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CITY OF SEATTLE
DRAFT ORDINANCE _____
COUNCIL BILL _____

..title

AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.22 to the Seattle Municipal Code; establishing secure scheduling requirements for large food services and retail establishments; prescribing remedies and enforcement procedures; amending Section 14.20.025 of the Seattle Municipal Code to add good faith estimates of work schedules to notice of employment information; amending Section 6.208.020 of the Seattle Municipal Code to condition business license registration on compliance with secure scheduling requirements; and amending Section 3.14.945 of the Seattle Municipal Code to add Chapter 14.22 to the list of ordinances administered and enforced by the Office of Labor Standards.

..body

WHEREAS, businesses need an appropriate level of staffing to provide services and sell goods; however, the appropriate level of staffing cannot always be precisely estimated or can change due to numerous factors, such as weather conditions and local and national events; and

WHEREAS when an employer pays per hour, its labor costs are determined by the number of hours an employee works, as compared to the fixed cost of a salaried employee, and it has an economic incentive to be able to respond to changing business needs by reducing and adding employee hours; and

WHEREAS, when an employee's hours are reduced, it changes the amount of income an employee will earn that pay period; and

WHEREAS, when an employee is asked to work additional hours or an employee's hours are changed with minimal notice, such changes often create conflicts with an employee's other responsibilities such as child care, other jobs, or school schedules; and

1 WHEREAS, when an employee is required to remain available to come in to work if needed, but
2 is not compensated if not needed, the employee is therefore not compensated for
3 foregoing the opportunity to tend to other responsibilities or pursue other interests; and

4 WHEREAS, if employers maintain a large pool of part-time employees to draw on when extra
5 staff are needed, employees in that pool might work fewer and more variable hours than
6 employees who are not part-time; and

7 WHEREAS, in *Schedule Unpredictability among Early Career Workers in the US Labor*
8 *Market: a National Snapshot*, using data from a national survey of early career adults
9 aged 26-32 years, Professor Susan Lambert of the University of Chicago, found that 40
10 percent of hourly workers knew their work schedule less than one week in advance, and
11 74 percent had fluctuating hours during a single month, with 50 percent having
12 fluctuations of more than eight hours or one day's pay; and

13 WHEREAS, Professor Lonnie Golden of Pennsylvania State University found that, by income
14 level, nationally the lowest income workers face the most irregular schedules and that 43
15 percent of part-time workers were working fewer hours per week than they preferred; and

16 WHEREAS, part-time work has a correlation with national poverty levels; for example, the
17 poverty rate for households with children is 11.2 percent with one full-time worker in the
18 household and 27.5 percent with a part-time worker, the poverty rate for Hispanics is 9.4
19 percent with one full-time worker in the household and 44.1 percent with a part-time
20 worker, and the poverty rate for African-Americans is 6.9 percent with one full-time
21 worker in the household and 55.5 percent with a part-time worker; and

22 WHEREAS, the City contracted with Vigdor Measurement and Evaluation to provide data on
23 scheduling practices in Seattle; and

1 WHEREAS, as discussed in *Scheduling in Seattle: Current State of Practice and Prospects for*
2 *Intervention*, Seattle scheduling practices are not dissimilar to national scheduling
3 practices: while many respondents were satisfied with their schedules, 30 percent of part-
4 time workers want to work more hours, 31 percent reported working both a closing and
5 opening shift consecutively, nearly half of the survey respondents would sacrifice a 20
6 percent pay premium in order to have one week's advance notice of their schedule; and
7 African-American and Latino respondents reported significantly higher rates of
8 scheduling-related hardship and were more likely to receive short notice of their
9 schedules, to work on-call shifts, and to have their hours reduced; and

10 WHEREAS, 1930s federal labor laws, such as the Fair Labor Standards Act that limited the
11 number of work hours in a day and week, addressed the manufacturing industry that was
12 the predominant employer at the time but are inadequate to address the conditions that
13 have arisen in the service and retail industries in which an ever-increasing number of U.S.
14 employees are employed; and

15 WHEREAS, several jurisdictions across the country, including Oregon, California, New York,
16 North Carolina, Connecticut, Washington D.C., and Illinois are considering scheduling
17 legislation to address the issues faced by employees with unpredictable work schedules
18 and consequently unpredictable income; and

19 WHEREAS, the City and County of San Francisco recently enacted two ordinances, the Hours
20 and Retention Protections for Formula Retail employees, and Predictable Scheduling and
21 Fair Treatment for Formula Retail Employees, commonly referred to together as the
22 Formula Retail Workers Bill of Rights, that require a two-week advance notice of work
23 schedules, predictability pay for certain changes to an employee's work schedule, equal

1 treatment of part-time employee in wages, time off and promotion opportunities, offering
2 additional hours of work to existing employees before hiring new employees, and certain
3 protections if a business is sold; and

4 WHEREAS, to gain a fuller understanding of scheduling practices in Seattle the Mayor
5 convened stakeholder meetings with both business owners and worker advocates who
6 met 12 times over six months; and

7 WHEREAS, the Seattle City Council's Civil Rights, Utilities, Economic Development, and Arts
8 (CRUEDA) committee heard reports from these stakeholders at ten meetings over six
9 months and from researchers in the field and the San Francisco Office of Labor Standards
10 Enforcement; and

11 WHEREAS, clearer communication between employers and employees, at time of hire and
12 periodically, about the employer's scheduling needs and employee's availability and
13 preference of hours would establish a stronger basis of understanding between employers
14 and employees; and

15 WHEREAS, the Seattle City Council, in recognition of the growing income inequality in the
16 city, enacted a new minimum wage and minimum compensation in recognition that the
17 federal minimum wage was inadequate and that local governments must act in the
18 absence of action by the federal government; and

19 WHEREAS, increased wages will not help decrease the income inequality gap if employees can
20 not work sufficient hours to support themselves and their dependents or know what hours
21 and therefore what income they can count on that week; NOW, THEREFORE,

22 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

23 Section 1. A new Chapter 14.22 is added to the Seattle Municipal Code as follows:

1 **14.22 SECURE SCHEDULING**

2 **14.22.005 Short title**

3 This Chapter 14.22 shall constitute the "Secure Scheduling Ordinance" and may be cited as such.

4 **14.22.010 Definitions**

5 For purposes of this Chapter 14.22:

6 "Adverse action" means denying a job or promotion, demoting, terminating, failing to
7 rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair
8 immigration-related practices, filing a false report with a government agency, changing an
9 employee's status to a nonemployee, or otherwise discriminating against any person for any reason
10 prohibited by Section 14.22.035. "Adverse action" for an employee may involve any aspect of
11 employment, including pay, work hours, responsibilities, or other material change in the terms and
12 condition of employment.

13 "Agency" means the Office for Civil Rights and any division therein.

14 "Aggrieved party" means an employee or other person who suffers tangible or intangible
15 harm due to an employer or other person's violation of this Chapter 14.22.

16 "At time of hire" means on or before the commencement of employment.

17 "Bona fide business reason" means a significant and identifiable burden of additional
18 costs to an employer or a significant detrimental effect on the employer's ability to meet
19 organizational demands, including but not limited to:

- 20 1. A significant inability of the employer, despite best efforts, to reorganize work
21 among existing employees;
- 22 2. A significant detrimental effect on business performance;

1 3. A significant insufficiency of work during the periods an employee proposes to
2 work; or

3 4. Pursuant to rules issued by the Director, such other reason that is based on a
4 substantial and identifiable burden of additional costs or detrimental effect on the employer's
5 ability to meet organizational demands.

6 "City" means the City of Seattle.

7 "Career-related educational or training program" means

- 8 1. An educational or training program;
9 2. A pre-apprenticeship or apprenticeship program; or
10 3. A program of study offered by a public, private, or nonprofit career and
11 technical education school, institution of higher education, or other entity that provides academic
12 education, career and technical education, or training, including but not limited to remedial
13 education or English as a second language, as appropriate.

