

July 16, 2018

MEMORANDUM

To: HHEWR Committee
From: Patricia Lee, Central Staff
Subject: Domestic Workers Ordinance C.B. 119286

On July 19, 2018 the Council's Housing, Health, Energy and Workers Rights (HHEWR) Committee is scheduled to discuss and potentially vote on amendments to the Domestic Workers Ordinance (DWO), Council Bill (C.B.) 119286. The DWO would establish new labor standards and protections for domestic workers, a domestic workers standards board and a new chapter in the Seattle Municipal Code (14.23)

The DWO was initially discussed at the HHEWR Committee on June 21, 2018. A memo summarizing the DWO is attached to this memo as Attachment 1. The proposed amendments are informed by Councilmember Mosqueda's continuing discussions with stakeholders, Councilmembers and the Executive on how to provide effective labor protections for domestic workers. The purpose of this memo is to summarize the proposed amendments to the DWO.

There are 11 proposed amendments. If passed they would:

- Amend the domestic worker definition;
- Clarify responsibilities when a worker is hired by more than one hiring entity;
- Clarify and establish the labor standards that would apply to domestic workers;
- Clarify board membership and consultation with pertinent City offices and boards and commissions; and
- Clarify the implementation date

Amendment Process

The proposed amendments are shown in track changes in the latest draft of the DWO (D9), Attachment 2 to this memo. The HHEWR Committee can either vote on each amendment separately or move to substitute D9 of the DWO.

I. Definition of Domestic Worker

Background.

14.23.010, pages 3 and 4 defines a Domestic Worker and establishes four exceptions.

“Domestic worker” is narrowly construed to mean any worker:

- 1) who is paid by one or more hiring entities;
- 2) who provides services to an individual or household in or about a private home; and
- 3) whose primary occupation is work in the job classifications of nanny, house cleaner, home care worker, gardener, cook, and household manager.

“Domestic worker” includes hourly and salaried employees, independent contractors, full-time and part-time workers, and temporary workers.

The four exceptions are:

"Domestic worker" does not include any individual who is:

- 1) Working on a casual basis. Casual refers to work that is: irregular, uncertain, or incidental in nature and duration; and different in nature from the type of work the worker is customarily engaged in as that worker's occupation;
- 2) In a family relationship with the hiring entity;
- 3) A live-in worker; or
- 4) A home care worker who is paid through public funds.

Amendments 1-3 change the definition of Domestic Worker

1. Amend the definition of Domestic Worker, 14.23.010, page 3, to remove the requirement that the domestic work be the “primary occupation” of the worker.

“Domestic worker” is narrowly construed to mean any worker: ~~1) who~~ 1) is paid by one or more hiring entities; and 2) ~~who~~ provides domestic services to an individual or household in or about a private home; ~~and 3) whose primary occupation is work in the job classifications of~~ as a nanny, house cleaner, home care worker, gardener, cook, or household manager.

Summary/Analysis:

The words “primary occupation” was originally used to clarify that the DWO applied to workers who work in domestic services not to those who may occasionally provide a domestic service such as babysitting. However, there are many workers who work in

multiple jobs or for whom it would not be clear what their “primary” occupation is so it is proposed that this language be removed.

2. Amend the definition of casual work, 14.23.010, page 3 as follows:

1. Working on a casual basis. Casual refers to work that is 1) irregular, uncertain, or incidental in nature and duration; and 2) different in nature from the type of paid work in which the worker is customarily engaged ~~in, as that worker’s occupation;~~

Summary/Analysis:

Casual work is an exception and not covered in the DWO. The proposed language clarifies that casual work is different in nature from the type of paid work in which the worker is customarily engaged in. Again, this is to differentiate between workers who work in domestic services from someone who may occasionally provide a domestic service.

3. Amend the exceptions in 14.23.010, page 3 as follows:

~~3. — A live in worker;~~ or

Summary/Analysis:

Live-In workers sleep or reside at their place of employment. This amendment removes this exception from the definition of domestic worker so live-in workers would be covered by the DWO.

II. Hiring Entity

Background.

There are many different working arrangements for domestic workers; some are hired directly by a household and some are hired by an agency and deployed to a household. The DWO establishes new responsibilities on the hiring entity, whether an individual household or agency. Amendment 4 clarifies responsibilities when there is more than one hiring entity.

Amendment 4 clarifies responsibilities when there is more than one hiring entity.

4. Amend the definition of hiring entity, SMC 14.23.010, page 4 as follows:

“Hiring entity” means any individual, partnership, association, corporation, business trust, or any entity, person, or group of persons that pays a wage or pays for the services of a domestic worker.; It includes any such entity or person acting directly or indirectly in the interest of a hiring entity in relation to the domestic worker. ~~More than one entity may be the hiring entity if payment for service by one hiring entity is not completely disassociated from payment by the other entity. When an individual or household contracts with a separate hiring entity that employs the domestic worker(s) to provide domestic services, the separate hiring entity is solely liable for violations of~~

this Chapter 14.23 unless the individual or household interferes with the rights established for domestic worker(s) in this Chapter 14.23.

Summary/Analysis:

The proposed amendment clarifies that if an individual or household contracts with an agency to provide domestic services, the agency is responsible if there is a violation of the rights established in the DWO unless the individual or household interferes with the rights established for domestic workers in the DWO.

III. Labor Standards

Amendments 5-8 establish new labor standards and clarify existing language.

5. Clarify the language on Wages, SMC14.12.020 (A), page 5 as follows:

- A. Hiring entities shall pay domestic workers ~~compensation and wages that are~~ at least the equivalent ~~of~~ the “hourly minimum compensation” and “hourly minimum wages” established for Schedule 2 employers as set forth in Chapter 14.19. If the domestic worker is a covered employee for purposes of Chapter 14.19, the hiring entity must pay the domestic worker in accordance with its obligations under Chapter 14.19. ~~compensation and wages that are at least equivalent to the hourly minimum compensation and the hourly minimum wage required to be paid by the hiring entity as an employer under Chapter 14.19.~~

Summary/Analysis:

Domestic workers who are employees are already covered by the Seattle’s minimum wage and minimum compensation ordinance. Independent contractors are included in the definition of domestic worker in the DWO and therefore covered by any labor standard, such as wages, established in the DWO. The proposed language is a rewording for clarification of the requirements.

6. Amend the requirements for Rest Breaks and Meal Periods, and establish a new requirement for live-in workers, SMC 14.23.020 (B) pages 5 and 6.

- B. (1) Except as provided in subsection (2) n~~N~~o domestic worker shall be required to work more than five consecutive hours for the same hiring entity without a 30-minute uninterrupted unpaid meal period. The meal period shall be unpaid unless the domestic worker is required to be remain on-call at the prescribed work site and is required to return to work when called~~break.~~ Domestic workers shall be allowed an uninterrupted -rest break~~period~~ of not less than ten minutes, paid for by the hiring entity, for each four consecutive

hours worked for the same hiring entity. No domestic worker shall be required to work more than three consecutive hours for the same hiring entity without an uninterrupted rest break period.

(2) If the domestic worker's work responsibilities make it impossible or infeasible to take a meal period or rest break, the hiring entity shall provide additional compensation for the hours worked during the missed meal period or rest break.

(3) No domestic worker who resides or sleeps at a place of employment shall be required to work more than six consecutive days for the same hiring entity without an unpaid, 24-hour period of consecutive rest, pursuant to rules issued by the Director.

