Seattle Office of Labor Standards

Cannabis Employee Job Retention Ordinance

Questions and Answers

Seattle's Cannabis Employee Job Retention Ordinance, Seattle Municipal Code (SMC 8.38) addresses job insecurity in the cannabis industry by ensuring covered employees have information about ownership changes and requiring new employers to retain covered employees for a 90 day-transition period.

The Seattle Office of Labor Standards (OLS) is responsible for administering this law. OLS provides outreach, compliance assistance, and enforcement services.

If you have a question that this Q&A does not cover, visit the Office of Labor Standards website. You may also call 206-256-5297 or reach us electronically:

- Employees with questions and complaints – submit an online inquiry form.
- Employers with requests for technical assistance – send an email to business.laborstandards@seattle.gov or submit an online inquiry form.

***The Office of Labor Standards (OLS) created this document to provide an explanation of the law**. Note: Information provided by OLS does not constitute legal advice, create an agency decision, or establish an attorney-client relationship with the reader.*

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A. General Information

1. What does this ordinance do?
   The Cannabis Employee Job Retention (CEJR) Ordinance requires covered employers to provide advanced notice to covered employees of changes in ownership and requires the covered incoming employer to retain covered employees for a certain time after the change in ownership.

2. Where can I view a copy of the law and the rules that apply to this law?
   The law (SMC 8.38) and the administrative rules related to this ordinance (SHRR 230) can be found on the Office of Labor Standards Cannabis Employee Job Retention Ordinance webpage.

3. When did this law go into effect?
   The law went into effect on July 19, 2023.

4. Which City department administers this law?
   The City of Seattle's Office of Labor Standards (OLS) administers this law. OLS provides a range of services for employees and employers including education and compliance assistance. OLS also investigates potential violations of this law.

5. Where do employees call with questions? Can employees remain anonymous?
   Employees can call 206-256-5297, email workers.laborstandards@seattle.gov, or submit an online inquiry. Upon request, and to the extent permitted by law, OLS protects the identifying information (e.g. name, job title) of employees who report violations and witnesses who provide information during investigations. OLS will not disclose the person's identifying information during or after the investigation, to the extent permitted by law. OLS may need to release names of employees who are owed payment as a result of an investigation.

6. What happens when employees call OLS?
   Employees may call OLS with questions or complaints. When employees call OLS, they will be directed to an intake investigator who will provide information about the law or gather information about issues at the workplace. If employees wish to make a complaint, OLS may collect information from additional witnesses and/or request documents from employees. After reviewing information provided by employees, OLS will decide if and how it can help, which may take a variety of forms, including simply providing information to the employer, trying to informally resolve the issue without a full investigation, or conducting a formal investigation. If OLS decides to investigate, and if OLS cannot investigate the employer immediately, it may place the case on a waitlist.

7. Does an employee's immigration status impact coverage or application of the law?
   No, immigration status does not impact coverage or application of the law. As a matter of policy, the City of Seattle does not ask about the immigration status of anyone using City services. Read OLS' Commitment to Immigrant and Refugee Communities for more information.

8. Can employers call OLS with their questions?
   Yes! OLS provides compliance assistance and training for employers. Employers can call 206-256-5297, send an email to business.laborstandards@seattle.gov, or submit an online inquiry form. OLS does not share information about the identity of employers with our enforcement team. Phone conversations and email conversations are kept separate form the investigation process.

9. What happens when an employer calls OLS with a question?
   OLS encourages employers to call or email their questions to our office. Our goal is to help employers attain full

compliance with Seattle's labor standards and we will answer many types of labor standards questions. OLS has staff dedicated to business engagement who respond to inquiries and who are not members of the enforcement team. Phone conversations and email exchanges with the business engagement staff are kept separate from the investigation process.

10. Does OLS provide language interpretation for its services?
    Yes. If OLS staff do not speak your preferred language, OLS will arrange for an interpreter to help with the conversation. OLS's services are free of charge regardless of whether interpretation services are required.

