

**SEATTLE OFFICE OF LABOR STANDARDS**  
**Chapter 120**

**Practices for administering Secure Scheduling requirements for employees working in Seattle  
(i.e. Secure Scheduling Ordinance) under SMC 14.22**

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## GENERAL PROVISIONS

### SHRR 120-010 Purpose

These Rules (i.e. Chapter 120) govern the practices of the Seattle Office of Labor Standards in administering requirements for secure scheduling under Seattle Municipal Code 14.22 (i.e. Secure Scheduling Ordinance).

### SHRR 120-020 Practice where rules do not govern

If a matter arises in administering the Secure Scheduling Ordinance that is not specifically covered by these rules, the Director shall specify the practices to be followed.

### SHRR 120-030 Construction of rules

These rules shall be liberally construed to permit the Seattle Office of Labor Standards to accomplish its administrative duties in implementing the Secure Scheduling Ordinance, including providing technical assistance, determining if a violation has occurred and proscribing penalties and remedies.

### SHRR 120-040 Severability

These rules are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of these rules 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 these rules, or the validity of the application of the rules to other persons or circumstances.

## DEFINITIONS

### SHRR 120-040 Bona fide business reason

#### 1. In general. "Bona fide business reason" means:

- a. An action that would cause the employer to violate a law, statute, ordinance, code, and/or governmental executive order; or
- b. A significant and identifiable burden of additional costs to the employer; or
- c. A significant and identifiable detrimental effect on the employer's ability to meet organizational demands, including
  - i. A significant inability of the employer, despite best efforts, to reorganize work among existing employees;
  - ii. A significant detrimental effect on business performance;
  - iii. A significant inability to meet customer needs or demands; or
  - iv. A significant insufficiency of work during the periods the employee proposes to work. SMC 14.22.010.

#### 2. Violation of administrative rule. "Bona fide business reason" also means an action that would cause the employer to violate an administrative rule.

3. **Premium pay.** “Bona fide business reason” also means an action that would require the employer to pay, to the same or different employee, additional compensation required by this ordinance (SMC 14.22); or a higher wage under section 207 of the Fair Labor Standards Act of 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.), the Minimum Wage Act, [RCW 49.46](#), et. seq, or the employer’s own written policy (e.g. holiday pay).
4. **Costs.** “Significant and identifiable burden of additional costs to the employer” means a material and measurably large burden of additional cost when considering the following factors
  - a. The nature and cost of the scheduling change requested by the employee;
  - b. The overall financial resources of the location or locations providing the scheduling adjustment; the number of persons employed at such location or locations;
  - c. The effect on expenses and resources;
  - d. The overall financial resources of the covered employer; the overall size of the business of a covered employer with respect to the number of its employees;
  - e. The number, type, and location of its facilities;
  - f. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; and
  - g. The geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.
5. **Employer’s ability to meet organizational demands.** “Significant and identifiable detrimental effect on the employer’s ability to meet organizational demands” includes, but is not limited to the following examples
  - a. **Seniority system for represented employees.** The employer’s practice of providing a work schedule consistent with a seniority system in a written policy and/or a bona fide collective bargaining agreement.
  - b. **Seniority system for non-represented employees.** The employer’s practice of providing a work schedule in accordance with a seniority system in a written policy.
6. **Insufficiency of work.** An “insufficiency of work” means that there is insufficient business need and/or customer demand to warrant staffing the employee during the proposed period, and the employer is unable to grant the employee’s proposal by adjusting the schedule of the other employee or employees working during the proposed period.

#### **SHRR 120-050 Major life event**

1. **In general.** “Major life event” means a major event related to the employee’s access to the workplace due to changes in the employee’s transportation or housing; the employee’s own serious health condition; the employee’s responsibilities as a caregiver; the employee’s enrollment in a career-related educational or training program; or the employee’s other job or jobs. SMC 14.22.010.
2. **Major.** A “major” event includes a foreseeable and unforeseeable event that a reasonable person believes:

- a. Is important, serious, or significant; and
  - b. Impacts the employee's access to the workplace on a long-term, short-term, or on-going basis.
3. **Employee's enrollment in a career-related education or training program.** A career-related education and training program includes programs that advance the employee's chosen pursuit, profession, or occupation in the same or different line of work for the same or different employer.
4. **Employee's other job or jobs.** Job means employment by the same or different employer or work performed as an independent contractor.

#### **SHRR 120-060 Family relationships**

1. **In general.**

- a. **Family relationship.** Family relationship means a relationship with any individual related to the employee by blood or affinity, whose close association with the employee is the equivalent to that of a person's child, spouse, parent, grandchild, grandparent, sibling, or parent of a spouse of the employee. SMC 14.22.010.
- b. **Spouse.** "Spouse" means husband, wife, or domestic partner. The terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships as well as to marital relationships and married persons. SMC 14.22.010.

2. **Non-marital relationships.** "Spouse" also means a non-marital relationship with an individual whose close association with the employee is the equivalent of a spouse.

#### **EMPLOYEE COVERAGE**

#### **SHRR 120-070 Employee coverage**

1. **In general.** Covered employees are limited to those who:

- a. Are defined under SMC 12A.28.200;
- b. Work at a fixed, point of sale location of a covered employer; and
- c. Provide such employment services in a physical location that is within the geographic boundaries of the City at least 50 percent of the time. SMC 14.22.015.

2. **Covered employees.** This ordinance (SMC 14.22) does not cover employees who work in hourly administrative or professional, non-customer facing positions (e.g. human resources, payroll, and receptionist positions).

3. **Fixed, point of sale location.** The "fixed, point of sale location" refers to the entirety of such location, including areas open and closed to the public and offsite areas when the employee works

in direct service of completing the sales generated at the fixed point of sale location(s) (e.g. delivery driver, catering banquet servers).

