SEATTLE OFFICE OF LABOR STANDARDS

SEATTLE HUMAN RIGHTS RULES (SHRR)
((~~SEATTLE OFFICE FOR CIVIL RIGHTS~~))

Chapter 90

Practices for administering minimum wage and minimum compensation rates for employees performing work in Seattle (i.e. Minimum Wage Ordinance) under SMC 14.19

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GENERAL PROVISIONS

SHRR 90-001 Purpose

These Rules (Chapter 90) govern the practices of the Seattle Office of Labor Standards ((~~, a division within Seattle Office for Civil Rights,~~)) in administering requirements for minimum wage and minimum compensation under Seattle Municipal Code 14.19 (i.e. the Minimum Wage Ordinance).

((~~**SHRR 90-010 Definitions**~~

~~"Bonuses" means non-discretionary payments in addition to hourly, salary, commission, or piece-rate payments paid under an agreement between the employer and employee;~~

~~"Commissions" means a sum of money paid to an employee upon completion of a task, usually selling a certain amount of good or services;~~

~~"Director" means the Division Director of the Office of Labor Standards within the Office for Civil Rights or the Division Director's designee;~~

~~"Employ" means to permit to work;~~

~~"Employee" means "employee," as defined under Section 12A.28.200. Employee does not include individuals performing services under a work study agreement;~~

~~"Employer" means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;~~

~~"Franchise" means a written agreement by which:~~

1. ~~A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;~~
2. ~~The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and~~
3. ~~The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee;~~

~~"Franchisee" means a person to whom a franchise is offered or granted;~~

~~"Franchisor" means a person who grants a franchise to another person;~~

~~"Hearing Examiner" means the official appointed by the Council and designated as the Hearing Examiner, or that person's designee (Deputy Hearing Examiner, Hearing Examiner Pro Tem, etc.);~~

~~"Hourly minimum compensation" means the minimum compensation due to an employee for each hour worked during a pay period;~~

~~"Hourly minimum wage" means the minimum wage due to an employee for each hour worked during a pay period;~~

~~"Medical benefits plan" means a silver or higher level essential health benefits package, as defined in 42 U.S.C. section 18022, or an equivalent plan that is designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan, whichever is greater;~~

~~"Minimum compensation" means the minimum wage in addition to tips actually received by the employee and reported to the Internal Revenue Service, and money paid by the employer towards an individual employee's medical benefits plan;~~

~~"Minimum wage" means all wages, commissions, piece-rate, and bonuses actually received by the employee and reported to the Internal Revenue Service;~~

~~"Piece rate" means a price paid per unit of work;~~

~~"Schedule 1 Employer" means all employers that employ more than 500 employees in the United States, regardless of where those employees are employed in the United States, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the United States;~~

~~"Schedule 2 Employer" means all employers that employ 500 or fewer employees regardless of where those employees are employed in the United States. Schedule 2 employers do not include franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the United States;~~

~~"Tips" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip;~~

~~"Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the Director. Commissions, piece-rate, and bonuses are included in wages. Tips and employer payments toward a medical benefits plan do not constitute wages for purposes of this Chapter.~~))

SHRR 90-020 Practice where rules do not govern

If a matter arises in administering the Minimum Wage Ordinance that is not specifically covered by these rules, the Director shall specify the practices to be followed.

SHRR 90-030 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 Minimum Wage Ordinance, including providing technical assistance, determining if a violation has occurred and proscribing penalties and remedies.

((~~EMPLOYEES~~)) EMPLOYMENT IN SEATTLE

SHRR 90-040 Employees who are typically based outside of the City and work in ((~~Seattle~~)) the City on an occasional basis

1. **In general.** Employees are covered by the ordinance for all time spent working within the geographic boundaries of ((~~Seattle~~)) the City. An employee who is typically based outside of the City and performs work in ((~~Seattle~~)) the City on an occasional basis is covered by the ordinance in a two-week period only if the employee performs more than two hours of work for an employer within ((~~Seattle~~)) the City during that two-week period. ((~~Time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle, with no employment-related or commercial stops in Seattle except for refueling or the employee's personal meals or errands, is not covered by the ordinance. SMC 14.19.020.~~)) SMC 14.19.015.B.

2. **Typically based outside of the City and performs work in the City on an occasional basis.** An employee is "typically based outside of the City and performs work in the City on an occasional basis" if the employee works for an employer outside the geographic boundaries of Seattle for more than 50% of work hours in a year; or over the course of the period of employment for employment that is less than a year. An employee who works within the geographic boundaries of Seattle at least 50% of work hours in a year does not "typically work outside of Seattle or work in Seattle on an occasional basis" and is covered by the ordinance for all hours worked in Seattle.

    a. To track an employee's work over the course of a year, employers must apply any fixed, consecutive 12-month period of time, including January 1 through December 31; a tax year, fiscal year, or contract year; or the year running from an employee's one-year anniversary date of employment.
    b. If an employee has not worked for the employer for a year, the percentage of work outside of Seattle is based on the ~~experience of~~hours worked by the employee(s) who previously worked in the employee's position over the course of the previous year or the previous period of employment for employment that is less than a year.
    c. If the employee's position is partially or substantially new, the percentage of work outside of Seattle is based on the employer's reasonable expectation of the ~~employee's work~~

location(s) for the hours worked by the employee over the course of a year; or over the course of the period of employment for employment that is less than a year.