Summary/Analysis:

This clarifies the requirement for an uninterrupted 30-minute meal period if the domestic worker works more than five consecutive hours for the same hiring entity and a ten-minute uninterrupted rest break if they work four consecutive hours for the same hiring entity. If the work situation does not allow for an uninterrupted rest break or meal period, the domestic worker will be paid for that as if they worked additional time.

This mirrors Washington State meal and rest break requirements which do not cover Domestic [Workers](#). WAC 296-126-092.

This amendment also establishes a requirement that domestic workers who reside or sleep at their place of employment be provided an un-paid 24-hour period of consecutive rest after six consecutive days of work.

7. Establish a Notice of rights and pay information by adding a new subsection D to 14.23.020, page 6 as follows:

D. Notice of rights and pay information.

(1).The Agency shall make available a model notice of rights and pay information in English, Spanish, and other languages.

(2) The written notice of rights and pay information shall include an explanation of the domestic worker's rights afforded by this Chapter 14.23 and space for the hiring entity to state the established pay for the provision of domestic services.

Summary/Analysis:

The Office of Labor Standards (OLS) will create a model notice of rights and pay information. Hiring entities can use this form, or create their own, to provide workers information on their pay and rights under the DWO.

IV. **Board composition and consultation**

Background

The Domestic Worker Standards Board is established to provide a forum for hiring entities, domestic workers, worker organizations and the public to consider, analyze and make recommendations to the City on the legal protections benefit and working conditions for domestic worker industry standards. The Board will have up to 13 Positions. Six will be appointed by the Mayor, six will be appointed by the Council and one will be appointed by the Board. All positions will be confirmed by the Council. To ensure domestic workers and hiring entities were equally represented the DWO identifies the board positions they will hold.

Amendments 8 - 10 Clarify Board positions and consultation

8. Amend 14.23.030 (B) (1) (2) pages 6 and 7 as follows:

- Position 10 hiring entity
- Position 11 domestic worker or worker organization
- Position 12 hiring entity
- Position 13 domestic worker or worker organization

Summary/Analysis:

Positions 10-13 were not specified in the introduced ordinance and are now noted.

9. Amend 14.12.030 (B), page 7 as follows:

In making Board appointments, the Mayor and Council shall consider including representation from vulnerable communities, such as the elderly rights community, disability rights community, and youth communities.

Summary/Analysis:

This affirms the City's commitment to inclusivity of all affected communities when making appointments.

10. Amend 14.23.030 (H) page 9 as follows:

H. The Board, in consultation with the Agency and other relevant City Boards and Commissions within six months after all members have been established, shall submit to the Mayor, and present to the City Council Housing, Health, Energy and Worker's Rights Committee or the Council committee with oversight of the Office of Labor Standards and/or domestic workers with a workplan identifying the topics the Board will address in the first two years.

The Board in consultation with the Agency and other relevant City Boards and Commissions shall submit an updated workplan every two years. The Board's first recommendations will be submitted to the Mayor and committee by the end of the first quarter of the year following the year in which the workplan has been submitted.

Summary/Analysis:

This requests that the Domestic Workers Standards Board consult with OLS and other relevant City Boards and Commissions in developing their workplan and recommendations.

V. Implementation date

11. Amend 14.23. Section 3 and add a new Section 4 as follows:

Section 3. ~~Sections 1 and 2 of this ordinance shall take effect on July 1, 2019. The Domestic Workers Standards Board shall convene in the first quarter of 2019.~~

Section 4. Section 1 and Section 2 of this ordinance shall take effect on July 1, 2019, except for the portion of Section 1 that creates Seattle Municipal Code Section 14.23.030.

Summary/Analysis:

This clarifies that the Board will be convened in first quarter of 2019 and the other sections of the DWO will take effect July 1, 2019. This will provide OLS time to develop the Rules and for appointing authorities to appoint Board members.

Attachments:

1. June 21 Memo – Domestic Workers Ordinance
2. D9 – Domestic Workers Ordinance

cc: Kirstan Arestad, Central Staff Director
Dan Eder, Deputy Director

June 20, 2018

MEMORANDUM

To: Housing, Health, Energy, and Workers' Rights Committee
From: Patricia Lee, Council Central Staff
Subject: Domestic Workers Ordinance, C.B. 119286

The Domestic Workers Ordinance (DWO), Council Bill (C.B.) 119286, will be discussed on Thursday, June 21, 2018 in the Council's Housing, Health, Energy and Workers Rights (HHEWR) Committee. This C.B. establishes a new chapter in the Seattle Municipal Code (14.23). This memo provides a summary of the bill. All page and section references in this memo refer to the C.B.

1. Who is covered? (14.23.010, page 3)

The DWO defines "Domestic Worker" narrowly to mean any person:

- (1) who is paid to perform work by a "hiring entity" or by more than one "hiring entities",
- (2) who provides services to an individual or household in or about a private home; and
- (3) whose primary occupation is work in the job classifications of nanny, house cleaner, home care worker, gardener, cook, and household manager.

Domestic Worker includes hourly and salaried employees, independent contractors, full-time and part-time workers, and temporary workers. The term hiring entity is used to cover both employers and those who hire an independent contractor to do domestic work.

The Domestic Worker definition specifically includes independent contractors as well as employees. The classification of a worker as an employee or independent contractor is significant as it often determines whether a worker will be included in the labor law protection or benefit in question.

Additional Background:

The Federal Fair Labor Standards Act (FLSA) of 1938 was the first federal law to establish minimum wage, overtime pay, recordkeeping, and child labor standards for employees in both the private sector and government. The FLSA does not cover independent contractors. Most State and local labor laws, that Central Staff reviewed, also cover employees and not independent contractors. Therefore, the question of whether a worker is an employee or independent contractor significantly affects whether labor law protections and benefits apply.

There has been a rich history of litigation and court cases trying to establish the criteria by which a worker should be classified as either an employee or independent contractor.

Determinations of classification are very fact specific, making it challenging to create a legal definition.

The DWO obviates the classification question. If a worker meets the criteria established in the Domestic Worker definition, then they are covered under the DWO whether they are employees or independent contractors.

2. Which Types of Domestic Workers are not covered under the DWO? (14.23.010, pp 3-4)

Workers in one or more of the following categories of Domestic Workers are not covered under the DWO:

- (1) Working on a casual basis. Casual refers to work that is: irregular, uncertain, or incidental in nature and duration; and different in nature from the type of work the worker is customarily engaged in as that worker's occupation;
- (2) In a family relationship with the hiring entity;
- (3) A live-in worker; or
- (4) A home care worker who is paid through public funds.

The DWO has a two-part definition for "casual work."

- (1) The first part of the definition refers to work that is irregular, uncertain or incidental in nature and duration. This is a common exception in labor laws, reflecting a decision that government is not going to regulate incidental, irregular work. Examples, of this could be the occasional pruning of shrubs, a housecleaning that is done for a big occasion or a babysitter that one hires once. Casual is defined from the hiring entity's perspective.
- (2) The second part of the definition refers to whether the work is "different in nature from the type of work the worker is customarily engaged in as that worker's occupation." This looks at the work from the worker's perspective. From the homeowner's perspective they may hire someone once for eight hours to prune the shrubs in their yard. From the worker's perspective, her landscaping business consists of a multitude of eight-hour jobs for many homeowners. It is not "casual" labor from the worker's perspective – it is how she makes a living.

This definition tries to capture the perspectives of the both worker and the hiring entity while still recognizing that there are some circumstances of "casual" labor that is irregular, uncertain, or incidental in nature and duration.