- 4. Percentage of work at a covered location.** The employee is covered by the ordinance if the employee works, or if the employer reasonably expects the employee to work, in Seattle at least 50% of the time at the employer's fixed point of sale location(s). The employee's work in Seattle is measured over the course of a year; or over the course of the particular period of employment for employment that is less than a year.
  - a. For existing employees continuing in the same position, employee coverage is based on the hours worked by the employee in Seattle over the course of the previous year or the previous period of employment.
  - b. If the employee has not worked for the employer for a year, employee coverage is based on the hours worked by the employee(s) who previously worked in the employee's position over the course of the previous year or the previous period of employment.
  - c. If the employee's position is partially or substantially new, employee coverage is based on the employer's reasonable expectation of the hours worked by the employee in Seattle over the course of a year; or over the course of the particular period of employment for employment that is less than a year.

## **EMPLOYER COVERAGE**

### **SHRR 120-080 Joint employers**

- 1. In general.** "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 an employer in relation to an employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer. SMC 14.22.010.
- 2. Joint employer.** Separate entities may be treated as a joint employer under this ordinance. Joint employers may be separate and distinct entities with separate owners, managers, and facilities.
- 3. Determination of joint employment.** Determining whether employment is joint employment, or separate and distinct employment, depends upon all the facts in the particular case. Where the employee performs work that simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as
  - a. Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees; or
  - b. Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

- c. Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

**4. Joint and several liability.** If the facts establish that the employee is jointly employed by two or more employers, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the ordinance with respect to the entire employment for the particular work week and pay period.

#### **SHRR 120-090 Successor Employers**

- 1. In general.** A successor means any person to whom the 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 an 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. [SMC 14.22.010](#).
- 2. Successor employer.**
  - a. For the first calendar year in which there is a change of control to a successor employer, the successor employer shall determine employer coverage based upon the number of employees of the previous employer or the successor employer, whichever is more favorable toward coverage by the ordinance.
  - b. For subsequent calendar years, the successor employer may determine employer coverage based solely upon the actual number of employees of the successor employer for the current calendar year, as required by [SMC 14.22.020](#).

#### **GOOD FAITH ESTIMATE OF WORK SCHEDULE**

##### **SHRR 120-100 Good faith estimate**

- 1. In general.** For new employees, the employer shall provide the employee with a written good faith estimate of the employee's work schedule at time of hire. The good faith estimate shall include the median number of hours the employee can expect to work each work week, and whether the employee can expect to work on-call shifts. [SMC 14.22.025.A](#).
- 2. Good faith.** The good faith estimate is a reasonable prediction; employers may choose to base it on forecasts, prior hours worked by the employee or a similarly-situated employee(s), or other information.

3. **Time period.** The good faith estimate shall provide information about the employee's work schedule for one year, divided into three-month increments.
  - a. **Short term employment.** The good faith estimate may provide information on the employee's work schedule for the number of three month increments in the particular period of short-term employment.
  - b. **Three month increments.** The good faith estimate must state the employer's choice of three-month increment, such as three months from the employee's hire date, or quarterly increments in a calendar year, tax year, fiscal year, contract year or benefit year under the Paid Sick and Safe Time Ordinance, [SMC 14.16](#).
4. **Median number of hours.** The good faith estimate shall state the median number of hours that the employer will schedule the employee to work in the written work schedules required by [SMC 14.22.040](#).
  - a. **Calculation.** A median is the middle number in a sequence of odd numbers or the average of the two middle numbers in a sequence of even numbers (e.g. 4 is the median of 1, 3, 4, 10, 20; 6 is the median of 1, 3, 4, 8, 9 ,10).
  - b. **Range.** The good faith estimate shall not include a range of numbers; the median is a single number.
5. **On-call shifts.** The good faith estimate shall state whether the employer will schedule the employee for on-call shifts in the written work schedules required by [SMC 14.22.040](#).
6. **Temporary services, staffing agencies, contractors, and subcontractors.** For any employee who is jointly employed by two or more employers, each employer shall be individually and jointly responsible for providing a good faith estimate at the beginning of each distinct assignment for a covered employer. Such employees shall be considered new employees upon starting each distinct assignment for a covered employer(s).

#### **SHRR 120-110 Significant change**

1. **In general.** For existing employees, the employer shall revise the good faith estimate once every year, calculated from the point of the last good faith estimate; and when there is a significant change to the employee's work schedule due to changes in the employee's availability; or to the employer's business needs. [SMC 14.22.025.A.1](#).
2. **Time period.** A significant change in the good faith estimate is measured over the course of one or more three-month increments, as defined by the employer under SHRR 120-100.3.
3. **Median number of hours.** A significant change occurs when there is a difference of at least 30% between the good faith estimate and the median number of scheduled hours in the written work schedules required by [SMC 14.22.040](#) over the course of one or more three-month increments. A



significant change includes differences of 30% or more above and 30% or more below the good faith estimate.

4. **On-call shifts.** A significant change in on-call shifts occurs when the good faith estimate of whether the employee can expect to work on-call shifts differs from the written work schedule required by [SMC 14.22.040](#).

