

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to employment in Seattle; establishing labor standards requirements for additional compensation for grocery employees working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

..body

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout Washington State and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, the Brookings Metropolitan Policy Program has reported that the United States' top retail companies, including grocery businesses, have earned record-breaking profits during the pandemic; and

WHEREAS, grocery employees have been supporting grocery businesses' operations and facilitating community access to food during the pandemic, despite facing a clear and present danger of workplace exposure to COVID-19 and receiving limited or inconsistent additional pay in recognition of this hazard; and

WHEREAS, the dangers of working during the pandemic are especially significant for Black, Indigenous, and People of Color (BIPOC) employees who are overrepresented among the retail frontline workforce and who are disproportionately impacted by COVID-19; and

WHEREAS, establishing a requirement for grocery employees to receive hazard pay for work performed in Seattle during the COVID-19 emergency will promote job retention,

1 compensate them for the risks of working on the frontlines of a global pandemic, improve
2 their financial ability to access resources for protecting themselves and their families
3 from catching or spreading the virus or coping with illness caused by the virus, and
4 support the welfare of the greater community that depends on grocery employees for safe
5 and reliable access to food; and

6 WHEREAS, the City Council (Council) intends to consider modifying or eliminating hazard pay
7 requirements after four or months of implementation and review of the current health,
8 safety, and economic risks of frontline work during the COVID-19 emergency; and

9 WHEREAS, the City encourages employers of essential frontline workers to help facilitate the
10 distribution of COVID-19 vaccines to their employees as vaccines become available; and

11 WHEREAS, on June 15, 2020, the City Council (Council) passed emergency legislation,
12 Ordinance 126094 (Premium Pay for Gig Workers Ordinance), requiring food delivery
13 network companies to provide gig workers with premium pay, which is a form of hazard
14 pay, to compensate them for the hazards of working during the COVID-19 emergency;
15 and

16 WHEREAS, the Premium Pay for Gig Workers Ordinance went into effect upon the Mayor's
17 signature on June 26, 2020; and

18 WHEREAS, recognizing the ongoing threat to frontline grocery employees, ~~three jurisdictions in~~
19 California, several California cities, including Berkeley, Long Beach, Los Angeles, and
20 San Francisco, as well as Los Angeles County, have announced legislative efforts to
21 require hazard pay of \$4 to \$5 per hour for grocery employees during the COVID-19
22 emergency, and more cities are expected to announce similar legislation in 2021; and

1 WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers'
2 lives, support economic security, and contribute to a fair, healthy, and vibrant economy;
3 and

4 WHEREAS, establishing a labor standard that requires hazard pay for grocery employees is a
5 subject of vital and imminent concern to the community and requires appropriate action
6 by the City Council; NOW, THEREFORE,

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

8 Section 1. The City Council (Council) finds and declares that:

9 A. In the exercise of The City of Seattle's police powers, the City is granted authority to
10 pass regulations designed to protect and promote public health, safety, and welfare.

11 B. This ordinance protects and promotes public health, safety, and welfare during the new
12 coronavirus 19 (COVID-19) emergency by requiring grocery businesses to provide hazard pay
13 for grocery employees performing work in Seattle, thereby increasing retention of employees
14 who provide essential services on the frontlines of a global pandemic and paying additional
15 compensation to those employees for the hazards of working with significant exposure to an
16 infectious disease.

17 C. On January 30, 2020, the World Health Organization (WHO) declared that COVID-19
18 constituted a public health emergency of international concern, WHO's highest level of alarm.

19 D. On February 29, 2020, Washington Governor Jay Inslee issued proclamation 20-05,
20 proclaiming a state of emergency for all counties throughout the state of Washington in response
21 to new cases of COVID-19, and directing state agencies to use all resources necessary to prepare
22 for and respond to the outbreak.

1 E. On March 3, 2020, Mayor Jenny Durkan proclaimed a civil emergency in response to
2 new cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to
3 take extraordinary measures to prevent death or injury of persons and to protect the public peace,
4 safety and welfare, and alleviate damage, loss, hardship or suffering.

5 F. On March 23, 2020, Washington Governor Jay Inslee issued Proclamation 20-25, a
6 “Stay Home – Stay Healthy” order closing all non-essential workplaces, requiring people to stay
7 home except to participate in essential activities or to provide essential business services, and
8 banning all gatherings for social, spiritual, and recreational purposes. This order was extended
9 through May 31, 2020. The “Stay Home – Stay Healthy” proclamation identified grocery
10 employees as “Essential Critical Infrastructure Workers” performing work to protect
11 communities and ensure continuity of functions critical to public health and safety, as well as
12 economic and national security.

13 G. On May 4, 2020, Washington Governor Jay Inslee announced a “Safe Start” plan to
14 start on June 1, 2020 to reopen Washington’s economy in phases with adequate social distancing
15 measures and health standards in place.

16 H. On June 19, 2020, Washington State Secretary of Health John Wiesman approved
17 King County to move to Phase 2 of the “Safe Start” plan.

18 I. On June 26, 2020, Seattle Ordinance 126094 (Premium Pay for Gig Workers
19 Ordinance), went into effect for gig workers working in Seattle for food delivery network
20 companies during the COVID-19 emergency. This emergency legislation requires food delivery
21 network companies to provide gig workers with additional compensation, “premium pay,” for
22 each online order that results in the gig worker making a work-related stop in Seattle. The
23 premium pay, which is a form of hazard pay, compensates gig workers for the risks of working

1 for food delivery network companies during the COVID-19 emergency and for the costs of
2 taking preventative safety measures to protect themselves and others from spreading the virus.

3 J. In October 2020, The British Medical Journal, *Occupational & Environmental*
4 *Medicine*, reported that grocery employees face a serious risk of COVID-19 infection and
5 associated psychological distress. A study of 104 grocery employees at a grocery store in Boston,
6 Massachusetts found that 20 percent tested positive for COVID-19 despite 91 percent of
7 employees reporting wearing a face mask at work and 77 percent of employees reporting
8 wearing masks outside of work. The positive rate of infection among grocery employees was
9 five times as likely for those who interacted with customers than for those who did not.
10 Additionally, the study found that 76 percent of employees had no symptoms, suggesting that
11 these employees could be an important reservoir of asymptomatic infection. Further, 24 of the 99
12 employees who filled out a related medical health questionnaire also reported experiencing
13 anxiety, and eight employees were deemed depressed from their questionnaire answers.

