

2016 Changes to Seattle's Labor Standards Laws

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In February 2016, the Seattle Office of Labor Standards (OLS) issued its *2016 Guide for Seattle Workers and Employers*, which summarizes recent amendments to Seattle's Labor Standards Laws, including Paid Sick and Safe Time ("PSST"), Minimum Wage, Wage Theft, and Fair Chance Employment (which limits an employer's use of conviction and arrest records). The Labor Standards affect all employers, regardless of their physical location, who have any employees working in Seattle. An employer must provide PSST to all employees who work in Seattle if it has more than four employees worldwide; the other three ordinances apply to all employers with one or more employees who work in Seattle.

Several important changes will take effect on April 1, 2016, while other changes became effective on Jan. 16, 2016. Employees can now recover three times the amount of unpaid wages for a violation of the Labor Standards and beginning April 1, 2016, employees may file a complaint in court instead of with the OLS. Employers should carefully evaluate whether they are fully complying with the Labor Standards and the new amendments. A detailed explanation of the changes is set forth below.

Changes Taking Effect on April 1, 2016

Private Right of Action: Beginning April 1, 2016, employees working at businesses that employ 50 or more employees may file a complaint for violations of the PSST, Minimum Wage, or Wage Theft ordinances in court rather than filing a complaint with the OLS. If the employer employs fewer than 50 employees, the right to bring a private lawsuit goes into effect on April 1, 2017. An employee can recover up to three times unpaid wages plus interest, penalties up to \$5,000 for retaliation, and attorney's fees and costs.

Written Paid Sick and Safe Time Policy: Employers covered by the PSST ordinance (any employer with more than four employees who has employees working in Seattle) must now provide a written PSST policy that outlines the benefit year the employer is using and the employer's policies and procedures for meeting the requirements of Seattle's PSST Ordinance.

Wage Theft Notice: By April 1, 2016, employers must provide to all new and existing employees (exempt and non-exempt) a written "notice of employment information" as required under the Wage Theft Ordinance. The notice must include the employer's name and contact information, pay rate, payday, an explanation of the tip policy, pay basis (hour, shift, day, commission) and regular payday. Previously, employers were required to provide this notice to employees upon hire or upon a change in employment, but by April 1, the

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employer must provide the notice to all employees working for the employer as of that date.

New Workplace Posters: OLS will provide new posters by April 1, 2016, and will begin enforcing the poster requirement at that time. The new posters should be available on the OLS website soon.

Other Important Changes to all Ordinances

The following changes took effect Jan. 16, 2016:

Increased Penalties: Employees are now entitled to receive up to three times the amount of unpaid wages or compensation due if the OLS determines that an employer violated the PSST, Minimum Wage, or Wage Theft Ordinances.

If OLS finds that an employer retaliated against an employee for asserting rights under one of the labor ordinances, the employee is entitled to reinstatement or up to three times front pay, plus an additional \$5,000 payment from the employer.

Rebuttable Presumption of Retaliation: The amended Ordinances establish a rebuttable presumption of unlawful retaliation if an adverse action occurs within 90 days of protected activity. The presumption must be rebutted by clear and convincing evidence.

Mitigation of Penalties: Under all ordinances, penalties can be mitigated if the employer pays the worker any amounts owed within 10-15 days. If the employer pays within 10 days, penalties are waived. If the employer pays within 15 days, penalties are reduced by half.

Additional PSST Ordinance Amendments

- 15-Minute Increment: Employers must now allow employees to use PSST in 15-minute increments, if “feasible” by the employer’s payroll system. If 15-minute increments are not feasible, the employer may continue to require employees to use PSST in hourly increments. The ordinance does not define the term “feasible.”
- Temporary Employees: The definition of “employee” and “employer” has been amended to make clear that more than one employer can employ an employee. Therefore temporary employees will be considered employees of both a staffing agency and the client employer.
- Occasional Employees: An employee based outside of Seattle is entitled to PSST after working at least 240 hours in Seattle in a benefit year. Once the employee meets the initial threshold requirement, the employee remains covered for the duration of employment with that employer. Prior to the amendment, the Ordinance stated that an employee was covered if he or she worked 240 hours in Seattle and did not address how long the coverage would continue. The amendment makes clear that the employee does not need to meet the 240 hour requirement each year.
- Benefit Year: Employers may choose any fixed 12-month period for calculating accrual,

use and carry-over of PSST hours, including for example a calendar year, fiscal year, or anniversary year from the employee's date of hire.

- **Successor Employers:** Employers who purchase an existing business are required to retain previously accrued PSST.

Minimum Wage Ordinance Amendments

Worldwide Employee Count: Employers must now determine their minimum wage schedule – Large Employer (more than 500 employees) or Small Employer (500 or fewer employees) by counting all employees worldwide, rather than just employees within the United States.

Wage Theft Ordinance (“WTO”) Amendments

New Definition of Compensation: The WTO now has a new definition of “compensation.” Compensation under the WTO includes salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively-required paid leave, and reimbursement for employer expenses. Prior to the amendment, the WTO had a narrower definition of “wages” which did not explicitly include tips, rest breaks, paid leave or reimbursements. Like the prior requirement regarding “wages”, under the amended WTO, employers are required to pay all “compensation” on an established pay day at no longer than monthly intervals.

Fair Chance Employment Amendments

Previously called the Job Assistance Ordinance (JAO), Seattle's Fair Chance Employment (FCE) limits the ways employers can use conviction and arrest records in the hiring process and during employment. Other than the name change, the only new provision of FCE is the creation of mandatory penalties paid to an aggrieved party (applicant or employee): \$500 for first violation, \$1,000 for second violation, and \$5,000 for third violation.

Practice Tips: What Employers Should Do Next

PSST Written Policy: Employers should review their employee handbook or other written sick leave policies to ensure the requirements of PSST are included. Under the amended Ordinance, employers must give employees notice of the following: the employer's definition of benefit year; tier size; rate of accrual, use and carry over of paid sick and paid safe time hours; manner of providing employees with an accounting of available paid sick and safe time hours each time wages are paid; and notification requirements for absences and requesting leave. If all of these requirements have not been previously included in a written policy, the employer should update its policy and provide notice of the new policy to all employees.

PSST Joint Employer: If an employer hires temporary employees from a staffing agency, whether or not they are joint employers will be decided on a case-by-case basis. Only one employer must provide sick leave, so the employer could rely upon the staffing agency to

provide PSST; however, both employers may be held jointly responsible if the staffing agency fails to properly comply with PSST. Employers should review agreements with staffing agencies and include in the agreement a requirement that the staffing agency is responsible for providing PSST to its employees. Employers should also be aware that they could be jointly named in a charge if the staffing agency fails to comply with PSST.

Shorter PSST Increments: Employers should determine whether allowing employees to take PSST in 15-minute increments is “feasible” for the payroll system. If so, employers should review their handbooks or other policies to determine whether their current policy requires employees to use longer increments (such as one hour) and update the policies accordingly. Employers should also give notice to employees of the change.

Worldwide Employees for Minimum Wage: Employers currently classified as Small Employers who have operations outside of the United States should determine the number of employees worldwide to see if their total employee count is over 500. As a reminder, Large Employers must pay a higher minimum wage and are unable to take advantage of credits for tips.

Conclusion

The amendments to Seattle’s Labor Standards ordinances were designed to offer additional protections to workers and harmonize definitions and enforcement procedures across all four ordinances. Employers should carefully review their current policies and seek legal advice to update handbooks and policies as needed to ensure compliance with these recent amendments.

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