3. What Labor Standards are Required?

A. Wages (14.23.020 (A), page 5)

[The City's Minimum Wage Ordinance](#) applies only to covered employees. The DWO requires that Domestic Workers be paid minimum compensation and minimum wages. The DWO does not differentiate whether the worker is an employee or an independent contractor, and the DWO effectively extends minimum compensation and minimum wage protections to independent contractors.

For independent contractors who are paid for providing a service, the DWO requires that the hourly rate for that service must equal the hourly minimum compensation and hourly minimum wage established in Seattle's Minimum Wage ordinance for "Schedule 2" employers, employers with 500 or less employees. The DWO does not change the Minimum Wage Ordinance to cover independent contractors. Instead the DWO requires domestic workers who are also independent contractors to be paid at least the same hourly rate as they would be entitled to as covered employees.

For Domestic Workers who are employees the hourly minimum compensation and hourly minimum wage will depend on whether their employer employs more than 500 employees (Schedule 1 Employers) or less than 500 employees (Schedule 2 Employers). Until 2019, the minimum wage for Schedule 1 Employers is different if the employer pays toward an employee's medical benefits plan. For Schedule 2 Employers there is both a required minimum compensation and minimum wage. The required minimum wage is lower if the employer contributes at least \$2.50 per hour toward the employee's medical benefits or the employee earns at least \$2.50 per hour in tips.

Again, the DWO ordinance does not change the Minimum Wage Ordinance, but it does reference the Minimum Wage Ordinance to determine compensation and wages.

Note, there are some exceptions to the City's minimum wage and minimum compensation requirements. The DWO does not change the exceptions in the City's Minimum Wage law. The City's Minimum Wage Ordinance does not cover minimum wage for any of the following workers:

- (1) casual labor, defined as irregular, intermittent work;
- (2) live-in workers who are required to reside at their place of employment; or
- (3) workers who spend a substantial portion of their time on call.

B. Meal and Rest Breaks are Required (14.23.020 (B), page 5)

The DWO provides:

"No domestic worker shall be required to work more than five consecutive hours for the same hiring entity without a 30-minute unpaid meal break. Domestic workers shall be

allowed a rest period of not less than ten minutes, paid for by the hiring entity, for each four consecutive hours worked for the same hiring entity. No domestic worker shall be required to work more than three consecutive hours for the same hiring entity without a rest period.”

The DWO provides the same meal and rest breaks as provided for in Washington State law. It is provided in the DWO because State law excludes domestic or casual labor from required meal and rest breaks.

The underlying premise is that workers cannot work continuously and effectively without a break. Every work situation is different, and the rule-making process will determine how these requirements can best be accomplished for domestic workers.

C. Privacy (14.23.020 (C) page 5)

The DWO prohibits a hiring entity from keeping a domestic workers original documents or personal effects.

Eight states have passed domestic worker ordinances. Four of these (Massachusetts, Connecticut, Oregon and Nevada) have prohibited hiring entities from keeping a worker’s personal documents. The intent is to prevent hiring entities from retaining documents to keep a worker in their employ.

4. What is the Domestic Workers Standards Board? (14.23.030 pp 5, 6)

Domestic workers and hiring entities are a dispersed workforce consistently mainly of individuals who do not know each other or work together. Given that it has been challenging for both workers and hiring entities to know what labor laws are applicable and how to implement them, the DWO establishes a Domestic Workers Standards Board (Board). The Board will provide a forum for workers, worker organizations, hiring entities and the public to discuss, consider, analyze and make recommendations to the City on the legal protections, benefits, working conditions and standards that should apply for the domestic worker industry. The Office of Labor Standards (OLS) will provide staff support to the Board.

Initially, the Board will consist of nine members: four appointed by the Mayor, four appointed by the Council, and one appointed by the Board members. In 2020, membership will increase to 13 members; an additional two to be appointed by the Mayor, and an additional two to be appointed by the Council. The DWO specifies the preferred experience for these positions to ensure that all stakeholder interests are represented. The three-year terms of Board members will be staggered to ensure Board continuity. All appointments are subject to confirmation by the Council.

The DWO identifies the following areas it would like the Board to provide recommendations on.

- (1) Training for hiring entities and domestic workers on: federal, state, and city labor laws, benefits, and protections; discrimination and sexual harassment; workplace safety standards; and requirements on tax payments;
- (2) Job skills, and potential accreditation or certification for domestic workers;
- (3) Wage standards, such setting industry standards, overtime, and pay differentials;
- (4) Access to paid sick leave, paid family leave, paid time off for bereavement, vacation, and retirement and health care benefit, such as through a leave bank or portable benefit structure;
- (5) Workers' compensation and temporary disability insurance, including alternative ways to provide coverage for domestic workers who are injured on the job but are not currently covered by state law, including consideration of domestic workers' coverage through insurance or through a leave bank or portable benefit structure;
- (6) Hiring agreements, including notice of rights and recordkeeping template language, and applicability of possible agreements;
- (7) Any notice or compensation requirements for a work schedule change;
- (8) Outreach and enforcement strategies to ensure compliance with applicable labor standards (including Paid Sick and Safe Time, Paid Family Leave, and any future policies adopted by City Council and to provide effective information to both hiring entities and domestic workers; and
- (9) Any other emerging issues the Board wishes to include in its workplan.

The Board will determine what it will focus on first and develop a workplan identifying the topics it will address in the first two years. The Board shall submit its first workplan within six months after all members have been established and submit an updated workplan every two years to the Council's HHEWR Committee or other Council committee with oversight of the OLS and/or domestic workers.

The Board's first recommendations will be submitted by the end of the first quarter of the year following the year in which the workplan has been submitted.

To ensure the Board's recommendations are considered by Council, the DWO establishes an expectation that the Committee will provide a written response to the Board within 120 days. The DWO further articulates an expectation that the Committee, in consultation with the City Attorney's office, will notify the Board chair in writing of any policies or legislation the Committee intends to:

- (1) put before the City Council for approval,
- (2) request further information about from the Board,

- (3) request the Board to develop alternatives to,
- (4) reject, in which case it will provide reasons for the rejection, or
- (5) consider on a longer timeline.

The DWO provides that the Committee should consider at least the following factors in making decisions: deference to the Board's recommendations; financial considerations; relation to other City policies and City of Seattle labor laws; legal issues; and enforceability challenges.

5. What are the Remedies and Enforcement in the DWO? (14.23.070 to 14.23.125 pp 9-24)

The remedies and enforcement mechanisms are like those provided in the City's other labor laws such as minimum wage and paid sick and safe leave. The DWO includes a private right of action, protections against retaliation, penalties, damages, and the potential revocation of a business license.

The OLS will be the investigatory and enforcement agency and will establish rules implementing the DWO.

6. What is the Effective Date of the DWO? (Sections 3 and 4, page 28)

The DWO has the standard effective date of 30 days after its approval by the Mayor or return by the Mayor unsigned within 10 days after presentation. However, to provide OLS time to develop the capacity to effectively investigate and enforce the labor standards, the effective date of the labor standards, the appointment of the Board and remedies and enforcement will take effect on July 1, 2019.

Next Steps

The HHEWR Committee meeting on July 5, 2018 will consider proposed amendments to the DWO (C.B. 119286).

cc: Kirstan Arestad, Central Staff Director
Dan Eder, Central Staff Deputy Director

Patricia Lee
LEG Domestic Workers ORD
D9 track changes

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to employment in Seattle; establishing labor standards for domestic workers; establishing a Domestic Workers Standards Board; prescribing remedies and enforcement procedures; amending Section 6.208.020 of the Seattle Municipal Code; and adding a new Chapter 14.23 to the Seattle Municipal Code.