#### **SHRR 120-120 Interactive process**

1. **In general.** The good faith estimate shall not constitute a contractual offer and the employer shall not be bound by the estimate. However, the employer shall initiate an interactive process with the employee to discuss any significant change from the good faith estimate, and if applicable, state a bona fide business reason for the change. [SMC 14.22.025.A.2](#).
2. **Timeline.** Unless delayed by circumstances outside the employer's control (e.g. employee unavailability to discuss the significant change, operational failures under SMC 14.22.050.7-9), the employer shall complete the interactive process within three weeks.
  - a. **Initiation.** The employee is responsible for recognizing a significant change and notifying the employer of the significant change. The employer shall make a good faith effort to initiate the interactive process within a week of such notification. If the employee does not notify the employer of a significant change, the employer is encouraged to initiate the interactive process within a week of the employer's recognition of a significant change.
  - b. **Conclusion.** The employer shall conclude the interactive process within three weeks. The conclusion is marked by the employer and employee's discussion about the perceived or actual significant change. If there has been a significant change, the employer shall provide a revised, written good faith estimate. If there is a bona fide business reason for the significant change, the employer shall provide a verbal or written, concise statement of facts describing such reason.
  - c. **Extension.** The employer and employee may agree to extend the interactive process, provided that the agreement is confirmed in writing.
  - d. **Short-term employment.** If the specified period of employment is for less than three weeks, the employer shall initiate and conclude the interactive process as soon as practicable.
2. **Content.** The interactive process is a problem-solving discussion between the employer and employee to facilitate a shared understanding regarding any perceived or actual significant change to the good faith estimate. The interactive process may be conducted via in-person conversation, telephone call, email, text message, or other accessible electronic or written format to facilitate discussion and understanding of the issues. The employer is encouraged to discuss issues relevant to the perceived or actual significant change, including but not limited to
  - a. An explanation of the significant change from the written good faith estimate;
  - b. A description of any applicable bona fide business reason for the change;
  - c. Any employee concerns regarding the change to the good faith estimate and the employer's potential next steps to address these concerns; and

- d. Any revised good faith estimate.

## RIGHT TO REQUEST INPUT INTO THE WORK SCHEDULE

### SHRR 120-130 Employee requests for input into the work schedule

1. **In general.** At time of hire and during employment, the employee may identify any limitations or changes in work schedule availability. The employee has the right to request not to be scheduled for work shifts during certain times or at certain locations and the right to identify preferences for the hours or locations of work. [SMC 14.22.030.A](#).
2. **Employee requests.** The employee has the right to make requests for certain times (e.g. hours of the day, length of work shifts) and locations of work prior to the employer's provision of the written work schedule required by [SMC 14.22.040](#).
3. **Notice of employee requests.** To the extent possible, the employee shall follow the employer's usual and customary policies and procedures when providing notice of requests prior to the employer's provision of the written work schedule required by SMC 14.22.040.
4. **Major life events.** For employee requests that are due to a major life event, there must be an identifiable nexus between the work schedule request and the major life event.

### SHRR 120-140 Interactive process

1. **In general.** The employer shall engage in an interactive process with the employee to discuss the request. If the employee's request is due to a major life event, the employer also may require verifying information from the employee with adequate notice and reasonable time to respond. [SMC 14.22.030.B](#).
2. **Timeline.** Unless delayed by circumstances outside the employer's control (e.g. employee unavailability to discuss the request, operational failures under SMC 14.22.050.7-9), the employer shall complete the interactive process within three weeks.
  - a. **Initiation.** The employer shall make a good faith effort to initiate the interactive process within a week of receiving the employee's request.
  - b. **Conclusion.** The employer shall conclude the interactive process within three weeks of receiving the employee's request. The conclusion is marked by the employer and employee's discussion about the employee's request; the employer's notification of whether the request was granted or denied; and, if applicable, the employer's provision of a written response.
  - c. **Extension.** The employer and employee may agree to extend the interactive process, provided that the agreement is confirmed in writing.

- d. **Short-term employment.** If the particular period of employment is for less than three weeks, the employer shall initiate and conclude the interactive process as soon as practicable.
3. **Content.** The interactive process is a problem-solving discussion between the employer and employee to facilitate a work schedule that meets the needs of both the employer and employee. The interactive process may be conducted via in-person conversation, telephone call, email, text message, or other accessible electronic or written format to facilitate discussion and understanding of the issues. The employer is encouraged to discuss issues relevant to the employee's request including, but not limited to
- a. The employee's work schedule conflict, requested work schedule change, or work schedule preferences;
  - b. If applicable, the impact of the employee's major life event and the employer's discretionary request for verifying information regarding the relevant major life event;
  - c. The potential work schedule changes to accommodate both employer and employee needs;
  - d. The employer's grant or denial of the employee's request pursuant to SHRR 120-050; and
  - e. In the event of a denial, the potential next steps the employer may take to accommodate the employee's work schedule request.
4. **Verifying information.** The employer may request verifying information to document the employee's major life event. Employer requests for verifying information must be reasonable and respectful of the employee's privacy; should not incur employee expense; and should not deter employees from making a request for input into their work schedule. Depending on the nature of the employee's request, the employee may satisfy the employer's requirement for verifying information by any of the following methods,
- a. **Written statement.** The employee may submit a written statement, signed by the employee, that identifies one or more of the five categories of a major life event as the reason for requesting a work schedule change and provide a concise statement of the circumstances of the major life event. The employer shall not inquire into the circumstances of the major life event beyond the categories identified in SMC 14.22.010 and shall inform the employee of the ability to redact or withhold information that the employee wishes to keep private.
  - b. **Third-party documentation.** The employee may submit third party documentation to demonstrate the connection between a major life event and the need for a work schedule change, including but not limited to a notice from a landlord, notice from a child's school, a class syllabus, pay stub or other documentation of another job. In all instances, the employee may redact information that the employee wishes to keep private.
  - c. **Documentation from a health care provider.** For employee requests that involve a serious health condition, the employee may provide a written statement, third-party documentation, or documentation signed by a health care professional stating that the employee or the employee's family member has a serious health condition.
    - i. **Health care professional.** A health care professional means any person licensed or otherwise authorized by any state government to diagnose and treat physical or

mental health conditions, including but not limited to a doctor, nurse, emergency medical care provider, counselor and/or a public or community health clinic worker, so long as that person is performing within the scope of their practice as defined by relevant law.

