



Legislation Text

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**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER 14.23 DOMESTIC WORKERS

### 14.23.005 Short title

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

### 14.23.010 Definitions

For purposes of this Chapter 14.23:

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

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

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

“Domestic worker” is narrowly construed to mean any worker who 1) is paid by one or more hiring entities; and 2) provides domestic services to an individual or household in or about a private home as a nanny, house cleaner, home care worker, gardener, cook, or household manager. “Domestic worker” includes hourly and salaried employees, independent contractors, full-time and part-time workers, and temporary workers.

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

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

2. In a family relationship with the hiring entity; or

3. A home care worker who is paid through public funds.

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

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

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

“Hiring entity” means any individual, partnership, association, corporation, business trust, or any entity, person, or group of persons that pays a wage or pays for the services of a domestic worker. It includes any such entity or person acting directly or indirectly in the interest of a hiring entity in relation to the domestic worker. When an individual or household contracts with a separate hiring entity that employs the domestic worker(s) to provide domestic services, the separate hiring entity is solely liable for violations of this Chapter 14.23 unless the individual or household interferes with the rights established for domestic worker(s) in this Chapter 14.23.

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

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

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

#### **14.23.020 Domestic worker labor standards**

##### **A. Wages**

1. Hiring entities shall pay domestic workers at least the equivalent of the “hourly minimum compensation” and “hourly minimum wages” established for Schedule 2 employers as set forth in Chapter 14.19. If the domestic worker is a covered employee for purposes of Chapter 14.19, the hiring entity must pay the domestic worker in accordance with its obligations under Chapter 14.19.

B. Rest breaks and meal periods

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

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

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

C. Worker documents

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

D. Notice of rights and pay information

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

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

**14.23.030 Domestic Workers Standards Board**

A. A Domestic Workers Standards Board (Board) is established to provide a forum for hiring entities,

domestic workers, worker organizations, and the public to consider, analyze, and make recommendations to the City on the legal protections, benefits, and working conditions for domestic worker industry standards.

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

1. Members appointed to positions 1, 5, 11, and 13 shall be domestic workers or worker organization representatives. Members appointed to positions 2 and 6 shall be domestic workers who are not worker organization representatives. For purposes of this subsection 14.23.030.B.1, worker organizations shall be a non-profit organization that: engages in public advocacy to promote the health and well-being of domestic workers; and has a governing structure that promotes workers' decision-making power. Preference among organizations should be for organizations that engage the most number of domestic workers as dues-paying members.

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

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

C. The initial terms of positions 1, 3, 5, 7, 10, and 11 shall be two years; the initial terms of positions 2, 4, 6, 8, 9, 12, and 13 shall be three years; all subsequent terms shall be three years. Any vacancy in an

unexpired term shall be filled in the same manner as the original appointment. A member whose term is ending may continue on an interim basis as a member with voting rights until such time as a replacement for that position has been appointed by the City Council or confirmed by the City Council.

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

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

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

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

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

submitted to the Mayor and committee by the end of the first quarter of the year following the year in which the workplan has been submitted. The committee will consider the Board's recommendations and will respond within 120 days of the committee presentation. The committee, in consultation with the City Attorney's Office, will notify the Board chair in writing of any policies or legislation the committee intends to: 1) put before the City Council for approval, 2) request further information about from the Board, 3) request the Board to develop alternatives to, 4) reject, in which case it will provide reasons for the rejection, or 5) consider on a longer timeline. The Committee shall consider at least the following factors in making decisions: deference to the Board's recommendations; financial considerations; relation to other City policies and City of Seattle labor laws; legal issues; and enforceability challenges.

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

1. Training for hiring entities and domestic workers on: federal, state, and city labor laws, benefits, and protections; discrimination and sexual harassment; workplace safety standards; and requirements on tax payments;
2. Job skills, and potential accreditation or certification for domestic workers;
3. Wage standards, such setting industry standards, overtime, and pay differentials;
4. Access to paid sick leave, paid family leave, paid time off for bereavement, vacation, and retirement and health care benefits, such as through a leave bank or portable benefit structure;
5. Workers' compensation and temporary disability insurance, including alternative ways to provide coverage for domestic workers who are injured on the job but are not currently covered by state law, including consideration of domestic workers' coverage through insurance or through a leave bank or portable benefit structure;
6. Hiring agreements, including notice of rights and recordkeeping template language, and applicability of possible agreements;



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

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

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

#### **14.23.070 Retaliation prohibited**

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

B. No hiring entity 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 14.23. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 14.23; the right to inform others about their rights under this Chapter 14.23; the right to inform the person's hiring entity, union or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this Chapter 14.23; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 14.23; the right to cooperate with the Agency in its investigations of this Chapter 14.23; the right to testify in a proceeding under or related to this Chapter 14.23; 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 14.23.

C. No hiring entity or any other person shall communicate to a person exercising rights protected under this Section 14.23.070, 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 a domestic worker or a family member of the domestic worker to a federal, state, or local agency because the domestic worker has exercised a right under this Chapter 14.23.

D. It shall be considered a rebuttable presumption of retaliation if the hiring entity 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 14.23.070. 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 domestic worker at the next opportunity for work in the same position. The hiring entity 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 14.23.070 shall be sufficient upon a showing that the hiring entity or any other person has taken an adverse action against a person and the person's exercise of rights protected in Section 14.23.070 was a motivating factor in the adverse action, unless the hiring entity can prove that the action would have been taken in the absence of such protected activity.