..body

WHEREAS, domestic workers provide valuable services as nannies, house cleaners, home care workers, gardeners, cooks and household managers; and

WHEREAS, the labor domestic workers provide is an important contribution to The City of Seattle’s (City) economy and prosperity, and provides the support services that enable other individuals to participate in the workforce; and

WHEREAS, many domestic workers are women, immigrants, and people of color who work in or about private homes, isolated from other workers; and

WHEREAS, the City is committed to eliminating racial disparities and achieving racial equity in Seattle through implementation of the Race and Social Justice Initiative; and

WHEREAS, since 2007 the National Domestic Workers Alliance (NDWA) has advocated for respect for domestic workers by including them in national, state, and local labor protection laws; and

WHEREAS, in 2011 and 2012 the NDWA surveyed 2,086 domestic workers in 14 metropolitan areas, including Seattle; conducted 29 focus group interviews and collected 52 testimonies from members of domestic worker organizations; and found low pay, lack of benefits, and problematic working conditions throughout the industry; and

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1 WHEREAS, in Seattle workers have established the Seattle Domestic Workers Alliance
2 (SDWA), a project of Working Washington, with support from Casa Latina, SEIU 775,
3 and the NDWA; and

4 WHEREAS, the Seattle Domestic Workers Alliance (SDWA) surveyed 174 nannies, house
5 cleaners, and gardeners in Seattle in both English and Spanish and found that 53 percent
6 of the surveyed workers did not receive overtime pay, 39 percent did not receive paid
7 sick days, and 85 percent did not have workers’ compensation or any recourse in case of
8 injury; and

9 WHEREAS, the SDWA survey also found that 70 percent of the surveyed workers work directly
10 for private households, rather than agencies, 36 percent are paid in cash, 56 percent do
11 not have a written contract, and workers without a contract were more likely to
12 experience workplace violations such as wage theft; and

13 WHEREAS, while the individual nature of domestic work makes it challenging to identify the
14 number of domestic workers, using available labor data from the American Community
15 Survey and Bureau of Labor Statistics and information from their labor and community
16 networks, SDWA estimates there are around 33,000 domestic workers in Seattle; and

17 WHEREAS, many domestic workers and hiring entities are unaware of how or to whom to
18 report a violation of their rights or know who to call if they have a question or concern;
19 and

20 WHEREAS, many hiring entities are unaware of their responsibilities and requirements when
21 they hire a domestic worker due to the isolated nature of work and much of this work
22 being in the “gray” economy; and

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1 WHEREAS, since 2010 eight states (New York, California, Hawaii, Massachusetts, Connecticut,
2 Oregon, Illinois, and Nevada) have enacted legislation to strengthen benefits and
3 protections for domestic workers; NOW, THEREFORE,

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

5 Section 1. A new Chapter 14.23 is added to the Seattle Municipal Code as follows:

6 **CHAPTER 14.23 DOMESTIC WORKERS**

7 **14.23.005 Short title**

8 This Chapter 14.23 shall constitute the “Domestic Workers Ordinance” and may be cited as such.

9 **14.23.010 Definitions**

10 For purposes of this Chapter 14.23:

11 “Agency” means the Office of Labor Standards and any division therein.

12 “Aggrieved party” means the domestic worker or other person who suffers tangible or
13 intangible harm due to the hiring entity or other person's violation of this Chapter 14.23.

14 “Director” means the Director of the Office of Labor Standards.

15 “Domestic worker” is narrowly construed to mean any worker:~~1)~~ who 1) is paid by one
16 or more hiring entities; and 2) ~~who~~ provides domestic services to an individual or household in
17 or about a private home ~~;~~ ~~and 3) whose primary occupation is work in the job classifications of~~
18 as a nanny, house cleaner, home care worker, gardener, cook, or ~~and~~ household manager.

19 “Domestic worker” includes hourly and salaried employees, independent contractors, full-time
20 and part-time workers, and temporary workers. "Domestic worker" does not include any
21 individual who is:

Attachment 2 – D9 - Domestic Workers Ordinance

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LEG Domestic Workers ORD
D9 track changes

- 1 1. Working on a casual basis. Casual refers to work that is: 1) irregular,
2 uncertain, or incidental in nature and duration,; and 2) different in nature from the type of paid
3 work in which the worker is customarily engaged in. ~~as that worker's occupation;~~
- 4 2. In a family relationship with the hiring entity; or
5 ~~3. A live-in worker; or~~
6 43. A home care worker who is paid through public funds.

7 "Family relationship" means a child, spouse, parent, grandchild, grandparent, or sibling
8 of either the hiring entity or the hiring entity's spouse, or any domestic worker whose close
9 association with the hiring entity is substantially similar in nature to a family relationship.

10 "Front pay" means the compensation the domestic worker would earn or would have
11 earned if reinstated to the domestic worker's former position.

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

15 "Hiring entity" means any individual, partnership, association, corporation, business
16 trust, or any entity, person, or group of persons that pays a wage or pays for the services of a
17 domestic worker. It includes any such entity or person acting directly or indirectly in the
18 interest of a hiring entity in relation to the domestic worker. ~~More than one entity may be the~~
19 ~~hiring entity if payment for service by one hiring entity is not completely disassociated from~~
20 ~~payment by the other entity. -When an individual or household contracts with a separate hiring~~
21 ~~entity that employs the domestic worker(s) to provide domestic services, the separate hiring~~
22 ~~entity is solely liable for violations of this Chapter 14.23 unless the individual or household~~
23 ~~interferes with the rights established for domestic worker(s) in this Chapter 14.23.~~

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

“Wage” means compensation due to the work of a domestic worker, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the Director.

“Written” or “writing” means a printed or printable communication in physical or electronic format including a communication that is transmitted through email, text message or a computer system, or is otherwise sent and maintained electronically.

14.23.020 Domestic worker labor standards

A. Wages:

1. A. Hiring entities shall pay domestic workers ~~compensation and wages that are~~ at least the equivalent ~~of~~ the “hourly minimum compensation” and “hourly minimum wages” established for Schedule 2 employers as set forth in Chapter 14.19. If the domestic worker is a covered employee for purposes of Chapter 14.19, the hiring entity must pay the domestic worker in accordance with its obligations under Chapter 14.19. ~~compensation and wages that are at least equivalent to the hourly minimum compensation and the hourly minimum wage required to be paid by the hiring entity as an employer under Chapter 14.19.~~

B. Rest Breaks and Meal Periods

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1 ~~(1)~~1. Except as provided in subsection (14.23.020.B.2), nNo domestic worker
2 shall be required to work more than five consecutive hours for the same hiring entity without a
3 30-minute uninterrupted unpaid meal period. The meal period shall be unpaid unless the
4 domestic worker is required to be remain on-call at the prescribed work site and is required to
5 return to work when called~~break~~. Domestic workers shall be allowed an uninterrupted –rest
6 break~~period~~ of not less than ten minutes, paid for by the hiring entity, for each four consecutive
7 hours worked for the same hiring entity. No domestic worker shall be required to work more
8 than three consecutive hours for the same hiring entity without an uninterrupted rest break~~period~~.

9 ~~2.(2)~~2. If the domestic worker’s work responsibilities make it impossible or
10 infeasible to take a meal period or rest break, the hiring entity shall provide additional
11 compensation for the missed meal period or rest break.

12 ~~3.(3)~~3. No- domestic worker- who resides or sleeps at a place of employment shall
13 be required to work more than six consecutive days for the same hiring entity without an unpaid,
14 24-hour period of consecutive rest, pursuant to rules issued by the Director.