14 "Caregiver" means an employee who has the responsibility of providing

- 15 1. Ongoing care or education, including responsibility for securing the ongoing
16 care or education of a child;
17 2. Ongoing care, including the responsibility for securing the ongoing care of
18 a. An individual with a serious health condition who is in a family
19 relationship with the employee; or
20 b. A parent of the individual.

21 "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child
22 of an individual standing in loco parentis who is under 18 years of age; or 18 years of age or
23 older, and incapable of self-care because of a mental or physical disability.

1 “Director” means the Division Director of the Office of Labor Standards within the
2 Office for Civil Rights or the Division Director's designee.

3 “Employ” means to suffer or permit to work.

4 “Employee” means “employee,” as defined under Section 12A.28.200, including but not
5 limited to full-time employees, part-time employees, and temporary workers. A putative
6 employer bears the burden of proof that the individual is, as a matter of economic reality, in
7 business for oneself (i.e. independent contractor) rather than dependent upon the alleged
8 employer. For the purposes of this Chapter 14.22, “employee” is limited to those who are
9 employed by large limited/quick food services establishments, full-service restaurants, and retail
10 establishments and the physical location of their employment services with that covered
11 employer is in whole or in substantial part (at least 50 percent of the time) within the geographic
12 boundaries of the City.

13 “Employer” means any individual, partnership, association, corporation, business trust, or
14 any entity, person or group of persons, or a successor thereof, that employs another person and
15 includes any such entity or person acting directly or indirectly in the interest of an employer in
16 relation to an employee. More than one entity may be the “employer” if employment by one
17 employer is not completely disassociated from employment by the other employer. For the
18 purposes of this Chapter 14.22, “employer” is limited to retail and food services establishments
19 that employ 500 or more employees worldwide regardless of where those employees are
20 employed, including but not limited to chains, integrated enterprises, or franchises associated
21 with a franchisor or network of franchises that employ more than 500 employees in aggregate.

22 “Family relationship” means a relationship with

1 1. A child, spouse, parent, grandchild, grandparent, sibling, or parent of a spouse
2 of the employee; or

3 2. Any individual related to the employee involved by blood or affinity, whose
4 close association with the employee is the equivalent of a family relationship as described in
5 subsection 1 of this definition.

6 “Food services establishment” means food services contractors; caterers; mobile food
7 services; drinking places (alcoholic beverages); full service restaurants; limited-service
8 restaurants; cafeterias, grill buffets, and buffets; and snack and nonalcoholic beverage bars, as
9 defined under the 2012 North American Industry Classification System (“NAICS”) 722. For the
10 purposes of this Chapter 14.22, “full service restaurants,” as defined under NAICS 722511, are
11 limited to restaurants with 40 or more full service restaurant locations worldwide, including but
12 not limited to locations that are a part of a chain, integrated enterprise, or franchise where the
13 franchisor owns or operates 40 or more such establishments worldwide.

14 “Franchise” means a written agreement by which:

15 1. A person is granted the right to engage in the business of offering, selling, or
16 distributing goods or services under a marketing plan prescribed or suggested in substantial part
17 by the grantor or its affiliate;

18 2. The operation of the business is substantially associated with a trademark,
19 service mark, trade name, advertising, or other commercial symbol; designated, owned by, or
20 licensed by the grantor or its affiliate; and

21 3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a
22 franchise fee.

23 “Franchisee” means a person to whom a franchise is offered or granted;

1 “Franchisor” means a person who grants a franchise to another person;

2 “Front pay” means the compensation the employee would earn or would have earned if
3 reinstated to the employee’s former position.

4 “Full-service restaurant,” as defined under NAICS 722511, means only those full-service
5 restaurants with 40 or more locations worldwide, including but not limited to locations that are
6 part of a chain, integrated enterprise, or franchise where the franchisor owns or operates 40 or
7 more such establishments worldwide.

8 “Grandchild” means the child of a child of an employee.

9 “Grandparent” means a parent of a parent of an employee.

10 "Hearing Examiner" means the official appointed by the City Council and designated as
11 the Hearing Examiner, under Chapter 3.02 or that person's designee (e.g., Deputy Hearing
12 Examiner or Hearing Examiner Pro Tem).

13 “Interactive process” means a timely, good faith process that includes a discussion
14 between the employer and the employee for the purpose of arriving at a mutually beneficial
15 arrangement for a schedule that meets the needs of the employee and the employer. The
16 discussion may include the proposal of alternatives by the employee and the employer.

17 “Major life event” means a major event related to the employee’s own serious health
18 condition, the employee’s responsibilities as a caregiver, the employee’s enrollment in a career-
19 related educational or training program, the employee’s second job, or pursuant to rules issued
20 by the Director, such other event that is material and necessary to effectuate the terms of this
21 Chapter 14.22.

22 “On-call” means any time that an employer requires an employee to be available to work,
23 contact the employer or the employer’s designee, or wait to be contacted by the employer or the

1 employer's designee, for the purpose of determining whether the employee must report to work.
2 During such time, on-call status applies regardless of whether the employee is located on or off
3 the employer's premises.

4 "Parent" means a biological or adoptive parent, a stepparent, or a person who stood in
5 loco parentis to an employee when the employee was a child.

6 "Predictability pay" means payments to an employee, calculated on an hourly basis at the
7 employee's regular rate of pay, as compensation for changes made by an employer to an
8 employee's work schedule pursuant to Section 14.22.045.

9 "Rate of inflation" means 100 percent of the annual average growth rate of the bi-
10 monthly Seattle-Tacoma-Bremerton Area Consumer Price Index for Urban Wage Earners and
11 Clerical Workers, termed CPI-W, for the 12 month period ending in August, provided that the
12 percentage increase shall not be less than zero.

13 "Regular rate of pay" means the hourly rate at which the employee is being paid, but may
14 not be less than the established minimum wage rate.

15 "Respondent" means an employer or any person who is alleged or found to have
16 committed a violation of this Chapter 14.22.

17 "Retail establishment" means a store retailer that operates a fixed point-of-sale location,
18 as defined under the 2012 North American Industry Classification System ("NAICS") 441
19 through 453998.

20 "Serious health condition" means an illness, injury, impairment, or physical or mental
21 condition that involves:

22 1. Inpatient care in a hospital, hospice, or residential medical care facility,
23 including any period of incapacity; or

1 2. Continuing treatment by a health care provider.

2 “Sibling” means a brother or sister, whether related by half blood, whole blood, or
3 adoption, or as a stepsibling.

4 “Split shift” means a schedule of daily hours in which the working hours required or
5 permitted are not consecutive. No meal period of one hour or less shall be considered an
6 interruption of consecutive hours.

7 “Spouse” means husband, wife, or domestic partner. For purposes of this Chapter 14.22
8 the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying
9 equally to city or state registered domestic partnerships or individuals in city or state registered
10 domestic partnerships as well as to marital relationships and married persons to the extent that
11 such interpretation does not conflict with federal law. Where necessary to implement this
12 Chapter 14.22, gender-specific terms such as husband and wife used in any statute, rule, or other
13 law shall be construed to be gender-neutral and applicable to individuals in city or state
14 registered domestic partnerships.

15 “Successor” means any person to whom an employer quitting, selling out, exchanging, or
16 disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
17 employer’s business, a major part of the property, whether real or personal, tangible or
18 intangible, of the employer’s business. For purposes of this definition, “person” means an
19 individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm,
20 corporation, business trust, partnership, limited liability partnership, company, joint stock,
21 company, limited liability company, association, joint venture, or any other legal or commercial
22 entity.

1 “Wage” means compensation due to an employee by reason of employment, payable in
2 legal tender of the United States or checks on banks convertible into cash on demand at full face
3 value, subject to such deductions, charges, or allowances as may be permitted by rules of the
4 Director.

5 “Work schedule” means the hours, days and times, including regular and on-call shifts,
6 when an employee is required by the employer to perform duties of employment for which the
7 employee will receive compensation.

