Legislation Details (With Text)

File #:	CB 119555 **Version:** 3	**Name:**	CB 119555
Type:	Ordinance (Ord)	**Status:**	Passed
		In control:	City Clerk
On agenda:	9/16/2019		
Final Action:	9/25/2019	**Ord. No.**	Ord 125930
Title:	AN ORDINANCE relating to employment in Seattle; requiring certain employers to make required healthcare expenditures to or on behalf of certain employees for the purpose of improving access to medical care; adding a new Chapter 14.28 to the Seattle Municipal Code (SMC); and amending Sections 3.15.000 and 6.208.020 of the SMC.		
Sponsors:	Teresa Mosqueda, M. Lorena González		
Indexes:			
Attachments:	1. Summary and Fiscal Note, 2. Proposed Substitute (added 8/15/19), 3. D4 Proposed Substitute Bill, 4. Proposed Amendment 1 (added; 9/17/19), 5. Signed Ordinance 125930, 6. Affidavit of Publication		

Date	Ver.	Action By	Action	Result
9/25/2019	3	City Clerk	attested by City Clerk	
9/25/2019	3	Mayor	returned	
9/24/2019	3	Mayor	Signed	
9/18/2019	3	City Clerk	submitted for Mayor's signature	
9/16/2019	2	City Council	passed as amended	Pass
9/12/2019	2	Housing, Health, Energy, and Workers' Rights Committee	pass as amended	Pass
8/15/2019	1	Housing, Health, Energy, and Workers' Rights Committee	discussed	
8/1/2019	1	Housing, Health, Energy, and Workers' Rights Committee	postponed	
6/27/2019	1	Housing, Health, Energy, and Workers' Rights Committee		
6/24/2019	1	City Council	referred	
6/21/2019	1	Council President's Office	sent for review	
6/19/2019	1	City Clerk	sent for review	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to employment in Seattle; requiring certain employers to make required healthcare expenditures to or on behalf of certain employees for the purpose of improving access to medical care; adding a new Chapter 14.28 to the Seattle Municipal Code (SMC); and amending Sections 3.15.000 and 6.208.020 of the SMC.

WHEREAS, the City has identified a need to provide immediate protection to low-wage hotel employees by passing a package of new labor standards ordinances; and

WHEREAS, ensuring that low-wage hotel employees have access through additional compensation to high-quality, affordable health coverage can help create greater workplace satisfaction, healthier employees, and healthier customers, and improve population health; NOW, THEREFORE;

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 14.28 is added to the Seattle Municipal Code as follows:

Chapter 14.28 IMPROVING ACCESS TO MEDICAL CARE FOR HOTEL EMPLOYEES

14.28.010 Short title

This Chapter 14.28 shall constitute the "Improving Access to Medical Care for Hotel Employees Ordinance" and may be cited as such.

14.28.020 Definitions

For the purposes of this Chapter 14.28:

"Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against any person for any reason prohibited by Section 14.28.120. "Adverse action" for an employee may involve any aspect of employment, including pay, work hours, responsibilities or other material change in the terms and conditions of employment;

"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 Chapter 14.28;

"Ancillary hotel business" means any business that (1) routinely contracts with the hotel for services in conjunction with the hotel's purpose; (2) leases or sublets space at the site of the hotel for services in

conjunction with the hotel's purpose; or (3) provides food and beverages, to hotel guests and to the public, with an entrance within the hotel premises;

"Annual open enrollment period" means a period, as defined in the Code of Federal Regulation (C.F.R.) at 45 CFR § 155.20 governing the Affordable Care Act (or as established by Director's rule), during which a qualified individual may enroll or change health coverage;

"City" means the City of Seattle;

"Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses. For reimbursement for employer expenses, an employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful;

"Covered employee" means an employee who meets the criteria established by Section 14.28.030;

"Covered employer" means an employer who meets the criteria established by Section 14.28.040;

"Dependents" means the same as the definition provided in the Code of Federal Regulations (C.F.R.) at 26 C.F.R. 54.9801-2 <https://www.law.cornell.edu/cfr/text/26/54.9801-2> (or as established by Director's rule);

"Director" means the Director of the Office of Labor Standards or the Director's designee;

