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\$15.00 Minimum Wage and Mandatory Paid Sick and Safe Leave for Transportation and Hospitality Workers Take Effect in City of SeaTac

By Pamela Salgado and Kellie Tabor

Effective January 1, 2014, as a result of an Ordinance passed by the citizens of the City of SeaTac, Washington,¹ certain transportation and hospitality employers in the City must provide their nonsupervisory employees working within the City limits a minimum wage of \$15.00 per hour and paid sick and safe leave, among other benefits.

Legal challenges to the Ordinance have already commenced. On December 27, 2013, King County Superior Court Judge Andrea Darvas ruled that the Ordinance is invalid as applied to “employers and employees conducting business within the boundaries of SeaTac International Airport,” holding that the City of SeaTac does not have the authority to set workplace rules at the airport because the Port of Seattle has exclusive jurisdiction there. On December 31, 2013, intervenors in the lawsuit petitioned the Washington State Supreme Court to review Judge Darvas’ ruling. Also, on December 31, 2013, the SeaTac City Manager sent an official request to the Port of Seattle, asking the Port to give its consent for the Ordinance to apply to airport workers. Port officials have stated they intend to respond to the request by June, following public hearings.

On December 31, 2013, the City of SeaTac created a website to provide guidance regarding the City’s administration and enforcement of the Ordinance.² The City will establish auditing procedures before December 31, 2014. The website also includes a claim form for employees who believe their employer is not complying with the Ordinance.

Which Employers Are Subject to the Ordinance?

The Ordinance provides an increased minimum wage, paid sick and safe leave time,³ and job security and other benefits to nonmanagerial, nonsupervisory employees working for covered employers in the hospitality and transportation industries within the City.

1 The City of SeaTac, incorporated in 1990, encompasses the 10-square mile area surrounding the Seattle-Tacoma International Airport—halfway between Seattle and Tacoma, Washington.

2 The website can be found at <http://www.ci.seatac.wa.us/index.aspx?page=681>.

3 “Sick and safe” time (described more fully below) is paid time off that an employee may use for the employee’s own illness; to care for an ill family member; or for “safe time” leave necessitated by domestic violence, sexual assault, or stalking, or by a business or school closure due to an infectious agent or a toxic or hazardous material.

Hospitality Industry Coverage. Large hotels, as well as any businesses operating within or in conjunction with large hotels, such as restaurants, bars, or spas, are subject to the Ordinance, as are any employers providing services for hotel customers on the premises, including temporary agencies and subcontractors. In addition, the Ordinance covers retail businesses located in and companies providing institutional food service for public facilities, corporate cafeterias, conference centers, and meeting facilities.

The Ordinance specifically excludes from its coverage restaurants and retail operations that are *not* located within a hotel, public facility, corporate cafeteria, conference facility, or meeting facility.

Transportation Industry Coverage. Transportation companies (excluding certified air carriers) employing 25 or more nonmanagerial, nonsupervisory individuals performing the following services within the City are also subject to the Ordinance: curbside passenger check-in; baggage check; wheelchair escort; baggage handling; cargo handling; rental luggage cart; aircraft and aviation support equipment cleaning; aircraft fueling; and ground transportation management; as well as any janitorial, custodial, facility maintenance, security, or customer service performed in a facility in which any of the previously listed services are also performed. In addition, the Ordinance covers large rental car, shuttle transportation, and parking service providers.

Increased Minimum Wage

The Ordinance requires that all nonmanagerial, nonsupervisory employees of covered employers who are employed within the City be paid a minimum wage of \$15.00 per hour (far higher than the Washington State minimum wage of \$9.32 per hour and the federal minimum wage of \$7.25 per hour). At the beginning of each subsequent year, the minimum wage rate will automatically increase at the rate of inflation.

Further, the Ordinance prohibits covered employers from taking tip credits or offsetting service charges or commissions against the minimum wage rate. The Ordinance also provides that all service charges and tips must be given to the employees directly providing the applicable services to the customers.