8 “Work schedule change” means any modification to an employee’s work schedule,
9 including but not limited to: the addition or reduction of hours; cancellation of a shift or portion
10 of a shift; a change in the date or time of a work shift by an employer; or scheduling an employee
11 for an on-call shift for which the employee does not need to report to work.

12 “Work shift” means the specific and consecutive hours an employer requires an employee
13 to work or to be on call to work.

14 “Work week” means, a fixed and regularly recurring period of one hundred sixty-eight
15 hours or seven consecutive twenty-four-hour periods; it may begin on any day of the week and
16 any hour of the day, and need not coincide with a calendar week.

17 “Written” or “writing” means a printed or printable response in physical or electronic
18 format.

19 “Year” means any fixed, consecutive, 12 month period of time.

20 **14.22.015 Employment in Seattle**

21 An employee is covered by this Chapter 14.22 when the physical location of such employment
22 services for a covered employer is within the geographic boundaries of the City at least 50
23 percent of the time.

1 **14.22.020 Employee count determination**

2 A. An employee who is not covered by this Chapter 14.22 shall still be included in any
3 employee count determination.

4 B. The determination of the number of employees for the current calendar year will be
5 calculated based upon the average number per calendar week of employees who worked for
6 compensation during the preceding calendar year for any and all weeks during which at least one
7 employee worked for compensation. For employers that did not have any employees during the
8 previous calendar year, the number of employee will be calculated based upon the average
9 number per calendar week of employees who worked for compensation during the first 90
10 calendar days of the current year in which the employer engaged in business.

11 C. To determine the number of employees, all hours worked for compensation by all
12 employees shall be counted, including but not limited to:

- 13 1. Work performed inside the City;
14 2. Work performed outside the City; and
15 3. Work performed in full-time employment, part-time employment, joint
16 employment, temporary employment, or through the services of a temporary services or staffing
17 agency or similar entity.

18 D. Separate entities that form an integrated enterprise shall be considered a single
19 employer under this Chapter 14.22. Separate entities will be considered an integrated enterprise
20 and a single employer under this Chapter 14.22 where a separate entity controls the operation of
21 another entity. The factors to consider include, but are not limited to:

- 22 1. Degree of interrelation between the operations of multiple entities;
23 2. Degree to which the entities share common management;

1 3. Centralized control of labor relations; and

2 4. Degree of common ownership or financial control over the entities.

3 **14.22.025 Good faith estimate of work schedule**

4 A. For new employees, the employer shall provide the employee at time of hire, with a
5 written good faith estimate of the employee's work schedule including the median number of
6 hours the employee is expected to work each work week, whether the employee will be expected
7 to work on-call shifts, and, pursuant to rules issued by the Director, other information that is
8 material and necessary to effectuate the terms of this Chapter 14.22.

9 1. For existing employees, the employer shall revise the good faith estimate
10 annually or when there is a significant change to the work schedule due changes in the
11 employee's availability or to the employer's business needs.

12 2. The good faith estimate shall not constitute a contractual offer and the
13 employer shall not be bound by the estimate. However, the employer shall initiate an interactive
14 process with the employee to discuss any significant change from the good faith estimate, and if
15 applicable state a bona fide business reason for the change.

16 3. The employer shall include the good faith estimate, in English and the
17 employee's primary language, with the written notice of employment information required by
18 subsection 14.20.025.D.

19 **14.22.030 Right to request input into the work schedule**

20 A. At time of hire the employee shall identify any limitations on their availability and has
21 the right to request that they not be scheduled during certain times or at certain locations and
22 may identify preferences for the hours or locations of work.

1 B. During employment the employee has the right to request not to be scheduled during
2 certain times or at certain locations due to changes in the employee’s availability, and the right to
3 identify preferences for the hours or locations of work. The employer shall consider the requests
4 using the procedures in subsections 14.22.030.C or 14.22.030.D.

5 C. If the employee’s request is for a reason not covered by subsection 14.22.030.D, the
6 employer shall engage in a timely, good faith, interactive process with the employee to discuss
7 the request. The employer may grant or deny the request for any reason that is not unlawful.

8 D. If the employee’s request is for a reason covered by this subsection 14.22.030 C, the
9 employer shall engage in a timely, good faith interactive process with the employee to discuss
10 the request, and may require verifying information from the employee with adequate notice and
11 reasonable time to respond. The employer shall grant the request unless the employer has a bona
12 fide business reason for denial and shall provide a written response. In the event of a denial, the
13 employer’s written response shall provide an explanation of the complete or partial denial of the
14 request, and the bona fide business reason for the decision.

15 The provisions of this subsection 14.22.030.D apply to a request by the employee for one of the
16 following reasons:

- 17 1. The employee’s own serious health condition;
- 18 2. The employee’s responsibilities as a caregiver;
- 19 3. The employee’s enrollment in a career-related educational or training program;
- 20 4. The employee’s other job or jobs; or
- 21 5. Pursuant to rules issued by the Director, such other reason that is that is

22 material and necessary to effectuate the terms of this Chapter 14.22.

23 **14.22.035 Right to rest between work shifts**

1 A. Unless the employee requests to work such hours the employer shall not schedule or
2 require an employee to work:

3 1. Less than ten hours after the end of the previous day's work shift; or

4 2. Less than ten hours following the end of a work shift that spanned two days.

5 B. The employer shall compensate the employee who works hours requested under
6 subsection 14.22.035.A at one and one-half times the employee's regular rate of pay.

7 C. The requirement for additional compensation in subsection 14.22.035.B shall not
8 apply for work hours that constitute a split shift.

9 D. An employee compensated for hours worked under subsection 14.22.035.B shall not
10 be additionally compensated for those hours under Section 14.22.050.

11 **14.22.040 Advance notice of work schedule**

12 A. At time of hire and for employees returning to work after a leave of absence, the
13 employer shall provide the employee a written work schedule. The employee's work schedule
14 shall run through the last date of the currently posted schedule; thereafter, the employer shall
15 include these employee(s) in the schedule for existing employees as described in subsection
16 14.20.040.B.

17 B. The employer shall provide a written work schedule to existing employees at least 14
18 calendar days before the first day of the work schedule. The written work schedule shall include
19 all regular and on-call shifts for the work period. The employer shall post the written work
20 schedule in a conspicuous and accessible location, in English and in the primary language(s) of
21 the employee(s) at the particular workplace.

22 **14.22.045 Notice of work schedule changes**

1 A. For employer-initiated changes to the work schedule, the employer shall provide the
2 employee with timely notice of the change by in-person conversation, telephone call, email, text
3 message, or other accessible electronic or written format.

4 B. The employee may decline to work any hours not included in the employee's own
5 work schedule.

6 C. For employee-initiated changes to the work schedule, the employee shall provide
7 notice of the request per the employer's usual and customary notice and procedural requirements
8 for foreseeable changes, or as soon as practicable for unforeseeable circumstances and shall
9 generally comply with an employer's reasonable normal notification policies and/or call-in
10 procedures.

11 D. The employer may ask but shall not require the employee to search for or find a
12 replacement employee to cover any hours during which the employee is unable to work a
13 scheduled shift.

14 **14.22.050 Compensation for work schedule changes**

15 A. Subject to the provisions of this subsection 14.22.050.A, the employer shall
16 compensate employees with predictability pay for changes to the written work schedule provided
17 to the employee with the advance notice required in Section 14.22.045.

18 1. The employer shall compensate the employee with one hour of predictability
19 pay at the employee's regular rate of pay, in addition to wages earned for the following reasons:

20 a. Adding hours of work; or

21 b. Changing the date or start or end time of a shift with no loss of hours.

1 2. The employer shall compensate the employee with predictability pay of no less
2 than one-half times the employee's regular rate of pay per hour for any scheduled hours the
3 employee does not work for the following reasons:

4 a. Subtracting hours from a regular shift before or after the employee
5 reports for duty;

6 b. Changing the date or start or end time of shift resulting in a loss of
7 hours;

8 c. Cancelling a shift; or

9 d. Scheduling an employee for an on-call shift for which the employee
10 does not need to report to work.