- ii. **Employee privacy.** The employer shall not require the documentation to explain the nature of the serious health condition.
- iii. **Relationship to other laws.** When the employee's request is for a purpose covered by a federal, state, or other local law (e.g. family medical leave, reasonable accommodation, workplace injury, etc.), the employer may inform the employee of other legal requirements for medical inquiry, medical examination and documentation that may be related to such purpose.

### **SHRR 120-150 Granting or denying the employee's request**

1. **In general.** After engaging in an interactive process with the employee to discuss the request, the employer shall grant or deny the request.
  - a. If the employee's request is not due to a major life event, the employer may grant or deny the request for any reason that is not unlawful.
  - b. If the employee's request is due to a major life event, the employer shall grant the request unless the employer has a bona fide business reason to deny it. In the event of a denial, the employer's written response shall provide an explanation of the complete or partial denial of the request, and the bona fide business reason for the decision. SMC 14.22.030.B.
2. **Granting the employee's request.** If the employer grants the employee's request, the employer must inform the employee of the work schedule change (i.e. times, hours, and/or locations of work) and provide a mutually agreed-upon start date. The start date of the work schedule change does not have to comply with the advance notice requirements in SMC 14.22.040.A.
  - a. **Request not due to major life event.** If the employee's request was not due to a major life event, the employer is encouraged, but is not required to provide a written response.
  - b. **Request due to major life event.** If the employee's request was due to a major life event, the employer shall provide a written response confirming the work schedule change.
  - c. **Request that constitutes a significant change to the good faith estimate.** If the employee's request also constitutes a significant change to the good faith estimate, the employer shall provide a revised, written good faith estimate of work schedule.
3. **Denying the employee's request.** If the employer denies the employee's request, the employer must inform the employee of the denial.
  - a. **Requests not due to a major life event.** If the employee's request was not due to a major life event, the employer is encouraged, but is not required to provide a written response.
  - b. **Requests due to a major life event.** If the employee's request was due to a major life event, the employer shall provide a written response providing an explanation of the complete or partial denial of the request and a concise statement of the facts supporting the applicable bona fide business reason.

## RIGHT TO REST BETWEEN WORK SHIFTS

### SHRR 120-160 Scheduling the employee

1. **In general.** Unless the employee requests or consents to work such hours, the employer shall not schedule or require the employee to work:
  - a. Less than ten hours after the end of the previous calendar day's work shift; or
  - b. Less than ten hours following the end of a work shift that spanned two calendar days.  
SMC 14.22.035.A.
2. **Employee's request or consent.** The employee may request or consent to work shifts separated by less than 10 hours, as described in SMC 14.22.035, on a situational or on-going basis, and may revoke such consent at any time during employment, provided that the employee follows the employer's usual and customary requirements for making work schedule changes. The employer may choose, but is not required, to keep record of the employee's request or consent to work such shifts.

### SHRR 120-170 Compensation

1. **In general.** The employer shall compensate the employee at one and one-half times the employee's scheduled rate of pay for hours worked that are less than ten hours apart when work shifts are
  - a. Less than ten hours after the end of the previous calendar day's work shift; or
  - b. Less than ten hours following the end of a work shift that spanned two calendar days.  
SMC 14.22.035.B.
2. **Requirement to provide compensation.** The employer shall provide the compensation required by SMC 14.22.035.B regardless of whether the employee requested or consented to work shifts separated by less than ten hours.
3. **Overtime.** The employer shall include compensation required by SMC 14.22.035.B in the regular rate of pay for purposes of calculating the overtime rate of pay to the extent required by section 207 of the Fair Labor Standards Act of 1938, (52 Stat. 1060; 29 U.S.C. § 201 et seq.) or the Minimum Wage Act, RCW 49.46.130.
4. **Double shift.** A "double shift" occurs when the employee works consecutive work shifts. The employer shall provide the compensation required by SMC 14.22.035.B when a double shift is
  - a. Less than ten hours after the end of the previous calendar day's work shift; or
  - b. Less than ten hours following the end of a work shift that spanned two calendar days.

### **SHRR 120-180 Split Shifts**

- 1. In general.** The requirement to pay additional compensation to the employee who works hours described in SMC 14.22.035.B shall not apply for work hours that constitute a split shift. SMC 14.22.035.C.
- 2. Split-shift.** A “split shift” occurs when the employee’s work shift hours are not consecutive and are interrupted by one or more employer-required, unpaid, non-working periods that are between one to four hours and that are not bona fide rest or meal periods.

### **ADVANCE NOTICE OF WORK SCHEDULE**

#### **SHRR 120-190 Existing employees**

- 1. In general.** For existing employees who are not returning from a leave of absence, the employer shall provide employees with a written work schedule at least 14 calendar days before the first day of the work schedule. SMC 14.22.040.A and B.
- 2. Existing employees.** Unless an exception applies, the employer shall provide existing employees with a written work schedule at least 14 calendar days before the first day of the work schedule as required by SMC 14.22.040.A.
  - a. This rule corrects a technical error in the ordinance that referenced SMC 14.20.040.B.
  - b. The reference to SMC 14.20.040.B was a technical error as evidenced by the stated intent to provide employees with predictable work schedules in SMC 14.22.012.

#### **SHRR 120-200 New and returning employees**

- 1. In general.** For new employees at time of hire, and for existing employees returning to work after a leave of absence, the employer may provide the employee with a written work schedule that runs through the last date of the currently posted schedule. Thereafter, the employer shall include these employee(s) in the schedule for existing employees as described in SMC 14.22.040.B. SMC 14.22.040.A and B.
- 2. New and returning employees.** For new employees at time of hire and existing employees returning from a leave of absence, the employer may provide a written work schedule, without 14 calendar days of advance notice, that runs through the last date of all currently posted schedules. The employer may consider the following employees “new or existing employees returning from a leave of absence”:
  - a. **Employees with a work schedule change.** Any employee who is granted a work schedule change under SMC 14.22.030;
  - b. **New employees.** Any new employee at time of hire.
  - c. **Transfers, promotions, and new job classifications.** Any existing employee at time of transfer, promotion, and/or assignment to a new job classification.