B. Employees

11. Which employees are protected by this law?
    This law applies to employees who have worked for a covered employer for at least 30 days prior to the execution of a transfer document, a document that affects a change in control of a covered business.

12. Are employees who are hired by a covered employers after the execution of a transfer document covered by this law?
    No.

C. Employers

13. Which employers are *covered employers* and must follow this law?
    Covered employers are limited to those who own, control, or operate a cannabis business in the City of Seattle, including but not limited to integrated enterprises.

    When a business ownership change happens, outgoing employers (those selling a business) and incoming employers (those buying the business) have obligations related to notice posting, preferential hiring, offer of employment and evaluation, and so on under this law.

    Moreover, all cannabis business employers need to disclose their integrated enterprise information to their employees.

14. What is a cannabis business?
    Cannabis business means an organization licensed or required to be licensed under Seattle City Laws, specially including cannabis producers, cannabis processors, cannabis retailers, and cannabis transporters.

15. What is an integrated enterprise?
    When an entity controls the operation of another entity, these entities are considered an integrated enterprise and a single employer under this law. In assessing whether multiple entities are considered an integrate enterprise, this law considers the degree of interrelation between their operations, the degree to which the entities share common management, centralized control of labor relations, degree of common ownership or financial control over the entities, and use of a common brand, trade, business, or operating name.

    Examples:
    1) X and Y are two LLCs. X is a cannabis retail shop. Y does all the marketing for X's business and products. At the same time, Y handles all services of management, personnel, payroll, insurance, storage, equipment, policy manual

creation, and contract negotiations for both X and Y. Essentially, Y controls the operation of X. Both X and Y are owned by the same three people. Although X and Y have different trade names, they are considered integrated enterprises due to their operational integration, as well as their common management, labor relations, and ownership.

2) R, S, and T are three LLCs with three different trade names. R grows cannabis plants and makes concentrated plant extracts. S processes cannabis plants that R grows to make edibles. T produces cannabis beauty and personal care products based on R's products. Four persons share the ownership and supervision of these three LLCs. Moreover, these three LLCs share a centralized personnel department, and inter-company transfers and promotions of personnel are common among these three LLCs, and they largely share common staffing, finance, and resource management. Although R, S, and T have different trade names, they are considered integrated enterprises due to their operational integration, as well as their common management, labor relations, and ownership.

16. What is a *change in control*?

In simple terms, a change in control is a change in ownership of all or a discrete portion of the business. In more technical terms, it is the sale, assignment, transfer, contribution, or other disposition of:

- all or substantially all of the assets used in the operation of the business,
- a discrete portion of that business that continues in operation as a business of the same type, or
- a controlling interest of the outgoing employer or a person who controls the outgoing employer.

17. What is a transfer document?

A transfer document is a document (like a purchase agreement) that creates an agreement to effect a change in control of a business covered by this law.

18. What is an *outgoing employer*?

An outgoing employer is the employer that owns, controls, or operates a covered cannabis business prior to a change in control.

19. What is an *incoming employer*?

An incoming employer is the employer that owns, controls, or operates a covered cannabis business after a change of control.

20. I read that this law applies when a cannabis business experiences a change in control into a cannabis business of the same business type. What is "the same business type" under the context of this law?

Same business type means a cannabis business that is licensed or required to be licensed by the Washington State Liquor and Cannabis Board or the City of Seattle in the same license category.

Specifically, there are four types of cannabis licenses/businesses: "cannabis processor," "cannabis producer," "cannabis retailer," and "cannabis transporter." Different tiers with the "cannabis producer" license category are considered the same business type.

D. Notice of Ownership Changes

21. What information does an outgoing employer have to provide to covered employees about a change in ownership?

Outgoing employers must provide written notice that the business is changing ownership. The notice must include:

- The name and contact information of the outgoing employer,
- The name and contact information of the incoming employer, and
- The effective date of the change in ownership.

22. When and how must an *outgoing employe*r provide this notice?
    Within five business days after the execution of a transfer document, an outgoing employer must post the notice in a place that can be readily viewed by employees and all job applicants. Display must be continuous but can be electronic or physical.