11 B. The requirements for additional compensation in subsection 14.22.050.A shall not
12 apply only under the following circumstances:

13 1. Mutually agreed upon shift swaps or coverage among employees that may be
14 approved in writing by the employer;

15 2. Additional hours that an employee volunteers to work in response to an
16 employer mass communication, whether in physical or electronic format, about the availability
17 of additional hours that are the result of another employee being unable to work scheduled hours;

18 3. Additional hours that an employee consents to work as the result of accepting
19 an offer of work pursuant to Section 14.22.055;

20 4. Changes that an employee voluntarily makes to the employee's own schedule
21 and documents with written consent;

22 5. Employee hours that are cut due to disciplinary reasons. The incident leading
23 to discipline must be documented;

1 6. Operations cannot begin or continue due to threats to employees or property, or
2 civil authorities recommend that work cannot begin or continue;

3 7. Operations cannot begin or continue because public utilities fail to supply
4 electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

5 8. Operations cannot begin or continue due to natural disaster or other cause not
6 within the employer's control pursuant to rules issued by the Director.

7 **14.22.052 Pattern or Practice of Underscheduling**

8 A systemic pattern or practice of significant underscheduling where the hours employees actually
9 work are significantly above those that are scheduled is a violation of this Chapter 14.22.

10 **14.22.055 Access to hours for existing employees**

11 A. An employer must offer additional hours of work to existing employees before hiring
12 additional employees or subcontractors, including hiring through the use of temporary services
13 or staffing agencies, for that particular workplace.

14 B. Except as provided in this subsection 14.22.055.B, the employer must post written
15 notice of available hours of work for at least three consecutive days, unless all eligible
16 employees advise in writing they are not interested in the available hours.

17 1. The notice must contain the following information:

18 a. Description and title of the position;

19 b. Required qualifications for the position;

20 c. Total hours of work being offered;

21 d. Schedule of available shifts;

22 e. Whether the available shifts will occur at the same time each week; and

1 f. Length of time the employer anticipates requiring coverage of the
2 additional hours.

3 2. The employer must post the notice in a conspicuous and accessible location
4 where employee notices are customarily posted, in English and the primary language(s) of the
5 employee(s) at the particular workplace. If the employer posts the notice in electronic format, all
6 employees in the workplace must have access to it on-site.

7 3. The employer may post the notice concurrently to external candidates.

8 C. The employer shall offer additional hours of work to an existing employee who has
9 responded to the offer of work, and who, to a reasonable employer acting in good faith is
10 qualified with the skills and experience to perform the work.

11 1. The employer shall give the employee at least two days, running from the date
12 of the employer's offer, to accept the additional hours of work.

13 2. If more than one qualified employee responds to the offer of additional hours of
14 work, the employer may distribute the work among interested employees. The employer may
15 limit distribution of hours to full shifts rather than parceling hours among employees. The
16 employer may choose among qualified internal candidates following the employer's customary
17 hiring procedures.

18 3. If the employee accepts additional hours of work for seasonal employment, the
19 employer may reasonably delay scheduling such hours and permit new employees to start
20 working for training purposes, provided that the employer provides the existing employee with a
21 prospective start date for the additional hours.

22 D. If no qualified employee responds to the written notice of additional hours of work
23 following the three-day posting requirement, or accepts an offer of additional hours during the

1 two-day acceptance period, the employer may immediately proceed with hiring new employees
2 from an external applicant pool to work the additional hours.

3 E. This Section 14.22.055 shall not apply, in whole or in part, as follows:

4 1. If an employer chooses to maintain an access to hours list, the requirement to
5 offer additional hours of work in subsection 14.022.055.A may be limited to employees on the
6 access to hours list.

7 a. At time of hire, all employees will be included on an access to hours list
8 for consideration of additional hours unless the employee opts out of the list by informing the
9 employer they do not want to be on the list.

10 b. The employee may choose to opt in or off the list by notifying the
11 employer at any time.

12 c. The employer's written notice of additional hours of work shall contain
13 the items described in subsection 14.22.055.B.1 and shall be posted for each employee on the
14 access to hours list in a conspicuous and accessible format, including but not limited to
15 placement where employee notices are customarily posted, in-person delivery, telephone call,
16 email, text message, or other electronic or written format, in English and the primary language(s)
17 of the employee(s) at the particular workplace.

18 d. If no qualified employee on the access to hours list responds to the
19 written notice of additional hours of work after the employer has provided notice to all such
20 employees, or accepts an offer of additional hours during the two-day acceptance period, the
21 employer may immediately proceed with hiring new employees from an external applicant pool
22 to work the additional hours.

1 2. This Section 14.22.055 shall not apply to additional hours of work that the
2 employer has designated for hiring programs, whether diversity hiring programs or young adult
3 hiring programs, affiliated with an external government entity or external non-profit
4 organization.

5 3. This Section 14.22.055 shall not be construed to require any employer to offer
6 employees work hours paid at one and one-half times the regular rate of pay (i.e. the overtime
7 premium) under RCW 49.46.130, nor to prohibit any employer from offering such work hours.

8 **14.22.060 Notice and posting**

9 A. The Agency shall create and distribute a poster giving notice of the rights afforded by
10 Chapter 14.22. The Agency shall create and distribute the poster in English, Spanish, and any
11 other languages that are necessary for employers to comply with subsection 14.22.025.B. The
12 poster shall give notice of the following rights under this Chapter 14.22:

13 1. The right to a good faith estimate of work schedules; the right to request input
14 into the work schedule; the right to advance notice of work schedules; the right to rest between
15 work shifts; the rights related to work schedule changes, including but not limited to the right to
16 predictability pay; and the right to access additional hours of work;

17 2. The right to be protected from retaliation for exercising in good faith the rights
18 protected by this Chapter 14.22; and

19 3. The right to file a complaint with the Agency or bring a civil action for
20 violation of the requirements of this Chapter 14.22, including an employer's failure to pay all
21 compensation owed by reason of employment, and an employer or other person's retaliation
22 against an employee or other person for engaging in an activity protected by this Chapter 14.22.

1 B. Employers shall display the poster in a conspicuous and accessible place at any
2 workplace or job site where any of their employees work. Employers shall display the poster in
3 English and in the primary language(s) of the employee(s) at the particular workplace. If display
4 of the poster is not feasible, including situations when the employee works remotely or does not
5 have a regular workplace or job site, employers may provide the poster on an individual basis in
6 an employee's primary language in physical or electronic format that is reasonably conspicuous
7 and accessible.

8 **14.22.065 Employer records**

9 A. Each employer shall retain records that document compliance with this Chapter 14.22
10 including:

- 11 1. Written good faith estimates of employee work schedules;
- 12 2. Written documentation regarding an employer's response to an employee's
13 request for a change in work schedule when required by Section 14.22.030;
- 14 3. Work schedules;
- 15 4. Payroll records, including documentation of additional compensation paid to
16 each employee as required by this Chapter 14.22;
- 17 5. Written notices for additional hours of work available for existing employees;
- 18 6. Written records of employees who have expressed interest in accepting
19 additional hours of work (i.e. access to hours list); and
- 20 7. Pursuant to rules issued by the Director, other records that are material and
21 necessary to effectuate the terms of this Chapter 14.22.

22 B. Records required by this Section 14.22.065 shall be retained for a period of three years
23 from the date such hours were worked.

1 C. If an employer fails to retain adequate records required under subsection 14.22.065.A,
2 there shall be a presumption, rebuttable by clear and convincing evidence, that the employer
3 violated this Chapter 14.22 for the periods and for each employee for whom records were not
4 retained.