- d. **Temporary services, staffing agencies, contractors, and subcontractors.** Any employee who is jointly employed by a covered employer and a temporary services provider, staffing agency, contractor, subcontractor, or other employer and who has started a distinct assignment for a covered employer; and
- e. **Returning employees.** Any employee who is returning from a leave of absence.

**3. Leave of absence.** A leave of absence may be defined by law, the employer's usual and customary policy or collective bargaining agreement. A leave of absence includes an absence from work that is mutually agreed upon by the employee and the employer or a collective bargaining agreement; leave to which the employee is entitled under local, state or federal law where the employer and employee relationship is continued; and leave imposed by the employer for a bona fide disciplinary reason.

#### **SHRR 120-210 Work period**

- 1. **In general.** The written work schedule shall include all regular and on-call shifts for the work period. SMC 14.22.040.C.
- 2. **Work period.** A work period refers to the given period of time in the written work schedule.

#### **NOTICE OF WORK SCHEDULE CHANGES**

##### **SHRR 120-220 Employer-requested work schedule changes**

- 1. **In general.** For employer-requested changes to the written work schedule that occur after the advance notice required by SMC14.22.040:
  - a. The employer shall provide the employee with timely notice of the change by in-person conversation, telephone call, email, text message, or other accessible electronic or written format; and
  - b. The employee may decline to work any hours not included in the employee's work schedule. SMC 14.22.045.A.
- 2. **Employer-requested changes.** Changes to the work schedule that are initiated by the employer are employer-requested changes.
- 3. **Timely notice.** The employer's provision of timely notice reflects the employer's good faith effort to contact the employee promptly and without undue delay after learning of the need for changing the employee's work schedule.

##### **SHRR 120-230 Employee-requested work schedule changes**

- 1. **In general.** For employee-requested changes to the written work schedule that occur after the advance notice required by SMC 14.22.040:

- a. The employee shall provide notice of the request per the employer's usual and customary notice and procedural requirements for foreseeable changes, or as soon as practicable for unforeseeable circumstances; and
- b. The employee shall comply with the employer's reasonable normal notification requirements and/or call-in procedures, provided that such requirements do not interfere with the purposes for which the work schedule change is needed if it is due to a reason covered by another local, state or federal law or is due to a major life event.
- c. The employer may ask but not require the employee to find replacement coverage if the employee is unable to work scheduled hours due to an emergency or major life event that prevents the employee from working scheduled hours, unless the major life event is also covered by another local, state or federal law pursuant to SMC 14.22.045.B.3.a. The employer may require a written statement from the employee verifying that the employee is unable to work the scheduled hours due to an emergency or major life event. The employee shall not have to explain the nature of the emergency or major life event.  
SMC 14.22.045.B.

2. **Employee-requested changes.** Changes to the work schedule that are initiated by the employee are employee-requested changes. This section refers to any employee-requested schedule changes made after the employer's reasonable, usual, and customary requirements for schedule change requests.
3. **Written statement.** To fulfill the employer's requirement for a written statement, the employee may provide verifying information as permitted by SHRR 120-140.4.

## **COMPENSATION FOR WORK SCHEDULE CHANGES**

### **SHRR 120-240 Compensation for work schedule changes**

1. **In general.** The employer shall compensate employees for each employer-requested change to the employee's written work schedule (i.e. work schedule change) that occurs after the advance notice required by SMC 14.22.040.A.
2. **Rounding.** Employers may use a usual and customary rounding practice that complies with 29 C.F.R. § 785.48 and the Wash. Dep't of Labor and Indus. Admin. Policy ES.D.1 (2004).
3. **Grace period for adding or subtracting hours.** The employer shall compensate the employee for each instance of adding or subtracting hours when there is an employer-requested work schedule change of more than 15 minutes, in accordance with the employer's usual and customary rounding practice.
4. **Payment for adding hours.** For each employer-requested change that is less than one hour, the employer may pro-rate the additional compensation due under SMC 14.22.050.A.1 based on the clock-out time, in accordance with the employer's usual and customary rounding practice.



