

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE providing the Office of City Auditor independent audit authority, including access to employer records, after a case is closed by the Seattle Office for Civil Rights (SOCR) in order to evaluate SOCR's enforcement efforts of Chapters 14.16, 14.17, 14.19, and 14.20 of the Seattle Municipal Code (SMC); amending Sections 3.40.040, 14.16.060, and 14.20.050 of the SMC; and creating a new Section 14.19.065 of the SMC.

..body

WHEREAS, in 2011 the Seattle City Council passed Ordinance 123698, the Paid Sick and Safe Time Ordinance, which took effect September 1, 2012; and

WHEREAS, the Paid Sick and Safe Time Ordinance requires employers with more than four full-time equivalent employees to provide workers with paid leave for their and their family members' illness, preventative care, and critical safety needs related to domestic violence, sexual assault, or stalking; and

WHEREAS, the Office of City Auditor (OCA) was requested to perform an enforcement audit of Seattle's Paid Sick and Safe Time Ordinance; and

WHEREAS, the OCA performed an enforcement audit covering the period of September 1, 2012 through December 31, 2013; and

WHEREAS, OCA issued its report on October 17, 2014; and

WHEREAS, the OCA report made 13 recommendations to address its findings and strengthen the Seattle Office for Civil Rights' (SOCR) enforcement efforts; and

WHEREAS, among OCA's recommendations was to amend the City's four labor laws, including the Paid Sick and Safe Time Ordinance, the Minimum Wage Ordinance, the Administrative Wage Theft Ordinance, and the Job Assistance Ordinance, to provide

1 OCA independent authority to obtain and audit employers' records and interview
2 complainants and respondents of closed cases in order to evaluate SOCR's enforcement
3 efforts; and

4 WHEREAS, it is the City Council's intent through this ordinance to provide the OCA with such
5 independent audit authority for the City's four labor laws, but it is not necessary to amend
6 the Job Assistance Ordinance because it refers to the Paid Sick and Safe Time Ordinance
7 for enforcement authority; and

8 WHEREAS, SOCR did not disagree with the recommendation, but wanted the City to consider
9 the potential for confusion if multiple City agencies had enforcement authority of the
10 same ordinance; and

11 WHEREAS, SOCR and OCA have worked on the proposed language to clarify the purpose of
12 OCA's audits, and the jurisdiction and responsibilities of the two City agencies; NOW,
13 THEREFORE,

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

15 Section 1. Section 3.40.040 of the Seattle Municipal Code, last amended by Ordinance
16 121722, is amended as follows:

17 **3.40.040 Auditing authority((=))**

18 A. The City Auditor is authorized to audit the records of the Seattle Public Library, the
19 Seattle City Employees Retirement System, the Firefighters' Pension Fund, and the Police
20 Pension Fund and, to the extent authorized by law, the Seattle Municipal Court.

21 B. The City Auditor is authorized to audit each Consultant Contract entered into by a
22 Department to verify, among other things, that the procedures prescribed in this chapter were
23 followed; that the compensation or other consideration provided to any Consultant has been

1 appropriate, under the circumstances, and that the contracted-for services were provided in a
2 timely manner.

3 C. The City Auditor shall participate in the selection of all consultants providing auditing
4 and accounting services in accordance with a memorandum of understanding entered into
5 between such official and the Executive Department. The affected City department or Executive
6 Department office may determine the terms and conditions of the agreement, but any such
7 contract shall be subject to review by the City Auditor. All reports or financial statements
8 submitted by such consultants shall be submitted to the City Auditor and the Director as well as
9 the affected department or Executive Department office.

10 D. The City Auditor shall have the authority to audit employer compliance with Chapters
11 14.16, 14.17, 14.19, and 14.20 for the sole purpose of evaluating the enforcement efforts of the
12 Office for Civil Rights and the Office of Labor Standards.