5 D. Respondents in any case closed by the Agency shall allow the Office of City Auditor
6 access to such records to permit the Office of City Auditor to evaluate the Agency's enforcement
7 efforts. Before requesting records from such a respondent, the Office of City Auditor shall first
8 consult the Agency's respondent records on file and determine if additional records are
9 necessary. The City Auditor may apply by affidavit or declaration in the form allowed under
10 RCW 9A.72.085 to the Hearing Examiner for the issuance of subpoenas under this subsection
11 14.22.065.D. The Hearing Examiner shall issue such subpoenas upon a showing that the records
12 are required to fulfill the purpose of this subsection 14.22.065.D.

13 **14.22.070 Retaliation prohibited**

14 A. No employer or any other person shall interfere with, restrain, deny, or attempt to
15 deny the exercise of any right protected under this Chapter 14.22.

16 B. No employer or any other person shall take any adverse action against any person
17 because the person has exercised in good faith the rights protected under this Chapter 14.22.
18 Such rights include but are not limited to the right to make inquiries about the rights protected
19 under this Chapter 14.22; the right to inform others about their rights under this Chapter 14.22;
20 the right to inform the person's employer, union, or similar organization, and/or the person's
21 legal counsel or any other person about an alleged violation of this Chapter 14.22; the right to
22 file an oral or written complaint with the Agency or bring a civil action for an alleged violation
23 of this Chapter 14.22; the right to cooperate with the Agency in its investigations of this Chapter

1 14.22; the right to testify in a proceeding under or related to this Chapter 14.22; the right to
2 refuse to participate in an activity that would result in a violation of city, state or federal law; and
3 the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.22.

4 C. No employer or any other person shall communicate to a person exercising rights
5 protected under this Section 14.22.070, directly or indirectly the willingness to inform a
6 government employee that the person is not lawfully in the United States, or to report, or to make
7 an implied or express assertion of a willingness to report, suspected citizenship or immigration
8 status of an employee or a family member of the employee to a federal, state, or local agency
9 because the employee has exercised a right under this Chapter 14.22.

10 D. It shall be considered a rebuttable presumption of retaliation if an employer or any
11 other person takes an adverse action against a person within 90 days of the person's exercise of
12 rights protected in this Section 14.22.070. However, in the case of seasonal work that ended
13 before the close of the 90 day period, the presumption also applies if the employer fails to rehire
14 a former employee at the next opportunity for work in the same position. The employer may
15 rebut the presumption with clear and convincing evidence that the adverse action was taken for a
16 permissible purpose.

17 E. Standard of proof. Proof of retaliation under this Section 14.22.070 shall be sufficient
18 upon a showing that an employer or any other person has taken an adverse action against a
19 person and the person's exercise of rights protected in Section 14.22.070 was a motivating factor
20 in the adverse action, unless the employer can prove that the action would have been taken in the
21 absence of such protected activity.

22 F. The protections afforded under this Section 14.22.070 shall apply to any person who
23 mistakenly but in good faith alleges violations of this Chapter 14.22.

1 G. A complaint or other communication by any person triggers the protections of this
2 Section 14.22.070 regardless of whether the complaint or communication is in writing or makes
3 explicit reference to this Chapter 14.22.

4 **14.22.075 Enforcement power and duties**

5 A. The Agency shall have the power to investigate violations of this Chapter 14.22, as
6 defined herein, and shall have such powers and duties in the performance of these functions as
7 are defined in this Chapter 14.22 and otherwise necessary and proper in the performance of the
8 same and provided for by law.

9 B. The Agency shall be authorized to coordinate implementation and enforcement of this
10 Chapter 14.22 and shall promulgate appropriate guidelines or rules for such purposes.

11 C. The Director of the Agency is authorized and directed to promulgate rules consistent
12 with this Chapter 14.22 and Chapter 3.02. Any guidelines or rules promulgated by the Director
13 shall have the force and effect of law and may be relied on by employers, employees, and other
14 parties to determine their rights and responsibilities under this Chapter 14.22.

15 **14.22.080 Violation**

16 The failure of any respondent to comply with any requirement imposed on the respondent under
17 this Chapter 14.22 is a violation.

18 **14.22.085 Investigation**

19 A. The Agency shall have the power to investigate any violations of this Chapter 14.22
20 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the
21 Director including, but not limited to, situations when the Director has reason to believe that a
22 violation has occurred or will occur, or when circumstances show that violations are likely to
23 occur within a class of businesses because the workforce contains significant numbers of

1 workers who are vulnerable to violations of this Chapter 14.22 or the workforce is unlikely to
2 volunteer information regarding such violations. An investigation may also be initiated through
3 the receipt by the Agency of a report or complaint filed by an employee or any other person.

4 B. An employee or other person may report to the Agency any suspected violation of this
5 Chapter 14.22. The Agency shall encourage reporting pursuant to this Section 14.22.085 by
6 taking the following measures:

7 1. The Agency shall keep confidential, to the maximum extent permitted by
8 applicable laws, the name and other identifying information of the employee or person reporting
9 the violation. However, with the authorization of such person, the Agency may disclose the
10 employee's or person's name and identifying information as necessary to enforce this Chapter
11 14.22 or for other appropriate purposes.

12 2. An employer must post or otherwise notify its employees that the Agency is
13 conducting an investigation, using a form provided by the Agency and displaying it on-site, in a
14 conspicuous and accessible location, and in English and the primary language(s) spoken by the
15 employee(s) at the particular workplace. If display of the form is not feasible, including
16 situations when the employee works remotely or does not have a regular workplace, employers
17 may provide the form on an individual basis in physical or electronic format that is reasonably
18 conspicuous and accessible.

19 3. The Agency may certify the eligibility of eligible persons for “U” visas under
20 the provisions of 8 U.S.C. § 1184(p) and 8 U.S.C. § 1101(a)(15)(U). The certification is subject
21 to applicable federal law and regulations, and rules issued by the Director.

22 C. The Agency’s investigation must commence within three years of the alleged
23 violation. To the extent permitted by law, the applicable statute of limitations for civil actions is

1 tolled during any investigation under this Chapter 14.22 and any administrative enforcement
2 proceeding under this Chapter 14.22 based upon the same facts. For purposes of this Chapter
3 14.22:

4 1. The Agency's investigation begins on the earlier date of when the Agency
5 receives a complaint from a person under this Chapter 14.22, or the Agency opens an
6 investigation under this Chapter 14.22.

7 2. The Agency's investigation ends when the Agency issues a final order
8 concluding the matter and any appeals have been exhausted; the time to file any appeal has
9 expired; or the Agency notifies the respondent in writing that the investigation has been
10 otherwise resolved.

11 D. The Agency's investigation shall be conducted in an objective and impartial manner.

12 E. The Director may apply by affidavit or declaration in the form allowed under RCW
13 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring an employer to
14 produce the records identified in subsection 14.22.065.A, or for the attendance and testimony of
15 witnesses, or for the production of documents required to be retained under subsection
16 14.22.065.A, or any other document relevant to the issue of whether any employee or group of
17 employees has been or is afforded proper amounts of compensation under this Chapter 14.22
18 and/or to whether an employer has violated any provision of this Chapter 14.22. The Hearing
19 Examiner shall conduct the review without hearing as soon as practicable and shall issue
20 subpoenas upon a showing that there is reason to believe that a violation has occurred if a
21 complaint has been filed with the Agency, or that circumstances show that violations are likely to
22 occur within a class of businesses because the workforce contains significant numbers of

1 workers who are vulnerable to violations of this Chapter 14.22 or the workforce is unlikely to
2 volunteer information regarding such violations.

3 F. An employer that fails to comply with the terms of any subpoena issued under
4 subsection 14.22.085.E in an investigation by the Agency under this Chapter 14.22 prior to the
5 issuance of a Director's Order issued pursuant to subsection 14.22.090.C may not use such
6 records in any appeal to challenge the correctness of any determination by the Agency of
7 damages owed or penalties assessed.

