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## Seattle's New Wage Theft Ordinance Imposes Notice Requirements and Civil Penalties

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Effective April 1, 2015, a new Wage Theft Ordinance imposes specific wage and tip notice requirements on employers in the City of Seattle.<sup>1</sup> The Seattle Office for Civil Rights (SOCR) is granted power to investigate complaints, and employers who violate the Ordinance are subject to orders to pay wages and tips, as well as civil penalties.

### What Employers Should Do Immediately to Comply with this Ordinance

Following are the immediate steps that employers should take if they have non-exempt employees<sup>2</sup> working in Seattle:

#### 1. Provide immediate notice of the wage theft law to Seattle employees.

Employers must provide notice of employees' rights under this law in writing (or electronically, as noted below). The SOCR has issued a poster that includes the required information about the new wage theft law, as well as information about Seattle's new minimum wage law. The poster is available in English (<http://www.seattle.gov/Documents/Departments/CivilRights/mwo-poster-english.pdf>) and Spanish (<http://www.seattle.gov/Documents/Departments/CivilRights/mwo-poster-spanish.pdf>). In lieu of displaying the poster, employers can comply with this requirement by reprinting the information in a handbook, or duplicating the poster in another format such as a letter or online system that is accessible by employees.<sup>3</sup>

#### 2. Notice to be provided at the time of hire and one pay period prior to changes in pay.

At time of hire and within one pay period prior to any change in the relevant terms of employment (including wage rates), employers must provide the following information to employees in writing (or electronically, as noted below):

- Name of employer and any trade names;
- Physical and mailing address of the employer's main office or principal place of business;

1 City of Seattle, Wash., Seattle Municipal Code ("SMC") Chapter 14.20.

2 As discussed below, the Ordinance exempts bona fide executive, professional, administrative, and outside sales employees.

3 SMC § 14.20.040(D).

- Telephone number of employer;
- Employee's rate or rates of pay;
- Employee's tip policy, including any tip sharing, pooling, or allocation policies;
- Pay basis (e.g., hour, shift, day, week, commission); and
- Employee's established pay day for wage and tip compensation.

This information may be communicated in a letter or online system that is accessible by employees.<sup>4</sup>

### 3. Information to be provided each pay period.

Every time wages and tips are paid, employers are required to provide the following information in writing (or electronically, as noted below):

- Rate or rates of pay;
- Non-wage tip compensation;
- Pay basis (e.g., hour, shift, day, week, commission);
- Gross wages; and
- All deductions for that pay period.

This information may be provided in a pay stub, letter, or online system that is accessible by employees.<sup>5</sup>

Existing Washington law already requires disclosure of much of this pay statement information. Some of the requirements, however, are new. The requirement to identify the pay basis beyond identifying whether payment is for hours or days worked is new. Also new is the requirement to document non-wage customer tips delivered to the employee by the employer.

### 4. Provide the above required information in the language commonly spoken by employees.

Employers must provide written information to employees in English, Spanish, and any other language commonly spoken by employees at the workplace using a "reasonable method."<sup>6</sup> This is a new requirement.

### 5. Ensure all wages and tips are paid to employees on a regular pay day.

This is already required by Washington law for wages, but this requirement for non-wage tips is new. As under Washington state law, the maximum payment interval permitted by the Ordinance is one month.<sup>7</sup>

### 6. Keep payroll records for no less than three years.

This is already required by Washington law.

### 7. Do not retaliate against employees exercising rights under this Ordinance.

## **Employees Covered by the New Requirements**

The notice requirements and complaint procedures apply to "employees," which, as defined, does not include certain categories of workers who are exempt under Washington's Minimum Wage Act, including bona fide executive, professional, administrative, and outside sales employees.<sup>8</sup>

4 SMC § 14.20.040(B).

5 SMC § 14.20.040(C).

6 SMC § 14.20.040(A).

7 SMC § 14.20.030.

8 SMC § 14.20.010; SMC § 12A.28.200.

All non-exempt employees in Seattle are generally covered for each hour worked within the geographic boundaries of Seattle. An employee who performs work in Seattle on an occasional basis, however, is covered in a two-week period only if the employee performs more than two hours of work within Seattle during that period. An employee who spends time in Seattle solely for the purpose of traveling through Seattle, with no employment-related or commercial stops in Seattle except for refueling or meals, is not covered.<sup>9</sup>

## Recordkeeping Requirements

As already required under Washington state law, the new Ordinance mandates that employers keep payroll records for at least three years. Payroll records must document the name, address, occupation, dates of employment, rate or rates of pay, amount paid each pay period, and the hours worked for each employee. Employers must allow SOCR access to the records to investigate and monitor compliance.<sup>10</sup> If an employer fails to keep records, the law presumes that the employer committed a violation, though this can be rebutted with “clear and convincing evidence.”<sup>11</sup>

## Anti-Retaliation Provision

The Ordinance prohibits retaliation against employees who exercise their rights under this law. This protects employees’ rights to ask questions about their rights, file complaints and cooperate with SOCR, inform the employer, union, or legal counsel about alleged violations, oppose any policy that is unlawful and inform other employees of their rights. Employers cannot interfere with an employee’s exercise of these rights, take adverse action against an employee for exercising these rights, or threaten to inform the government that a person filing a wage claim is not lawfully in the United States.<sup>12</sup>

## Enforcement

SOCR will promulgate rules for enforcement of Seattle’s Wage Theft Ordinance. Charges alleging a violation of the Ordinance must be filed with SOCR within three years.<sup>13</sup> SOCR will investigate alleged violations of the Ordinance, with authority to issue subpoenas requiring the testimony of witnesses and the production of evidence. SOCR is required to consider any position statement or evidence submitted by the employer.<sup>14</sup> Once the investigation is complete, SOCR will issue a written determination.<sup>15</sup>

If SOCR finds a violation, the appropriate remedy will include full payment of unpaid wages, tip compensation, and accrued interest. In addition, the remedy may also include a civil penalty depending on the type and number of violations. SOCR may assess a penalty up to \$500 for a first-time violation of the Ordinance. The penalty for subsequent violations may range from \$1,000 to \$20,000 per employee. Additional penalties may be assessed for willful violation of the notice and posting requirements (\$125 to \$250) or for interfering with SOCR in the performance of its duties (\$1,000 to \$5,000). Under the Ordinance, successors to the business may become liable for the full amount of any remedy assessed against the business.<sup>16</sup>

The Ordinance provides for an appeal procedure through a contested hearing if the employer appeals in writing within fifteen days.<sup>17</sup>

In appropriate cases, SOCR can refer complaints to the Seattle Police Department or the City Attorney’s Office for criminal investigation or prosecution.<sup>18</sup> In addition, if an employer fails to comply with a final order of SOCR, the City can refuse to issue or can revoke its business license.<sup>19</sup>

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9 SMC § 14.20.020.

10 SMC § 14.20.050(A).

11 SMC § 14.20.050(B).

12 SMC § 14.20.060.

13 SMC §§ 14.20.070(A)-(B)(1).

14 SMC § 14.20.070(B).

15 SMC § 14.20.070(C).

16 SMC § 14.20.070(D).

17 SMC § 14.20.070(E)-(F).

18 SMC § 14.20.070(C)(2).

19 SMC § 5.55.230(A)(9).