



## Minimum Wage Ordinance

### Questions and Answers

Seattle’s Minimum Wage Ordinance, Seattle Municipal Code (SMC) 14.19, establishes minimum wage standards for employees working within Seattle city limits. The City of Seattle’s Office of Labor Standards administers this ordinance, providing outreach, compliance assistance and enforcement services to workers and employers.

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](mailto:business.laborstandards@seattle.gov) or submit an [online inquiry form](#).

*Note: Information provided by the Office of Labor Standards does not constitute legal advice, create an agency decision, or establish an attorney-client relationship with the recipient of the information.*

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# A. General Information

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**1. When did the Seattle Minimum Wage Ordinance take effect?**

The original Seattle Minimum Wage Ordinance took effect on April 1, 2015.

**2. Where can I view a copy of the law and the rules that apply to this law?**

The language of the law can be viewed by clicking [here](#). To view the rules, visit the [Office of Labor Standards Minimum Wage Ordinance webpage](#) and download a copy of the Seattle Human Rights Rules (SHRR) Chapter 90.

**3. Which City department implements this law?**

The City of Seattle's Office of Labor Standards (OLS) implements this law. OLS provides a range of services for employees and employers, including education, training, compliance assistance, intake and investigations.

**4. Where do employees call with questions? Can employees remain anonymous?**

Employees can call 206-256-5297, email [workers.laborstandards@seattle.gov](mailto: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 and 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.

**5. 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.

**6. Does an employee's immigration status impact coverage or application of this law?**

No, immigration status does not impact coverage/application of the ordinance. 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.

**7. 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](mailto:business.laborstandards@seattle.gov), or submit an [on-line inquiry form](#). OLS does **not** share information about employer questions with our enforcement team. Phone conversations and email conversations with employers are kept separate from the investigation process.



## 8. What happens when an employer calls OLS with a question about compliance?

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 employer inquiries and who are not members of the enforcement team. Phone conversations and email exchanges with the business engagement staff are kept entirely separate from the investigation process.

Note: The information provided by our business engagement team is not intended to be and should not be construed as legal advice.

## 9. 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

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## 1. Who is covered by Seattle’s minimum wage?

Seattle’s Minimum Wage Ordinance applies to workers who meet the definition of an “employee.” The questions and answers in this section provide more information about who is considered an “employee” under this law.

Note: As of July 1, 2019, the Domestic Workers Ordinance, Seattle Municipal Code (SMC) 14.23, grants domestic workers minimum wage protections regardless of whether they are an employee or independent contractor. For more information on this law, visit the Office of Labor Standards website.

## 2. What is the definition of employee?

Under Seattle’s Minimum Wage Ordinance, an employee is any individual employed by an employer, including full-time, part-time, seasonal, temporary employees, and employees who are jointly employed by one or more employers (e.g. employee hired through the services of a staffing agency or similar entity).

Some occupations are excluded from both the State of Washington’s and Seattle’s minimum wage laws, such as certain agricultural workers, casual laborers, exempt “white collar” workers, volunteers, newspaper vendors/carriers, railroad workers, live-in workers and others. See [Seattle Municipal Code \(SMC\) 12A.28.200](#) for more details on the definition of employee in Seattle’s Minimum Wage Ordinance. See [Revised Code of Washington \(RCW\) 49.46.010](#) for more information on the (identical) definition of employee in the State of Washington’s Minimum Wage Act.

## 3. Which employees are covered by the ordinance?

The ordinance covers hourly employees (i.e. overtime eligible) who perform work in Seattle and applies to all hours worked within Seattle limits. Employees who are based outside of the city and work in Seattle on an occasional basis are covered by the ordinance after working two hours within a two-week period. See below for more information on “occasional basis employees.”



The ordinance does not apply to employees excluded under the definition of employee in [SMC 12A.28.200.B](#). The ordinance does not apply to hours worked outside of Seattle.

#### **4. Does the Minimum Wage Ordinance apply to independent contractors?**

No. Whether an individual is an employee or an independent contractor is determined by the “Economic Realities Test” that is used by the Fair Labor Standards Act and the Washington State Minimum Wage Act.

If there is a dispute regarding a worker’s status, the employer is responsible for proving that the worker is an independent contractor rather than an employee (i.e., the law favors employee status and an employer must prove otherwise). Under the Economic Realities test, factors for distinguishing an employee from an independent contractor include:

- Is the work an integral part of the employer’s business?
- Does the worker’s managerial skill affect the worker’s opportunity for profit or loss?
- How does the worker’s relative investment compare to the employer’s investment?
- Does the work performed require special skill and initiative?
- Is the relationship between the worker and the employer permanent or indefinite?
- What degree of control does the employer exercise or retain?