8 G. In addition to other remedies, the Director may refer any subpoena issued under
9 subsection 14.22.085.E, to the City Attorney to seek a court order to enforce any subpoena.

10 H. Where the Director has reason to believe that a violation has occurred, the Director
11 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
12 status quo pending completion of a full investigation or hearing, including but not limited to a
13 deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest,
14 damages and penalties due. A respondent may appeal any such order in accordance with Section
15 14.22.100.

16 **14.22.090 Findings of fact and determination**

17 A. Except when there is an agreed upon settlement, the Director shall issue a written
18 determination with findings of fact resulting from the investigation and statement of whether a
19 violation of this Chapter 14.22 has or has not occurred based on a preponderance of the evidence
20 before the Director.

21 B. If the Director determines that there is no violation of this Chapter 14.22, the Director
22 shall issue a "Determination of No Violation" with notice of an employee or other person's right
23 to appeal the decision, subject to the rules of the Director.

1 C. If the Director determines that a violation of this Chapter 14.22 has occurred, the
2 Director shall issue a “Director’s Order” that shall include a notice of violation identifying the
3 violation or violations. The Director’s Order shall state with specificity the amounts due under
4 this Chapter 14.22 for each violation, including payment of unpaid compensation, liquidated
5 damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to
6 Section 14.22.095. The Director’s Order may specify that civil penalties and fines due to the
7 Agency can be mitigated for respondent’s timely payment of remedy due to an aggrieved party
8 under subsection 14.22.095.A.2. The Director’s Order may direct the respondent to take such
9 corrective action as is necessary to comply with the requirements of this Chapter 14.22,
10 including, but not limited to, monitored compliance for a reasonable time period. The Director’s
11 Order shall include notice of the respondent’s right to appeal the decision, pursuant to Section
12 14.22.100.

13 **14.22.095 Remedies**

14 A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties
15 payable to aggrieved parties, fines, and interest provided under this Chapter 14.22 are cumulative
16 and are not intended to be exclusive of any other available remedies, penalties, fines, and
17 procedures.

18 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
19 fines contained in this Section 14.22.095 shall be increased annually to reflect the rate of
20 inflation and calculated to the nearest cent on January 1 of each year. The Agency shall
21 determine the amounts and file a schedule of such amounts with the City Clerk.

22 2. If there is a remedy due to an aggrieved party, the Director may waive the total
23 amount of civil penalties and fines due to the Agency if the Director determines that the

1 respondent paid the full remedy due to the aggrieved party within ten days of service of the
2 Director's Order. The Director may waive half the amount of civil penalties and fines due to the
3 Agency if the Director determines that the respondent paid the full remedy due to the aggrieved
4 party within 15 days of service of the Director's Order. The Director shall not waive any amount
5 of civil penalties and fines due to the Agency if the Director determines that the respondent has
6 not paid the full remedy due to the aggrieved party after 15 days of service of the Director's
7 Order.

8 3. When determining the amount of liquidated damages, civil penalties, penalties
9 payable to aggrieved parties, and fines due under this Section 14.22.095, for a Settlement
10 Agreement or Director's Order, including but not limited to the mitigation of civil penalties and
11 fines due to the Agency for timely payment of remedy due to an aggrieved party under
12 subsection 14.22.095.A.2, the Director shall consider the total amount of unpaid compensation,
13 liquidated damages, penalties, fines, and interest due; the nature and persistence of the violations;
14 the extent of the respondent's culpability, the substantive or technical nature of the violations;
15 the size, revenue, and human resources capacity of the respondent; the circumstances of each
16 situation; the amounts of penalties in similar situations; and other factors pursuant to rules issued
17 by the Director.

18 B. A respondent found to be in violation of this Chapter 14.22 shall be liable for full
19 payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of
20 this Chapter 14.22, and other equitable relief. For a first violation of this Chapter 14.22, the
21 Director may assess liquidated damages in an additional amount of up to twice the unpaid
22 compensation. For subsequent violations of this Chapter 14.22, the Director shall assess an
23 amount of liquidated damages in an additional amount of twice the unpaid compensation. If the

1 violation is ongoing when the Agency receives a complaint or opens an investigation, the
2 Director may order payment of amounts that accrue after receipt of the complaint or after the
3 investigation opens and before the date of the Director's Order. Interest shall accrue from the
4 date the unpaid compensation were first due at 12 percent per annum, or the maximum rate
5 permitted under RCW 19.52.020. For purposes of establishing a first and subsequent violation
6 for this Section 14.22.095, the violation must have occurred within ten years of the Director's
7 Order.

8 C. A respondent found to be in violation of this Chapter 14.22 for retaliation under
9 Section 14.22.070 shall be subject to any appropriate relief at law or equity including, but not
10 limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full
11 payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of
12 this Chapter 14.22, and liquidated damages in an additional amount of up to twice the unpaid
13 compensation. The Director also shall order the imposition of a penalty payable to the aggrieved
14 party of up to \$5,000.

15 D. A respondent who willfully violates the notice and posting requirements of subsection
16 14.22.060.B shall be subject to a civil penalty of \$750 for the first violation and \$1,000 for
17 subsequent violations.

18 E. A respondent who willfully hinders, prevents, impedes, or interferes with the Director
19 or Hearing Examiner in the performance of their duties under this Chapter 14.22 shall be subject
20 to a civil penalty of not less than \$1,000 and not more than \$5,000.

21 F. For a first violation of this Chapter 14.22, the Director may assess a civil penalty of up
22 to \$500 per aggrieved party. For a second violation of this Chapter 14.22, the Director shall
23 assess a civil penalty of up to \$1,000 per aggrieved party, or an amount equal to ten percent of

1 the total amount of unpaid compensation, whichever is greater. For a third or any subsequent
2 violation of this Chapter 14.22, the Director shall assess a civil penalty of up to \$5,000 per
3 aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation,
4 whichever is greater. The maximum civil penalty for a violation of this Chapter 14.22 shall be
5 \$20,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid
6 compensation, whichever is greater. For purposes of this Section 14.22.095, a violation is a
7 second, third, or subsequent violation if the respondent has been a party to one, two or more than
8 two Settlement Agreements, respectively, stipulating that a violation has occurred; and/or one,
9 two, or more than two Director's Orders, respectively, have issued against the respondent in the
10 ten years preceding the date of the violation; otherwise, it is a first violation.

11 G. For the following violations, the Director may assess a fine in the amounts set forth
12 below:

Violation	Fine
Failure to provide a good faith estimate of work schedule under Section 14.22.025	\$500
Failure to provide a written response to a request for a predictable or flexible working arrangement under subsection 14.22.030.C	\$500
Failure to compensate employee at one and one-half times pay for working a shift that is separated by less than ten hours under Section 14.22.035	\$500
Failure to provide at least 14 days of advance notice of work schedule under Section 14.22.040	\$500
Failure to compensate employee with predictability pay for work schedule changes under Section 14.22.045	\$500
Systemic pattern or practice of significant underscheduling under Section 14.22.052	\$500
Failure to offer additional hours of work to existing employees under Section 14.22.055	\$500
Failure to provide employees with written notice of rights under subsection 14.22.060	\$500

Failure to maintain records for three years under Section 14.22.065	\$500 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.22.070	\$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.22.085.B.2	\$500
Failure to provide notice of failure to comply with final order to the public under Section 14.22.115.A.1	\$500

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The fine amounts shall be increased cumulatively by 50 percent of the fine for each preceding violation for each subsequent violation of the same provision by the same employer or person within a ten year period. The maximum amount that may be imposed in fines in any one year period for each type of violation listed above is \$5,000 unless a fine for retaliation is issued, in which case the maximum amount is \$20,000.

H. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City reasonable costs incurred in enforcing this Chapter 14.22, including but not limited to reasonable attorneys' fees.