"Employ" means to suffer or permit to work;

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

"Employer" means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or

person acting directly or indirectly in the interest of the employer in relation to the employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by any other employer;

"Healthcare services" means medical care, services, or goods that may qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue Code, or medical care, services, or goods having substantially the same purpose or effect as such deductible expenses. "Healthcare services" does not include vision or dental services;

"Health coverage" means payment or reimbursement of costs for healthcare services;

"Hotel's purpose" means services in conjunction with the hotel's provision of short term lodging including food or beverage services, recreational services, conference rooms, convention services, laundry services, and parking;

"Hours" means (1) each hour for which an employee is paid, or is entitled to payment, for the performance of duties for the employer; and (2) each hour for which the employee is paid, or is entitled to payment, by the employer for a period during which no duties are performed due to vacation, holiday, illness, legally required paid leave, incapacity (including disability), layoff, jury duty, military duty, or leave of absence;

"Large hotel" means a hotel or motel, as defined in Section 23.84A.024, containing 100 or more guest rooms or suites of rooms suitable for providing lodging to members of the public for a fee, regardless of how many of those rooms or suites are occupied or in commercial use at a given time;

"Medical inflation" means the average annual rate of growth of spending in the private health insurance market, as determined annually by the Center for Medicare & Medicaid Services National Health Expenditures;

"Qualifying life event" means the events, as may be set forth in a covered employer's health plan document (or as established by Director's rule), which permit eligibility for a "special enrollment period," if offered, allowing enrollment in health coverage outside the annual open enrollment period for enrollment in

employer-sponsored plan.

"Rate of inflation" means 100% of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue 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;

"Respondent" means an employer or any person who is alleged to have committed a violation of this Chapter 14.28;

"Special enrollment period" means a period, as defined in the Code of Federal Regulations (C.F.R.) at § 155.20 governing the Affordable Care Act (or as established by Director's rule), during which a qualified individual or enrollee who experiences certain "qualifying life events" may enroll in, or change enrollment in health coverage outside of the initial and annual open enrollment periods;

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

14.28.025 Intent

The intent of this Chapter 14.28 is to improve low-wage hotel employees' access, through additional compensation, to high-quality, affordable health coverage for the employees and their spouses or domestic partners, children, and other dependents.

14.28.030 Employee coverage

A. For the purposes of this Chapter 14.28, covered employees are limited to employees who work for a covered employer at a large hotel in the City and for an average of 80 hours or more per month, the calculation

of which shall be determined by Director's rule.

B. For the purposes of this Chapter 14.28, a covered employee does not include:

1. An employee who is a manager, supervisor, or a confidential employee;

2. An employee who receives health coverage from another source, including but not limited to employer-sponsored health insurance through an employer other than the covered employer, either as an employee or by virtue of being the spouse, domestic partner, child, or other dependent of another person. If an employee receives health coverage from another source, the following conditions must be met in order for the employee to be excluded from being treated as a "covered employee":

a. The employer must obtain a signed waiver from the employee, free from coercion as described in Section 14.28.050 and under penalty of perjury, that the employee has access to high-quality and affordable health coverage from another source for themselves and, if applicable, their spouse, domestic partner, or dependents. The employer must offer the waiver in the employee's primary language and on a form issued by the Director as described in Section 14.28.050. Prior to offering the waiver, the employer must provide the employee with a written disclosure of the rights being waived, the form and contents of which shall be prescribed by the Director.

b. The employer is not required to verify the accuracy of the attestation in the employee's waiver.

C. A waiver of the requirements of this Chapter 14.28, as described in subsection 14.28.030.B., is revocable by the employee during any period of annual open enrollment in the covered employer's employer-sponsored plan or due to a qualifying life event.

14.28.040 Employer coverage

A. For the purposes of this Chapter 14.28, covered employers are limited to those who either: (a) own, control, or operate a large hotel in the City; or (b) own, control, or operate an ancillary hotel business in the City with 50 or more employees worldwide regardless of where those employees are employed, including but

not limited to chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employee 50 or more employees in aggregate.