23. How long must the notice be posted?
    The incoming employer must keep the notice posted for at least 180 calendar days after the business opens to the public under its control.

E. Job Retention

24. What information does an outgoing employer need to provide the incoming employer?
    The outgoing employer must provide the incoming employer with a preferential hiring list. This list shall include the name, a mailing address, an email address, and a list of all job classifications with beginning and end dates (if applicable) for each covered employee. The preferential hiring list shall be provided within 15 calendar days after signing the transfer document.

    For more details about covered employees, please see Employee Section.

25. Who is responsible for the accuracy and completeness of the preferential hiring list?
    The outgoing employer shall provide complete information for all covered employees and consult with the employees to ensure their information is accurate on the day when the list is transferred to the outgoing employer.

26. What must the incoming employer do with the preferential hiring list?
    The incoming employer must hire from the preferential hiring list before hiring anyone not on the list for 180 calendar days after the business is open to the public under the incoming employer. The incoming employer must hire in order of seniority within each job classification to the extent that comparable job classifications exist.

27. How should an incoming employer determine whether a job classification at their business is comparable to a job classification listed by an outgoing employer? In other words, what are considered comparable job classifications under this law?
    An incoming employer shall determine whether a job classification at their business is comparable to a job classification listed by an outgoing employer based on the comparability of (1) job duties; and (2) the skills, experience, training, or certifications required to perform each job classification. An outgoing employer job classification shall still be comparable to an incoming employer job classification if the outgoing employer job classification has more expansive job duties, skills, training, or certification requirements. The incoming employer shall hire employees by seniority within the same job classification first. After exhausting employees on the preferential hiring list in the same job classification, the incoming employer shall hire by seniority from comparable job classification(s).

    Example:
    The outgoing employer is a cannabis retail store with medical endorsement that has 5 medical consultants and 7 budtenders. The medical consultants in this store have cannabis medical consultant certificates; they fulfill tasks required by a budtender and also provide consultation on cannabis medical uses. The incoming employer is a retail store that exclusively sells recreational use cannabis and needs to hire 10 budtenders. The incoming employer must hire all budtenders from the outgoing employer first, and then hire the 3 most senior medical consultants from the outgoing employer.

28. How does an incoming employer decide seniority?

Seniority is determined by the employee's seniority within their most recent classification. If that information is unavailable to the incoming employer, the employee's seniority is determined by their hire date as indicated on the preferential hiring list.

29. What is required of *incoming employers* making a job offer to an employee on the *preferential hiring list?*

The job offer must be in writing and be held open for at least ten business days.

"Writing" means a printed or printable communication in physical or electronic format, including but not limited to a communication that is transmitted through email, text message, or a computer or mobile system, or that is otherwise sent and maintained electronically.

30. What counts as a business day in this law?

A day upon which normal business operations are conducted by the employer counts as a business day.

31. Does the counting of ten business days (when the job offer must be held open) vary when the job offer delivery methods differ?

Yes. Below are three delivery methods and when the ten-business day period begins counting for each of the scenarios:

1) If the offer of employment is delivered in person, the ten-business day period begins on the day following the day the offer is hand delivered to the employee.
2) If the offer is delivered by email or other electronic delivery (e.g. text message, a computer or mobile system, and any other communication that is sent and maintained electronically), the ten-business day period begins on the day following the day the offer is delivered to the employee.
3) If the offer is delivered by mail or mail delivery service or left in a mailbox for pick up by the U.S. Postal Service, the ten-business day period begins on the third day following the day the offer is placed in the mail or mailbox or provided to the mail delivery service.

32. If an employee from the *preferential hiring* list accepts a job with the *incoming* employer, how long must the *incoming employer* keep the employee on staff?

The incoming employer must retain the employee for 90 calendar days, counting from the day the employee starts working for the incoming employer.

33. Can an employer fire an employee during the *90-day period*?

The incoming employer may only fire an employee during this period if the employer has just cause to do so.