- a. **Example #1.** The employer scheduled the employee to work from 10:00 am to 4:00 pm for \$20/hour. After providing the written work schedule, the employer requested that the employee work late to finish a special project. The employee agreed and clocked-out at 4:39 pm. Since the employer’s usual and customary timekeeping practice rounds to the nearest five-minute increment, the employee’s clock-out time rounds to 4:40 pm. This example counts as a work schedule change of adding hours (i.e. 40 minutes). In addition to compensating the employee for the time worked (i.e. 40 minutes = \$13.33), the employer must compensate the employee for 40 minutes at the employee’s scheduled rate of pay for the work schedule change (\$13.33), for a total of \$26.66.
  - b. **Example #2.** The employer scheduled the employee from 10:00 to 4:00 pm for \$20/hour. During the work shift, the employer requested that the employee clock out after counting the till, even if it meant working after the scheduled end of shift. The employee agreed and clocked out at 4:10 pm. Since the employer’s usual and customary timekeeping practice rounds to the nearest quarter hour, the employee’s clock-out time rounds to 4:15 pm. This example does not count as a work schedule change of adding hours because it is within the 15-minute grace period. The employer must still compensate the employee for the time worked (i.e. 15 minutes = \$5.00), but does not owe additional compensation for the work schedule change.
  - c. **Example #3.** The employer scheduled the employee to work from 10:00 am to 4:00 pm for \$20/hour. During the work shift, the employer requested that the employee work late to complete a sale. The employee agreed and clocked out at 4:05 pm. Since the employer’s usual and customary timekeeping practice rounds to the nearest quarter hour, the employee’s clock-out time rounds to 4:00 pm. This example does not count as a work schedule change of adding hours because it is within the 15-minute grace period. The employer need not compensate the employee for the five minutes worked past 4:00 pm, provided the employer’s rounding practice is consistent with [29 C.F.R. § 785.48](#) and the [Wash. Dep’t of Labor and Indus. Admin. Policy ES.D.1 \(2004\)](#).
5. **Payment for subtracting hours.** The employer shall pay no less than one-half times the employee’s scheduled rate of pay per hour for each scheduled hour, or pro-rated hour, that the employee does not work due to “subtracting hours,” in accordance with the employer’s usual and customary rounding practice.
- a. **Example #1.** The employer scheduled the employee to work from 10:00 am to 4:00 pm for \$20/hour. During the work shift, the employer requested that the employee end the work shift early due to slow business. The employee agreed and clocked out at 3:24 pm. Since the employer’s usual and customary timekeeping practice rounds to the nearest quarter hour, the employee’s clock-out time rounds to 3:30. This example counts as a work schedule change of subtracting hours (i.e. 30 minutes). The employer must pay the employee \$5.00 (i.e. one-half the employee’s scheduled rate of pay for 30 minutes) for the work schedule change.
  - b. **Example #3.** The employer scheduled the employee to work from 10:00 am to 4:00 pm at \$20/hour. During the work shift, the employer requested that the employee end the work

shift early. The employee agreed and clocked-out at 3:44 pm. Since the employer's usual and customary timekeeping practice rounds to the nearest five-minute increment, the employee's clock-out time rounds to 3:45 pm. This example does not count as a work schedule change of subtracting hours because it is within the 15-minute grace period.

5. **Overtime.** The employer shall include compensation for work schedule changes at the regular rate of pay for purposes of calculating the overtime rate of pay to the extent required by required by section 207 of the Fair Labor Standards Act of 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.), and the Minimum Wage Act, RCW 49.46.130.
6. **Scheduled rate of pay.** The employer shall provide compensation for work schedule changes at the scheduled rate of pay at the beginning of the employee's work shift, regardless of whether such rate is different than the employee's regular rate (e.g. overtime rate) or whether the rate changes over the course of the shift (e.g. regular rate that changes to overtime rate mid-shift). For employees who are paid for waiting on-call, the employer shall compensate the employee at the scheduled rate of pay that would have applied at the beginning of the employee's on-site, work shift, not the scheduled rate for the waiting period.
7. **Net hours.** For compensation due for subtracting hours, the employer is not required to compensate the employee for hours that would have constituted unpaid meal or rest periods, or discretionary paid meal periods. Employers must compensate employees for scheduled hours that would have constituted paid rest periods required by state law, WAC 296-126-092.
8. **Temporary services, staffing agencies, contractors, and subcontractors.** For any employee who is jointly employed by a covered employer and a temporary service provider, staffing agency, contractor, or subcontractor, the employer shall provide the employee with compensation for each work schedule change after starting a distinct assignment with the covered employer.

## EXCEPTIONS TO COMPENSATION FOR WORK SCHEDULE CHANGES

### SHRR 120-250 Mass communications

1. **In general.** Compensation for work schedule changes, required by SMC 14.22.050.A, shall not apply when the employee volunteers to work additional hours in response to the employer's written mass communication about the availability of additional hours, provided that the mass communication is
  - a. Only used for additional hours that are the result of another employee being unable to work scheduled hours, and
  - b. Is clear that accepting such hours is voluntary and the employee has the right to decline such hours. SMC 14.22.050.B.2.

2. **Opt-out.** At time of hire and during employment, employees may opt out of, and opt back into, receiving mass communications. Employers are encouraged to discuss the use of mass communications when providing the good faith estimate of work schedule.
3. **Mass communication.** A mass communication is a written message distributed to two or more employees.
  - a. **Required information.** In each mass communication, the employer shall convey that
    - i. The message is a mass communication;
    - ii. Accepting the employer's offer of additional hours is voluntary and the employee has the right to decline such hours; and
    - iii. Accepting such hours does not require the employer to pay compensation for work schedule changes occurring after the advance notice required by [SMC 14.22.040](#).
  - b. **Scope.** The employer may choose to limit a mass communication to the pool of available employees who, to a reasonable employer acting in good faith are qualified with the skills and experience to perform the work; and to employees who would not incur premium pay required by law (e.g. overtime) or the employer's usual and customary policy.
  - c. **Translations.** The employer is encouraged to provide mass communications in English and the primary language(s) of the employees at the worksite.
4. **Offer and assignment of additional hours.** The employer may offer and assign the additional hours of work per the employer's usual and customary policies and procedures.

#### **SHRR 120-260 In-person group communications**

1. **In general.** Compensation for work schedule changes, required by [SMC 14.22.050.A](#), shall not apply when the employee consents to work additional hours in response to the employer's in-person group communication among currently working employees, so long as such hours are consecutive to the hours the employee is currently working. [SMC 14.22.050.B.3](#).
2. **In-person group communication.** An in-person group communication is a communication initiated by the employer with two or more currently working employees.
  - a. **Required information.** In each in-person group communication, the employer shall convey that
    - i. Accepting the employer's offer of additional hours is voluntary and the employee has the right to decline such hours;
    - ii. Accepting such hours does not require the employer to pay compensation for work schedule changes occurring after the advance notice required by [SMC 14.22.040](#).
  - b. **Scope.** The employer shall initiate the in-person group communication with two or more currently working employees who are not already scheduled to work the additional hours and who the employer reasonably believes are qualified to work the additional hours.
3. **Offer and assignment of additional hours.** The employer may offer and assign the additional hours of work per the employer's usual and customary policies and procedures.