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

1. The calculation shall be based upon the average number per calendar week of employees who worked for compensation during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have employees during the previous calendar year, the number of employees will be calculated based upon the average number per calendar week of employees who worked for compensation during the first 90 calendar days of the current year in which the employer engaged in business; and

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

a. Employees who are not covered by this Chapter 14.28;

b. Employees who worked inside the City;

c. Employees who worked outside the City; and

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

C. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.29. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.29 where a separate entity controls the operation of another entity. The factors to consider include, but are not limited to:

1. Degree of interrelation between the operations of multiple entities;

2. Degree to which the entities share common management;

3. Centralized control of labor relations; and

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

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14.28.050 Prohibition on coercing or unduly inducing a waiver

A covered employer is prohibited from coercing or unduly inducing an employee to waive coverage of this Chapter 14.28.

14.28.060 Required healthcare expenditures for covered employees

A. Covered employers must make a monthly required healthcare expenditures to or on behalf of each covered employee in the amount of the following 2019 rates and subject to annual adjustments based on the medical inflation rate:

1. $ 420 per month for an employee with no spouse, domestic partner, or dependents;

2. $ 714 per month for an employee with only dependents;

3. $ 840 per month for an employee with only a spouse or domestic partner;

4. $ 1,260 per month for an employee with a spouse or domestic partner and one or more dependents.

B. Covered employers have discretion as to the form of the monthly required healthcare expenditures they choose to make for their covered employees. Employers may satisfy their monthly obligations through any one or more of the following forms:

1. Additional compensation paid directly to the covered employee; and/or

2. Payments to a third party, such as to an insurance carrier or trust, or into a tax favored health programs, (including health savings accounts, medical savings accounts, health flexible spending arrangements, and health reimbursement arrangements), for the purpose of providing healthcare services to the employee or the spouse, domestic partner, or dependents of the covered employee (if applicable); and/or

3. Average per-capita monthly expenditures for healthcare services made to or on behalf of covered employees or the spouse, domestic partner, or dependents of the employees (if applicable) by the employer's self-insured and/or self-funded insurance program(s).

C. If a covered employer makes its monthly required health expenditures through an employer-

sponsored plan, whether in partial or full satisfaction of the monthly required health expenditure rate (if in partial satisfaction of the monthly required health expenditure rate, the employer is required to satisfy the remaining portion of the monthly health expenditure rate through one of the forms outlined in 14.28.060 B), and if the employer imposes a waiting period before new hires can be enrolled in its employer-sponsored plan (or the plan or insurer carrier mandates such a period), the employer will not be required to satisfy the health expenditures as described in subsection 14.28.060.A until the sooner of sixty days from the date of hire or the expiration of the waiting period. This temporary exemption from the obligation to satisfy the health expenditure requirements described in subsection 14.28.060.A shall only apply to a newly-hired employee who is subject to the waiting period and shall have no effect on the employer's obligations to its other covered employees.

D. If an employee voluntarily declines an employer's offer of a monthly required healthcare expenditure in full satisfaction of the requirements described in subsections 14.28.060.A, the employer will be deemed to have satisfied its required healthcare expenditure rate for that employee provided that the following conditions are met:

1. The employer's offered form of such monthly required healthcare expenditure under subsection 14.28.060.B must not require the employee to pay more than a dollar amount equivalent to 20 percent of the monthly required healthcare amount described in subsection 14.28.060.A.1; and

2. The employer must obtain a signed waiver from the employee, free from coercion as described in Section 14.28.050 and under penalty of perjury, that the employee is waiving the employer's offer of the monthly required healthcare expenditure in full satisfaction of the requirements described in subsections 14.28.090.A and B. The employer must offer the waiver in the employee's primary language and on a form issued by the Director as described in Section 14.28.050. Prior to offering the waiver, the employer must provide the employee with a written disclosure of the rights being waived, the form and content of which shall be prescribed by the Director.

If an employee receives the wavier and written disclosures described in this subsection 14.28.060.D.2,

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the employee refuses to sign such waiver, and the employee continues to decline, in whole or part, the employer's offer of a monthly required expenditure in full satisfaction of the requirements described in subsection 14.28.060.A and this subsection 14.28.060.D.1, the employer will be deemed to have satisfied its required healthcare expenditure rate for that employee. The employer must maintain records, as prescribed by Director's rule, regarding the employee's receipt of the waiver and written disclosures described in this subsection 14.28.060.D.2, and the employee's subsequent refusal to the sign the waiver described in this subsection 14.28.060.D.2.