For more information, see our [Worker Classification Fact Sheet \(Guide\)](#).

Note: As of July 1, 2019, the Domestic Workers Ordinance, Seattle Municipal Code (SMC) 14.23, grants domestic workers minimum wage protections regardless of whether they are an employee or independent contractor. For more information on this law, visit the Office of Labor Standards website.

#### **5. Does Seattle’s Minimum Wage Ordinance requirements apply to the following employees or workers?**

The following answers relate to Minimum Wage Ordinance coverage for the following employees or independent contractors.

Those marked with \*\* may be covered by the Domestic Workers Ordinance, SMC 14.23, which grants minimum wage protections to domestic workers regardless of employment status. For more information on this law, visit the Office of Labor Standards website.

##### **a) Work study?**

Yes. 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.

##### **b) Paid interns?**

Yes. Seattle’s minimum wage requirements apply to paid interns.



**c) Independent contractors? \*\***

No. Minimum wage requirements only apply to employees. *Please see the note about the Domestic Workers Ordinance above.*

**d) Salaried employees?**

The ordinance covers salaried employees who are eligible for overtime, but it does not cover overtime-exempt salaried employees, such as an employee in a bona fide executive, administrative, professional or outside sales position. For more information, see [SMC 12A.28.200.B](#).

**e) Family members who work for a business?**

Yes. The ordinance applies to family members who work for a business, provided those family members qualify as employees as defined by the ordinance.

**f) Employees who are required to live and/or sleep at the place of employment such as home care workers or on-site apartment managers? \*\***

No. The definition of employee excludes “[a]ny individual whose duties require that [the individual] reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of [the individual’s] work time subject to call, and not engaged in the performance of active duties.” *Please see the note about the Domestic Workers Ordinance above.*

**g) Casual babysitters? \*\***

No. The definition of employee excludes “[a]ny individual employed in casual labor in or about a private home, unless performed in the course of the employer’s trade, business, or profession.” *Please see the note about the Domestic Workers Ordinance above.*

**6. Where can I find a map of Seattle city boundaries?**

Please click the below link to use an interactive map showing Seattle’s boundary lines.

- [View an interactive map showing Seattle's boundary lines.](#)

**7. What does it mean to work in Seattle on an occasional basis?**

Employees who are typically based outside of the Seattle and perform work in Seattle on an irregular basis (i.e. not regularly scheduled) are considered to work in Seattle on an occasional basis. Employees who work in Seattle on an occasional basis are covered by the Seattle minimum wage after working more than two hours within Seattle city limits during a two-week period. Once employees meet this threshold requirement, all hours worked in Seattle are covered by the Seattle minimum wage for that pay period.

**8. How does an employer determine what two-week period to use for occasional basis employees?**

Employers can choose how to determine a two-week period as long as it is consecutive and consistently applied. The two-week period can be a calendar period, pay period, or a rolling period measured forward or backward from the first hour worked in Seattle. For more information, please see Seattle Human Rights Rule Chapter 90 Rule 90-040(3) on two-week periods.

**9. Who is responsible for tracking the hours of an employee who occasionally works in Seattle?**

Employers may require employees to track their own hours. However, employers are responsible for providing their employees with information about the Minimum Wage Ordinance. They also must



make sure that their employees have the ability to track the hours they work in Seattle. Additionally, employers must retain records documenting payment of the Seattle minimum wage and minimum compensation for all Seattle hours.

**10. Does the ordinance cover employees who travel through Seattle?**

Employees who are simply traveling through Seattle (from a starting point outside Seattle to a destination outside of Seattle) are not covered by the ordinance. Incidental stops to refuel, eat a meal or take care of an errand are not considered employment-related stops. Employees who work in Seattle on an occasional basis and make work-related stops in Seattle may be covered by the ordinance, depending on how many hours of work they perform in Seattle during a two-week period (see questions 6, 7, and 8 in this section).

**11. When are owners, partners, officers and shareholders considered employees?**

Whether owners, partners, officers and shareholders are considered employees is decided on a case-by-case basis. In the context of an investigation, OLS will make this determination using guidance from the [Equal Employment Opportunities Commission \(EEOC\) Compliance Manual](#).

EEOC guidance states that in most circumstances, individuals who are partners, officers, members of boards of directors, or major shareholders will not qualify as employees. However, the final determination is not made on the basis of a person's title and the following factors will be considered:

- Whether the organization can hire or fire the individual or set rules and regulations of the individual's work  
Whether and, if so, to what extent the organization supervises the individual's work
- Whether the individual reports to someone higher in the organization
- Whether and, if so, to what extent the individual can influence the organization
- Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts
- Whether the individual shares in the profits, losses, and liabilities of the organization

**12. Can individuals or unions waive minimum wage requirements?**

No.