I. An employer that is the subject of a settlement agreement stipulating that a violation shall count for debarment, or final order for which all appeal rights have been exhausted shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If an employer is the subject of a final order two times or more within a five-year period, the contractor or subcontractor shall not be allowed to bid on any City contract for two years. This subsection 14.22.095.I. shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter provided that nothing in this subsection 14.22.095.I shall be construed to limit the application of Chapter 20.70. The Director shall

1 notify the Director of Finance and Administrative Services of all employers subject to debarment
2 under this subsection 14.22.095.I.

3 **14.22.100 Appeal period and failure to respond**

4 A. An employee or other person who claims an injury as a result of an alleged violation
5 of this Chapter 14.22 may appeal the Determination of No Violation Shown, pursuant to the
6 rules of the Director.

7 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
8 to Section 14.22.095, by requesting a contested hearing before the Hearing Examiner in writing
9 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
10 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
11 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
12 until 5 p.m. on the next business day.

13 **14.22.105 Appeal procedure and failure to appear**

14 A. Contested hearings shall be conducted pursuant to the procedures for hearing contested
15 cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing
16 contested cases. The review shall be conducted de novo and the Director shall have the burden of
17 proof by a preponderance of the evidence before the Hearing Examiner. Upon establishing such
18 proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that
19 the Director abused discretion. Failure to appear for a contested hearing will result in an order
20 being entered finding that the employer committed the violation stated in the Director's order. For
21 good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may
22 set aside an order entered upon a failure to appear.

1 B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying
2 or reversing the Director's order.

3 **14.22.110 Appeal from Hearing Examiner order**

4 A. The respondent may obtain judicial review of the decision of the Hearing Examiner by
5 applying for a Writ of Review in the King County Superior Court within 30 days from the date
6 of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable
7 law, and court rules.

8 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
9 sought in compliance with this Section 14.22.110.

10 **14.22.115 Failure to comply with final order**

11 A. If a respondent fails to comply within 30 days of service of any settlement agreement
12 with the Agency, or with any final order issued by the Director or the Hearing Examiner for
13 which all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the
14 following measures to secure compliance:

15 1. The Director may require the respondent to post public notice of the
16 respondent's failure to comply in a form and manner determined by the Agency.

17 2. The Director may refer the matter to a collection agency. The cost to the City
18 for the collection services will be assessed as costs, at the rate agreed to between the City and the
19 collection agency, and added to the amounts due.

20 3. The Director may refer the matter to the City Attorney for the filing of a civil
21 action in King County Superior Court, the Seattle Municipal Court, or any other court of
22 competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the

1 Director may seek to enforce a settlement agreement, Director's Order or a final order of the
2 Hearing Examiner under Section 14.22.120.

3 4. The Director may request that the City's Department of Finance and
4 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
5 requested by the employer or person until such time as the employer complies with the remedy
6 as defined in the settlement agreement or final order. The City's Department of Finance and
7 Administrative Services shall have the authority to deny, refuse to renew, or revoke any business
8 license in accordance with this subsection 14.22.115.A.4.

9 B. No respondent that is the subject of a settlement agreement or final order issued under
10 this Chapter 14.22 shall quit business, sell out, exchange, convey, or otherwise dispose of the
11 respondent's business or stock of goods without first notifying the Agency and without first
12 notifying the respondent's successor of the amounts owed under the final order at least three
13 business days prior to such transaction. At the time the respondent quits business, or sells out,
14 exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount
15 of the remedy, as defined in the settlement agreement or the final order issued by the Director or
16 the Hearing Examiner, shall become immediately due and payable. If the amount due under the
17 settlement agreement or final order is not paid by respondent within ten days from the date of
18 such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment
19 of the amount due, provided that the successor has actual knowledge of the order and the
20 amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact
21 and amount of the order and the amounts due. The successor shall withhold from the purchase
22 price a sum sufficient to pay the amount of the full remedy. When the successor makes such
23 payment, that payment shall be deemed a payment upon the purchase price in the amount paid,

1 and if such payment is greater in amount than the purchase price the amount of the difference
2 shall become a debt due such successor from the employer.

3 **14.22.120 Debt owed The City of Seattle**

4 A. All monetary amounts due under the settlement agreement or Director's Order shall be
5 a debt owed to the City and may be collected in the same manner as any other debt in like
6 amount, which remedy shall be in addition to all other existing remedies, provided that amounts
7 collected by the City for unpaid compensation, liquidated damages, penalties payable to
8 aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and, once
9 collected by the City, shall be paid by the City to the aggrieved party.

10 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
11 time period set forth in subsection 14.22.100.B the Director's Order shall be final, and the
12 Director may petition the Seattle Municipal Court to enforce the Director's Order by entering
13 judgment in favor of the City finding that the respondent has failed to exhaust its administrative
14 remedies and that all amounts and relief contained in the order are due. The Director's Order
15 shall constitute prima facie evidence that a violation occurred and shall be admissible without
16 further evidentiary foundation. Any certifications or declarations authorized under RCW
17 9A.72.085 containing evidence that the respondent has failed to comply with the order or any
18 parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's
19 Order to the Hearing Examiner within the time period set forth in subsection 14.22.100.B and
20 therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible
21 without further evidentiary foundation.

22 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
23 within the time period set forth in subsection 14.22.110.A, the order of the Hearing Examiner

1 shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
2 Order by entering judgment in favor of the City for all amounts and relief due under the order of
3 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
4 that the violations contained therein occurred and shall be admissible without further evidentiary
5 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing
6 evidence that the respondent has failed to comply with the order or any parts thereof, and is
7 therefore in default, or that the respondent has failed to avail itself of judicial review in
8 accordance with subsection 14.22.110.A, shall also be admissible without further evidentiary
9 foundation.

10 D. In considering matters brought under subsections 14.22.120.B and 14.22.120.C, the
11 Municipal Court may include within its judgment all terms, conditions, and remedies contained
12 in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are
13 consistent with the provisions of this Chapter 14.22.

14 **14.22.125 Private right of action**

15 A. Any person or class of persons that suffers financial injury as a result of a violation of
16 this Chapter 14.22 or is the subject of prohibited retaliation under Section 14.22.070, may bring a
17 civil action in a court of competent jurisdiction against the employer or other person violating
18 this Chapter 14.22 and, upon prevailing, may be awarded reasonable attorney fees and costs and
19 such legal or equitable relief as may be appropriate to remedy the violation including, without
20 limitation, the payment of any unpaid compensation plus interest due to the person and
21 liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty
22 payable to any aggrieved party of up to \$5,000 if the aggrieved party was subject to prohibited

1 retaliation. Interest shall accrue from the date the unpaid compensation were first due at 12
2 percent per annum, or the maximum rate permitted under RCW 19.52.020.

3 B. For purposes of this Section 14.22.125, “person” includes any entity a member of
4 which has suffered financial injury or retaliation, or any other individual or entity acting on
5 behalf of an aggrieved party that has suffered financial injury or retaliation.

6 C. For purposes of determining membership within a class of persons entitled to bring an
7 action under this Section 14.22.125, two or more employees are similarly situated if they:

- 8 1. Are or were employed by the same employer or employers, whether
- 9 concurrently or otherwise, at some point during the applicable statute of limitations period,
- 10 2. Allege one or more violations that raise similar questions as to liability, and
- 11 3. Seek similar forms of relief.

12 D. For purposes of subsection 14.22.125.C, employees shall not be considered dissimilar
13 solely because their

- 14 1. Claims seek damages that differ in amount, or
- 15 2. Job titles or other means of classifying employees differ in ways that are
- 16 unrelated to their claims.

17 **14.22.130 Study of application of secure scheduling requirements**

18 A. The Council shall request the City Auditor to contract with academic researchers who
19 have a proven track record of rigorous analysis of the impacts of labor standards regulations to
20 conduct an evaluation of the impacts of Council Bill XXXXXX for the baseline, six-month, 18-
21 month, and two-year periods following implementation. Areas of evaluation shall include, but
22 not be limited to the impacts to businesses, including costs, and employees of the requirements

1 of this Chapter 14.22, differences and challenges between limited and full-service restaurants in
2 implementing the ordinance, and the interplay of diversity programs and access to hours lists.