14 K. In November 2020, the Brookings Metropolitan Policy Program reported that the
15 profits of top retail companies, including grocery businesses, soared during the pandemic while
16 their employees earned low wages and, with few exceptions, failed to receive consistent or
17 meaningful additional compensation for performing life threatening work. The report found that
18 the top retail companies in their analysis earned on average an extra \$16.7 billion in profit
19 compared to the previous year – a 40 percent increase. Frontline retail employees experienced
20 little of this windfall, averaging a 10 percent pay increase on top of wages that were often too
21 low to meet a family’s basic needs.

1 L. On January 3, 2021, the Center for Disease Control (CDC) reported that multiple
2 COVID-19 variants are circulating globally that appear to spread more easily and quickly than
3 other variations.

4 M. Studies show that a variant first detected in the United Kingdom (UK) in September
5 2020, known as B.1.1.7, is 50 to 70 percent more transmissible than the previously circulating
6 form of the COVID-19 virus and is responsible for more than half of new infections in the UK.
7 The B.1.1.7 variant is now prevalent in 40 countries, and cases in the United States have been
8 identified in nine states: California, Colorado, Connecticut, Georgia, Florida, Minnesota, New
9 York, Pennsylvania, and Texas.

10 N. Studies show that a highly contagious COVID-19 variant first detected in South Africa
11 may pose a risk to COVID antibody treatments.

12 O. The Washington State Department of Health (DOH) reports that two vaccines are
13 authorized for emergency use by United States Food & Drug Administration. In December 2020,
14 the DOH published a COVID-19 vaccine estimated timeline beginning in December 2020 with a
15 “Phase 1a” for high-risk health care workers in healthcare settings, high-risk first responders,
16 long term care facility residents, and continuing for other identified high-risk individuals through
17 April 2021. The timeline stated that future phases would be announced for May through
18 December 2021.

19 P. Initially, DOH’s COVID vaccine timeline indicated that all grocery employees would
20 be eligible for vaccination in February 2021. A modified timeline, published in January 2021,
21 clarified that only grocery employees 50 years or older would be eligible in February 2021 and
22 grocery employees under 50 years would be eligible in April 2021.

1 Q. Across the country, states have widely varied in their administration of the vaccine
2 and logistical problems have put efforts to vaccinate the country behind schedule.

3 R. As of January 11, 2021, the CDC reported that about nine million people received the
4 first dose of the COVID vaccine, far short of the federal goal of administering the first dose for
5 at least 20 million people by the end of 2020. In Washington state, the DOH reported that only
6 one third of the 624,975 vaccine doses distributed to the state had been administered by this
7 same date. Some of the gap for Washington state may be attributable to data lags and logistical
8 issues in the federal partnership with clinics administering the vaccine.

9 S. On January 5, 2021, Governor Jay Inslee announced the “Healthy Washington-
10 Roadmap to Recovery,” a COVID-19 phased recovery plan beginning on January 11, 2021 that
11 starts with every region in Phase 1, prohibiting indoor gatherings with people outside the
12 household and limiting business activity. Regions may reopen when they meet certain metrics
13 around hospitalization and case data.

14 T. Dr. Jeff Duchin, Health Officer for Public Health – Seattle & King County, has stated
15 that the target for COVID-19 activity is a downward trend of fewer than ten new cases for every
16 100,000 residents over a two-week period, which translates to about 16 cases or fewer per day
17 over 14 days.

18 U. On January 13, 2020, Public Health – Seattle & King County reported that the current
19 status in King County is 352 positive cases per 100,000 residents.

20 V. As of January 13, 2021, Public Health – Seattle & King County reported a total of
21 70,094 positive cases including 1,151 deaths. The Washington DOH reported a total of 281,202
22 positive cases including 3,838 deaths and the WHO reported a total of 90,759,370 cases
23 including 1,963,169 deaths.

1 W. Throughout the entirety of the COVID-19 emergency, grocery businesses have been
2 operating in Seattle and relying upon the work of grocery employees who are highly vulnerable
3 to health and safety risks.

4 X. Grocery employees are essential workers performing services that are fundamental to
5 the economy and health of the community during the COVID-19 crisis. They face clear and
6 present dangers at their jobs and continue to risk their lives and the health of their families to
7 keep the community's food supply chain operating.

8 Y. Grocery employees cannot choose to work from home and must come to work to
9 perform their jobs, which can involve substantial interaction with customers and/or ventilation
10 systems that could potentially spread the virus. They are wearing masks, trying as much as
11 possible to social distance, performing safety protocols, and learning new skills to decrease
12 transmission of the virus to protect themselves and the public.

13 Z. The risks of working during the pandemic are especially significant for BIPOC
14 employees because they are overrepresented among the retail frontline workforce and are
15 disproportionately impacted by COVID-19. Data shows that people of color are
16 disproportionately experiencing hospitalization and dying of COVID-19.

17 AA. The CDC reports that Black and Indigenous people, followed by Pacific Islanders
18 and Latinx people, are disproportionately affected by COVID-19 due to long-standing inequities
19 in social determinants of health, including overrepresentation in jobs that require customer
20 contact such as grocery stores; lower incomes and barriers to wealth accumulation; lack of access
21 to quality healthcare and fair treatment in the healthcare system; difficulties in finding affordable
22 and quality housing; and inequities in access to high-quality education. The CDC reports that
23 these determinants may increase risk of COVID-19 exposure, illness, hospitalization, long-term

1 health and social consequences, and death. To stop the spread of COVID-19, the CDC states that
2 resources must be equitably available for everyone to maintain physical and mental health.

3 BB. Science in the News (SITN), a graduate student group at the Harvard Graduate
4 School of the Arts and Sciences, reports that it is more difficult for BIPOC communities to stay
5 safe during the pandemic and notes the importance of keeping these vulnerable populations in
6 mind as the country slowly reopens the economy. SITN states that social distancing is a privilege
7 that many people of color cannot afford because they work and reside in situations with higher
8 risk of exposure to the virus: people of color are more likely to live in densely populated areas;
9 reside in multigenerational and multifamily households; and use public transportation.
10 Furthermore, SITN reports that many inequalities that pre-dated the pandemic have worsened,
11 including limited access for Black and Latinx communities to primary care physicians, medical
12 facilities, and COVID testing.