15
16 C.- Worker documents:

17 A hiring entity shall not keep any domestic worker’s original documents or other
18 personal effects.

19 D. Notice of rights and pay information

20 ~~(1)~~. The Agency shall make available a model notice of rights and pay
21 information in English, Spanish, and other languages.

1 (2). The written notice of rights and pay information shall include an
2 explanation of the domestic worker’s rights afforded by this Chapter 14.23 and space for the
3 hiring entity to state the established pay for the provision of domestic services.
4

5 **14.23.030 Domestic Workers Standards Board**

6 A. A Domestic Workers Standards Board (Board) is established to provide a forum for
7 hiring entities, domestic workers, worker organizations, and the public to consider, analyze, and
8 make recommendations to the City on the legal protections, benefits, and working conditions for
9 domestic worker industry standards.

10 B. The Board consists of nine members, appointed to positions numbered 1 through 9.
11 The Mayor shall appoint members to positions 1, 2, 3, and 4. The City Council shall appoint
12 members to positions 5, 6, 7, and 8. Position 9 shall be appointed by the Board. Effective January
13 1, 2020, the Board shall increase to a total of 13 members. The Mayor shall appoint positions 10
14 and 11. The City Council shall appoint positions 12 and 13. Every appointment made by the
15 Mayor or Board is subject to confirmation by the City Council. In making Board appointments,
16 the Mayor and Council shall consider including representation from vulnerable communities,
17 such as the elderly rights community, disability rights community, and youth communities.

18 1. Members appointed to positions 1, ~~and 5, 11, and 13~~ shall be domestic workers
19 or worker organization representatives. Members appointed to positions 2 and 6 shall be
20 domestic workers who are not worker organization representatives. For purposes of this
21 subsection 14.23.030.B.1, worker organizations shall be a non-profit organization that: engages
22 in public advocacy to promote the health and well-being of domestic workers; and has a
23 governing structure that promotes workers’ decision-making power. Preference among

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1 organizations should be for organizations that engage the most number of domestic workers as
2 dues-paying members.

3 2. Members appointed to positions 3, ~~and 7~~, 10, and 12 shall be hiring entities or
4 their representatives. Members appointed to positions 4 and 8 shall be individuals who contract
5 with or hire one or more domestic workers.

6 3. The member appointed to position 9 shall be a community representative. In
7 appointing a member to position 9 the Board shall consider diversity within the industry and
8 vulnerable populations, such as the disability rights community.

9 C. The initial terms of positions 1, 3, 5, 7, 10, and 11 shall be two years; the initial terms
10 of positions 2, 4, 6, 8, ~~and 9~~, 12, and 13 shall be three years; all subsequent terms shall be three
11 years. Any vacancy in an unexpired term shall be filled in the same manner as the original
12 appointment. A member whose term is ending may continue on an interim basis as a member
13 with voting rights until such time as a replacement for that position has been appointed by the
14 City Council or confirmed by the City Council.

15 D. The Board may adopt rules for its own procedures, including quorum requirements,
16 frequency of meetings, and provision of translation and interpretation services. However, the
17 quorum requirements must include a minimum representation of domestic workers or domestic
18 worker organizations and hiring entities or their representatives. The Board members shall select
19 co-chairs.

20 E. The Board shall determine how to solicit and maintain input from hiring entities and
21 domestic workers, such as through public hearings, surveys, or worker and business associations.

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1 F. The Agency shall provide staff and logistical support, including but not limited to
2 translation, outreach, and travel expenses, and work with the Board to determine appropriate
3 support for the Board members and their activities.

4 G. The Board’s responsibilities include, but are not limited to, providing a forum for
5 hiring entities, domestic workers, worker organizations, and other affected parties to share
6 information, insights, and experiences on the working conditions of domestic workers, and
7 recommendations on how working conditions can be changed to meet the needs of domestic
8 workers and hiring entities. These recommendations shall include possible legislation or policy
9 changes, changes to the City’s outreach and education efforts, and/or changes to the City’s
10 enforcement strategies.

11 H. The Board, in consultation with the Agency and other relevant City Boards and
12 Commissions, within six months after all members have been established, shall submit to the
13 Mayor, and present to the City Council Housing, Health, Energy and Worker’s Rights
14 Committee or the Council committee with oversight of the Office of Labor Standards and/or
15 domestic workers with a workplan identifying the topics the Board will address in the first two
16 years. The Board in consultation with the Agency and other relevant City Boards and
17 Commissions, shall submit an updated workplan every two years. The Board’s first
18 recommendations will be submitted to the Mayor and committee by the end of the first quarter of
19 the year following the year in which the workplan has been submitted. The committee will
20 consider the Board’s recommendations and will respond within 120 days of the committee
21 presentation. The committee, in consultation with the City Attorney’s Office, will notify the
22 Board chair in writing of any policies or legislation the committee intends to: 1) put before the
23 City Council for approval, 2) request further information about from the Board, 3) request the

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1 Board to develop alternatives to, 4) reject, in which case it will provide reasons for the rejection,
2 or 5) consider on a longer timeline. The Committee shall consider at least the following factors
3 in making decisions: deference to the Board’s recommendations; financial considerations;
4 relation to other City policies and City of Seattle labor laws; legal issues; and enforceability
5 challenges.

6 I. The Board, pursuant to its workplan, shall provide recommendations to the City
7 Council on the following subjects:

8 1. Training for hiring entities and domestic workers on: federal, state, and city
9 labor laws, benefits, and protections; discrimination and sexual harassment; workplace safety
10 standards; and requirements on tax payments;

11 2. Job skills, and potential accreditation or certification for domestic workers;

12 3. Wage standards, such setting industry standards, overtime, and pay
13 differentials;

14 4. Access to paid sick leave, paid family leave, paid time off for bereavement,
15 vacation, and retirement and health care benefit, such as through a leave bank or portable benefit
16 structure;

17 5. Workers’ compensation and temporary disability insurance, including
18 alternative ways to provide coverage for domestic workers who are injured on the job but are not
19 currently covered by state law, including consideration of domestic workers’ coverage through
20 insurance or through a leave bank or portable benefit structure;

21 6. Hiring agreements, including notice of rights and recordkeeping template
22 language, and applicability of possible agreements;

23 7. Any notice or compensation requirements for a work schedule change;

1 8. Outreach and enforcement strategies to ensure compliance with applicable
2 labor standards (including Paid Sick and Safe Time, Paid Family Leave, and any future policies
3 adopted by City Council) and to provide effective information to both hiring entities and
4 domestic workers; and

5 9. Any other emerging issues the Board wishes to include in its workplan.

6 **14.23.070 Retaliation prohibited**

7 A. No hiring entity or any other person shall interfere with, restrain, deny, or attempt to
8 deny the exercise of any right protected under this Chapter 14.23.

9 B. No hiring entity or any other person shall take any adverse action against any person
10 because the person has exercised in good faith the rights protected under this Chapter 14.23.
11 Such rights include but are not limited to the right to make inquiries about the rights protected
12 under this Chapter 14.23; the right to inform others about their rights under this Chapter 14.23;
13 the right to inform the person’s hiring entity, union or similar organization, and/or the person’s
14 legal counsel or any other person about an alleged violation of this Chapter 14.23; the right to
15 file an oral or written complaint with the Agency or bring a civil action for an alleged violation
16 of this Chapter 14.23; the right to cooperate with the Agency in its investigations of this Chapter
17 14.23; the right to testify in a proceeding under or related to this Chapter 14.23; the right to
18 refuse to participate in an activity that would result in a violation of city, state or federal law; and
19 the right to oppose any policy, practice or act that is unlawful under this Chapter 14.23.