3 B. The Council shall use the results of the evaluation to identify possible areas for
4 revision and to determine whether to extend application, in whole or in part, to employers in
5 different industries and/or with different thresholds for coverage.

6 **14.22.135 Encouragement of more generous policies**

7 A. Nothing in this Chapter 14.22 shall be construed to discourage or prohibit an employer
8 from the adoption or retention of scheduling policies more generous than the one required herein.

9 B. Nothing in this Chapter 14.22 shall be construed as diminishing the obligation of an
10 employer to comply with any contract, collective bargaining agreement, employment benefit
11 plan, or other agreement providing more generous scheduling policies to an employee than
12 required herein.

13 C. Nothing in this Chapter 14.22 shall be construed as diminishing the rights of public
14 employees regarding scheduling policies as provided under federal or Washington state law or
15 the Seattle Municipal Code.

16 **14.22.140 Other legal requirements**

17 This Chapter 14.22 defines requirements for secure scheduling and shall not be construed to
18 preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement,
19 policy, or standard that provides for greater requirements; and nothing in this Chapter 14.22 shall
20 be interpreted or applied so as to create any power or duty in conflict with federal or state law.
21 Nor shall this Chapter 14.22 be construed to preclude any person aggrieved from seeking judicial
22 review of any final administrative decision or order made under this Chapter 14.22 affecting
23 such person.

1 **14.22.145 Collective bargaining agreement for secure scheduling**

2 Employees may ratify, through a collective bargaining agreement, an alternative structure for
3 secure scheduling that meets the public policy goals of this Chapter 14.22.

4 **14.22.150 Severability**

5 The provisions of this Chapter 14.22 are declared to be separate and severable. If any clause,
6 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.22, or the
7 application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not
8 affect the validity of the remainder of this Chapter 14.22, or the validity of its application to
9 other persons or circumstances.

10 Section 2. Subsection 14.20.025.D of the Seattle Municipal Code, which section was
11 enacted by Ordinance 124960, is amended as follows:

12 **14.20.025 Notice and posting**

13 * * *

14 D. Employers shall give written notice of employment information to employees that
15 contains items listed in subsections 14.20.025.D.~~((1))~~4.a through 14.20.025.D.~~((7))~~4.i in English
16 and in the primary language(s) of the employee(s) receiving the written information.

17 1. Employers shall give this written notice to employees at time of hire and,
18 effective July 1, 2017, to all employees who work for the employer as of that date and in the
19 future.

20 2. Employers shall revise this written notice before any change to such
21 employment information, or as soon as practicable for retroactive changes to such employment
22 information, pursuant to rules issued by the Director. For the written good faith estimate of the
23 employee's work schedule in subsection 14.20.025.4.h, the employer shall only be required to

1 revise the notice when there is a significant change to the work schedule due to the employee's
2 request for a predictable, stable or flexible work schedule or due to changes in the employer's
3 staffing needs, pursuant to Section 14.22.025. ((Effective April 1, 2016, employers shall give this
4 written notice to all employees who work for the employer as of that date and in the future.))

5 3. If an employer fails to give this written notice for the items listed in subsections
6 14.20.025.D.4.a through 14.20.025.D.4.g, the failure shall constitute evidence weighing against
7 the credibility of the employer's testimony regarding the agreed-upon rate of pay.

8 4. The written notice shall include the following items:

9 ~~((1.))~~ a. Name of employer and any trade ("doing business as") names used
10 by the employer;

11 ~~((2.))~~ b. Physical address of the employer's main office or principal place
12 of business and, if different, a mailing address;

13 ~~((3.))~~ c. Telephone number and, if applicable, email address of the
14 employer;

15 ~~((4.))~~ d. Employee's rate or rates of pay, and, if applicable, eligibility to
16 earn an overtime rate or rates of pay;

17 ~~((5.))~~ e. Employer's tip policy, with an explanation of any tip sharing,
18 pooling, or allocation policies;

19 ~~((6.))~~ f. Pay basis (e.g. hour, shift, day, week, commission);

20 ~~((7.))~~ g. Employee's established pay day for earned compensation due by
21 reason of employment; ~~((and))~~

1 5. The property at which the business is located has been determined by a court
2 to be a chronic nuisance property as provided in Chapter 10.09.

3 6. The applicant or licensee has been convicted of theft under subsection
4 12A.08.060.A.4 within the last ten years.

5 7. The applicant or licensee is a person subject within the last ten years to a
6 court order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or
7 29 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later
8 of either:

9 a. the expiration of the time for filing an appeal from the final judgment
10 order under the court rules in effect at the time of the final judgment order; or

11 b. if a timely appeal is made, the date of the final resolution of that
12 appeal and any subsequent appeals resulting in final judicial affirmation of the findings of
13 violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

14 8. The applicant or licensee is a person subject within the last ten years to a final
15 and binding citation and notice of assessment from the Washington Department of Labor and
16 Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and
17 penalties assessed therewith were not satisfied within 30 days of the date the citation became
18 final and binding.

19 9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, ~~((and))~~
20 14.20.080.A.4, and 14.22.115.A.4, the applicant or licensee has failed to comply within 30
21 days of service of any settlement agreement, any final order issued by the Division Director of
22 the Office of Labor Standards within the Office for Civil Rights, or any final order issued by
23 the Hearing Examiner under Chapters 14.16, 14.17, 14.19, ~~((and))~~ 14.20, and 14.22, for which

1 all appeal rights have been exhausted, and the Division Director of the Office of Labor
2 Standards within the Office for Civil Rights has requested that the Director deny, refuse to
3 renew, or revoke any business license held or requested by the applicant or licensee. The
4 denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s)
5 under Chapters 14.16, 14.17, 14.19, ~~((and))~~ 14.20, and 14.22 are remedied.

6 10. The business is one that requires an additional license under this Title 6 and
7 the business does not hold that license.

8 11. The business has been determined under a separate enforcement process to
9 be operating in violation of law.

10 * * *

11 Section 4. Section 3.14.945 of the Seattle Municipal Code, last amended by Ordinance
12 124643, is amended as follows:

13 **3.14.945 Office of Labor Standards**

14 There is established in the Office for Civil Rights an Office of Labor Standards, under the direction
15 of the Mayor. There shall be a Division Director to manage the Office of Labor Standards. The
16 Director of the Office for Civil Rights shall appoint the Division Director subject to the approval
17 of the Mayor. The mission of the Office of Labor Standards is to protect workers' wages, working
18 conditions, and safety and health, and to end barriers to workplace equity for women, communities
19 of color, immigrants and refugees, and other vulnerable workers. The functions of the Office of
20 Labor Standards are as follows:

21 A. Promoting labor standards by means of outreach and education and technical
22 assistance and training;

23 B. Collecting and analyzing data on the city's work force and workplaces;

1 C. Administering and enforcing City of Seattle ordinances relating to minimum wage
2 and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of
3 criminal history in employment decisions (Chapter 14.17), ~~((and))~~ wage and tip compensation
4 requirements (Chapter 14.20), and secure scheduling (Chapter 14.22).

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1 Section 5. The requirements of Chapter 14.22 of the Seattle Municipal Code created by
2 this ordinance shall be implemented on July 1, 2017.

3 Section 6. This ordinance shall take effect and be in force 30 days after its approval by
4 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
5 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

6 Passed by the City Council the ____ day of _____, 2016, and
7 signed by me in open session in authentication of its passage this
8 ____ day of _____, 2016.

9 _____
10 _____
11 President _____ of the City Council

12
13 Approved by me this ____ day of _____, 2016.

14 _____
15 _____
16 Edward B. Murray, Mayor

17
18 Filed by me this ____ day of _____, 2016.

19 _____
20 _____
21 Monica Martinez Simmons, City Clerk

22 (Seal)