13 CC. Grocery businesses are profiting during the pandemic from the labor of employees
14 who are working under dangerous conditions.

15 DD. Hazard pay, paid in addition to regular wages, is an established type of additional
16 compensation for employees performing hazardous duties or work involving physical hardship
17 that can cause extreme physical discomfort and distress.

18 EE. Grocery employees working during the COVID-19 emergency merit hazard pay
19 because they are performing hazardous duty or work involving physical hardship that can cause
20 extreme physical discomfort and distress due to the significant risk of exposure to the COVID-19
21 virus.

22 FF. Grocery employees have been working under hazardous conditions month after
23 month. They are working in these hazardous conditions now and will continue to face safety

1 risks as the virus presents an ongoing threat, including the threat of more contagious variants, for
2 an uncertain period. In the best-case scenario, grocery employees can expect to be vaccinated
3 from the virus within four months. However, state and national delays in vaccination efforts
4 suggest the potential for a longer timeline. In the meantime, the crisis of the pandemic continues
5 unabated and presents extreme risks for grocery employees.

6 GG. Ensuring that grocery employees are compensated for the substantial risks of
7 working during the COVID-19 emergency promotes retention of these vital workers. Retention
8 of grocery employees is fundamental to protecting the health of the community as these
9 employees directly support public purchase of groceries and facilitate community access to food.

10 HH. This ordinance is immediately necessary in response to the COVID-19 emergency
11 because the health threats that grocery employees face are as significant now as when this crisis
12 began and are growing exponentially as community transmission is already surging, COVID-19
13 variants may further increase transmission of the virus and reduce therapeutic treatments, and
14 vaccinations are destined for a gradual roll-out that could take four months or more for grocery
15 employees and much longer for the general public. This is a rapidly evolving situation, with
16 disproportionate risks and adverse impacts for BIPOC communities, that must be addressed
17 without delay.

18 II. Grocery employees are necessary to protect the public health because their work
19 sustains access to groceries; hazard pay is one step to recognize the dangers facing these
20 employees as they support our community, encourage them to continue their vital work, and
21 provide them with additional financial resources.

22 JJ. An immediate requirement to provide grocery employees with hazard pay promotes
23 retention of essential workers, improves the financial ability of grocery employees to access

resources they need to stay safe and healthy, and ultimately supports the greater community that depends on grocery employees for consistent, safe and reliable access to food.

Section 2. As the substantive effects of this ordinance are not permanent, this ordinance is not intended to be codified. Section numbers are for ease of reference within this ordinance, and section and subsection references refer to numbers in this ordinance unless stated otherwise.

HAZARD PAY FOR GROCERY EMPLOYEES

100.005 Short title

This ordinance shall constitute the “Hazard Pay for Grocery Employees Ordinance” and may be cited as such.

100.010 Definitions

For purposes of this ordinance:

“Adverse action” means reducing compensation, garnishing gratuities, denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, or otherwise discriminating against any person for any reason prohibited by Section 100.050. “Adverse action” for an employee may involve any aspect of employment, including compensation, work hours, responsibilities, or other material change in the terms and conditions of employment. “Adverse action” also encompasses any action by the employer or a person acting on the employer’s behalf that would dissuade a reasonable person from exercising any right afforded by this ordinance.

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

“Aggrieved party” means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this ordinance.

1 “City” means The City of Seattle.

2 “Compensation” means the payment owed to an employee by reason of employment,
3 including but not limited to, salaries, wages, tips, service charge distributions, overtime,
4 commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid
5 leave, and reimbursement for employer expenses.

6 “Director” means the Director of the Office of Labor Standards or the Director's
7 designee.

8 “Director rules” means: (1) rules the Director or Agency may promulgate pursuant to
9 subsection 100.060.B or 100.060.C; or (2) other rules that the Director identifies, by means of an
10 Agency Q&A, previously promulgated pursuant to authority in Seattle Municipal Code Title 14.
11 Rules the Director identifies by means of an Agency Q&A shall have the force and effect of law
12 and may be relied on by employers, employees, and other parties to determine their rights and
13 responsibilities under this ordinance.

14 “Employ” means to suffer or permit to work;

15 “Employee” means “employee” as defined under Seattle Municipal Code Section
16 12A.28.200, including but not limited to full-time employees, part-time employees, and
17 temporary workers. An alleged employer bears the burden of proof that the individual is, as a
18 matter of economic reality, in business for oneself (i.e., an independent contractor) rather than
19 dependent upon the alleged employer.

20 “Employer” means any individual, partnership, association, corporation, business trust,
21 or any entity, person or group of persons, or a successor thereof, that employs another person and
22 includes any such entity or person acting directly or indirectly in the interest of the employer in

1 relation to the employee. More than one entity may be the “employer” if employment by one
2 employer is not completely disassociated from employment by any other employer.

3 “Franchise” means an agreement by which:

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

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

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

12 “Franchisee” means a person to whom a franchise is offered or granted.

13 “Franchisor” means a person who grants a franchise to another person.

14 “Front pay” means the compensation the employee would earn or would have earned if
15 reinstated to the employee's former position.

16 “Grocery business” means a retail store operating in Seattle that is either:

17 1. Over 10,000 square feet in size and that is primarily engaged in retailing
18 groceries for offsite consumption, including but not limited to the sale of fresh produce, meats,
19 poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages,
20 baked foods, and/or prepared foods. Other household supplies or other products shall be
21 secondary to the primary purpose of groceries sales; or

22 2. Over 85,000 square feet and with 30 percent or more of its sales floor area
23 dedicated to sale of groceries, including but not limited to the sale of fresh produce, meats,

1 poultry, fish, deli products, dairy products, canned and frozen foods, dry foods, beverages,
2 baked foods, and/or prepared foods.

3 “Grocery business” does not include convenience stores or food marts primarily engaged
4 in retailing a limited line of goods that generally includes milk, bread, soda, and snacks.

5 “Grocery business” also does not include farmers’ markets as defined by the City’s Multi-
6 Departmental Administrative Rule 09-01 for the Farmers Markets Pilot Program or its
7 successor rule.

8 “Grocery employee” means an employee covered by this ordinance.