**13. Can employers pay less than Seattle's minimum wage to certain employees?**

Yes, but only in specific situations. Employers can pay subminimum wage only to employees under 16 years old and to employees who qualify for a Seattle Special Certificate (e.g. student learners, apprentices, and messengers). Employers may *not* pay subminimum wage to workers with a disability.

Employees performing work in Seattle with a Seattle Special Certificate still must be paid above the Washington State minimum wage. Employers also must obtain a Seattle Special Certificate from OLS before paying the subminimum wage. The first step in obtaining a Seattle Special Certificate is to obtain a state Special Certificate to pay less than the state minimum wage (OLS will apply to same percentage reduction to the Seattle minimum wage). For more information on the criteria for a state Special Certificate, call Washington State Labor & Industries at 360-902-5552. For more information on the criteria for a Seattle Special Certificate, call OLS at 206-256-5297.



## C. Employers

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### 1. Which employers are required to pay minimum wage to its employees?

Seattle's minimum wage applies to employers with employees performing work in Seattle. This document provides information for employers of workers who meet the definition of "employees" (see above for more information on the definition of "employee").

Note: As of July 1, 2019, the Domestic Workers Ordinance (Seattle Municipal Code 14.23) covers "hiring entities" of domestic workers regardless of whether the worker is an employee or independent contractor. For more information on this law, visit the Office of Labor Standards website.

### 2. Are non-profits covered by the ordinance?

Yes. Minimum wage requirements are the same for non-profit and private employers.

### 3. How do employers determine their minimum wage requirements?

Minimum wage requirements are based on a "schedule size" determined by an employer's number of employees.

### 4. What are employer schedules?

The ordinance uses the term "schedule" to set different requirements and timelines for implementing the minimum wage based on an employer's number of employees. There are two schedules – large and small employers.

#### a) What is a "large employer" (schedule 1)?

A large employer employs 501 or more employees worldwide. Large employers include all franchisees associated with a franchise or a network of franchises that together employ more than 500 employees in aggregate.

#### b) What is a "small employer" (schedule 2)?

A small employer employs 500 or fewer employees worldwide. Franchisee employers that are associated with a franchisor or a network of franchises that together employ fewer than 500 employees in aggregate are considered small employers.

### 5. How is employer "schedule size" determined?

An employer determines schedule size by calculating the average number of employees who worked for compensation each calendar week during the prior calendar year. An employer should include any week during which at least one employee worked. Employers should not include weeks where no employees worked. All employees worldwide are counted, including:

- Full-time employees
- Part-time employees
- Temporary or seasonal employees, including employees of a staffing agency or similar entity.
- Jointly-employed employees (see Question 10 of this section)
- Paid interns
- Work study employees
- All employees of a franchise or a network of franchises in the United States



**6. Does an employer’s schedule size count employees working outside of Seattle?**

Yes. An employer’s schedule size counts all employees worldwide.

**7. Does an employer’s schedule size count full-time equivalent employees (FTEs) or each employee?**

An employer’s schedule size counts each employee regardless of whether that employee is full-time, part-time, temporary, etc.

**8. How do new employers determine the number of employees?**

Employers that did not have any employees during the previous calendar year count the average number of employees employed per calendar week during the first 90 calendar days of the current year of business.

**9. How is a temporary worker obtained through a staffing agency counted for schedule size? Is the temporary worker counted as an employee of both the staffing agency and the contracting employer?**

If the staffing agency and contracting employer are joint employers of the temporary workers, then both employers count the temporary worker to determine schedule size. The temporary worker is counted twice for this purpose.

**10. What are joint employers?**

Separate business entities (with separate owners, managers & facilities) may be treated as joint employers under this ordinance. An individual may also be a joint employer.

While a joint employment relationship generally exists when an employee performs work that benefits two or more employers, the final determination depends on several nonexclusive factors that are part of an “economic realities test.” The five primary factors are:

- 1) The nature and degree of control of the workers;
- 2) The degree of supervision (direct or indirect) of the work;
- 3) The power to determine the pay rates or the methods of payment of the workers;
- 4) The right (directly or indirectly) to hire, fire or modify the employment conditions of the workers; and
- 5) Preparation of payroll and the payment of wages.

Other factors include:

- Whether the work is a specialty job on the production line;
- Whether responsibility between a labor contractor and an employer passes from one labor contractor to another without material changes;
- Whether the premises and equipment of the employer are used for the work;
- Whether the employees have a business organization that shifts as a unit from one work site to another;
- Whether the work is piecework and not work that requires initiative, judgment or foresight (i.e. considering if the service rendered requires a special skill);
- Whether the employee has an opportunity for profit or loss depending upon the employee's managerial skill;
- Whether there is permanence in the working relationship; and





- Whether the service rendered is an integral part of the employer's business.