### **SHRR 120-270 Operations failures**

- 1. In general.** Compensation for work schedule changes, required by [SMC 14.22.050.A](#), shall not apply when employer operations cannot begin or continue due to
  - a. Threats to employees or property, or due to the recommendation of a public official that work cannot begin or continue;
  - b. Public utilities failure to supply electricity, water, or gas, or failure in the public utilities, or sewer system; or
  - c. Natural disaster or other cause not within the employer's control pursuant to rules issued by the Director. [SMC 14.22.050.B.7-9](#).
- 2. Violations of other laws.** Compensation for work schedule changes, required by [SMC 14.22.050.A](#), also shall not apply when employer operations cannot begin or continue due to events outside the control of the employer that would cause the employer to violate a law, statute, ordinance, code, administrative rule, and/or governmental executive order.

### **ACCESS TO HOURS FOR EXISTING EMPLOYEES**

#### **SHRR 120-280 Access to hours for existing employees**

- 1. In general.**
  - a. Before hiring new employees from an external applicant pool or subcontractors, including hiring through the use of temporary services or staffing agencies, the employer must offer additional hours of work to existing employees when those hours become available at their place of work as defined by the employers usual and customary business practice.
  - b. Except as provided in this subsection 14.22.055.B, the employer must post written notice of available hours of work for at least three consecutive calendar days. The notice must contain the following information:
    - i. Description and title of the position;
    - ii. Required qualifications for the position;
    - iii. Total hours of work being offered;
    - iv. Schedule of available work shifts;
    - v. Whether the available work shifts will occur at the same time each week; and
    - vi. Length of time the employer anticipates requiring coverage of the additional hours. [SMC 14.22.055.A and B](#).
- 2. Additional hours.** The notice and job offer requirements required by [SMC 14.22.055](#) shall apply to any additional hours, long or short term, that the employer would otherwise fill by hiring new employees from an external applicant pool or through temporary services, staffing agencies, contractors, and subcontractors.
- 3. Notice.** The notice may provide specific or general information about the total hours of work being offered; schedule of available work shifts; and whether the available work shifts will occur at the

same time each week. An acceptable general statement includes but is not limited to, “hours and schedule dependent upon the employee’s availability.”

- 4. Offering hours.** The employer shall not require one qualified employee to accept all additional hours. Rather, the employer may offer all additional hours to one qualified employee or offer to distribute the hours among several, qualified employees. The employer also may limit distribution of hours to full work shifts rather than parceling hours among employees.

#### **EXCEPTIONS TO ACCESS TO HOURS FOR EXISTING EMPLOYEES**

##### **SHRR 120-290 Written confirmation from all employees**

- 1. In general.** If the employer provides notice of additional hours to all employees and receives written confirmation from all such employees that they are not interested in accepting additional hours of work, the employer may immediately proceed with hiring new employees from an external applicant pool or subcontractors to work the additional hours. [SMC 14.22.055.E.1](#).
- 2. Written confirmation.** The employer must receive written confirmation from all employees on the employer’s payroll, excluding those who are on a leave of absence, planned vacation, or planned use of Paid Sick and Safe Time for the entire three-day period of notice.

##### **SHRR 120-300 Access to hours lists**

- 1. In general.** If the employer chooses to maintain a written access to hours list, the employer may limit the notice and job offer requirements required by [SMC 14.22.055](#) to employees on the access to hours list. [SMC 14.22.055.E.2 and 3](#).
- 2. Specific lists.** The employer may maintain distinct access to hours lists for specific positions, or specific job characteristics (e.g. hours, locations), provided that the employer places all employees on such list(s) regardless of qualifications at the time of hire or at the time the employer creates such list(s). Employees may choose to be removed from, or added back to, such access to hours lists by notifying the employer at any time during employment.
- 3. Short-term employees.** The employer shall automatically place all direct hire, short-term employees on the payroll on the access to hours list(s), including direct hire temporary, seasonal, and other short-term employees.
- 4. Temporary services, staffing agencies, contractors, and subcontractors.** The employer is not required to place employees provided by temporary services, staffing agencies, contractors, and subcontractors on the access to hours list(s) if such employees are not on the employer’s payroll.
- 5. Written confirmation.** The employer may immediately proceed with hiring new employees from an external applicant pool or employees of temporary services, staffing agencies, contractors, and subcontractors to work the additional hours only after receiving written declination of such hours

from all employees on the access to hours list(s), excluding those who are on a leave of absence, planned vacation, or planned use of Paid Sick and Safe Time for the entire three-day notice period.

### **SHRR 120-310 Hiring programs**

- 1. In general.** The notice and job offer requirements required by [SMC 14.22.055](#) shall not apply to additional hours of work that the employer has designated for hiring programs, including but not limited to diversity, supported employment hiring programs or young adult hiring programs, affiliated with a government entity or external non-profit organization that has been approved subject to the rules of the Director or is a program that meets the eligibility criteria for the Work Opportunity Tax Credit as defined by the Department of Labor. [SMC 14.22.055.E.5](#).
- 2. Existing employees.** Employers are encouraged to hire existing employees that meet the goals of the hiring program before hiring externally.
- 3. Limit on designated hires.** For the purpose of using hiring programs as an exception to the access to hours requirements, employers shall limit the number of employees hired through the hiring program for the current calendar year to 15% or less of (1) all covered employees in Seattle; or (2) covered employees at the particular, fixed, point of sale location. Any number that results in a fraction, shall be rounded down to the next whole number for values less than .5 and up to the next whole number for values greater than .5. For employers who use combined hiring for more than one fixed, point of sale location, the employer may aggregate the number of employees hired through the hiring program for the fixed, point of sale locations which perform shared hiring. The employer shall determine the number of covered employees based on a modified calculation for employer coverage required by [SMC 14.22.020](#):
  - a. Determining number of covered employees.** The average number per calendar week of covered employees who worked for compensation during the preceding calendar year for any and all weeks during which at least one covered employee worked for compensation. For employers that did not have any covered employees during the previous calendar year, the number of covered employee[s] will be calculated based upon the average number per calendar week of covered employees who worked for compensation during the first 90 calendar days of the current year in which the employer engaged in business;
  - b. Example of limit on designated hires.** An employer employs 250 covered employees in Seattle in the current calendar year. The employer may hire up to 38 employees (15% of 250 is 37.5, which is rounded up to 38) through a hiring program in the current calendar year.
- 4. Types of hiring programs**
  - a. Diversity.** Diversity includes individuals and groups protected by federal, state and local anti-discrimination laws, and characteristics associated with historically disenfranchised communities including but not limited to conviction and arrest records; survival of domestic violence; homelessness, foster youth emancipating from the child welfare system, and receipt of public subsidies (e.g. TANF, SSI).