Paid Leave for Sick and Safe Time

Under the Ordinance, all nonmanagerial, nonsupervisory employees of covered entities must accrue at least one hour of paid sick and safe time for every 40 hours worked. Unlike sick and safe time ordinances from other jurisdictions, the City of SeaTac ordinance prohibits caps on accrual or use. Employees must be paid their normal hourly compensation for all qualifying leave time taken. In addition, rather than permitting carry over at year end, at the end of the calendar year there is a mandatory pay-out and employers must pay covered workers a lump sum equivalent to all accrued but unused sick and safe time.

Employees may use any accrued time for absences resulting from their own or a family member's mental or physical illness, injury, or health condition, or any treatment or medical diagnosis related to any such health condition, as well as preventative medical care. In addition, covered employees may use leave time to obtain or assist a family member in obtaining legal assistance, treatment, counseling, or other services in response to domestic violence, sexual assault, or stalking. Finally, covered employees may take accrued leave when their place of business or children's school has been closed to limit exposure to an infectious agent, or a toxic or hazardous material.

While most other jurisdictions that require sick and safe leave allow employers to request certification after absences of three consecutive days or if the circumstances suggest fraud, employees in the City of SeaTac are not required to present certification of the illness or other situation necessitating the leave regardless of the length of the leave requested or the circumstances surrounding the leave. The Ordinance also prohibits employers from disciplining or retaliating against an employee for using accrued sick and safe time, and specifically prohibits employers from counting sick and safe time used in connection with any neutral attendance policy.

In its FAQ, the City of SeaTac has indicated its position that "occasional basis employees"—employees who work primarily outside the City but work inside the City on an "ad hoc, irregular basis"—are entitled to paid sick and safe leave time. However, only the hours worked by such an employee within the City count toward his/her accrual and the employee can only use sick and safe time hours during times he/she is working within the City.

Promoting Full-Time Employment and Retention Benefits for Laid Off Workers

The Ordinance requires any covered employer with additional hours of work to offer those hours to existing employees before hiring additional part-time employees or subcontractors.

In addition, when there is a change in the company providing any hospitality or transportation services covered by the Ordinance, the outgoing company must identify all individuals employed for at least 30 workdays who were laid off due to lack of work during the prior two years or who will lose their jobs due to the closure of operations within the next six months. At the point of assuming the services and for 90 days thereafter, the incoming company must offer any available positions to all qualified individuals on the list before hiring new employees or transferring workers from elsewhere. Furthermore, the incoming company may not discharge any retained employee without just cause during the first 90 days of employment.

Reporting Requirements, Prohibition of Retaliation, and Enforcement

The Ordinance requires the City of SeaTac to adopt procedures to monitor and ensure employer compliance. Covered employers must maintain records documenting hours worked, paid sick and safe time taken, and wages and benefits provided to covered workers, and must retain such record for two years. Employers must allow the City Manager or his or her designee access to such records.

Under the Ordinance, covered employers are prohibited from interfering with, restraining, or denying the exercise or attempted exercise of any right protected by the Ordinance, and from taking an adverse action or discriminating against a covered worker for exercising his/her rights. Judge Darvas, in her recent ruling mentioned in the introduction to this ASAP, held that federal labor law preempted these provisions.

Any person claiming a violation of the Ordinance may file a complaint with the SeaTac City Attorney, who has the authority to investigate and initiate legal action to remedy any violation. In addition, the Ordinance purports to authorize individual employees and others to file suit to enforce the Ordinance, and to obtain money damages and/or injunctive relief, as well as attorneys' fees and costs. Whether a city has the authority to authorize such private rights of action in the courts is an unresolved question.

Conclusion

The fight over the City of SeaTac's Ordinance will likely continue for years to come. In the meantime, covered employers are well advised to consult legal counsel with regard to complying with the Ordinance.

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