For more information, see the U.S. Department of Labor's [Factsheet on Joint Employment](#). \*

**11. How does an employer determine schedule size if an employee is jointly employed by two employers?**

Each employer counts the employee in their determination of schedule size, regardless of whether the employee is maintained on only one of the employers' payrolls

**12. How is the pay rate determined for employees who are jointly employed by joint employers?**

The schedule size of the joint employer with the most employees determines the hourly rate for the employee who is jointly employed.

**13. Are both joint employers responsible for complying with the ordinance (e.g. workplace poster, payment of minimum wage, records-keeping)?**

Yes.

**14. How do employers determine if they are part of a franchise? Some business agreements use words like "affiliate" or "chapter," rather than franchise.**

A franchise is a written agreement in which:

- A person is granted the right to sell or distribute goods or services under a marketing plan prescribed or suggested in substantial part by a grantor or its affiliate.
- The business operation is substantially associated with a trademark, trade name, advertising, or other symbols owned or licensed by the grantor or its affiliate.
- The person is required to pay a franchise fee. [See RCW 19.100.010 for more details.](#)

**15. How do employers determine if they are a part of an integrated enterprise?**

An integrated enterprise is a business relationship in which one separate entity controls the operation of another entity. To determine schedule size, separate entities that form an integrated enterprise are considered a single employer.

Factors to consider in making this assessment include (but are not limited to):

- Degree of interrelation between the operations of multiple entities;
- Degree to which the entities share common management;
- Centralized control of labor relations; and
- Degree of common ownership or financial control over the entities.

Separate legal entities that share some degree of interrelated operations and common management are generally considered separate employers (i.e. not integrated enterprises) for the purposes of this ordinance **as long as** they are substantially in separate physical locations from one another and each separate legal entity has partially different ultimate ownership.

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\* Although this document was withdrawn by the Department of Labor, OLS continues to rely on this guidance because its reasoning is persuasive and consistent with caselaw.



## D. Wages and Compensation

### 1. Minimum Wage and Compensation Requirements

a) **2021 Update:** What is the minimum wage requirement for **LARGE EMPLOYERS**?

In 2020, the minimum wage for large employers is \$16.39/hour.

In 2021, the minimum wage for large employers is \$16.69/hour.

All large employers pay the same minimum wage regardless of payments toward an employee's medical benefits.

LARGE EMPLOYERS		
YEAR	MINIMUM WAGE only	MINIMUM WAGE with payments toward employee's medical benefits
2015 (Apr. 1 <sup>st</sup> )	\$11.00	\$11.00
2016 (Jan. 1 <sup>st</sup> )	\$13.00	\$12.50
2017 (Jan. 1 <sup>st</sup> )	\$15.00	\$13.50
2018 (Jan. 1 <sup>st</sup> )	\$15.45	\$15.00
2019 (Jan. 1 <sup>st</sup> )	\$16.00	
2020 (Jan. 1 <sup>st</sup> )	\$16.39	
2021 (Jan. 1 <sup>st</sup> )	\$16.69	

b) **2021 Update:** What are the minimum wage/compensation requirements for **SMALL EMPLOYERS**?

In 2020, the minimum compensation requirement for small employers is \$15.75/hour. Small employers can meet this requirement in two ways:

- 1) Pay an hourly minimum compensation of \$15.75/hour; or
- 2) Pay an hourly minimum wage of \$13.50/hour and make up the balance with employee tips reported to the IRS and/or payments toward an employee's qualifying medical benefits plan.

In 2021, the minimum compensation requirement for small employers is \$16.69/hour. Small employers can meet this requirement in two ways:

- 1) Pay an hourly minimum compensation of \$16.69/hour; or
- 2) Pay an hourly minimum wage of \$15/hour and make up the balance with employee tips reported to the IRS and/or payments toward an employee's qualifying medical benefits plan.

Starting January 1, 2021, the minimum compensation requirement for small employers matches the hourly minimum wage for large employers.

Please see the chart on the next page.



