

Proposed Rules for Notice & Comment

SEATTLE OFFICE OF LABOR STANDARDS

Chapter 180

**Practices for administering the Commuter Benefits Ordinance requirements
under Seattle Municipal Code 14.30**

GENERAL PROVISIONS

- SHRR 180-010** Purpose
- SHRR 180-020** Practice where rules do not govern
- SHRR 180-030** Construction of rules
- SHRR 180-040** Severability
- SHRR 180-050** More generous practices

EMPLOYEE COVERAGE

- SHRR 180-060** Covered employees

PRE-TAX ELECTION COMMUTER BENEFIT

- SHRR 180-070** Offers of pre-tax deduction
- SHRR 180-080** Transit and vanpool expenses
- SHRR 180-090** Employer-provided transit passes

NOTICE AND POSTING

- SHRR 180-100** Determination of employee's primary language(s)

ENFORCEMENT

- SHRR 180-110** Enforcement and cure period

GENERAL PROVISIONS

SHRR 180-010 Purpose

These Rules govern the practices of the Seattle Office of Labor Standards in administering the requirements of the Commuter Benefits Ordinance under Seattle Municipal Code (SMC) 14.30 (the “Commuter Benefits Ordinance”).

SHRR 180-020 Practice where rules do not govern

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

SHRR 180-030 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 Commuter Benefits Ordinance, including providing technical assistance, determining if a violation has occurred, and proscribing penalties and remedies.

SHRR 180-040 Severability

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

SHRR 180-050 More generous practices

Nothing shall be construed as discouraging or prohibiting an employer or hiring entity from adopting or retaining practices that provide more generous commuter benefits labor standards than the protections established by SMC 14.30.

EMPLOYEE COVERAGE

SHRR 180-060 Covered employees

1. **In general.** For the purposes of coverage under Chapter 14.30 for any given month, covered employees are limited to those who work an average of ten hours or more per week in Seattle in the previous calendar month.
2. **Determining average hours.** To calculate an employee’s average weekly hours in the previous calendar month, determine the number of complete seven-day workweeks in that previous calendar month. This number will either be three or four workweeks, depending on the month. Determine the total number of hours worked for all complete seven-day workweeks during the previous calendar month, and divide by the number of complete workweeks.
 - a. **Workweek defined.** A workweek is a fixed and regularly recurring period of 168 hours during seven consecutive 24-hour periods. It may begin on any day of the week and any hour of the day. Once the beginning time of an employee's workweek is established it remains fixed but may be changed if the change is intended to be permanent and is not designed to evade employee coverage. In the absence of a workweek established by the employer, the workweek automatically defaults to the calendar week, Sunday through Saturday.

- b. **Hours worked.** “Hours worked” means all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace.

PRE-TAX ELECTION COMMUTER BENEFIT

SHRR 180-070 Offers of Pre-tax deduction

1. **Offer in Writing.** The provision or offer of a pre-tax election commuter benefit must be made in writing. Employers are strongly encouraged to provide this offer in the employee’s primary language, as defined in SHRR 180-090.

SHRR 180-080 Transit expenses or vanpool expenses

1. **In general.** The pre-tax election commuter benefit shall allow employees to elect to exclude qualified transportation fringe benefits (except for parking) incurred for transit expenses or vanpool expenses from the employee's taxable wages and compensation up to the maximum level allowed by federal tax law, consistent with federal Internal Revenue Code section 132(f) as of June 1, 2018.
2. **Transit expenses.** Consistent with 26 CFR § 1.132-9, qualified transportation fringe benefits incurred for transit expenses are expenses incurred in purchasing a transit pass, token, farecard, voucher, or similar item (including an item exchangeable for fare media) that entitles a person to transportation on mass transit facilities (whether or not publicly owned).
3. **Vanpool expenses.** Consistent with 26 CFR § 1.132-9, vanpool expenses are incurred by commuting in a commuter highway vehicle that provides transportation by an employer to an employee in connection with travel between the employee's residence and place of employment. A commuter highway vehicle is a highway vehicle with a seating capacity of at least six adults (excluding the driver) and with respect to which at least 80 percent of the vehicle's mileage for a year is reasonably expected to be for transporting employees in connection with travel between their residences and their place of employment; and on trips during which the number of employees transported for commuting is at least one-half of the adult seating capacity of the vehicle (excluding the driver).

SHRR 180-090 Employer-provided transit passes

1. **In general.** An employer who provides a fully or partially subsidized transit pass that meets the requirements of SHRR 180-090(2) and (3) will have met its obligations to provide pre-tax election commuter benefits.
2. **Fully subsidized, employer-provided transit pass.** A fully subsidized, employer-provided transit pass is a transit pass, distributed and paid for by the employer that, at a minimum, provides for the fares of King County Metro and Sound Transit Link Light Rail service.
 - a. Employers are encouraged to manage and distribute their fully subsidized transit passes through a program administered by a local transit agency, such as King County Metro’s ORCA Business Passport program.
3. **Partially subsidized, employer-provided transit pass.** An employer may satisfy the requirements of SMC 14.30.050(E) by doing either of the following:
 - a. Providing a transit pass with a monthly subsidy amount that is equal to or greater than 30% of a retail monthly transit pass that will cover fares for King County Metro and Sound Transit Link Light Rail service.

- b. Providing a transit pass through the ORCA Business Passport program, or substantially similar program offered by a local transit agency, with an employer contribution of at least 50% of a transit pass.

NOTICE AND POSTING

SHRR 180-100 Determination of employee's primary language(s)

1. **In general.** The Office of Labor Standards shall create and distribute a workplace poster with notice of commuter benefit rights. OLS shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with posting requirements. Employers shall display the poster in a conspicuous and accessible place at any workplace or job site where any of their employees work. Employers shall display the poster in English and in the primary language(s) of the employee(s) at the particular workplace.
2. Translation requirements.
 - a. "Primary language" means the language in which the employee feels most comfortable communicating. Employers shall make a good faith effort to determine the primary languages of employees at the particular workplace.
 - b. OLS shall create and make available translated versions of the workplace poster to facilitate employer compliance with translation requirements. Employers are not required to provide notices in languages other than English until OLS has created and posted the necessary translation on the OLS website. Employers are encouraged to notify OLS of the need for additional translations.

ENFORCEMENT

SHRR 180-110 Enforcement and cure period

1. **In general.** The practices and procedures for enforcing the Commuter Benefits Ordinance are determined by the Seattle Office of Labor Standards Rules, Chapter 140, except for as outlined in SHRR 180-110(2).
2. **90-Day Cure Period.**
 - a. **Notice of Cure Period.** The Office of Labor Standards may provide a respondent with an opportunity to achieve compliance by providing proof of compliance, within 90 days after the initiation of an investigation. The Office of Labor Standards will notify the respondent of their choice to provide the respondent with a voluntary cure period in writing.
 - b. **Proof of compliance.** Proof of compliance includes proof that an employer has offered the covered employee(s) the opportunity to use pre-tax earnings to pay for transit or vanpool expenses or that the employer provides a fully or partially subsidized transit pass that meets the requirements of SHRR 180-090. This includes but is not limited to written records of offers of pre-tax deductions for transit or vanpool or offers of subsidy and proof of payment.
 - c. **Notice of proof of compliance.** The Office of Labor Standards will provide written notice to the respondent whether the respondent has provided sufficient proof of compliance, resulting in the closure of investigation and waiver of penalties. If proof of compliance is not received or deemed insufficient, OLS will continue with its investigation and follow the practices and procedures for enforcement as established in SHRR Chapter 140.