((**Occasional basis.** Employees who perform work in Seattle on an irregular basis (i.e. not regularly scheduled) are considered to work in Seattle on an occasional basis.

3. Two-week period. To track time worked by occasional basis employees, employers must consistently apply a consecutive two-week period.

a. Employers have the discretion to determine the two-week period, including a calendar period, pay period, or rolling period measured forward or backward from the first hour worked in Seattle.
b. Employers may delegate tracking of time worked in Seattle to employees if the employer meets ordinance requirements for notice and posting and provides employees with a reasonable system for tracking time.
c. Employers are not required to track time worked in Seattle if the employer complies with all Seattle requirements for payment of minimum wage and minimum compensation to an employee regardless of where that employee's work is performed.

4. Payment requirements. Once an occasional basis employee is covered by the ordinance, payment for all time worked in Seattle during the applicable two-week period shall comply with the ordinance.))

EMPLOYER SCHEDULE DETERMINATION

SHRR 90-045 Joint employers

1. **In general.** "Employer" means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer. SMC 14.19.010.

2. **Joint employer.** Separate entities may be treated as a joint employer under this ordinance. Joint employers may be separate and distinct entities with separate owners, managers, and facilities.

3. **Determination.** Determining whether employment is joint employment, or separate and distinct employment, depends upon all the facts in the particular case. Where the employee performs work that simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as

a. Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or
b. Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or
c. Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

4. **Schedule.** To determine whether the employer is a Schedule 1 or Schedule 2 employer for purposes of SMC 14.19.020, employees who are jointly employed must be counted by all joint employers, regardless of whether the employee is maintained on one or both employers' payrolls.

5. **Hourly rate.** The Schedule of the joint employer with the most employees determines the hourly rate for the employee who is jointly employed.

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

SPECIAL CERTIFICATE AND MINORS

SHRR 90-050 Learners, apprentices, messengers, workers with a disability

1. **In general.** The Director shall have the authority to issue a special certificate authorizing an employer to pay a wage less than the hourly rate defined in SMC 14.19.030, 14.19.035, and 14.19.040 ((~~, and 14.19.050~~)), but above the Washington State minimum wage, as defined in RCW 49.46.020. Such special certificates shall only be available for learners, apprentices, messengers and people with disabilities as described in in RCW 49.46.060 and shall be subject to such limitations as to time, number, proportion, and length of service as the Director shall prescribe. Prior to issuance, an applicant for a special certificate must secure a letter of recommendation from the Washington State Department of Labor and Industries stating that the applicant has a demonstrated necessity pursuant to WAC 296-128. ((~~SMC 14.19.020.~~)) SMC 14.19.025.A.

2. Issuance of special certificates

a. The Director may issue special certificates to pay a subminimum wage for learners, apprentices, and messengers as described in RCW 49.46.060.
b. The Director shall not issue special certificates to pay a subminimum wage for people with disabilities as described in RCW 49.46.060.

~~2.~~3. **Letter of recommendation.** A copy of an approved special certificate from Washington State Department of Labor and Industries shall serve as a letter of recommendation.

~~3.~~4. **Limitations.** The Director's special certificate may ((~~shall~~)) have the same limitations for time, number, proportion and length of service as prescribed by the Washington State Department of Labor and Industries provided that the hourly rate is above the Washington State minimum wage.

~~4.~~5. **Application.** Applications for a special certificate to pay a subminimum wage must be submitted to the Director in writing and will be considered on a case-by-case basis.

~~5.~~6. **((~~Issuance~~)) Notice of the decision.** The Director shall send written notice of the decision to the employer, and when applicable, to the employee as prescribed by WAC 296-128.

SHRR 90-060 Minors

1. **In general.** The Director shall have the authority to issue a rule for the minimum wage for employees under the age of eighteen years, provided that any percentage of the hourly rate established by rule shall not be lower than the percentage established by applicable state statutes and regulations. ((~~SMC 14.19.020.~~)) SMC 14.19.025.B.

2. **Employees less than 16 years of age.** Employers shall pay employees who have not yet reached age sixteen an hourly rate of pay that is not less than 85% of the hourly rate required for employees ages 16 and older by SMC 14.19.030, 14.19.035, and 14.19.040.((~~, and 14.19.050.~~))

HOURLY MINIMUM WAGE AND MINIMUM COMPENSATION

SHRR 90-065 Individual employee's medical benefits plan

1. **In general.**
   a. Schedule 1 employers that pay toward an individual employee's medical benefits plan shall pay the employee an hourly minimum wage that is no less than the schedule set forth by SMC 14.19.030.B.
   b. Schedule 2 employers can meet the applicable hourly minimum compensation requirement through wages (including applicable commissions, piece-rate, and bonuses), tips, and money paid by an employer towards an individual employee's medical benefits plan, provided that the Schedule 2 employer also meets the applicable hourly minimum wage requirements. SMC 14.19.040.B.