SMALL EMPLOYERS		
YEAR	MINIMUM COMPENSATION	MINIMUM WAGE with tips and/or payments toward employee's medical benefits
2015 (Apr. 1 <sup>st</sup> )	\$11.00	\$10.00
2016 (Jan. 1 <sup>st</sup> )	\$12.00	\$10.50
2017 (Jan. 1 <sup>st</sup> )	\$13.00	\$11.00
2018 (Jan. 1 <sup>st</sup> )	\$14.00	\$11.50
2019 (Jan. 1 <sup>st</sup> )	\$15.00	\$12.00
2020 (Jan. 1 <sup>st</sup> )	\$15.75	\$13.50
2021 (Jan. 1 <sup>st</sup> )	\$16.69	\$15.00
2022 (Jan. 1 <sup>st</sup> )	TBD	\$15.75
2023 (Jan. 1 <sup>st</sup> )	TBD	\$16.50
2024 (Jan. 1 <sup>st</sup> )	TBD	\$17.25

In 2025, all minimum compensation requirements will expire. Small employers will pay the same minimum wage as large employers and will no longer count employee tips and/or payments toward an employee's medical benefit plan.

**c) When does OLS announce minimum wage increases?**

OLS aims to announce the upcoming year's minimum wage increase by September 30 of each year.

**d) How are the inflation adjustments calculated?**

For large employers in 2020, the minimum wage increased to reflect the rate of inflation, based on the Seattle-Tacoma-Bellevue (formerly Bremerton) Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

For small employers, the minimum wage increased according to a schedule established by the minimum wage ordinance (See question 2, above).

**e) What are wages?**

Wages include salary, hourly pay, piece rate pay, commissions, and non-discretionary performance bonuses. Tips and employer payments toward medical benefits plans are not wages.

## 2. Tips and Service Charges

**a) What tips can be counted toward minimum compensation?**

Small employers can pay an hourly minimum wage and make up the minimum compensation balance with employee tips and/or payments toward an employee's medical benefits plan.

To use tips to make up the balance of minimum compensation, the tips must be (1) actually received by the employee and (2) reported to the Internal Revenue Service.



Note: At time of hire, employers must provide employees with a “Notice of Employment Information”, including information on the employer’s tip policy. The Notice of Employment Information is required by the [Wage Theft Ordinance](#). For more information, see our [Notice of Employment Information templates](#).

**b) How do small employers report tips to the IRS?**

Small employers who are using tips to meet minimum compensation requirements may use methods established by the IRS for reporting tips and must also keep records of tips in pay roll records. See the IRS Publication, “[Tip Recordkeeping & Reporting](#),” for more information.

**c) Can small employers average tips over a pay period?**

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

**d) What if an employee works two or more positions for a small employer and one position does not receive tips?**

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

Example: Simon works as a server and host for a restaurant. Since Simon does not earn tips in the host position, his employer can only count his tips earned as a server for his hours worked in the server position.

**e) Can small employers apply tips earned in a pay period toward an employee’s participation in a mandatory staff meeting?**

If participation in a mandatory staff meeting is a requirement of a tipped employee’s position, the employer can count tips for the entire pay period toward the minimum compensation payment for the hours worked during the meeting.

**f) Are employers allowed to require tip pooling?**

Yes. Employers are permitted to require employee participation in a valid tip pool. Under previous U.S. Department of Labor (DOL) rules, tip pools could only include employees who “customarily and regularly” received tips, such as servers, bussers, service bartenders, counter personnel who serve customers, and bellhops (i.e. front of house employees), but could not include cooks, janitors and dishwashers (i.e. back of house employees).

On March 23, 2018 those rules were rescinded. As a result, employers may now institute a mandatory tip pool that includes both front of the house and back of the house employees. For more information, see the [DOL’s Field Assistance Bulletin No. 2018-3](#).

**g) Do employees have the right to retain all tips?**

Yes. Tips are the property of the employee or employees receiving the tips, including employees who receive tips through a valid tip pool.



**h) Can employers retain employee tips?**

No. Tips are the property of the employee or employees receiving them, including employees who receive tips through a valid tip pool. An employer may not keep tips for any purpose.

**i) Can employers require tipped employees to share their tips with managers and shift supervisors?**

Tips are the property of the employee or employees receiving them, including employees who receive tips through a mandatory tip pool. Employers, managers, or supervisors may accept tips only for services they directly provide. Employers may not require or permit tip sharing with managers and/or shift supervisors who are exempt from the definition of “employee” under the Washington State Minimum Wage Act, RCW 49.46.010(3), such as, executive, administrative, or professional employees).

Hourly non-exempt managers and supervisors are generally permitted to participate in mandatory tip pools. However, if an OLS investigation reveals that a manager or supervisor who qualifies as an employee under RCW 49.46.010(3) has manipulated the shift schedule to favor managers or supervisors, OLS reserves the right to find such tip pool participation to be improper.

For more information see [Washington State Department of Labor and Industries Administrative Policy ES.A.12.](#)

**j) Do service charges count toward minimum wage and minimum compensation?**

Service charges are automatic, separately designated amounts added to customers’ bills that appear to be for services provided by employees. Service charges include but are not limited to automatic charges designated on receipts as a "service charge," "automatic gratuity," "delivery charge," or "portage charge."

