

SEATTLE OFFICE OF LABOR STANDARDS
Chapter 150

**Practices for administering Hotel Employees Health and Safety Initiative requirements
under SMC 14.25**

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Seattle Office of Labor Standards (Strikethrough version of final rules – 5/31/18)

Demonstrates changes made to the proposed rules following the closure of the notice and comment period

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DRAFT

GENERAL PROVISIONS

SHRR 150-010 Purpose

These Rules govern the practices of the Seattle Office of Labor Standards in administering requirements for the Hotel Employees Health and Safety Ordinance under Seattle Municipal Code (SMC) 14.25 (the “Hotel Employees Health and Safety Initiative”).

SHRR 150-020 Practice where rules do not govern

If a matter arises in administering the Hotel Employees Health and Safety Initiative 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 150-030 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 Hotel Employees Health and Safety Initiative.

SHRR 150-040 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.

PROTECTIONS FROM VIOLENCE

SHRR 150-050 Accusations of assault, sexual assault, or sexual harassment

- 1. Requirement to decline service.** If an accusation against a guest under SMC 14.25.040(A) involves assault, sexual assault, or sexual harassment, and is supported by a statement made under penalty of perjury, as defined in SHRR 15-050(2), or other evidence, as defined in ~~Rule~~ SHRR 150-050(3), the employer shall decline to allow the guest to return to the hotel for at least three years after the date of the incident.
- 2. Statements made under penalty of perjury.** To be made under penalty of perjury, a statement must be certified or declared by the person to be true under penalty of perjury, must be subscribed by the person, must state the date and place of execution and must state that it is so certified or declared under the laws of the State of Washington. The certification or declaration may be in substantially the following form:

“I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.”

(Date and Place)

(Signature)

- 3. Other evidence.** For purposes of SHRR 150-050(1) and SMC 14.25.040(B), “other evidence” is evidence other than statements of the victim, witnesses, or other persons, ~~having a tendency that~~ tends to support an accusation of assault, sexual assault, or sexual harassment against a guest. “Other evidence” includes physical evidence; audio and video recordings or photographs of events, occurrences, injuries, incident scenes; or other similar evidence.

SHRR 150-060 Right to paid time

- 1. Police, law enforcement agency, and law enforcement agency with jurisdiction.** The terms “police,” “law enforcement agency,” and “law enforcement agency with jurisdiction” have the same meaning.
- 2. Paid time to contact police and provide a statement to police.** An employee is owed sufficient paid time to contact the police and to provide a police statement or statements as requested or dictated by the police.
- 3. Counselor or advisor.** A “counselor or advisor” is a person who gives advice or guidance and includes, but is not limited to, family members, friends, licensed professionals, attorneys, and advocates.
- 4. Consulting a counselor or advisor.** “Consult” means the act of seeking advice on immediate next steps in the wake of an event triggering the right for paid time as provided for by Seattle Municipal Code (SMC) 14.25.060(B). An employee is owed sufficient paid time to accomplish this purpose, which may vary from instance to instance and employee to employee. Immediate next steps include, but are not limited to, creating a safety plan with an advocate, seeking advice from an attorney about whether to file a police report, or speaking with a ~~trusted~~ friend about whether to seek professional counseling.
- 5. Scope of paid time.** The right to paid time for activities protected by SMC 14.25.060(B) does not include and is in addition to other paid time to which an employee may be entitled for medical treatment and/or for recovery from an incident of violence, including assault, sexual assault and/or sexual harassment.
- 6. Other paid leave.** Employers may not subtract hours paid pursuant to SMC 14.25.060(B) from any other paid leave to which the employee is entitled (by law or by employer policy); including Seattle’s Paid Sick and Safe Time Ordinance, SMC 14.16.

PROTECTIONS FROM INJURY

SHRR 150-070 Safe workplace

The safety devices, safeguards, work practices, methods, processes, and means that are required by Seattle Municipal Code 14.25.080 must at least meet those outlined by the Washington Industrial Safety and Health Act, Revised Code of Washington 49.17, and its corresponding administrative codes.

SHRR 150-080 Controlling chemical agents

To comply with the requirements of Seattle Municipal Code 14.25.090(A), employers must use methods of controlling chemical agents that at least meet the minimum requirements of the Washington Industrial Safety and Health Act, Revised Code of Washington 49.17, and its corresponding administrative codes.

SHRR 150-090 Protection from hazards of contact with chemical agents

To comply with the requirements of Seattle Municipal Code 14.25.090(B), employers must use methods of protecting employees from the hazard of contact with, or exposure to, chemical agents that at least

meet the minimum requirements of the Washington Industrial Safety and Health Act, Revised Code of Washington 49.17, and its corresponding administrative codes.