13 Section 2. Section 14.16.060 of the Seattle Municipal Code, enacted by Ordinance
14 123698, is amended as follows:

15 **14.16.060 Employer Records**

16 A. Employers shall retain records documenting hours worked by employees and paid sick
17 time taken by employees, for a period of two years. ~~((, and))~~

18 B. Employers shall allow the Agency access to such records, with appropriate notice and
19 at a mutually agreeable time, to investigate potential violations and to monitor compliance with
20 the requirements of this ~~((chapter))~~ Chapter 14.16.

21 C. Respondents in any case closed by the Agency shall allow the Office of City Auditor
22 access to such records to permit the Office of City Auditor to evaluate the Agency's enforcement
23 efforts. Before requesting records from such a respondent, the Office of City Auditor shall first

1 consult the Agency's respondent records on file and determine if additional records are
2 necessary.

3 ((B-)) D. Employers shall not be required to modify their recordkeeping policies to
4 comply with this section, as long as records reasonably indicate employee hours worked in
5 Seattle, accrued paid sick and safe time, and paid sick and safe time taken. When an issue arises
6 as to the amount of accrued paid sick time and/or paid safe time available to an employee under
7 this ((chapter)) Chapter 14.16, if the employer does not maintain or retain adequate records
8 documenting hours worked by the employee and paid sick and safe time taken by the employee,
9 or does not allow the Agency reasonable access to such records, it shall be presumed that the
10 employer has violated this ((chapter)) Chapter 14.16.

11 ((C-)) E. Records and documents relating to medical certifications, re-certifications, or
12 medical histories of employees or employees' family members, created for purposes of this
13 chapter, are required to be maintained as confidential medical records in separate files/records
14 from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these
15 records must comply with the ADA confidentiality requirements.

16 Section 3. A new Section 14.19.065 is added to the Seattle Municipal Code as follows:

17 **14.19.065 Records**

18 A. Employers shall allow the Agency access to the records required to be kept under
19 subsection 4.19.060.C.3 to investigate potential violations and to monitor compliance with the
20 requirements of this Chapter 14.19.

21 B. Employers in any case closed by the Agency shall allow the Office of City Auditor
22 access to such records to permit the Office of City Auditor to evaluate the Agency's enforcement
23 efforts. Before requesting records from such a respondent, the Office of City Auditor shall first

1 consult the Agency's respondent records on file and determine if additional records are
2 necessary.

3 Section 4. Section 14.20.050 of the Seattle Municipal Code, enacted by Ordinance
4 124645, is amended as follows:

5 **14.20.050 Records**

6 A. For a period of three years, employers shall retain payroll records pertaining to
7 covered employees that document the name, address, occupation, dates of employment, rate or
8 rates of pay, amount paid each pay period, and the hours worked for each employee.

9 1. Employers shall allow the Agency access to such records, with appropriate
10 notice and at a mutually agreeable time, to investigate potential violations and to monitor
11 compliance with the requirements of this Chapter 14.20.

12 2. Employers in any case closed by the Agency shall allow the Office of City
13 Auditor access to such records to permit the Office of City Auditor to evaluate the Agency's
14 enforcement efforts. Before requesting records from such a respondent, the Office of City
15 Auditor shall first consult the Agency's respondent records on file and determine if additional
16 records are necessary.

17 B. If an issue arises as to an employee's entitlement to wage and tip compensation under
18 this Chapter 14.20, if the employer does not maintain or retain adequate payroll records, or does
19 not allow the Agency reasonable access to such records, there shall be a presumption, rebuttable
20 by clear and convincing evidence, that the employer violated this Chapter 14.20.

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

4 Passed by the City Council the ____ day of _____, 2015, and
5 signed by me in open session in authentication of its passage this
6 ____ day of _____, 2015.

7 _____
8
9 President _____ of the City Council

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11 Approved by me this ____ day of _____, 2015.

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13 _____
14 Edward B. Murray, Mayor

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16 Filed by me this ____ day of _____, 2015.
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18 _____
19 Monica Martinez Simmons, City Clerk

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21
22 (Seal)

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