20 C. No hiring entity or any other person shall communicate to a person exercising rights
21 protected under this Section 14.23.070, directly or indirectly, the willingness to inform a
22 government employee or contracted organization that the person is not lawfully in the United
23 States, or to report, or to make an implied or express assertion of a willingness to report,

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1 suspected citizenship or immigration status of a domestic worker or a family member of the
2 domestic worker to a federal, state, or local agency because the domestic worker has exercised a
3 right under this Chapter 14.23.

4 D. It shall be considered a rebuttable presumption of retaliation if the hiring entity or
5 any other person takes an adverse action against a person within 90 calendar days of the person's
6 exercise of rights protected in this Section 14.23.070. However, in the case of seasonal
7 employment that ended before the close of the 90 calendar day period, the presumption also
8 applies if the employer fails to rehire a former domestic worker at the next opportunity for work
9 in the same position. The hiring entity may rebut the presumption with clear and convincing
10 evidence that the adverse action was taken for a permissible purpose.

11 E. Proof of retaliation under this Section 14.23.070 shall be sufficient upon a showing
12 that the hiring entity or any other person has taken an adverse action against a person and the
13 person's exercise of rights protected in Section 14.23.070 was a motivating factor in the adverse
14 action, unless the hiring entity can prove that the action would have been taken in the absence of
15 such protected activity.

16 F. The protections afforded under this Section 14.23.070 shall apply to any person who
17 mistakenly but in good faith alleges violations of this Chapter 14.23.

18 G. A complaint or other communication by any person triggers the protections of this
19 Section 14.23.070 regardless of whether the complaint or communication is in writing or makes
20 explicit reference to this Chapter 14.23.

21 **14.23.075 Enforcement power and duties**

22 A. The Agency shall have the power to investigate violations of this Chapter 14.23, as
23 defined herein, and shall have such powers and duties in the performance of these functions as

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1 are defined in this Chapter 14.23 and otherwise necessary and proper in the performance of the
2 same and provided for by law.

3 B. The Agency shall be authorized to coordinate implementation and enforcement of this
4 Chapter 14.23 and shall promulgate appropriate guidelines or rules for such purposes.

5 C. The Director of the Agency is authorized and directed to promulgate rules consistent
6 with this Chapter 14.23 and Chapter 3.02. Any guidelines or rules promulgated by the Director
7 shall have the force and effect of law and may be relied on by hiring entities, domestic workers,
8 and other parties to determine their rights and responsibilities under this Chapter 14.23.

9 **14.23.080 Violation**

10 The failure of any respondent to comply with any requirement imposed on the respondent
11 under this Chapter 14.23 is a violation.

12 **14.23.085 Investigation**

13 A. The Agency shall have the power to investigate any violations of this Chapter 14.23
14 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the
15 Director including, but not limited to, situations when the Director has reason to believe that a
16 violation has occurred or will occur, or when circumstances show that violations are likely to
17 occur within a class of businesses because the workforce contains significant numbers of
18 workers who are vulnerable to violations of this Chapter 14.23 or the workforce is unlikely to
19 volunteer information regarding such violations. An investigation may also be initiated through
20 the receipt by the Agency of a report or complaint filed by a domestic worker or any other
21 person.

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1 B. A domestic worker or other person may report to the Agency any suspected violation
2 of this Chapter 14.23. The Agency shall encourage reporting pursuant to this Section 14.23.085
3 by taking the following measures:

4 1. The Agency shall keep confidential, to the maximum extent permitted by
5 applicable laws, the name and other identifying information of the domestic worker or person
6 reporting the violation. However, with the authorization of such person, the Agency may disclose
7 the domestic worker's or person's name and identifying information as necessary to enforce this
8 Chapter 14.23 or for other appropriate purposes.

9 2. The Agency may require the hiring entity to post or otherwise notify domestic
10 workers that the Agency is conducting an investigation, using a form provided by the Agency
11 and displaying it on-site, in a conspicuous and accessible location, and in English and the
12 primary language(s) spoken by the domestic worker(s) at the particular workplace. If display of
13 the form is not feasible, including situations when the domestic worker works remotely or does
14 not have a regular workplace, the hiring entity may provide the form on an individual basis in
15 physical or electronic format that is reasonably conspicuous and accessible.

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

19 C. The Agency's investigation must commence within three years of the alleged
20 violation. To the extent permitted by law, the applicable statute of limitations for civil actions is
21 tolled during any investigation under this Chapter 14.23 and any administrative enforcement
22 proceeding under this Chapter 14.23 based upon the same facts. For purposes of this Chapter
23 14.23:

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1 1. The Agency's investigation begins on the earlier date of when the Agency
2 receives a complaint from a person under this Chapter 14.23, or the Agency opens an
3 investigation under this Chapter 14.23.

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

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

9 E. The Director may apply by affidavit or declaration in the form allowed under RCW
10 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring the attendance and
11 testimony of witnesses, or any document relevant to the issue of whether any domestic worker or
12 group of domestic workers has been or is afforded proper amounts of compensation under this
13 Chapter 14.23 and/or to whether the hiring entity has violated any provision of this Chapter
14 14.23. The Hearing Examiner shall conduct the review without hearing as soon as practicable
15 and shall issue subpoenas upon a showing that there is reason to believe that a violation has
16 occurred if a complaint has been filed with the Agency, or that circumstances show that
17 violations are likely to occur within a class of businesses because the workforce contains
18 significant numbers of workers who are vulnerable to violations of this Chapter 14.23 or the
19 workforce is unlikely to volunteer information regarding such violations.

20 F. The hiring entity that fails to comply with the terms of any subpoena issued under
21 subsection 14.23.085.E in an investigation by the Agency under this Chapter 14.23 prior to the
22 issuance of a Director's Order issued pursuant to subsection 14.23.090.C may not use such

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1 records in any appeal to challenge the correctness of any determination by the Agency as to
2 liability or as to damages and/or penalties assessed.

3 G. In addition to other remedies, the Director may refer any subpoena issued under
4 subsection 14.23.085.E, to the City Attorney to seek a court order to enforce any subpoena.

5 H. Where the Director has reason to believe that a violation has occurred, the Director
6 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
7 status quo pending completion of a full investigation or hearing, including but not limited to a
8 deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest,
9 damages and penalties due. A respondent may appeal any such order in accordance with Section
10 14.23.100.

11 **14.23.090 Findings of fact and determination**

12 A. Except when there is an agreed upon settlement, the Director shall issue a written
13 determination with findings of fact resulting from the investigation and statement of whether a
14 violation of this Chapter 14.23 has or has not occurred based on a preponderance of the evidence
15 before the Director.

16 B. If the Director determines that there is no violation of this Chapter 14.23, the Director
17 shall issue a "Determination of No Violation" with notice of a domestic worker or other person's
18 right to appeal the decision, subject to the rules of the Director.

19 C. If the Director determines that a violation of this Chapter 14.23 has occurred, the
20 Director shall issue a "Director's Order" that shall include a notice of violation identifying the
21 violation or violations.

22 1. The Director's Order shall state with specificity the amounts due under this
23 Chapter 14.23 for each violation, including payment of unpaid compensation, liquidated

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1 damages, civil penalties, penalties payable to aggrieved parties, and interest pursuant to Section
2 14.23.095.

3 2. The Director's Order may specify that civil penalties due to the Agency can be
4 mitigated for respondent's timely payment of remedy due to an aggrieved party under subsection
5 14.23.095.A.2.

6 3. The Director's Order may specify that civil penalties are due to the aggrieved
7 party rather than due to the Agency.