SHRR 150-100 Providing employees information on hazardous chemicals

To comply with the requirements of Seattle Municipal Code 14.25.090(C), employers must meet at least the minimum standards and requirements outlined by the Washington Industrial Safety and Health Act, Revised Code of Washington 49.17, and its corresponding administrative codes.

PROTECTIONS FOR EMPLOYEES PERFORMING HOUSEKEEPING SERVICES

SHRR 150-110 Housekeeper

A housekeeper is any individual who falls within the definition of “employee” and “hotel employee” in SMC 14.25.160, and who at any time provides housekeeping services.

SHRR 150-120 Housekeeping services

- 1. In general.** Housekeeping services include any services or tasks that are required to prepare or maintain the cleanliness of the physical guest room before, during, or after a guest’s stay.
- 2. Excluded Activities.**
 - a. Housekeeping services does not include preventative or as-needed maintenance activities such as repair, replacement, and general maintenance of appliances, electronics, furniture, doors, windows, carpets, walls, plumbing, and other fixtures.
 - b. Housekeeping services does not include tasks associated with preparing already-made beds for sleep, maintaining inventory (e.g. mini-bar, toiletries, towels), or inspecting housekeeping services performed in a guest room. Making unmade beds, regardless of whether a change of linen is required, is not an excluded activity.

SHRR 150-130 To Clean

An employee has cleaned a guest room if the employee has performed housekeeping services in the guest room. If an employee has performed housekeeping services in a guest room, the entire square footage of that guest room shall be applied to the employee’s total square footage cleaned that day.

SHRR 150-140 Shall not be required to clean

- 1. Voluntary consent is required.** An employer shall not schedule or require an employee to clean more than the maximum square footage outlined by Seattle Municipal Code (SMC) 14.25.100(B) or SMC 14.25.100(C) unless an employee requests or voluntarily consents to do so. To have an employee’s valid consent, the employer must inform the employee of the total amount of additional square footage to be cleaned in advance of the employee’s acceptance of the assignment.
- 2. Right to refuse.** An employee has a right to refuse an employer’s request to clean more than the maximum square footage allowed by SMC 14.25.100(B) and SMC 14.25.100(C).

SHRR 150-150 When compensation for additional cleaning is not applicable

An employee shall not be entitled to the additional compensation provided for by SMC 14.25.100(D) when the employee exceeds the maximum square footage allowed by SMC 14.25.100(B) or SMC 14.25.100(C) because one of the following occurs prior to the end of an employee’s scheduled shift:

- a. The employee requests to leave work because of an unforeseeable emergency, illness, or for an activity protected by law;

- b. Operations cannot begin or continue due to threats to employees or property, or due to the recommendation of a public official that work cannot begin or continue;
- c. Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure to the public utilities, or sewer system; or
- d. Operations cannot begin or continue due to natural disaster, weather events, or events that would cause the employer to violate a law, statute, ordinance, code, administrative rule, and/or governmental executive order.

ADDITIONAL COMPENSATION RELATED TO ~~HEALTH INSURANCE COSTS~~ MEDICAL CARE

SHRR 150-160 Coverage period

Large hotel employers shall pay the additional wages or salary required by Seattle Municipal Code (SMC) 14.25.120(A) to the employee by the 15th day of each calendar month. This payment covers the additional compensation for which the employee is entitled to under 14.25.120(A) for the preceding calendar month.

SHRR 150-170 Low-wage employee

To determine whether an individual employee is a low-wage employee, the large hotel employer must look at the total gross, monthly compensation that the employer paid to the employee, excluding any additional compensation that was paid during that month under SMC 14.25.120, for the month for which the additional compensation is being calculated.

SHRR 150-180 Household Size

For determining household and household size, the term “household” means the employee, the employee’s legally married spouse or registered domestic partner, and any person for whom the employee is allowed an exemption under the Internal Revenue Code, 26 U.S.C § 151-153.

SHRR 150-190 Full-time employee

1. **Full-time employee determination.** To determine whether an employee is full-time for the purposes of providing the additional compensation required by SMC 14.25.120(A) and for the record keeping requirements under SMC 14.25.150(B)(2), the employer must look at the total monthly hours during the calendar month for which the calculation for additional compensation is being determined. If the employee completed the requisite 80 hours, the employee will be considered full-time for that calendar month.
2. **Meaning of hours.** “Hours” means:
 - a. Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer, and
 - b. Each hour for which an employee is paid, or entitled to payment, by the employer for a period during which no duties are performed due to vacation, holiday, illness, legally required paid leave, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

SHRR 150-200 Policy

1. **Definition of policy.** Pursuant to SMC 14.25.160, “policy” means an insurance policy available on the Washington Health Benefit Exchange that would provide coverage to the employee and, if the employee has any spouse and dependent children, to the employee’s spouse and dependent children in addition to the employee.