E. The required healthcare expenditure is in addition to, and shall not be deemed satisfied by, any amount otherwise required to be paid by federal, state, or local law; and the required healthcare expenditure will not be considered as wages paid for purposes of determining compliance with hourly wage and hourly compensation laws and regulations. Any additional compensation paid to the covered employee to meet the monthly required healthcare expenditure shall be paid as ordinary income no later than the employee's last regular pay date of each calendar month and, with respect to new hires, must commence the earlier of when the waiting period to enroll in the employer-sponsored plan, if applicable, expires (if the employer makes its monthly required health expenditures through an employer-sponsored plan in partial satisfaction of the health expenditure requirement) or sixty days from the date of hire.

F. The healthcare expenditure rates required by subsection 14.28.060.A shall be adjusted annually based upon the average medical inflation rate as defined in Section 14.28.020. The adjustment shall not be calculated by the Agency. The Agency shall post the calculated annual rate and file such amount with the City Clerk before the third quarter of each year to determine the monthly required healthcare expenditure rate for the next calendar year.

14.28.100 Notice and posting

A. The Agency shall create and make available a poster that gives notice of the rights afforded by this Chapter 14.28. The Agency shall create the poster in English, Spanish, and other languages. The poster shall

give notice of:

1. The right to improved access to medical care through employer required healthcare expenditures, as provided by Section 14.28.060;

2. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.28; and

3. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 14.28.

B. Employers shall display the poster in a conspicuous and accessible place at any workplace or job site where any of their employees work. Employers shall display the poster in English and Spanish and in the primary languages of the employee(s) at the particular workplace. Employers shall make a good faith effort to determine the primary languages spoken by the employees at that particular workplace. If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace or job site, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

14.28.110 Employer records

A. Each employer shall retain records that document compliance with this Chapter 14.28, including:

1. Proof of each required healthcare expenditure made each month to or on behalf of each current and former employee pursuant to Section 14.28.060;

2. Copies of waiver forms executed pursuant to Sections 14.28.030 and 14.28.060; and

3. Pursuant to rules issued by the Director, other records that are material and necessary to effectuate the terms of this Chapter 14.28.

B. Records required by subsection 14.28.110.A shall be retained for a period of three years.

C. If the employer fails to retain adequate records required under subsection 14.28.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 14.28 for

the periods for which records were not retained for each employee for whom records were not retained.

14.28.120 Retaliation prohibited

A. No employer or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this Chapter 14.28.

B. No employer or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 14.28. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 14.28; the right to inform others about their rights under this Chapter 14.28; the right to inform the person's employer, union or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this Chapter 14.28; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 14.28; the right to cooperate with the Agency in its investigations of this Chapter 14.28; the right to testify in a proceeding under or related to this Chapter 14.28; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice or act that is unlawful under this Chapter 14.28.

C. No employer or any other person shall communicate to a person exercising rights protected under this Section 14.28.120, directly or indirectly, the willingness to inform a government employee or contracted organization that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 14.28.

D. It shall be considered a rebuttable presumption of retaliation if the employer or any other person takes an adverse action against a person within 90 calendar days of the person's exercise of rights protected in this Section 14.28.120. However, in the case of seasonal employment that ended before the close of the 90 calendar day period, the presumption also applies if the employer fails to rehire a former employee at the next

opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this Section 14.28.120 shall be sufficient upon a showing that the employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 14.28.120 was a motivating factor in the adverse action, unless the employer can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 14.28.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.28.

G. A complaint or other communication by any person triggers the protections of this Section 14.28.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.28.

14.28.130 Enforcement power and duties

A. The Agency shall investigate violations of this Chapter 14.28, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.28 and otherwise necessary and proper in the performance of the same and provided for by law.

B. The Agency shall be authorized to coordinate implementation and enforcement of this Chapter 14.28 and shall promulgate appropriate guidelines or rules for such purposes.

C. The Director of the Agency is authorized and directed to promulgate rules consistent with this Chapter 14.28 and Chapter 3.02. Any guidelines or rules promulgated by the Director shall have the force and effect of law and may be relied on by employers, employees, and other parties to determine their rights and responsibilities under this Chapter 14.28.