Service charges are not tips. Employers can count service charges paid to the employee as commissions but only for the employee’s earnings above the state minimum wage. Employers can also count service charges paid to the employee toward Seattle minimum wage and minimum compensation requirements but only for the employee’s earnings above the state minimum wage.

If an employer discloses a service charges on a menu and/or receipt to the customer as not payable to the employee (i.e. payable to the house), the employer is not bound by these restrictions. In other words, when an employer informs customers that service charges are not payable to the employee, then service charges are simply revenue in the same way that customer payments for food are revenue. The employer is free to decide how to use this revenue.

**k) What are the disclosure requirements for service charges?**

Employers who include automatic service charges must disclose the percentage of the automatic service charge that is paid directly to the employee or employees serving the customer. The disclosure must appear both on itemized receipts and on any menus provided to the customer. These disclosure requirements are established by state law. For more information, see [RCW 49.46.160](#) and [Washington State Department of Labor and Industries Administrative Policy ES.A.12.](#)

**l) Does applying a “Seattle Surcharge” trigger disclosure requirements?**



It depends how the surcharge is described. If the business implies to customers that the surcharge is for services provided by employees, then the employer must follow disclosure requirements. If the surcharge language does not suggest that the amount is being collected for services, and that the amount will not be paid to the employee, then the employer is not required to follow disclosure requirements. For more information, see [2015 Surcharge Guidance](#) from the Washington State Attorney General's Office.

### 3. Medical Benefits

**a) What is a qualifying medical benefits plan?**

A qualifying medical benefits plan must meet the requirements of a silver level or equivalent plan under the Affordable Care Act by providing at least 70% of the full actuarial value of the benefits provided under the plan (See [42 U.S.C. § 18022.d](#)).

**b) How does a small employer determine the actuarial value of their plan? What documentation would be helpful to keep on file?**

A small employer may request an "actuarial certification" from their insurance provider/third party administrator to demonstrate that their qualifying medical plan meets the appropriate actuarial value. Additionally, an employer may ask their insurance provider or administrator to test their health benefit plan in the most current Center for Medicare and Medicaid Services Actuarial Value Calculator and request a copy of the results.

**c) Does a small employer pay the higher minimum compensation rate when an employee declines an employer-offered medical benefits plan?**

If an employee declines, the small employer must pay the higher minimum compensation rate.

**d) Does a small employer pay the higher minimum wage or minimum compensation rate when an employee has not completed an eligibility period (e.g. 90 days) to qualify for medical benefits?**

The small employer must pay the new employee the higher minimum wage or minimum compensation rate until the employee completes the eligibility period and enrolls in the employer-offered medical benefits plan. This situation may also arise with a current employee if the employee's enrollment status changes.

**e) Are there exceptions to the requirements to pay the higher minimum wage if the employee is not actually enrolled and eligible for medical benefits?**

Yes, there are limited exceptions. Under the 2017 Minimum Wage Rule revisions, there are two exceptions for the requirement to pay the higher minimum wage if an individual employee was not actually enrolled and eligible for the medical benefits:

- 1) The employer is paying toward an individual employee's medical benefits plan during the employee's waiting period for enrollment and eligibility; or
- 2) 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).



## 4. Sub-minimum Wages

### a) Are there situations when employers can pay less than minimum wage?

Yes. In both instances, employees must still be paid above the state minimum wage. Employers can pay a subminimum wage for:

- **Minors** under age 16 years; and
- **Student learners, apprentices, and messengers** who have been approved for a state Special Certificate under WAC 296-128 and Seattle Special Certificate under SHRR 90-050.

### b) What are the minimum wage requirements for minors?

The following requirements apply:

- **Employees who are 16-17 years old** earn the same Seattle minimum wage as adults.
- **Employees who are under 16 years old** can earn 85% of the hourly rate required by the Seattle minimum wage ordinance.

### c) Can employers use a state or Seattle Special Certificate to pay subminimum wage to an employee with a disability?

No. Employers may *not* pay subminimum wage to employees with a disability who are working in Seattle. OLS prohibited paying subminimum wage to employees with a disability in the 2017 Minimum Wage rule revisions; this prohibition was codified in 2018.

## 5. Deductions & Other Costs

### a) What are permissible deductions from wages?

Washington state regulations establish permissible deductions from wages. For more information, see [WAC 296-126-025](#) and [WAC 296-126-028](#).

### b) Can an employer add the cost of employee housing to wages to meet minimum wage requirements?

No. Under state minimum wage law, an employer cannot add the cost of housing to meet minimum wage requirement. Housing is deemed a benefit, not part of wages.