2. **Spouse.** The term “spouse” includes legally married spouses and registered domestic partners.
3. **Dependent children.** The term “dependent children” means any person for whom the employee is allowed an exemption under the “qualifying child test” of the Internal Revenue Code, 26 U.S.C § 151-153.
4. **At least equal to a gold-level policy on the Washington Health Benefit Exchange.** A policy that is “at least equal to a gold-level policy on the Washington Health Benefit Exchange” is one that meets the requirements of a Gold Level Plan as set forth in Section 1302 of the Affordable Care Act (42 U.S.C. § 18022).

SHRR 150-210 Requirement to pay additional compensation to low-wage employees

1. **In general.** Under SMC 14.25.120(A), a hotel employer is required to pay low-wage employees additional compensation as set forth in that section.
2. **Exceptions to requirement.**
 - a. **Enrollment Required.** An employer is not required to pay additional compensation under SMC 14.25.120(A), if (i) the employee has enrolled in an employer-offered a policy that was offered by the employer and that is at least equal to a gold-level policy on the Washington Health Benefit Exchange and (ii) the employer is making payments towards the employee’s policy. This exception applies during the employee’s waiting period if the employer is making payments toward the policy during the waiting period.
 - b. **Cost to the employee.** For an employer to qualify for an exception to pay the additional compensation required by SMC 14.25.120(B), SHRR 150-210(1), and SHRR 150-210(2)(a), the employee cannot pay more than 5% of their monthly gross taxable earnings toward payment for the policy, including the cost of coverage for any enrolled spouse or dependent children.
 - c. **Taft-Hartley Plans.** An employer is not required to pay the additional compensation required by SMC 14.25.120(A) when the employer is paying toward an employee’s policy 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).
- ~~3. **At least equal to a Washington Health Benefit Exchange gold-level policy.** A policy that is “at least equal to a gold-level policy on the Washington Health Benefit Exchange” is one that is designed to provide benefits that are actuarially equivalent to 80 percent of the full actuarial value of the benefits provided under the plan.~~
- ~~4. **Cost to the employee.** For an employer to qualify for an exception to pay the additional compensation required by SMC 14.25.120(B), the employee cannot pay more than 5% of their monthly gross taxable earnings toward payment for the policy, including the cost of coverage for any enrolled spouse or dependent children.~~

DISRUPTIONS TO HOTEL INDUSTRY

SHRR 150-220 Offer of employment - Ten business days calculation

- 1. Business Day.** “Business day” means a day that is not Saturday or Sunday, or a federal, state, or City of Seattle holiday.
- 2. Delivery by personal service or in-person delivery.** If the written offer of employment is delivered in person, the ten-business day period referenced in SMC 14.25.140(C) begins on the day following the day the written offer is hand delivered to the employee.
- 3. Email or electronic delivery.** If the written offer of employment is delivered by email or other electronic delivery, the ten-business day period referenced in SMC 14.25.140(C) begins on the day following the day the written offer is emailed to the employee.
- 4. By mail, mail delivery service, or mailbox.** If the written offer of employment is delivered by mail or mail delivery service, or left in a mailbox for pickup by the U.S. Postal Service, the ten-business days period referenced in SMC 14.25.140(C) begins on the third day following the day the written offer is placed in the mail or mailbox, or provided to the mail delivery service, unless the third day is Saturday or Sunday, or a federal, state, or City of Seattle holiday, in which event the ten-business day period begins on the first day that is not Saturday or Sunday, or a federal, state, or City of Seattle holiday following the third day.

SHRR 150-230 Discharge from employment for just cause

Discharge for just cause as referenced in SMC 14.25.140(F) requires that a fair and objective investigation produced evidence that the employee violated a reasonable and consistently applied workplace standard of which the employee knew or reasonably should have known, and that discharge was reasonably related to the seriousness of the employee’s conduct and was the consistently applied punishment for a violation of that workplace standard.

RETALIATION

SHRR 150-240 Adverse employment action

The terms “adverse employment action” and “adverse action” mean denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of employment, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee’s status to a nonemployee, or otherwise discriminating against any person for any reason prohibited by Seattle Municipal Code (SMC) 14.25.030 and SMC 14.25.150. An “adverse employment action or an “adverse action” for an employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

NOTICE, POSTING, RECORD KEEPING REQUIREMENTS

SHRR 150-250 Individual notification of rights

The notification referenced in Seattle Municipal Code (SMC) 14.25.150(B)(1) shall give notice of the following rights in substantial part under SMC 14.25. For hotel employers that are not large hotel employers, sections 3 and 4 below do not apply.