14.28.140 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.28 is a violation.

14.28.150 Investigation

A. The Agency shall have the power to investigate any violations of this Chapter 14.28 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the Director including, but not limited to, situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because either the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.28 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an employee or any other person.

B. An employee or other person may report to the Agency any suspected violation of this Chapter 14.28. The Agency shall encourage reporting pursuant to this Section 14.28.150 by taking the following measures:

1. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. However, with the authorization of such person, the Agency may disclose the employee’s or person's name and identifying information as necessary to enforce this Chapter 14.28 or for other appropriate purposes.

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

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

C. The Agency's investigation must commence within three years of the alleged violation. To the extent

permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this Chapter 14.28 and any administrative enforcement proceeding under this Chapter 14.28 based upon the same facts. For purposes of this Chapter 14.28:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.28, or the Agency provides notice to the respondent that an investigation has commenced under this Chapter 14.28.

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

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

E. The Director may apply by affidavit or declaration in the form allowed under RCW 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring the attendance and testimony of witnesses, or any document relevant to the issue of whether any employee or group of employees has been or is afforded proper amounts of compensation under this Chapter 14.28 and/or to whether the employer has violated any provision of this Chapter 14.28. The Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue subpoenas upon a showing that there is reason to believe that a violation has occurred if a complaint has been filed with the Agency, or that circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.28 or the workforce is unlikely to volunteer information regarding such violations.

F. An employer that fails to comply with the terms of any subpoena issued under subsection 14.28.150.E in an investigation by the Agency under this Chapter 14.28 prior to the issuance of a Director's Order issued pursuant to subsection 14.28.160.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of liability, damages owed, or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 14.28.150.E to the City Attorney to seek a court order to enforce any subpoena.

H. Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 14.28.180.

14.28.160 Findings of fact and determination

A. Except when there is an agreed upon settlement, the Director shall issue a written determination with findings of fact resulting from the investigation and statement of whether a violation of this Chapter 14.28 has or has not occurred based on a preponderance of the evidence before the Director.

B. If the Director determines that there is no violation of this Chapter 14.28, the Director shall issue a "Determination of No Violation" with notice of an employee or other person's right to appeal the decision, subject to the rules of the Director.

C. If the Director determines that a violation of this Chapter 14.28 has occurred, the Director shall issue a "Director's Order" that shall include a notice of violation identifying the violation or violations.

1. The Director's Order shall state with specificity the amounts due under this Chapter 14.28 for each violation, including payment of civil penalties, fines, and penalties payable to the aggrieved party pursuant to subsection 14.28.170.B and 14.28.170.D; and unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to subsection 14.28.170.C for retaliation.

2. The Director's Order may specify that civil penalties due to the Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party under subsection 14.28.170.A.4.

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

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 14.28, including, but not limited to, monitored compliance for a reasonable time period.

5. The Director's Order shall include notice of the respondent's right to appeal the decision, pursuant to Section 14.28.180.

14.28.170 Remedies

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 14.28 are cumulative and are not intended to be exclusive of any other available remedies, penalties, fines and procedures. Pursuant to subsection 14.28.160.C.3, the Director may specify that civil penalties and fines are due to the aggrieved party rather than due to the Agency.

1. The amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 14.28.170 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

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

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

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

a. The Director may waive the total amount of civil penalties due to the Agency if the

Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order.

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

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

5. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 14.28.170, for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties and fines due to the Agency for timely payment of remedy due to an aggrieved party under subsection 14.28.170.A.4, the Director shall consider:

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

b. The nature and persistence of the violations;

c. The extent of the respondent's culpability;

d. The substantive or technical nature of the violations;

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

f. The circumstances of each situation;

g. The amounts of penalties in similar situations; and

h. Other factors pursuant to rules issued by the Director.

B. A respondent found to be in violation of this Chapter 14.28 shall be liable for full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 14.28, and other

equitable relief.

1. For a first violation of this Chapter 14.28, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

2. For subsequent violations of this Chapter 14.28, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation.

3. For purposes of establishing a first and subsequent violation for this Section 14.28.170, the violation must have occurred within ten years of the settlement agreement or Director's Order.