8 4. The Director's Order may direct the respondent to take such corrective action as
9 is necessary to comply with the requirements of this Chapter 14.23, including, but not limited to,
10 monitored compliance for a reasonable time period.

11 5. The Director's Order shall include notice of the respondent's right to appeal the
12 decision, pursuant to Section 14.23.100.

13 **14.23.095 Remedies**

14 A. The payment of unpaid wages, compensation, liquidated damages, civil penalties,
15 penalties payable to aggrieved parties, and interest provided under this Chapter 14.23 are
16 cumulative and are not intended to be exclusive of any other available remedies, penalties, and
17 procedures.

18 1. The amounts of all civil penalties and penalties payable to aggrieved parties
19 contained in this Section 14.23.095 shall be increased annually to reflect the rate of inflation and
20 calculated to the nearest cent on January 1 of each year. The Agency shall determine the amounts
21 and file a schedule of such amounts with the City Clerk.

22 2. If a violation is ongoing when the Agency receives a complaint or opens an
23 investigation, the Director may order payment of unpaid compensation plus interest that accrues

1 after receipt of the complaint or after the investigation opens and before the date of the Director's
2 Order.

3 3. Interest shall accrue from the date the unpaid compensation was first due at 12
4 percent annum, or the maximum rate permitted under RCW 19.52.020.

5 4. If there is a remedy due to an aggrieved party, the Director may waive the total
6 amount of civil penalties due to the Agency if the Director determines that the respondent paid
7 the full remedy due to the aggrieved party within ten days of service of the Director's Order. The
8 Director may waive half the amount of civil penalties due to the Agency if the Director
9 determines that the respondent paid the full remedy due to the aggrieved party within 15 days of
10 service of the Director's Order. The Director shall not waive any amount of civil penalties due to
11 the Agency if the Director determines that the respondent has not paid the full remedy due to the
12 aggrieved party after 15 days of service of the Director's Order.

13 5. When determining the amount of liquidated damages, civil penalties, and
14 penalties payable to aggrieved parties due under this Section 14.23.095, for a settlement
15 agreement or Director's Order, including but not limited to the mitigation of civil penalties due to
16 the Agency for timely payment of remedy due to an aggrieved party under subsection
17 14.23.095.A.2, the Director shall consider:

18 a. The total amount of unpaid compensation, liquidated damages,
19 penalties, and interest due;

20 b. The nature and persistence of the violations;

21 c. The extent of the respondent's culpability;

22 d. The substantive or technical nature of the violations;

- 1 e. The size, revenue, and human resources capacity of the respondent,
- 2 including whether respondent is a household or established business;
- 3 f. The circumstances of each situation;
- 4 g. The amounts of penalties in similar situations; and
- 5 h. Other factors pursuant to rules issued by the Director.

6 B. A respondent found to be in violation of this Chapter 14.23 shall be liable for full
7 payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of
8 this Chapter 14.23, and other equitable relief. For a first violation of this Chapter 14.23, the
9 Director may assess liquidated damages in an additional amount of up to twice the unpaid
10 compensation.

11 1. For subsequent violations of this Chapter 14.23, the Director shall assess an
12 amount of liquidated damages in an additional amount of twice the unpaid compensation.

13 2. For purposes of establishing a first and subsequent violation for this Section
14 14.23.095, the violation must have occurred within ten years of the settlement agreement or
15 Director's Order.

16 C. A respondent found to be in violation of this Chapter 14.23 for retaliation under
17 Section 14.23.070 shall be subject to any appropriate relief at law or equity including, but not
18 limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full
19 payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of
20 this Chapter 14.23, and liquidated damages in an additional amount of up to twice the unpaid
21 compensation. The Director also shall order the imposition of a penalty payable to the aggrieved
22 party of up to \$5,000.

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1 D. A respondent found to be in violation of this Chapter 14.23 shall be subject to civil
2 penalties. Pursuant to subsection 14.23.090.C.3, the Director may specify that civil penalties are
3 due to the aggrieved party rather than due to the Agency.

4 1. For a first violation of this Chapter 14.23, the Director may assess a civil
5 penalty of up to \$500 per aggrieved party.

6 2. For a second violation of this Chapter 14.23, the Director shall assess a civil
7 penalty of up to \$1,000 per aggrieved party, or an amount equal to ten percent of the total
8 amount of unpaid compensation, whichever is greater.

9 3. For a third or any subsequent violation of this Chapter 14.23, the Director shall
10 assess a civil penalty of up to \$5,000 per aggrieved party, or an amount equal to ten percent of
11 the total amount of unpaid compensation, whichever is greater. The maximum civil penalty for a
12 violation of this Chapter 14.23 shall be \$20,000 per aggrieved party, or an amount equal to ten
13 percent of the total amount of unpaid compensation, whichever is greater.

14 4. For purposes of this Section 14.23.095, a violation is a second, third, or
15 subsequent violation if the respondent has been a party to one, two, or more than two settlement
16 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than
17 two Director's Orders, respectively, have issued against the respondent in the ten years preceding
18 the date of the violation; otherwise, it is a first violation.

19
20 E. A respondent who willfully hinders, prevents, impedes, or interferes with the Director
21 or Hearing Examiner in the performance of their duties under this Chapter 14.23 shall be subject
22 to a civil penalty of not less than \$1,000 and not more than \$5,000.

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1 F. In addition to the unpaid compensation, penalties, liquidated damages, and interest, the
2 Agency may assess against the respondent in favor of the City reasonable costs incurred in
3 enforcing this Chapter 14.23, including but not limited to reasonable attorneys' fees.

4 G. The hiring entity that is the subject of a settlement agreement stipulating that a
5 violation shall count for debarment, or final order for which all appeal rights have been
6 exhausted shall not be permitted to bid, or have a bid considered, on any City contract until such
7 amounts due under the final order have been paid in full to the Director. If the hiring entity is the
8 subject of a final order two times or more within a five-year period, the contractor or
9 subcontractor shall not be allowed to bid on any City contract for two years. This subsection
10 14.23.095.G shall be construed to provide grounds for debarment separate from, and in addition
11 to, those contained in Chapter 20.70 and shall not be governed by that chapter provided that
12 nothing in this subsection 14.23.095.G shall be construed to limit the application of Chapter
13 20.70. The Director shall notify the Director of Finance and Administrative Services of all hiring
14 entities subject to debarment under this subsection 14.23.095.G.

15 **14.23.100 Appeal period and failure to respond**

16 A. A domestic worker or other person who claims an injury as a result of an alleged
17 violation of this Chapter 14.23 may appeal the Determination of No Violation Shown, pursuant
18 to the rules of the Director.

19 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
20 to Section 14.23.095, by requesting a contested hearing before the Hearing Examiner in writing
21 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
22 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal

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1 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
2 until 5 p.m. on the next business day.

3 **14.23.105 Appeal procedure and failure to appear**

4 A. Contested hearings shall be conducted pursuant to the procedures for hearing
5 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
6 hearing contested cases. The review shall be conducted de novo and the Director shall have the
7 burden of proof by a preponderance of the evidence before the Hearing Examiner. Upon
8 establishing such proof, the remedies and penalties imposed by the Director shall be upheld
9 unless it is shown that the Director abused discretion. Failure to appear for a contested hearing
10 will result in an order being entered finding that the hiring entity committed the violation stated
11 in the Director's order. For good cause shown and upon terms the Hearing Examiner deems just,
12 the Hearing Examiner may set aside an order entered upon a failure to appear.

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

15 **14.23.110 Appeal from Hearing Examiner order**

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

20 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
21 sought in compliance with this Section 14.23.110.