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

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

#### **14.23.075 Enforcement power and duties**

A. The Agency shall have the power to investigate violations of this Chapter 14.23, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.23 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 14.23 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 14.23 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 hiring entities, domestic workers, and other parties to determine their

rights and responsibilities under this Chapter 14.23.

#### **14.23.080 Violation**

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

#### **14.23.085 Investigation**

A. The Agency shall have the power to investigate any violations of this Chapter 14.23 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 the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.23 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 a domestic worker or any other person.

B. A domestic worker or other person may report to the Agency any suspected violation of this Chapter 14.23. The Agency shall encourage reporting pursuant to this Section 14.23.085 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 domestic worker or person reporting the violation. However, with the authorization of such person, the Agency may disclose the domestic worker's or person's name and identifying information as necessary to enforce this Chapter 14.23 or for other appropriate purposes.

2. The Agency may require the hiring entity to post or otherwise notify domestic workers 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) spoken by the domestic worker(s) at the particular workplace. If display of the form is not feasible, including situations when the

domestic worker works remotely or does not have a regular workplace, the hiring entity 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 14.23 and any administrative enforcement proceeding under this Chapter 14.23 based upon the same facts. For purposes of this Chapter 14.23:

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

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 domestic worker or group of domestic workers has been or is afforded proper amounts of compensation under this Chapter 14.23 and/or to whether the hiring entity has violated any provision of this Chapter 14.23. 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 14.23 or the workforce is unlikely to volunteer information regarding such violations.

F. The hiring entity that fails to comply with the terms of any subpoena issued under subsection 14.23.085.E in an investigation by the Agency under this Chapter 14.23 prior to the issuance of a Director's Order issued pursuant to subsection 14.23.090.C may not use such records in any appeal to challenge the correctness of any determination by the Agency as to liability or as to damages and/or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 14.23.085.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 14.23.100.

#### **14.23.090 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 14.23 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 14.23, the Director shall issue a "Determination of No Violation" with notice of a domestic worker 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 14.23 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 14.23 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties

payable to aggrieved parties, and interest pursuant to Section 14.23.095.

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 14.23.095.A.2.

3. The Director's Order may specify that civil penalties 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 14.23, 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 14.23.100.

#### **14.23.095 Remedies**

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

1. The amounts of all civil penalties and penalties payable to aggrieved parties contained in this Section 14.23.095 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 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. The Director may waive half the 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 15 days of service of the Director's Order. The Director shall not waive any amount of civil penalties 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, and penalties payable to aggrieved parties due under this Section 14.23.095, for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties due to the Agency for timely payment of remedy due to an aggrieved party under subsection 14.23.095.A.2, the Director shall consider:

- a. The total amount of unpaid compensation, liquidated damages, penalties, 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, including whether respondent is a household or established business;
- 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 14.23 shall be liable for full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 14.23, and other equitable relief. For a first violation of this Chapter 14.23, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

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

2. For purposes of establishing a first and subsequent violation for this Section 14.23.095, 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 14.23 for retaliation under Section 14.23.070 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 14.23, 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 14.23 shall be subject to civil penalties. Pursuant to subsection 14.23.090.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 14.23, the Director may assess a civil penalty of up to \$500 per aggrieved party.

2. For a second violation of this Chapter 14.23, 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 14.23, 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 14.23 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 14.23.095, 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. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 14.23 shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000.

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

G. The hiring entity 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 hiring entity is the subject of a final order two times or more within a five-year period, the contractor or subcontractor shall not be allowed to bid on any City contract for two years. This subsection 14.23.095.G 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 14.23.095.G shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all hiring entities subject to debarment under this subsection 14.23.095.G.

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

A. A domestic worker or other person who claims an injury as a result of an alleged violation of this Chapter 14.23 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

14.23.095, 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.

#### **14.23.105 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 hiring entity 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.

#### **14.23.110 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 14.23.110.

#### **14.23.115 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 King County Superior Court, the Seattle Municipal Court, or any other 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, Director's Order or a final order of the Hearing Examiner under Section 14.23.120.

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 hiring entity or person until such time as the hiring entity 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 14.23.115.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter 14.23 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 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 hiring entity.

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

A. All monetary amounts due under the 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 14.23.100.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 14.23.100.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 14.23.110.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 14.23.110.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.23.120.B and 14.23.120.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 14.23.

#### **14.23.125 Private right of action**

A. Any person or class of persons that suffers financial injury as a result of a violation of this Chapter 14.23 or is the subject of prohibited retaliation under Section 14.23.070, may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating this Chapter 14.23 and, upon prevailing, may be awarded reasonable attorney 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 additional amount of up to twice the unpaid compensation; a penalty payable to any aggrieved party of up to \$5,000 if the aggrieved party was subject to prohibited retaliation. Interest 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 14.23.125, "person" includes any entity a member of which has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury or retaliation.

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

1. Are or were hired by the same hiring entity or hiring entities, 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 14.23.125.C, domestic workers 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 domestic workers differ in ways that are unrelated to their claims.

#### **14.23.130 Severability**

The provisions of this Chapter 14.23 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.23, 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 14.23, or the validity of its application to other persons or circumstances.

Section 2. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 125203, 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.
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, ((and)) 14.22.115.A.4, and 14.23.115.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, ~~((and))~~ 14.22, and 14.23 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, ~~((and))~~ 14.22, and 14.23 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 3. The Domestic Workers Standards Board shall convene in the first quarter of 2019.

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

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 \_\_\_\_\_, 2018, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council



Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Jenny A. Durkan, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)