However, if an employer pays minimum wage, the cost of housing can be deducted with a written agreement that complies with [RCW 49.52.060](#) (i.e. authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of the employee). In this situation, the employer would have paid minimum wage and the cost of housing would be considered a benefit. Notably, employers also would also be responsible for reporting the employee's pay to IRS and employment security. For more information, see [Washington State Department of Labor and Industries Administrative Policy ES.A.2](#).

### c) Do transportation benefits count toward minimum wage and minimum compensation requirements?

No.



## 6. Paid Leave

**a) Does the Seattle minimum wage apply to the rate of pay for hourly employees who use Paid Sick and Safe Time?**

Yes. Hourly employees who use Paid Sick and Safe Time (PSST) must receive their normal hourly compensation, which must be no less than the Seattle minimum wage. Normal hourly compensation means the rate the employee would have earned during the hours the employee used PSST. For more information see the Office of Labor Standards' [Paid Sick and Safe Time Comprehensive Q&A](#) which can be downloaded from our website.

**b) Does the Seattle minimum wage apply to the rate of pay for vacation and holiday leave?**

No. But employers who promise to pay vacation/holiday pay at a certain rate of pay and fail to pay for the use of the paid leave could be committing a wage theft violation. OLS would investigate these complaints under Seattle's Wage Theft Ordinance.

## 7. Overtime Rates

**a) Does Seattle minimum wage apply to overtime rates?**

Yes. **For time and a half overtime requirements**, hourly employees working in excess of 40 hours per work week must be paid at a rate that is not less than one and one-half times the regular rate that the person is employed (some employee exceptions apply). See [RCW 49.46.130](#).

**b) 2021 Update: What is the overtime rate for LARGE EMPLOYERS that pay employees minimum wage?**

Large employers must pay one and one-half times the applicable minimum wage.

LARGE EMPLOYERS		
YEAR	MINIMUM WAGE only	MINIMUM WAGE with payments toward employee's medical benefits
2017 January 1 <sup>st</sup>	\$15.00 Overtime = \$22.50	\$13.50 Overtime = \$20.25
2018 January 1 <sup>st</sup>	\$15.45 Overtime = \$23.175 <sup>2</sup>	\$15.00 Overtime = \$22.50
2019 January 1 <sup>st</sup>	\$16.00 Overtime = \$24.00	
2020 January 1 <sup>st</sup>	\$16.39 Overtime = \$24.585*	
2021 January 1 <sup>st</sup>	\$16.69 Overtime = \$25.035*	

\* The 2020 and 2021 overtime rate may require the employer to round up to the nearest cent. For example, if an employee of a large employer works 5 hours of overtime in 2020, the employer would calculate the employee's pay as \$16.39 x 1.5 x 5 hours = \$122.925. The employee's pay should be rounded up to \$122.93.

**c) 2021 Update: What is the overtime rate for SMALL EMPLOYERS that pay employees minimum**





## wage?

Small employers must pay one and one-half the minimum compensation. However, if the minimum compensation includes employee tips and/or payment toward an individual's medical benefits, the small employer must pay one and one-half the minimum compensation minus the tip and/or medical benefit credit (e.g. In 2020,  $\$15.75 \times 1.5 - \$2.25 = \$21.375$ ).

This chart details the overtime rates for small employers that pay employees Seattle's minimum wage.

SMALL EMPLOYERS		
YEAR	MINIMUM COMPENSATION	MINIMUM WAGE with tips and/or payments toward employee's medical benefits
2017 January 1 <sup>st</sup>	\$13.00 Overtime = \$19.50	\$11.00 Overtime = \$17.50
2018 January 1 <sup>st</sup>	\$14.00 Overtime = \$21.00	\$11.50 Overtime = \$18.50
2019 January 1 <sup>st</sup>	\$15.00 Overtime = \$22.50	\$12.00 Overtime = \$19.50
2020 January 1 <sup>st</sup>	\$15.75 Overtime = \$23.625 <sup>♦</sup>	\$13.50 Overtime = \$21.375 <sup>♦</sup>
2021 January 1 <sup>st</sup>	\$16.69 Overtime = \$25.035	\$15.00 Overtime = \$23.345
2022 January 1 <sup>st</sup>	See large employer minimum wage	\$15.75 Overtime = TBD
2023 January 1 <sup>st</sup>	See large employer minimum wage	\$16.50 Overtime = TBD
2024 January 1 <sup>st</sup>	See large employer minimum wage	\$17.25 Overtime = TBD

### d) Where can an employee file a complaint if their employer does not pay overtime?

Employees can file complaints for failure to pay overtime with the [Seattle Office of Labor Standards](#) under the Wage Theft Ordinance, with the [Washington State Department of Labor and Industries](#), with the [US Department of Labor](#), or with a court of competent jurisdiction.