9 “Hazard pay” means additional compensation owed to an employee on top of the
10 employee’s other compensation, including but not limited to salaries, wages, tips, service
11 charge distributions, overtime, commissions, piece rate, bonuses, rest breaks, promised or
12 legislatively required pay or paid leave, and reimbursement for employer expenses. For the
13 purposes of compensating an employee for paid sick and paid safe time under Seattle
14 Municipal Code Chapter 14.16, hazard pay is considered a premium rate and is not included in
15 the employee’s normal hourly compensation.

16
17 “Primary language” means the language in which the employee feels most comfortable
18 communicating.

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

1 “Respondent” means an employer or any person who is alleged or found to have
2 committed a violation of this ordinance.

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

11 “Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in
12 recognition of some service performed for the customer by the employee receiving the tip.

13 “Written” or “writing” means a printed or printable communication in physical or
14 electronic format, including but not limited to a communication that is transmitted through email,
15 text message, or a computer or mobile system, or that is otherwise sent and maintained
16 electronically.

17 **100.015 Employee coverage**

18 For the purposes of this ordinance:

19 A. Covered employees are limited to those who perform work for a covered employer at
20 a retail location in Seattle.

21 B. Time spent by an employee in Seattle solely for the purpose of travelling through
22 Seattle from a point of origin outside Seattle to a destination outside Seattle, with no

1 employment-related or commercial stops in Seattle except for refueling or the employee's
2 personal meals or errands, is not covered by this ordinance.

3 C. Employees who are gig workers under Ordinance 126094 are not covered employees
4 under this ordinance. Employers must pay all compensation owed to such gig workers in
5 accordance with their obligations under Ordinance 126094.

6 **100.020 Employer coverage**

7 A. For the purposes of this ordinance, covered employers are limited to grocery
8 businesses that employ 500 or more employees worldwide regardless of where those employees
9 are employed, including but not limited to chains, integrated enterprises, or franchises associated
10 with a franchisor or network of franchises that employ 500 or more employees in aggregate.

11 B. To determine the number of employees for the current calendar year:

12 1. The calculation is based upon the average number per calendar week of
13 employees who worked for compensation during the preceding calendar year for any and all
14 weeks during which at least one employee worked for compensation. For employers that did not
15 have any employees during the preceding calendar year, the number of employees(s) for the
16 current calendar year is calculated based upon the average number per calendar week of
17 employees who worked for compensation during the first 90 calendar days of the current year in
18 which the employer engaged in business.

19 2. All employees who worked for compensation shall be counted, including but
20 not limited to:

- 21 a. Employees who are not covered by this ordinance;
- 22 b. Employees who worked in Seattle;
- 23 c. Employees who worked outside Seattle; and

1 d. Employees who worked in full-time employment, part-time
2 employment, joint employment, temporary employment, or through the services of a temporary
3 services or staffing agency or similar entity.

4 C. Separate entities that form an integrated enterprise shall be considered a single
5 employer under this ordinance. Separate entities will be considered an integrated enterprise and a
6 single employer under this ordinance where a separate entity controls the operation of another
7 entity. The factors to consider in making this assessment may include, but are not limited to:

- 8 1. Degree of interrelation between the operations of multiple entities;
- 9 2. Degree to which the entities share common management;
- 10 3. Centralized control of labor relations;
- 11 4. Degree of common ownership or financial control over the entities; and
- 12 5. Use of a common brand, trade, business, or operating name.

13 D. The Agency is authorized to make a reasonable inference as to whether an employer
14 meets the definition of “grocery business” under Section 100.010, and an alleged employer bears
15 the burden of proof to show that the employer is not a “grocery business” as defined in Section
16 100.010.

17 E. When determining whether an employer is “primarily engaged in retailing groceries”
18 according to the definition of “grocery business” under Section 100.010, the Agency may
19 consider any number of factors, including but not limited to the following examples: grocery
20 sales as a percentage of the retail store’s overall sales; sales floor area dedicated to grocery sales;
21 marketing or promotional materials from the employer; or other public statements from
22 representatives of the employer.

23 **100.025 Hazard pay requirements**

1 A. Employers shall provide each employee with hazard pay at a rate of four dollars per
2 hour for each hour worked in Seattle.

3 1. No employer shall, as a result of this ordinance going into effect, take steps to
4 reduce employee compensation so as to prevent, in whole or in part, employees from receiving
5 hazard pay at a rate of four dollars per hour for each hour worked in Seattle in addition to those
6 employees' other compensation. Employers shall maintain records to establish the reason(s) for
7 any reduction in employee compensation pursuant to Section 100.040.

8 2. Employers providing hazard pay, as defined under Section 100.010, on the
9 effective date of this ordinance may use the hourly rate of that hazard pay to offset the amount
10 due under this subsection 100.025.A.

11 a. Employers shall comply with requirements for providing compensation in
12 Section 100.025.B for the entire amount due under Section 100.025.A.

13 b. Employers bear the burden the proof to show that the additional compensation
14 is hazard pay for the purposes of working during the COVID-19 emergency.

15 B. Employers shall comply with the requirements for providing compensation in the
16 Wage Theft Ordinance, Seattle Municipal Code Chapter 14.20, including but not limited to the
17 following:

18 1. Employers shall provide revised written notice of employment information that
19 includes notice of hazard pay pursuant to Seattle Municipal Code subsection 14.20.025.D,
20 provided that such notice is ~~not due until~~due by 30 days after the effective date of this ordinance.

21 The revised notice of employment information shall include notice of any hazard pay offset
22 available under subsection 100.025.A.2.;

1 2. Employers shall provide payment for hazard pay on the established, regular pay
2 day on which wages are paid ~~the applicable hours worked~~ pursuant to Seattle Municipal Code
3 Section 14.20.020, ~~and~~

4 3. Employers shall provide written itemization of the hazard pay separately from
5 payment for wages and other compensation pursuant to Seattle Municipal Code subsection
6 14.20.025.E.

7 C. Employers shall comply with the hazard pay requirements in this Section 100.025 for
8 the duration of the civil emergency proclaimed by the Mayor on March 3, 2020.

9 **100.030 Notice and posting**

10 A. Within 30 days of the effective date of this ordinance, employers shall display a
11 written notice of rights established by this ordinance in a conspicuous and accessible place at any
12 workplace or job site where any of their employees' work. Employers shall display the notice of
13 rights in English and in the primary language(s) of the employee(s) at the workplace or job
14 site. Employers shall make a good faith effort to determine the primary languages of the
15 employees at the workplace or job site. If display of the notice of rights is not feasible,
16 including situations when the employee works remotely or does not have a regular workplace
17 or job site, employers may solely provide the notice of rights on an individual basis in the
18 employee's primary language in a physical or electronic format that is reasonably conspicuous
19 and accessible.

