements	\$500.
Failure to comply with prohibitions against retaliation	\$1,000 per aggrieved party.
Willful failure to display the Labor Standards Ordinance poster	First violation: \$750 Subsequent violations: \$1,000.
Failure to provide notice of investigation to employees	\$500.
Failure to provide notice of failure to comply with final order to public	\$500.

<sup>3</sup> If there is no aggrieved party, the penalty for a first, second, or subsequent violation shall be paid to the Department as a civil penalty. See SMC 14.17.055(F).

Willful interference with the investigation	Between \$1,000 and \$5,000.
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- (3) Attorney's Fees. In addition to the unpaid wages, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing SMC 14.17, including but not limited to reasonable attorneys' fees.

#### **SECTION 4. REMEDIES IN MINIMUM WAGE (MW) CASES**

- (1) Remedies to Aggrieved Parties.

<b>Table 4-1. Remedies to Aggrieved Parties under SMC 14.19.080</b>	
<b>Violation</b>	<b>Remedy to Each Aggrieved Party</b>
First and subsequent violations of the MW Ordinance	Liquidated damages of up to twice the unpaid wages.
Failure to pay minimum wage or minimum compensation	Full payment of unpaid wages plus interest.
Retaliation	Appropriate relief at law or equity, including but not limited to: reinstatement; front pay in lieu of reinstatement with full payment of unpaid wages plus interest; liquidated damages of up to twice the unpaid wages; and a penalty of up to \$5,000.

- (2) Fines to the City of Seattle.

<b>Table 4-2. Fines to the City of Seattle under SMC 14.19.080</b>	
<b>Violation</b>	<b>Fine</b>
First, second, and subsequent violations of the MW Ordinance	<p>First violation: Up to \$500 per aggrieved party.</p> <p>Second violation: Up to \$1,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater.</p> <p>Subsequent violations: Up to \$5,000 per aggrieved party, or an amount equal to ten</p>

	percent of the total amount of unpaid wages, whichever is greater. <sup>4</sup>
Willful failure to display the Labor Standards Ordinance poster	First violation: \$750. Subsequent violations: \$1,000.
Failure to provide employees with written notice of rights under notice and posting requirements	\$500.
Failure to comply with prohibitions against retaliation	\$1,000 per aggrieved party.
Failure to maintain employer records documenting minimum wages and minimum compensation paid to each employee for three years	\$500 per missing record.
Failure to provide notice of investigation to employees	\$500.
Failure to provide notice of failure to comply with final order to public	\$500.
Willful interference with the investigation	Between \$1,000 and \$5,000.

- (3) Attorney's Fees. In addition to the unpaid wages, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing SMC 14.19, including but not limited to reasonable attorneys' fees.

## SECTION 5. REMEDIES IN WAGE THEFT (WT) CASES

- (1) Remedies to Aggrieved Parties.

<b>Table 5-1. Remedies to Aggrieved Parties under SMC 14.20.060</b>	
<b>Violation</b>	<b>Remedy to Each Aggrieved Party</b>
First and subsequent violations of the WT Ordinance	Liquidated damages up to twice the unpaid wages.
Failure to pay all compensation owed to an employee by reason of employment on an established regular	Full payment of unpaid compensation plus interest.

<sup>4</sup> Maximum penalty for a violation is \$20,000 per aggrieved party or 10% of unpaid wages, whichever is greater.



pay day at no longer than monthly payment intervals	
Retaliation	Appropriate relief at law or equity, including but not limited to: reinstatement; front pay in lieu of reinstatement with full payment of unpaid wages plus interest; liquidated damages of up to twice the unpaid wages; and a penalty of up to \$5,000.

(2) Fines to the City of Seattle.

<b>Table 5-2. Fines and Penalties to the Agency under SMC 14.20.060</b>	
<b>Violation</b>	<b>Fine</b>
First, second, and subsequent violations of the WT Ordinance	First violation: Up to \$500 per aggrieved party. Second violation: Up to \$1,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. Subsequent violations: Up to \$5,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. <sup>5</sup>
Willful failure to display the Labor Standards Ordinance poster	First violation: \$750. Subsequent violations: \$1,000.
Failure to provide employees with written notice of rights under notice and posting requirements	\$500.
Failure to provide employees with written notice of pay information each time wages are paid	\$500 per aggrieved party.
Failure to provide written notice of employment information	\$500 per aggrieved party.
Failure to comply with prohibitions against retaliation	\$1,000 per aggrieved party.

<sup>5</sup> Maximum penalty for a violation is \$20,000 per aggrieved party or 10% of unpaid wages, whichever is greater.

Failure to maintain employer records for three years	\$500 per missing record.
Failure to provide notice of investigation to employees	\$500.
Failure to provide notice of failure to comply with final order to public	\$500.
Willful interference with the investigation	Between \$1,000 and \$5,000.

- (3) Attorney's Fees. In addition to the unpaid wages, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing [SMC 14.20](#), including but not limited to reasonable attorneys' fees.

**SECTION 6. REMEDIES IN SECURE SCHEDULING (SS) CASES**

- (1) Remedies to Aggrieved Parties.

<b>Table 6-1. Remedies to Aggrieved Parties under SMC 14.22.095</b>	
<b>Violation</b>	<b>Remedy to Each Aggrieved Party</b>
First and subsequent violations of the SS Ordinance	Liquidated damages of up to twice the unpaid compensation. Full payment of unpaid compensation plus interest.
Retaliation	Appropriate relief at law or equity, including but not limited to: reinstatement; front pay in lieu of reinstatement with full payment of unpaid wages plus interest; liquidated damages of up to twice the unpaid wages; and a penalty of up to \$5,000.

- (2) Fines to the City of Seattle.

<b>Table 6-2. Fines and Penalties to the Agency under SMC 14.22.095</b>	
<b>Violation</b>	<b>Fine</b>
First, second, and subsequent violations of the SS Ordinance	First violation: Up to \$500 per aggrieved party. Second violation: Up to \$1,000 per aggrieved party, or an amount equal to ten

	percent of the total amount of unpaid compensation, whichever is greater. Subsequent violations: Up to \$5,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater. <sup>6</sup>
Failure to provide good faith estimate of work schedule	\$500.
Failure to provide a written response for denial of employee's request for a limitation or change in work schedule due to a major life event	\$500.
Failure to compensate employee at one and a half times pay for working hours that are separated by less than 10 hours from the previous shift	\$500.
Failure to provide at least 14 calendar days of advance notice of work schedule	\$500.
Failure to provide notice of work schedule changes	\$500.
Failure to comply with prohibitions against asking or requiring an employee to find coverage for scheduled hours if the employee is unable to work for a reason covered by other laws or a major life event	\$500.
Failure to compensate employee with additional compensation for work schedule changes	\$500.
Failure to comply with prohibition against systemic pattern or practice of significant underscheduling	\$500.

<sup>6</sup> Maximum penalty for a violation is \$20,000 per aggrieved party or 10% of unpaid wages, whichever is greater.

Failure to offer additional hours of work to existing employees	\$500.
Willful failure to display the Labor Standards Ordinance poster	First violation: \$750 Subsequent violations: 1,000.
Failure to provide employees with written notice of rights under notice and posting requirements	\$500.
Failure to comply with prohibitions against retaliation	\$1,000 per aggrieved party.
Failure to provide notice of investigation to employees	\$500.
Failure to provide notice of failure to comply with final order to public	\$500.
Willful interference with the investigation	Between \$1,000 and \$5,000.

- (3) Attorney's Fees. In addition to the unpaid wages, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing SMC 14.22, including but not limited to reasonable attorneys' fees.