## E. Notice and Posting

♦ These 2020 overtime rates will require the employer to round up to the nearest cent. For example, if a non-tipped employee of a small employer (no medical benefits) works 5 hours of overtime, the employer would calculate the employee's pay as  $\$15.75 \times 1.5 \times 5 \text{ hours} = \$118.125$ . The employee's pay should be rounded up to \$118.13.



Seattle Office of Labor Standards (last updated 08/03/2020, 09/30/2020, 3/1/2021)

Note - The information provided in this document is not intended as legal advice and should not be used as a substitute for laws and regulations.

**1. What are the notice and posting requirements of the ordinance?**

As of April 1, 2016, employers must display an 11" x 17" **OLS Workplace Poster**, updated annually, in a conspicuous and accessible location where employees work in Seattle. Employers must display the poster in English and in the primary language(s) of the employees at the particular workplace.

OLS creates the poster, provides annual updates by December 1<sup>st</sup> of each year, and translates it into different languages. The poster provides notice of the following rights for minimum wage:

- Employees are entitled to the applicable rate of minimum wage and/or minimum compensation;
- Retaliation is illegal; and
- Employees have a right to file a [complaint](#) with the Office of Labor Standards or file a civil action if their employer does not pay them minimum wage and/or minimum compensation or if the employer retaliates against any person for exercising their rights under the ordinance.

**2. How do employers comply with the workplace poster requirement if employees telecommute or work off-site with no central work location?**

If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace, employers may provide the poster on an individual basis in the employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

**3. How do employers comply with the workplace poster requirement for out-of-town employees who work in Seattle on an occasional basis?**

For employees who work in Seattle on an occasional basis, employers must comply with the workplace poster requirements reasonably in advance of their first period of work in Seattle.

**4. Where can employers get the workplace poster?**

The workplace poster is available electronically on the [OLS website](#). The poster also is available in our downtown office (810 Third Avenue, Suite 375).

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## **F. Payroll Records**

**1. How long must employers retain payroll records?**

Employers must retain payroll records for three years documenting minimum wages and minimum compensation paid to covered employees. See [SMC 14.19.050](#).

**2. What information is required for payroll records?**

Payroll records must contain information required for this ordinance and for Washington state minimum wage, including:

- Name, home address, occupation and date of birth (if under eighteen).
- Time of day and day of week on which the employee's workweek begins.
- Hours worked each workday and total hours worked each workweek.
- Total daily or weekly straight-time earnings or wages.



- Total overtime compensation for the workweek.
- Total additions to or deductions from wages paid each pay period.
- Total wages, including non-discretionary bonuses, commissions and piece-rate, paid each pay period.
- Date of payment and the pay period covered by payment.

Payroll records also must have information regarding **medical benefits and tips** that demonstrate the payment of Seattle minimum wages and minimum compensation to each employee. The records must demonstrate that the total of wages, tips and payments toward medical benefits (if applicable) equal minimum wage and minimum compensation requirements. Specifically, records must include payments toward the individual employee’s medical benefits, the actuarial value of the employee’s medical benefits, and payments of tips and service charges to the employee. See [SMC 14.20.030](#) and Seattle Human Rights Rule 90-110 on Payroll Records.

### 3. What information must be provided to the employee every pay period?

Under Seattle’s [Wage Theft Ordinance](#), employers must provide employees with written notice of the following information each time that wages are paid:

- All hours worked with regular and overtime hours shown separately;
- Rate or rates of pay;
- Rate of pay is required whether employees are paid on hourly, salary, commission, piece rate or combination thereof, or other basis during the pay period. Employees paid on a rate other than hourly or salary are entitled to a detailed printed accounting of commissions, piece rate or other methods of payment earned during the pay period
- Tip compensation;
- Pay basis (e.g. hour, shift, day, week, commission);
- Gross wages; and
- All deductions for that pay period. See [SMC 14.20.030](#).

## G. Protection from Retaliation

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### 1. Does the ordinance prohibit retaliation?

Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against employees who assert their rights under the Minimum Wage ordinance in good faith.

These rights include (but are not limited to):

- Asking questions about Minimum Wage rights or the ordinance (e.g. asking about the correct minimum wage);
- Informing an employer, union or legal counsel about alleged Minimum Wage violations;
- Filing a complaint about alleged Minimum Wage violations.
- Participating in an investigation of alleged Minimum Wage violations.
- Talking to the Office of Labor Standards or other coworkers about Minimum Wage rights or the ordinance
- Informing other employees of their Minimum Wage rights.





**Seattle Office of Labor Standards (last updated 08/03/2020, 09/30/2020, 3/1/2021)**

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