20 B. The notice of rights shall provide information on:

- 21 1. The right to hazard pay guaranteed by this ordinance;
- 22 2. The right to be protected from retaliation for exercising in good faith the rights
- 23 protected by this ordinance; and

1 3. The right to file a complaint with the Agency or bring a civil action for a
2 violation of the requirements of this ordinance, including an employer’s denial of hazard pay as
3 required by this ordinance and an employer or other person's retaliation against an employee or
4 other person for asserting the right to hazard pay or otherwise engaging in an activity protected
5 by this ordinance.

6 C. The Agency may create and distribute a model notice of rights in English and other
7 languages. However, employers are responsible for providing employees with the notice of rights
8 required by subsection 100.030.A and 100.030.B in a form and manner sufficient to inform
9 employees of their rights under this ordinance, regardless of whether the Agency has created and
10 distributed a model notice of rights.

11 **100.040 Employer records**

12 A. Employers shall retain records that document compliance with this ordinance for each
13 employee.

14 B. Employers shall retain the records required by subsection 100.040.A for a period of
15 three years.

16 C. If an employer fails to retain adequate records required under subsection 100.040.A,
17 there shall be a presumption, rebuttable by clear and convincing evidence, that the employer
18 violated this ordinance for the periods and for each employee for whom records were not
19 retained.

20 **100.050 Retaliation prohibited**

21 A. No employer or any other person shall interfere with, restrain, or deny the exercise of,
22 or the attempt to exercise, any right protected under this ordinance.

1 B. No employer or any other person shall take any adverse action against any person
2 because the person has exercised in good faith the rights protected under this ordinance. Such
3 rights include, but are not limited to, the right to make inquiries about the rights protected under
4 this ordinance; the right to inform others about their rights under this ordinance; the right to
5 inform the person's employer, the person's legal counsel, a union or similar organization, or any
6 other person about an alleged violation of this ordinance; the right to file an oral or written
7 complaint with the Agency or bring a civil action for an alleged violation of this ordinance; the
8 right to cooperate with the Agency in its investigations of this ordinance; the right to testify in a
9 proceeding under or related to this ordinance; the right to refuse to participate in an activity that
10 would result in a violation of city, state or federal law; and the right to oppose any policy,
11 practice, or act that is unlawful under this ordinance.

12 C. No employer or any other person shall communicate to a person exercising rights
13 protected in this Section 100.050, directly or indirectly, the willingness to inform a government
14 worker that the person is not lawfully in the United States, or to report, or to make an implied or
15 express assertion of a willingness to report, suspected citizenship or immigration status of an
16 employee or family member of an employee to a federal, state, or local agency because the
17 employee has exercised a right under this ordinance.

18 D. It shall be a rebuttable presumption of retaliation if an employer or any other person
19 takes an adverse action against a person within 90 days of the person's exercise of rights
20 protected in this Section 100.050. However, in the case of seasonal work that ended before the
21 close of the 90-day period, the presumption also applies if the employer fails to rehire a former
22 employee at the next opportunity for work in the same position. The employer may rebut the

1 presumption with clear and convincing evidence that the adverse action was taken for a
2 permissible purpose.

3 E. Proof of retaliation under this Section 100.050 shall be sufficient upon a showing that
4 an employer or any other person has taken an adverse action against a person and the person's
5 exercise of rights protected in this Section 100.050 was a motivating factor in the adverse action,
6 unless the employer can prove that the action would have been taken in the absence of such
7 protected activity.

8 F. The protections afforded under this Section 100.050 shall apply to any person who
9 mistakenly but in good faith alleges violations of this ordinance.

10 G. A complaint or other communication by any person triggers the protections of this
11 Section 100.050 regardless of whether the complaint or communication is in writing or makes
12 explicit reference to this ordinance.

13 **100.060 Enforcement power and duties**

14 A. The Agency shall have the power to investigate violations of this ordinance and shall
15 have such powers and duties in the performance of these functions as are defined in this
16 ordinance and otherwise necessary and proper in the performance of the same and provided for
17 by law.

18 B. The Agency is authorized to coordinate implementation and enforcement of this
19 ordinance and may promulgate appropriate guidelines or rules for such purposes.

20 C. The Director is authorized to promulgate rules consistent with this ordinance and
21 Chapter 3.02 of the Seattle Municipal Code. Any guidelines or rules promulgated by the Director
22 shall have the force and effect of law and may be relied on by employers, employees, and other
23 parties to determine their rights and responsibilities under this ordinance.

1 **100.070 Violation**

2 The failure of any respondent to comply with any requirement imposed on the respondent under
3 this ordinance is a violation.

4 **100.080 Investigation**

5 A. The Agency shall have the power to investigate any violations of this ordinance by
6 any respondent. The Agency may initiate an investigation pursuant to Director rules, including
7 but not limited to situations when the Director has reason to believe that a violation has occurred
8 or will occur, or when circumstances show that violations are likely to occur within a class of
9 employers or businesses because the workforce contains significant numbers of employees who
10 are vulnerable to violations of this ordinance or the workforce is unlikely to volunteer
11 information regarding such violations. An investigation may also be initiated through the receipt
12 by the Agency of a report or complaint filed by an employee or other person.

13 B. An employee or other person may report to the Agency any suspected violation of this
14 ordinance. The Agency shall encourage reporting pursuant to this Section 100.080 by taking the
15 following measures:

16 1. The Agency shall keep confidential, to the maximum extent permitted by
17 applicable laws, the name and other identifying information of the employee or person reporting
18 the violation. However, with the authorization of such person, the Agency may disclose the
19 employee's or person's name and identifying information as necessary to enforce this ordinance
20 or for other appropriate purposes.

21 2. Employers shall provide employees with written notice of an investigation.
22 Employers shall provide the notice in a format that is readily accessible to employees. The
23 Agency shall create the notice in English and other languages.

1 3. The Agency may certify the eligibility of eligible persons for “U” Visas under
2 the provisions of 8 U.S.C. § 1184.p and 8 U.S.C. § 1101.a.15.U. This certification is subject to
3 applicable federal law and regulations, and Director rules.