C. A respondent found to be in violation of this Chapter 14.28 for retaliation under Section 14.28.120 shall be subject to any appropriate relief at law or equity including, but not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 14.28, and liquidated damages in an additional amount of up to twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to $5,000.

D. A respondent found to be in violation of this Chapter 14.28 shall be subject to civil penalties. Pursuant to subsection 14.28.160.C.3, the Director may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

1. For a first violation of this Chapter 14.28, the Director may assess a civil penalty of up to $500 per aggrieved party.

2. For a second violation of this Chapter 14.28, the Director shall assess a civil penalty of up to $1,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

3. For a third or any subsequent violation of this Chapter 14.28, the Director shall assess a civil penalty of up to $5,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid

compensation, whichever is greater. The maximum civil penalty for a violation of this Chapter 14.28 shall be $20,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. For purposes of this Section 14.28.170, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than two Director's Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

E. For the following violations, the Director may assess a fine up to the amounts set forth below:

Violation	**Fine**
Failure to comply with prohibitions against coercing or unduly inducing an employee into waiving coverage under Section 14.28.050	$1,000 per aggrieved party
Failure to provide the required healthcare expenditure as required by Section 14.28.060	$500 per aggrieved party
Failure to provide employees with written notice of rights under Section 14.28.100	$500
Failure to maintain records for three years under Section 14.28.110	$500 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.28.120	$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.28.150.B.2	$500
Failure to provide notice of failure to comply with final order to the public under subsection 14.28.210.A.1	$500

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

F. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 14.28 shall be subject to a civil penalty of not

less than $1,000 and not more than $5,000.

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City reasonable costs incurred in enforcing this Chapter 14.28, including but not limited to reasonable attorney's fees.

H. An employer that is the subject of a settlement agreement stipulating that a violation shall count for debarment, or final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the employer is the subject of a final order two times or more within a five-year period, the employer shall not be allowed to bid on any City contract for two years. This subsection 14.28.170.H shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter, provided that nothing in this subsection 14.28.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all employers subject to debarment under this subsection 14.28.170.H.

14.28.180 Appeal period and failure to respond

A. An employee or other person who claims an injury as a result of an alleged violation of this Chapter 14.28 may appeal the Determination of No Violation Shown, pursuant to the rules of the Director.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 14.28.170, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.

14.28.190 Appeal procedure and failure to appear

A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases

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

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

14.28.200 Appeal from Hearing Examiner order

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

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 14.28.200.

14.28.210 Failure to comply with final order

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

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

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

and added to the amounts due.

3. The Director may refer the matter to the City Attorney for the filing of a civil action in any court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a settlement agreement, a Director's Order or a final order of the Hearing Examiner under Section 14.28.220.

4. The Director may request that the City's Department of Finance and Administrative Services deny, suspend, refuse to renew, or revoke any business license held or requested by the employer or person until such time as the employer complies with the remedy as defined in the settlement agreement or final order. The City's Department of Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke any business license in accordance with this subsection 14.28.210.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter 14.28 shall quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the Agency and without first notifying the respondent's successor of the amounts owed under the settlement agreement or final order at least three business days prior to such transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in the settlement agreement or the final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the settlement agreement or final order is not paid by respondent within ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment of the amount due, provided that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due. The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment shall be deemed a payment upon the purchase price in the amount paid, and if such payment is greater in amount than the purchase price the amount of the

difference shall become a debt due such successor from the employer.

14.28.220 Debt owed The City of Seattle

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

B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 14.28.180.B the Director's Order shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City finding that the respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 14.28.180.B and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 14.28.200.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is

therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 14.28.200.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.28.220.B and 14.28.220.C, the Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this Chapter 14.28.