22 **14.23.115 Failure to comply with final order**

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

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

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

10 3. The Director may refer the matter to the City Attorney for the filing of a civil
11 action in King County Superior Court, the Seattle Municipal Court, or any other court of
12 competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the
13 Director may seek to enforce a settlement agreement, Director's Order or a final order of the
14 Hearing Examiner under Section 14.23.120.

15 4. The Director may request that the City's Department of Finance and
16 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
17 requested by the hiring entity or person until such time as the hiring entity complies with the
18 remedy as defined in the settlement agreement or final order. The City's Department of Finance
19 and Administrative Services shall have the authority to deny, refuse to renew, or revoke any
20 business license in accordance with this subsection 14.23.115.A.4.

21 B. No respondent that is the subject of a settlement agreement or final order issued under
22 this Chapter 14.23 shall quit business, sell out, exchange, convey, or otherwise dispose of the
23 respondent's business or stock of goods without first notifying the Agency and without first

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1 notifying the respondent's successor of the amounts owed under the final order at least three
2 business days prior to such transaction. At the time the respondent quits business, or sells out,
3 exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount
4 of the remedy, as defined in the settlement agreement or the final order issued by the Director or
5 the Hearing Examiner, shall become immediately due and payable. If the amount due under the
6 settlement agreement or final order is not paid by respondent within ten days from the date of
7 such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment
8 of the amount due, provided that the successor has actual knowledge of the order and the
9 amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact
10 and amount of the order and the amounts due. The successor shall withhold from the purchase
11 price a sum sufficient to pay the amount of the full remedy. When the successor makes such
12 payment, that payment shall be deemed a payment upon the purchase price in the amount paid,
13 and if such payment is greater in amount than the purchase price the amount of the difference
14 shall become a debt due such successor from the hiring entity.

15 **14.23.120 Debt owed The City of Seattle**

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

22 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
23 time period set forth in subsection 14.23.100.B the Director's Order shall be final, and the

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1 Director may petition the Seattle Municipal Court to enforce the Director's Order by entering
2 judgment in favor of the City finding that the respondent has failed to exhaust its administrative
3 remedies and that all amounts and relief contained in the order are due. The Director's Order
4 shall constitute prima facie evidence that a violation occurred and shall be admissible without
5 further evidentiary foundation. Any certifications or declarations authorized under RCW
6 9A.72.085 containing evidence that the respondent has failed to comply with the order or any
7 parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's
8 Order to the Hearing Examiner within the time period set forth in subsection 14.23.100.B and
9 therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible
10 without further evidentiary foundation.

11 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
12 within the time period set forth in subsection 14.23.110.A, the order of the Hearing Examiner
13 shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
14 Order by entering judgment in favor of the City for all amounts and relief due under the order of
15 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
16 that the violations contained therein occurred and shall be admissible without further evidentiary
17 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing
18 evidence that the respondent has failed to comply with the order or any parts thereof, and is
19 therefore in default, or that the respondent has failed to avail itself of judicial review in
20 accordance with subsection 14.23.110.A, shall also be admissible without further evidentiary
21 foundation.

22 D. In considering matters brought under subsections 14.23.120.B and 14.23.120.C, the
23 Municipal Court may include within its judgment all terms, conditions, and remedies contained

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1 in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are
2 consistent with the provisions of this Chapter 14.23.

3 **14.23.125 Private right of action**

4 A. Any person or class of persons that suffers financial injury as a result of a violation of
5 this Chapter 14.23 or is the subject of prohibited retaliation under Section 14.23.070, may bring a
6 civil action in a court of competent jurisdiction against the hiring entity or other person violating
7 this Chapter 14.23 and, upon prevailing, may be awarded reasonable attorney fees and costs and
8 such legal or equitable relief as may be appropriate to remedy the violation including, without
9 limitation, the payment of any unpaid compensation plus interest due to the person and
10 liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty
11 payable to any aggrieved party of up to \$5,000 if the aggrieved party was subject to prohibited
12 retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12
13 percent per annum, or the maximum rate permitted under RCW 19.52.020.

14 B. For purposes of this Section 14.23.125, "person" includes any entity a member of
15 which has suffered financial injury or retaliation, or any other individual or entity acting on
16 behalf of an aggrieved party that has suffered financial injury or retaliation.

17 C. For purposes of determining membership within a class of persons entitled to bring an
18 action under this Section 14.23.125, two or more domestic workers are similarly situated if they:

- 19 1. Are or were hired by the same hiring entity or hiring entities, whether
20 concurrently or otherwise, at some point during the applicable statute of limitations period,
21 2. Allege one or more violations that raise similar questions as to liability, and
22 3. Seek similar forms of relief.

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1 D. For purposes of subsection 14.23.125.C, domestic workers shall not be considered
2 dissimilar solely because their

3 1. Claims seek damages that differ in amount, or

4 2. Job titles or other means of classifying domestic workers differ in ways that are
5 unrelated to their claims.

6 **14.23.130 Severability**

7 The provisions of this Chapter 14.23 are declared to be separate and severable. If any clause,
8 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.23, or the
9 application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not
10 affect the validity of the remainder of this Chapter 14.23, or the validity of its application to
11 other persons or circumstances.

12 Section 2. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last
13 amended by Ordinance 125203, is amended as follows:

14 **6.208.020 Denial, revocation of, or refusal to renew business license**

15 A. In addition to any other powers and authority provided under this Title 6, the Director,
16 or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any
17 business license issued under the provisions of this Chapter 6.208. The Director, or the Director's
18 designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or
19 refusal to renew the license and on what grounds such a decision was based. The Director may
20 deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of
21 the following grounds:

22 1. The license was procured by fraud or false representation of fact.

23 2. The licensee has failed to comply with any provisions of this Chapter 6.208.

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1 3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35,
2 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.

3 4. The licensee is in default in any payment of any license fee or tax under Title 5
4 or Title 6.

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

7 6. The applicant or licensee has been convicted of theft under subsection
8 12A.08.060.A.4 within the last ten years.

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

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

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

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

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1 9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4,
2 14.20.080.A.4, ((and)) 14.22.115.A.4, and 14.23.115.A.4, the applicant or licensee has failed to
3 comply, within 30 days of service of any settlement agreement, with any final order issued by the
4 Director of the Office of Labor Standards, or any final order issued by the Hearing Examiner
5 under Chapters 14.16, 14.17, 14.19, 14.20, ((and)) 14.22, and 14.23 for which all appeal rights
6 have been exhausted, and the Director of the Office of Labor Standards has requested that the
7 Director deny, refuse to renew, or revoke any business license held or requested by the applicant
8 or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as
9 the violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, ((and)) 14.22, and 14.23 are
10 remedied.

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

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

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1 Section 3. ~~14.23.03 Section 1, †The Domestic Workers Standards Board , will~~shall
2 ~~convene in the first quarter of 2019.~~

3 ~~Section 4. The other provisions of Sections 1~~Section 1 and Section 2 of this ordinance
4 shall take effect on July 1, 2019, ~~except for the portion of Section 1 that creates Seattle~~
5 ~~Municipal Code Section 14.23.030.~~

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

9 Passed by the City Council the _____ day of _____, 2018,
10 and signed by me in open session in authentication of its passage this _____ day of
11 _____, 2018.

12 _____
13 President _____ of the City Council

14 Approved by me this _____ day of _____, 2018.

15 _____
16 Jenny A. Durkan, Mayor

17 Filed by me this _____ day of _____, 2018.

18 _____
19 Monica Martinez Simmons, City Clerk

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(Seal)