4 C. The Agency's investigation shall commence within three years of the alleged violation.
5 To the extent permitted by law, the applicable statute of limitations for civil actions is tolled
6 during any investigation under this ordinance and any administrative enforcement proceeding
7 under this ordinance based upon the same facts. For purposes of this ordinance:

8 1. The Agency's investigation begins on the earlier date of when the Agency
9 receives a complaint from a person under this ordinance, or when the Agency provides notice to
10 the respondent that an investigation has commenced under this ordinance.

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

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

16 E. The Director may apply by affidavit or declaration in the form allowed under RCW
17 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring a hiring entity to
18 produce the records required by Section 100.040, or for the attendance and testimony of
19 witnesses, or for the production of documents required to be retained under Section 100.040, or
20 any other document relevant to the issue of whether any employee or group of employees has
21 been or is afforded the proper amount of hazard pay required by this ordinance and/or to whether
22 an employer has violated any provision of this ordinance. The Hearing Examiner shall conduct
23 the review without hearing as soon as practicable and shall issue subpoenas upon a showing that

1 there is reason to believe that: a violation has occurred, a complaint has been filed with the
2 Agency, that circumstances show that violations are likely to occur within a class of businesses
3 because the workforce contains significant numbers of employees who are vulnerable to
4 violations of this ordinance, the workforce is unlikely to volunteer information regarding such
5 violations, or the Agency has gathered preliminary information indicating that a violation may
6 have occurred.

7 F. An employer that fails to comply with the terms of any subpoena issued under
8 subsection 100.080.E in an investigation by the Agency under this ordinance before the issuance
9 of a Director's Order issued pursuant to subsection 100.090.C may not use such records in any
10 appeal to challenge the correctness of any determination by the Agency of liability, damages
11 owed, or penalties assessed.

12 G. In addition to other remedies, the Director may refer any subpoena issued under
13 subsection 100.080.E to the City Attorney to seek a court order to enforce any subpoena.

14 H. Where the Director has reason to believe that a violation has occurred, the Director
15 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
16 status quo pending completion of a full investigation or hearing, including but not limited to a
17 deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest,
18 damages, and penalties due. A respondent may appeal any such order in accordance with Section
19 100.210.

20 **100.090 Findings of fact and determination**

21 A. Except when there is an agreed upon settlement, the Director shall issue a written
22 determination with findings of fact resulting from the investigation and statement of whether a

1 violation of this ordinance has or has not occurred based on a preponderance of the evidence
2 before the Director.

3 B. If the Director determines that there is no violation of this ordinance, the Director shall
4 issue a “Determination of No Violation” with notice of an employee or other person’s right to
5 appeal the decision, pursuant to Director rules.

6 C. If the Director determines that a violation of this ordinance has occurred, the Director
7 shall issue a “Director's Order” that shall include a notice of violation identifying the violation or
8 violations.

9 1. The Director’s Order shall state with specificity the amounts due under this
10 ordinance for each violation, including payment of unpaid compensation, liquidated damages,
11 civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section
12 100.200.

13 2. The Director's Order may specify that civil penalties and fines due to the
14 Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party
15 pursuant to subsection 100.200.A.4.

16 3. The Director’s Order may specify that civil penalties and fines are due to the
17 aggrieved party rather than due to the Agency pursuant to subsection 100.200.E or 100.200.F.

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

21 5. The Director's Order shall include notice of the respondent's right to appeal the
22 decision pursuant to Section 100.210.

23 **100.200 Remedies**

1 A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties
2 payable to aggrieved parties, fines, and interest provided under this ordinance is cumulative and
3 is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

4 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
5 fines contained in this Section 100.200 shall be increased annually to reflect the rate of inflation
6 and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall
7 determine the amounts and file a schedule of such amounts with the City Clerk.

8 2. If a violation is ongoing when the Agency receives a complaint or opens an
9 investigation, the Director may order payment of unpaid compensation plus interest that accrues
10 after receipt of the complaint or after the investigation opens and before the date of the Director's
11 Order.

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

14 4. If there is a remedy due to an aggrieved party, the Director may waive part or
15 all civil penalties and fines due to the Agency based on timely payment of the full remedy due to
16 the aggrieved party.

17 a. The Director may waive the total amount of civil penalties and fines due
18 to the Agency if the Director determines that the respondent paid the full remedy due to the
19 aggrieved party within ten days of service of the Director's Order.

20 b. The Director may waive half the amount of civil penalties and fines due
21 to the Agency if the Director determines that the respondent paid the full remedy due to the
22 aggrieved party within 15 days of service of the Director's Order.

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

4 5. When determining the amount of liquidated damages, civil penalties, penalties
5 payable to aggrieved parties, and fines due under this Section 100.200 for a settlement agreement
6 or Director's Order, including but not limited to the mitigation of civil penalties and fines due to
7 the Agency for timely payment of remedy due to an aggrieved party under subsection
8 100.200.A.4, the Director ~~shall~~may consider:

9 a. The total amount of unpaid compensation, liquidated damages,
10 penalties, fines, and interest due;

11 b. The nature and persistence of the violations;

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

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

14 e. The size, revenue, and human resources capacity of the respondent;

15 f. The circumstances of each situation;

16 g. The amount of penalties in similar situations; and

17 h. Other factors pursuant to Director rules.

18 B. A respondent found to be in violation of this ordinance shall be liable for full payment
19 of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this
20 ordinance and other equitable relief. If the precise amount of unpaid compensation cannot be
21 determined due to a respondent's failure to produce records or if a respondent produces records
22 in a manner or form which makes timely determination of the amount of unpaid compensation
23 impracticable, the Director may designate a daily amount of \$50 for unpaid compensation due to

1 aggrieved party. For any violation of this ordinance, the Director may assess liquidated damages
2 in an additional amount of up to twice the unpaid compensation.

3 C. A respondent found to be in violation of this ordinance for retaliation under Section
4 100.050 shall be subject to any appropriate relief at law or equity including, but not limited to
5 reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of
6 unpaid compensation plus interest in favor of the aggrieved party under the terms of this
7 ordinance, and liquidated damages in an additional amount of up to twice the unpaid
8 compensation. The Director also shall order the imposition of a penalty payable to the aggrieved
9 party of up to \$5,565.10.

10 D. A respondent found to be in violation of hazard pay requirements under subsection
11 100.025.A shall be subject to all remedies available under this Section 100.200.