34. What is *just cause*?

An incoming employer has just cause to fire someone if:

a. a fair and objective investigation produced evidence that the employee violated a reasonable and consistently applied workplace standard,
b. the employee knew or reasonably should have known of this workplace standard, and
c. termination was reasonably related to the seriousness of the employee's conduct and was the consistently applied punishment for a violation of that workplace standard.

35. Can an *incoming employer* lay off employees during the 90-day transition period?

An incoming employer may lay off an employee only if it requires fewer employees than the outgoing employer. The incoming employer must retain employees by seniority within each job classification, to the extent comparable job classifications exist.

36. What actions must an *incoming employer* take at the end of the 90-day transition period?

The incoming employer is required to provide a written performance evaluation to each employee and, if the employee's performance was satisfactory, consider retaining the employee.

F. Notice, Posting, and Recordkeeping Requirements

37. What is the notice and posting requirement of this law?

There are two notices requirements of this law.

1) All covered cannabis business employers must display the posters of Notice of Rights pertain to this law.
    - OLS will create the poster and make it available for electronic download on its website. This poster contains the requirements of this law, including preferential hiring, offer of employment, retention and evaluation, etc.
    - Employers must display the poster at any workplace or job site their employees work, in a visible and accessible location.
    - Employers must display the poster in English and in the primary languages of employees at that workplace. Employers must make a good-faith effort to determine the primary languages of employees to post posters in the correct languages. Primary language means the language in which the employee feels most comfortable communicating.
    - Employers are not required to provide these notices in languages other than English until OLS makes the necessary translation available. Employers are encouraged to notify OLS of the need for additional translations.

2) Covered cannabis business employers that have associated integrated enterprises must give written notice to employees of the name and any trade ("doing business as") names used by any associated integrated enterprise.
    - For existing employees as of the effective date of this law, employers should provide this information in writing no later than July 19, 2023.
    - For employees hired by an employer after the effective date of this law, July 19, 2023, employers shall provide this information as a part of the written Notice of Employment Information required by Seattle's Wage Theft Ordinance at time of hire.

38. Where can the covered employers get the Notice of Rights poster as well as a template for the written Notice of Employment Information?

These resources are available electronically on the OLS website. OLS creates and updates these posters and templates and will make them available for electronic downloading in English and other languages.

39. What if OLS does not have the poster(s) and template(s) in a specific language?

To assist with employer compliance with the language requirements of the ordinance, OLS intends to translate posters in several languages. Employers are not required to provide these notices in languages other than English until OLS makes the necessary translation available. Employers are encouraged to notify OLS of the need for additional translations.

40. What records must an employer keep?

Employers must keep records that show compliance with the ordinance. These records must be kept for three years. These records include (but are not limited to):

- Written notice of the change in control,

- Copy of the preferential hiring list given to the incoming employer,
- Written records of dates of hiring, current position titles, and transition dates from previous positions (if applicable) for all employees,
- Written verification of offers extended to employees on the preferential hiring list, including the dates,
- Written records of performance evaluation given to covered employees, and
- Written notices of the employer's integrated enterprise information provided to employees (if applicable).

G. Prohibition Retaliation

41. Does the law prohibit retaliation?

Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action against employees who assert or exercise their rights in good faith.

These rights include (but are not limited to):

- Asking questions about the law or the rights given by the law,
- Informing someone about potential or actual violations of the law,
- Filing a complaint with the Office of Labor Standards or participating in an investigation about potential or actual violations of the law,
- Talking to the Office of Labor Standards or coworkers about the rights granted by this law, and
- Informing other employees about their rights.

An employee is still protected from retaliation even if they are mistaken about the right afforded.

42. What is considered an *adverse action*?

An *adverse action* is some action that negatively impacts any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms or condition of employment.

Some examples of adverse actions include: denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practice, filing of a false report with a government agency, changing employment status, or unlawfully discriminating against an employee.

H. Waivers

43. Can an individual employee waive their rights to the protections of this law?

No. Individual employees cannot waive their rights under this law.