14.28.230 Private right of action

A. Any person or class of persons that suffers injury as a result of a violation of this Chapter 14.28 or is the subject of prohibited retaliation under Section 14.28.120 may bring an action in a court of competent jurisdiction against the employer or other person violating this Chapter 14.28 and, upon prevailing, may be awarded reasonable attorney's fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any unpaid compensation plus interest due to the person and liquidated damages in an amount up to twice the unpaid compensation; a penalty payable to any aggrieved party of no less than $100 and not more than $1000 for each day the employer was in violation. I nterest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of this Section 14.28.230, "person" includes any entity a member of which has suffered injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 14.28.230, two or more employees are similarly situated if they:

1. Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period,

2. Allege one or more violations that raise similar questions as to liability, and

3. Seek similar forms of relief.

D. For purposes of subsection 14.28.230.C, employees shall not be considered dissimilar solely because their:

1. Claims seek damages that differ in amount, or

2. Job titles or other means of classifying employees differ in ways that are unrelated to their claims.

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

14.28.235 Collective bargaining agreement

A. The requirements of this Chapter 14.28 shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement, or in an addendum to an existing agreement including an agreement that is open for negotiation, in clear and unambiguous terms; provided, however, that in either case, the agreement must be ratified by the employees and must contain alternative safeguards that meet the public policy goals of this Chapter 14.28.

B. With the exception of any waiver permitted by Section 14.28.030, any waiver by an individual employee of any provisions of this Chapter 14.28 shall be deemed contrary to public policy and shall be void and unenforceable.

14.28.240 Other legal requirements

This Chapter 14.28 provides hotel employee protection requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater protections; and nothing in this Chapter 14.28 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter 14.28 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this

Chapter 14.28 affecting such person.

14.28.250 Severability

The provisions of this Chapter 14.28 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.28, or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 14.28 or the validity of its application to other persons or circumstances.

14.28.260 Effective date

A. For ancillary hotel businesses with between 50 and 250 employees that contract, lease, or sublease with a hotel as of the date of passage of this Chapter 14.28, the provisions of this Chapter 14.28 shall take effect upon the later of July 1, 2025 or the earliest annual open enrollment period for health coverage, if offered, after July 1, 2025.

B. For all other covered employers, the provisions of this Chapter 14.28 shall take effect upon the later of July 1, 2020 or the earliest annual open enrollment period for health coverage, if offered, after July 1, 2020.

Section 2. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance 125684, is amended as follows:

3.15.000 Office of Labor Standards created - Functions

There is created within the Executive Department an Office of Labor Standards, under the direction of the Mayor. The mission of the Office of Labor Standards is to advance labor standards through thoughtful community and business engagement, strategic enforcement and innovative policy development, with a commitment to race and social justice. The Office of Labor Standards seeks to promote greater economic opportunity and further the health, safety, and welfare of employees; support employers in their implementation of labor standards requirements; and end barriers to workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers.

The functions of the Office of Labor Standards are as follows:

A. Promoting labor standards through outreach, education, technical assistance, and training for employees and employers;

B. Collecting and analyzing data on labor standards enforcement;

C. Partnering with community, businesses, and workers for stakeholder input and collaboration;

D. Developing innovative labor standards policy;

E. Administering and enforcing City of Seattle ordinances relating to minimum wage, and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), wage and tip compensation requirements (Chapter 14.20), secure scheduling (Chapter 14.22), improving access to medical care for hotel employees (Chapter 14.28), commuter benefits (Chapter 14.30), and other labor standards ordinances the City may enact in the future.

Section 3. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 125684, 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 business license issued under the provisions of this Chapter 6.208. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or refusal to renew the license and on what grounds such a decision was based. The Director may deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of the following grounds:

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

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

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

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

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

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

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

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

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

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

9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, 14.20.080.A.4, 14.22.115.A.4, 14.28.210.A.4, and 14.30.180.A.4, the applicant or licensee has failed to comply, within 30 days of service of any settlement agreement, with any final order issued by the Director of the Office of Labor Standards, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.28, and 14.30, for which all appeal rights have been exhausted, and the Director of the Office of Labor Standards has requested that the Director deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.28, and 14.30 are remedied.

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

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

* * *

Section 4. If any section or subsection of the Seattle Municipal Code affected by this ordinance is amended by ordinance without reference to amendments made by this ordinance, each ordinance shall be given effect to the extent that the amendments do not conflict in purpose, and the code reviser may publish the section or subsection in the official code with all amendments incorporated therein.

* * *

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

Passed by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

_____

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

_____

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Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

_____

Monica Martinez Simmons, City Clerk

(Seal)

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