12 E. The Director is authorized to assess civil penalties and may specify that civil penalties
13 are due to the aggrieved party rather than due to the Agency.

14 1. For a first violation of this ordinance, the Director may assess a civil penalty of
15 up to \$556.30 per aggrieved party.

16 2. For a second violation of this ordinance, the Director shall assess a civil penalty
17 of up to \$1,112.60 per aggrieved party, or an amount equal to ten percent of the total amount of
18 unpaid compensation, whichever is greater.

19 3. For a third or any subsequent violation of this ordinance, the Director shall
20 assess a civil penalty of up to \$5,565.10 per aggrieved party, or an amount equal to ten percent of
21 the total amount of unpaid compensation, whichever is greater.

22 4. For purposes of this Section 100.200, a violation is a second, third, or
23 subsequent violation if the respondent has been a party to one, two, or more than two settlement

1 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than
2 two Director's Orders, respectively, have issued against the respondent in the ten years preceding
3 the date of the violation; otherwise, it is a first violation.

4 F. The Director is authorized to assess fines and may specify that fines are due to the
5 aggrieved party rather than due to the Agency. The Director is authorized to assess fines as
6 follows:

Violation	Fine
Failure to display written notice of rights under Section 100.030	\$556.30
Failure to retain employer records for three years under subsections 100.040.A and 100.040.B	\$556.30 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 100.050	\$1,112.60 per aggrieved party
Failure to provide notice of investigation to employees under subsection 100.080.B.2	\$556.30
Failure to post or distribute public notice of failure to comply with final order under subsection 100.240.A.1	\$556.30

7
8 The maximum amount that may be imposed in fines in a one-year period for each type of
9 violation listed above is \$5,565.10 unless a fine for retaliation is issued, in which case the
10 maximum amount is \$22,259.36.

11 G. A respondent who willfully hinders, prevents, impedes, or interferes with the Director
12 or Hearing Examiner in the performance of their duties under this ordinance shall be subject to a
13 civil penalty of not less than \$1,112.60 and not more than \$5,565.10.

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

1 I. A respondent that is the subject of a settlement agreement stipulating that a violation
2 has occurred shall count for debarment, or a final order for which all appeal rights have been
3 exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such
4 amounts due under the final order have been paid in full to the Director. If the respondent is the
5 subject of a final order two times or more within a five-year period, the employer shall not be
6 allowed to bid on any City contract for two years. This subsection 100.200.I shall be construed to
7 provide grounds for debarment separate from, and in addition to, those contained in Seattle
8 Municipal Code Chapter 20.70 and shall not be governed by that chapter provided that nothing in
9 this subsection 100.200.I shall be construed to limit the application of Seattle Municipal Code
10 Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of
11 all respondents subject to debarment under this subsection 100.080.I.

12 **100.210 Appeal period and failure to respond**

13 A. An employee or other person who claims an injury as a result of an alleged violation
14 of this ordinance may appeal the Determination of No Violation, pursuant to Director rules.

15 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
16 to Section 100.200, by requesting a contested hearing before the Hearing Examiner in writing
17 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
18 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
19 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
20 until 5 p.m. on the next business day.

21 **100.220 Appeal procedure and failure to appear**

22 A. Contested hearings shall be conducted pursuant to the procedures for hearing
23 contested cases contained in Section 3.02.090 of the Seattle Municipal Code and the rules

1 adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de
2 novo and the Director shall have the burden of proving by a preponderance of the evidence that
3 the violation or violations occurred. Upon establishing such proof, the remedies and penalties
4 imposed by the Director shall be upheld unless it is shown that the Director abused discretion.
5 Failure to appear for a contested hearing shall result in an order being entered finding that the
6 respondent committed the violation stated in the Director's Order. For good cause shown and
7 upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order
8 entered upon a failure to appear.

9 B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying
10 or reversing the Director's Order, consistent with Ordinance 126068.

11 **100.230 Appeal from Hearing Examiner order**

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

16 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
17 sought in compliance with this Section 100.230.

18 **100.240 Failure to comply with final order**

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

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

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

6 3. The Director may refer the matter to the City Attorney for the filing of a civil
7 action in King County Superior Court, the Seattle Municipal Court, or any other court of
8 competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the
9 Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under
10 Section 100.250.

11 4. The Director may request that the City's Department of Finance and
12 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
13 requested by the hiring entity or person until such time as the hiring entity complies with the
14 remedy as defined in the settlement agreement or final order. The City's Department of Finance
15 and Administrative Services shall have the authority to deny, refuse to renew, or revoke any
16 business license in accordance with this subsection 100.240.A.4.

17 B. No respondent that is the subject of a final order issued under this ordinance shall quit
18 business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock
19 of goods without first notifying the Agency and without first notifying the respondent's successor
20 of the amounts owed under the final order at least three business days before such transaction. At
21 the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the
22 respondent's business or stock of goods, the full amount of the remedy, as defined in a final order
23 issued by the Director or the Hearing Examiner, shall become immediately due and payable. If

1 the amount due under the final order is not paid by respondent within ten days from the date of
2 such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment
3 of the amount due, provided that the successor has actual knowledge of the order and the
4 amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact
5 and amount of the order and the amounts due. The successor shall withhold from the purchase
6 price a sum sufficient to pay the amount of the full remedy. When the successor makes such
7 payment, that payment shall be deemed a payment upon the purchase price in the amount paid,
8 and if such payment is greater in amount than the purchase price the amount of the difference
9 shall become a debt due such successor from the hiring entity.

10 **100.250 Debt owed The City of Seattle**

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

17 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
18 time period set forth in subsection 100.210.B, the Director's Order shall be final, and the Director
19 may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the
20 Director's Order by entering judgment in favor of the City finding that the respondent has failed
21 to exhaust its administrative remedies and that all amounts and relief contained in the order are
22 due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall
23 be admissible without further evidentiary foundation. Any certifications or declarations

1 authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply
2 with the order or any parts thereof, and is therefore in default, or that the respondent has failed to
3 appeal the Director's Order to the Hearing Examiner within the time period set forth in
4 subsection 100.210.B, and therefore has failed to exhaust the respondent's administrative
5 remedies, shall also be admissible without further evidentiary foundation.