2. **Enrollment in a medical benefits plan and eligibility for receipt of benefits.** Schedule 1 and 2 employers may pay the permissible lower minimum wage only if a~~A~~n individual employee ~~must be~~is enrolled in a medical benefits plan and is eligible for receipt of benefits, subject to the following exceptions:
   a. The employer is paying toward an individual employee's medical benefits plan during the employee's waiting period for enrollment and eligibility; or

b. The employer is paying toward an individual employee's medical benefits under a multi-employer health and welfare benefit plan established under section 302(c)(5) of the Labor Management Relations Act of 1947 29 U.S.C. § 401-531 (i.e. Taft-Hartley Act).

SHRR 90-070 Service charges

1. **Service charge.** Service charge means a separately designated, automatic amount collected by employers from customers that is for services provided by employees, or is described in such a way that customers might reasonably believe that the amounts are for such services. Service charges include but are not limited to charges designated on receipts as a "service charge," "gratuity," "delivery charge," or "porterage charge." See RCW 49.46.160(1)(c).

   ((~~a. Service charges are not tips.~~
   ~~b. Service charges, paid or payable to the employee, may be considered commissions for purposes of this ordinance if they meet the definition of commission in SMC 14.19.010.~~))

2. **Disclosure requirement.** An employer that imposes an automatic service charge related to food, beverages, entertainment, or porterage provided to a customer must disclose in an itemized receipt and in any menu provided to the customer the percentage of the automatic service charge that is paid or is payable directly to the employee or employees serving the customer. See RCW 49.46.160(1).

3. **Commission.** Service charges paid to an employee may count toward commissions for the employee's earnings above the state minimum wage, as set forth in RCW. 49.46.020.

4. **Minimum wage and minimum compensation.** Service charges paid to an employee may count toward Seattle minimum wage and minimum compensation for the employee's earnings above the state minimum wage, as set forth in RCW 49.46.020.

SHRR 90-080 Two or more positions for the same employer

When an employee is performing work in both a tipped and non-tipped position for the same Schedule 2 employer, tips count toward hourly minimum compensation only for hours worked in the tipped position.

((~~SHRR 90-090 Work study~~

1. ~~**In general.** Employee is defined by SMC 12A.28.200 and does not include individuals performing services under a work study agreement. SMC 14.19.010.~~

2. ~~**Work study.** Work Study means a job placement program that provides students in secondary and/or post-secondary educational institutions with employment opportunities for financial aid and/or vocational training.~~

~~**EMPLOYERS**~~

~~**SHRR 90-100 Joint employers**~~

~~**1. Joint employer.** Separate entities may be treated as a joint employer under this ordinance. Joint employers may be separate and distinct entities with separate owners, managers, and facilities.~~

~~**2. Determination.** Determining whether employment is joint employment, or separate and distinct employment, depends upon all the facts in the particular case. Where the employee performs work that simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as~~

~~a. Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or~~
~~b. Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or~~
~~c. Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.~~

~~**2. Schedule.** To determine the employer's Schedule, employees who are jointly employed must be counted by all joint employers, regardless of whether the employee is maintained on one or both employers' payrolls.~~

~~**3. Hourly rate.** The Schedule of the joint employer with the most employees determines the hourly rate for the employee who is jointly employed.~~

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

EMPLOYER RECORDS

SHRR 90-110 Payroll records

1. **In general.** Employers shall retain payroll records ((~~of covered employees for a period of three years~~)) documenting minimum wages and minimum compensation paid to each employee. Employers must retain such records for a period of three years from the date such hours were worked. ((~~SMC 14.19.060.~~)) SMC 14.19.050.

2. **Basic information.** Payroll records shall contain information required by state statutes and regulations for Washington state minimum wage, including
    a. Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record or federal tax return filing purposes;
    b. Home address;
    c. Occupation in which employed;
    d. Date of birth if under eighteen;
    e. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of which has workers who have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees;
    f. Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" shall be any consecutive twenty-four hours);
    g. Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;
    h. Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;
    i. Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;
    j. Total wages, including bonuses, commissions and piece-rate, paid each pay period;
    k. Date of payment and the pay period covered by payment;
    l. Employer may use symbols where names or figures are called for so long as such symbols are uniform and defined. See WAC 296-128-010.

3. **Minimum wage and minimum compensation.** Payroll records also shall contain information ((~~regarding medical benefits and tips~~)) that demonstrates ((~~the~~)) payment of minimum wage((~~s~~)) and minimum compensation to each employee, including but not limited to ~~information regarding~~ payments toward ~~an~~the individual employee's medical benefits; the actuarial value of the employee's medical benefits; and ~~paid~~ payments of tips and service charges to the employee.

ENFORCEMENT

SHRR 90-120 Practice and procedures for enforcement of ordinance

The e~~E~~nforcement practices and procedures for this ordinance (SMC 14.19) are determined by the Seattle Office ~~for Civil Rights Rules~~ of Labor Standards Rules~~-~~, ~~(SHRR)~~ Chapter 140.