- 1. Rights related to protection from violent assault and sexual harassment**
 - a. The right to be provided with a panic button if assigned to work alone in a guest room;
 - b. The right to report guest violence, including assault, sexual assault, and sexual harassment;
 - c. The right to request and receive reassignment after reporting guest violence;
 - d. The right to paid time off from work to file a police report, to give a police statement, and to consult with a counselor or advisor after experiencing guest violence; and
 - e. The right to be informed that a guest has been accused of an act of violence ~~if assigned~~ prior to working in the guest's room alone.
- 2. Rights related to protection from injury**
 - a. The right to be provided with and use safety devices and to use work practices that make the workplace safe as required under state law; and
 - b. The right to be protected from the hazards of exposure to chemical agents and to be provided information on hazardous chemicals in their work areas as required under state law.
- 3. Rights related to protections for employees who perform housekeeping services at large hotels**
 - a. The right to not be required to clean more than 5,000 square feet of guest rooms in an 8-hour day; and
 - b. The right to receive 1.5 times the regular rate of pay for all hours spent cleaning guest rooms that day if the employee cleans more than the 5,000 square feet.
- 4. Rights related to improving access to medical care for low wage hotel employees of a large hotel employer**
 - a. The right to additional compensation to cover ~~the costs of health insurance~~ medical and insurance costs unless the employee pays 5% or less of their monthly wages (from the hotel employer) towards an employer-offered gold-level insurance policy (for the employee and enrolled household members);
- 5. Rights for retention hotel employees when a hotel changes ownership**
 - a. The right to be offered employment with the new employer ~~by seniority within your job classification~~ before the employer hires non-retention employees for the six-month period following the opening of the hotel under new ownership;
 - b. If offered employment with the new employer, the right to receive a written offer and have at least 10 business days to accept the offer;
 - c. If retained, the right to only be fired for just cause during the first 90 days of employment with the new employer;
 - d. If retained, the right to be laid off by seniority within job classification if, during the first 90 days of employment, the new employer determines fewer employees are required than the outgoing employer; and
 - e. The right to a written performance evaluation at the end of the first 90 days of employment with the new employer.
- 6. Rights against retaliation and right to ~~bring a civil action~~ file a lawsuit**
 - a. The right to be protected from retaliation for exercising in good faith the rights protected by SMC 14.25; and
 - b. The right to ~~bring a civil action~~ file a lawsuit for violation of the requirements of SMC 14.25.

SHRR 150-260 Notification language requirements

The notification referenced in SMC 14.25.150(B)(1) must be provided to each employee in English and in each primary language spoken by ten or more employees at that particular workplace. Employers shall make a good faith effort to determine the primary languages spoken by the employees at that particular workplace.

DEFINITIONS

SHRR 150-270 Confidential employee

Confidential employees are those who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies about labor relations or regularly substitute for employees that have such duties. Mere access to confidential labor relations material or personnel records does not make an employee a confidential employee.

COLECTIVE BARGAINING AGREEMENT FOR HOTEL EMPLOYEES HEALTH AND SAFETY INITIATIVE

SHRR 150-280 Waiver

1. **In general.**
 - a. Any waiver by an individual employee of any provisions of SMC 14.25 shall be deemed contrary to public policy and shall be void and unenforceable.
 - b. Any waiver by a party to a collective bargaining agreement of SMC 14.25.020-060 and SMC 14.25.150 shall be deemed contrary to public policy and shall be void and unenforceable.
 - c. The requirements under SMC 14.25.070-140 shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement, or in an addendum to an existing agreement including an agreement that is open for negotiation, in clear and unambiguous terms.
2. **Clear and unambiguous terms.** The terms that expressly waive the requirements of any waivable provisions shall reference the ordinance by name and citation, the Hotel Employees Health and Safety Initiative, SMC 14.25, and reference the specific provision or provisions that are being waived by the collective bargaining agreement.
3. **Impasse.** Employer and employee impasse during negotiation of a collective bargaining agreement does not constitute a waiver of this ordinance (SMC 14.25).

NON-DISCLOSURE

SHRR 150-290 Non-Disclosure

1. In accordance with SMC 14.25.150(D)(2), information that would tend to identify complainants, victims, or witnesses who have furnished information to the Seattle Office of Labor Standards regarding alleged violations of law and who have requested non-disclosure at the time of the complaint shall be protected from disclosure, to the maximum extent permitted by applicable laws, except as provided in subsection (2) of this section.

2. Unless otherwise required by law, or valid disclosure has been made by other means, the identification of persons described in subsection (1) of this section may only be disclosed under these Rules pursuant to an agreement to disclose such information between the person to be identified and the Director.

EFFECTIVE DATE OF RULES

SHRR 150-300 Effective date

These Rules shall take effect on July 1, 2018.

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