6 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
7 within the time period set forth in subsection 100.230.A, the order of the Hearing Examiner shall
8 be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
9 Order by entering judgment in favor of the City for all amounts and relief due under the order of
10 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
11 that the violations contained therein occurred and shall be admissible without further evidentiary
12 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing
13 evidence that the respondent has failed to comply with the order or any parts thereof, and is
14 therefore in default, or that the respondent has failed to avail itself of judicial review in
15 accordance with subsection 100.230.A, shall also be admissible without further evidentiary
16 foundation.

17 D. In considering matters brought under subsections 100.250.B and 100.250.C, the
18 Municipal Court may include within its judgment all terms, conditions, and remedies contained
19 in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are
20 consistent with the provisions of this ordinance.

21 **100.260 Private right of action**

22 A. Any person or class of persons that suffers financial injury as a result of a violation of
23 this ordinance, or is the subject of prohibited retaliation under Section 100.050, may bring a civil

1 action in a court of competent jurisdiction against the employer or other person violating this
2 ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such
3 legal or equitable relief as may be appropriate to remedy the violation including, without
4 limitation: the payment of any unpaid compensation plus interest due to the person and
5 liquidated damages in an additional amount of up to twice the unpaid compensation; and a
6 penalty payable to any aggrieved party of up to \$5,565.10 if the aggrieved party was subject to
7 prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due
8 at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

9 B. For purposes of this Section 100.260, “person” includes any entity a member of which
10 has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an
11 aggrieved party that has suffered financial injury or retaliation.

12 C. For purposes of determining membership within a class of persons entitled to bring an
13 action under this Section 100.260, two or more employees are similarly situated if they:

- 14 1. Are or were hired for the same employer or employers, whether concurrently or
15 otherwise, at some point during the applicable statute of limitations period,
- 16 2. Allege one or more violations that raise similar questions as to liability, and
- 17 3. Seek similar forms of relief.

18 D. For purposes of subsection 100.260.C, employees shall not be considered dissimilar
19 solely because the employees’:

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

1 E. An order issued by the court may include a requirement for an employer to submit a
2 compliance report to the court and to the Agency.

3 **100.265 Waiver**

4 Any waiver by an individual of any provisions of this ordinance shall be deemed contrary to
5 public policy and shall be void and unenforceable.

6 **100.270 Encouragement of more generous policies**

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

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

13 **100.280 Other legal requirements**

14 This ordinance provides minimum requirements for hazard pay for covered employees during the
15 COVID-19 emergency and shall not be construed to preempt, limit, impose additive
16 requirements, or otherwise affect the applicability of any other law, regulation, requirement,
17 policy, or standard that provides for hazard pay, or that extends other protections to employees;
18 and nothing in this ordinance shall be interpreted or applied so as to create any power or duty in
19 conflict with federal or state law. Nor shall this ordinance be construed to preclude any person
20 aggrieved from seeking judicial review of any final administrative decision or order made under
21 this ordinance affecting such person. Nothing in this Section 100.280 shall be construed as
22 restricting an employee's right to pursue any other remedies at law or equity for violation of their
23 rights.

100.290 Severability

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

Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 126189, is amended as follows:

3.02.125 Hearing Examiner filing fees

A. The filing fee for a case before the City Hearing Examiner is \$85, with the following exceptions:

Basis for Case	Fee in dollars
* * *	
Fair Employment Practices Ordinance (Chapter) 14.04))	No fee
Floating Home Moorages (Chapter) 7.20))	85 per petitioner 255 maximum
<u>Hazard Pay for Grocery Employees Ordinance (Ordinance XXXXX)</u>	<u>No fee</u>
Land Use Code Citation (Chapter) 23.91))	No fee
* * *	

Section 4. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 126108, is amended as follows:

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

A. In addition to any other powers and authority provided under this Title 6, the Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any

1 business license issued under the provisions of this Chapter 6.208. The Director, or the Director's
2 designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or
3 refusal to renew the license and on what grounds such a decision was based. The Director may
4 deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of
5 the following grounds:

- 6 1. The license was procured by fraud or false representation of fact.
- 7 2. The licensee has failed to comply with any provisions of this Chapter 6.208.
- 8 3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35,
9 5.38, 5.39, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
- 10 4. The licensee is in default in any payment of any license fee or tax under Title 5
11 or Title 6.
- 12 5. The property at which the business is located has been determined by a court to
13 be a chronic nuisance property as provided in Chapter 10.09.
- 14 6. The applicant or licensee has been convicted of theft under subsection
15 12A.08.060.A.4 within the last ten years.
- 16 7. The applicant or licensee is a person subject within the last ten years to a court
17 order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29
18 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of
19 either:
 - 20 a. The expiration of the time for filing an appeal from the final judgment
21 order under the court rules in effect at the time of the final judgment order; or

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

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

9 9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4,
10 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4, 14.27.210.A.4, 14.28.210.A.4,
11 14.30.180.A.4, and 14.33.210.A.4, subsection 100.240.A.4 of Ordinance 126091, ~~((and))~~
12 subsection 100.240.A.4 of Ordinance 126094, and subsection 100.240.A.4 of Ordinance
13 XXXXXX, the applicant or licensee has failed to comply, within 30 days of service of any
14 settlement agreement, with any final order issued by the Director of the Office of Labor
15 Standards, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17,
16 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, 14.30, and 14.33, Ordinance 126091 (~~(-~~
17 ~~((and))~~) Ordinance 126094, and Ordinance XXXXXX for which all appeal rights have been
18 exhausted, and the Director of the Office of Labor Standards has requested that the Director
19 deny, refuse to renew, or revoke any business license held or requested by the applicant or
20 licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the
21 violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29,
22 14.30, and 14.33, Ordinance 126091, ~~((and))~~ Ordinance 126094, and Ordinance XXXXXX are
23 remedied.

1 Section 7. By reason of the findings set forth in Section 1, and the emergency that is
2 hereby declared to exist, this ordinance shall become effective immediately upon its passage by a
3 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of
4 the Charter of the City.

5 Passed by a 3/4 vote of all the members of the City Council the _____ day of
6 _____, 2020, and signed by me in open session in authentication of its
7 passage this _____ day of _____, 2021.

8 _____
9 President _____ of the City Council

10 Approved / returned unsigned / vetoed this _____ day of _____, 2021.

11 _____
12 Jenny A. Durkan, Mayor

13 Filed by me this _____ day of _____, 2021.

14 _____
15 Monica Martinez Simmons, City Clerk

16 (Seal)