

Seattle Minimum Wage and Wage Theft Ordinances Take Effect April 1, 2015

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Two significant wage-related ordinances take effect on April 1, 2015, impacting all employers with employees who work in Seattle, whether regularly or occasionally.

The Seattle Minimum Wage Ordinance: Minimum wages rise for all employees who perform at least two hours of work in Seattle in a two-week pay period. The Ordinance sets forth additional record-keeping and notice posting requirements, along with provisions on joint employers and integrated enterprises. The city's new Office of Labor Standards (OLS), which is part of the Seattle Office for Civil Rights (SOCR), has just released the final administrative rules that guide how the Seattle Minimum Wage Ordinance is interpreted and enforced, available [here](#), along with an extensive FAQ sheet, available [here](#).

The Seattle Wage Theft Ordinance: Although the City of Seattle originally passed a Wage Theft Ordinance in 2011 (amending SMC 12A.08.060), the sole complaint mechanism provided by the 2011 law involved the filing of a criminal complaint to law enforcement. Starting Wednesday, April 1, 2015, a new administrative process will allow employees to file wage theft charges with the OLS.

Notice Posting: Both the Seattle Minimum Wage Ordinance and the Wage Theft Ordinance require employers to provide written notice to employees of their entitlement under the laws. The notice must state the applicable minimum wage and/or minimum compensation, that retaliation is prohibited, and that employees may file a charge or bring a civil action. The notice must be provided in English, Spanish, and any other language commonly spoken by covered employees. The OLS offers a poster that employers may download for free that contains all of the required information. Instead of displaying the poster, employers may alternatively convey the information in employee handbooks, distribute it to employees upon hire, send a copy to employees by mail, or display the information on an employee-accessible online system (e.g. an intranet). The poster is available [here](#).

Dual Minimum Wage and Wage Theft Investigations: Tucked into the FAQ section on the Seattle Minimum Wage Ordinance, the OLS announced that "Minimum wage complaints will be dually investigated as administrative wage theft complaints." Employers will need to become familiar with their obligations under both ordinances.

The Seattle Minimum Wage Ordinance

The final rules are largely identical to the proposed rules announced in February 2015. DWT issued an advisory covering those rules, available [here](#). (Click [here](#) for a DWT

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Large Employers

Starting April 1, 2015, large employers (with more than 500 employees) must pay covered employees a minimum wage of \$11.00 per hour for hours worked in Seattle.

As of Jan. 1, 2016, the minimum wage for employees of large employers rises again to \$13.00 per hour. In 2016, large employers who contribute toward an employee's qualifying health-plan can pay a reduced minimum wage of \$12.50, so long as the contribution brings the employee's total hourly minimum compensation to \$13.00 per hour or higher.

The portion of the Ordinance that classifies franchisees as large employers will take effect April 1, 2015. The International Franchise Association recently lost its bid for a preliminary injunction barring that portion of the Ordinance from taking effect on April 1, but may appeal that ruling.

Small Employers

Starting April 1, 2015, small employers (with 500 or fewer employees) must pay covered employees a minimum compensation of \$11.00 per hour. The minimum compensation requirement may be met through wages alone. Small employers who offer qualifying tips or who contribute to a qualifying medical plan may instead pay employees a minimum of \$10.00 per hour starting April 1, 2015, so long as the tips and/or medical plan contribution brings the employee's total hourly minimum compensation to \$11.00 per hour or higher.

As of Jan. 1, 2016, the minimum compensation requirement for small employers rises to \$12.00 per hour, and the minimum wage component rises from \$10 to \$10.50 per hour.

To ensure compliance with the Seattle Minimum Wage Ordinance, employers will need to conduct a detailed analysis of their payroll practices (at times, on an employee-by-employee basis), record keeping, and medical plans and/or tip arrangements, and make careful decisions where gray areas in the Ordinance exist. (Click [here](#) for a DWT webinar covering the Ordinance.)

Remedies for violations include back pay with interest. The OLS announced that it will not impose additional civil penalties on employers during the first year the Ordinance is effective, except in the case of egregious violations. Accordingly, as of April 1, 2016, employers can expect civil penalties starting at \$125 per violation per employee, up to a maximum of \$20,000 per employee (or 10% of the total amount of unpaid wages, whichever is greater) after incurring three or more violations.

The Seattle Wage Theft Ordinance

Starting April 1, 2015, the Office of Labor Standards has been authorized to investigate workers' complaints of "wage theft" – the nonpayment of wages and/or tips. The administrative charge process does not replace the criminal complaint process for workers complaining of wage theft that the city authorized by ordinance in 2011.

The Wage Theft Ordinance contains additional notice requirements that go above and beyond what is required under Washington state wage and hour laws. At the time of hire, employers must provide employees with written notice of information such as their rate of pay, tip and tip sharing policies, pay basis (e.g., hour, shift, day, week, commission), and pay day. Each pay day, employers must provide written notice of the wages and tips employees received during the pay period.

The Wage Theft Ordinance contains two notable “rebuttable presumptions” that favor employees:

- If an issue arises as to an employee’s entitlement to wage and tip compensation, and if the employer does not maintain or retain adequate payroll records (at least 3 years) or does not allow OLS reasonable access to those records, then there shall be presumption rebuttable only by “clear and convincing evidence” that the employer violated the Wage Theft Ordinance.

- If an employer takes an adverse action within 90 days of a covered employee’s “exercise of rights” under the Wage Theft Ordinance, then there will be a rebuttable presumption that the adverse action was retaliation for engaging in protected activity. The Ordinance defines “exercise of rights” to include the following:
 - the right to make inquiries about rights protected under the Ordinance;
 - the right to file an oral or written complaint” about an alleged violation with OLS;
 - the right to inform an employer, union or similar organization, and/or legal counsel about an employer’s alleged violation;
 - the right to cooperate with OLS in its investigations;
 - the right to oppose any policy, practice, or act that is unlawful under the Ordinance;
 - and
 - the right to inform other employees of their potential rights under the Ordinance.

The Wage Theft Law sets forth a three-year statute of limitations for employees to bring charges. Remedies include the alleged amount of unpaid wages and tips, additional lost compensation (if any) accrued after the filing of the charge, and civil penalties starting at \$125 and rising with subsequent violations to not more than \$5,000. The Ordinance provides that liabilities under the Wage Theft Ordinance are binding on successor employers in the event a business is sold or transferred. Moreover, the Wage Theft Ordinance allows the City to revoke or refuse to issue or renew the business license of an employer who refuses to comply with a final order finding a wage theft violation.

If you have questions about the Seattle Minimum Wage Ordinance or Seattle Wage Theft Ordinance, please contact Portia R. Moore (phone: 206.757.8089) or Paula C. Simon (phone: 206.757.8301).

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