- b. **Supported employment.** Supported employment refers to service provisions wherein people with disabilities are assisted with obtaining and maintaining employment.
  - c. **Young adult.** There is no specific age range for young adults; the age range of young adults may be reasonably defined by specific hiring programs.
  
- 5. **Process.** Government, non-profit organizations, and employers must complete a formal process prior to using hiring programs that serve as an exception to access to hours requirements. Government and non-profit organizations must obtain approval of the hiring program from the Labor Standards Advisory Commission. Employers must obtain confirmation of the hiring program from the Director of the Office of Labor Standards.
  
- 6. **Government and non-profit hiring programs.** Government and non-profit organizations shall apply to be placed on an approved list of hiring programs prior to partnering with specific employers.
  - a. **Application.** The application shall include, but is not limited to, the following information:
    - ii. Mission statement and description of experience within the community the program seeks to serve;
    - iii. Description of the hiring program(s) and specific need the program(s) seeks to address;
    - iv. Description of history and/or qualifications to implement the hiring program; and
    - v. Point of contact for follow-up that may include discussion, site visit, oral presentation, and/or meeting.
  - b. **Evaluation.** The Labor Standards Advisory Commission, with support from Office of Labor Standards staff, shall evaluate applications and determine approval.
  - c. **Conditions.** Approval is conditioned upon agreement that the Office of Labor Standards and the Office of City Auditor may use information about the hiring program for outreach, research, and monitoring purposes.
  
- 7. **Employers.** Employers shall file a notice with the Director of the Office of Labor Standards for one or more distinct projects with approved hiring program(s).
  - a. **Notice.** The notice shall include, but is not limited to, the following information:
    - i. Description of each distinct hiring program, including relevant dates, specific hiring goals, specific needs the program seeks to address;
    - ii. Identification of the approved government or non-profit hiring program; and
    - iii. Method for informing employees with notice of the employer's hiring program as an exception to the access to hours requirements.
  - b. **Review.** The Director shall review the employer's notice, provide confirmation, or provide notice of missing information.
  - c. **Conditions.** Confirmation is conditioned upon agreement that the employer will inform existing employees of the use of the hiring program as an exception to the access to hours requirements; and permit the Office of Labor Standards and the Office of City Auditor to use information about the hiring program, including but not limited to the number of employees hired through the hiring program, for outreach, research and monitoring purposes.

## NOTICE AND POSTING

### SHRR 120-320 Notice and posting requirements

1. **In general.** The Office of Labor Standards shall create and distribute a workplace poster with notice of secure scheduling employee rights and employer requirements. OLS shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with posting requirements. 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 in the primary language(s) of the employee(s) at the particular workplace. [SMC 14.22.060](#).
2. **Individual notice of rights.** At time of hire, the employer shall provide each employee with a copy of the OLS workplace poster giving notice of the rights to secure scheduling under this ordinance (SMC 14.22). The employer shall provide the poster in the employee's primary language in physical or electronic format.
3. **Translation requirements.** Employers shall provide the notices required by the following sections in English and any language that the employer knows or has reason to know is the primary language of the employee(s) at the particular workplace. Employers shall make a good faith effort to determine all primary languages of employees at the particular workplace.
  - a. Good faith estimate, [SMC 14.22.025.A.3](#);
  - b. Advance notice of work schedule, [SMC 14.22.040.D](#);
  - c. Notice for access to hours, [SMC 14.22.055.B.3](#);
  - d. Notice for access to hours list, [SMC 14.22.055.E.2.g](#);
  - e. Workplace poster, [SMC 14.22.060.B](#); and
  - f. Notice of investigation, [SMC 14.22.085.B.2](#).
4. **Primary language.** "Primary language" means the language in which the employee feels most comfortable communicating.

## RETALIATION

### SHRR 120-330 Discipline

1. **In general.** No employer or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this ordinance. [SMC 14.22.070](#).
2. **Discipline.** Employers may discipline the employee for the employee's failure to comply with the employer's usual and customary job requirements for notice of work schedule changes that occur after the written work schedule required by SMC 14.22.040. The employer is encouraged to engage in an interactive process with the employee before taking such disciplinary action if the employee's notice of work schedule changes is due to a major life event.



## COLLECTIVE BARGAINING AGREEMENT FOR SECURE SCHEDULING

### SHRR 120-340 Waivers

#### 1. In general.

- a. The requirements of this ordinance 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 and the employees have ratified an alternative structure for secure scheduling that meets the public policy goals of this ordinance.
- b. Any waiver by an individual employee of any provisions of this ordinance shall be deemed contrary to public policy and shall be void and unenforceable. SMC 14.22.145.

**2. Clear and unambiguous terms.** The terms that expressly waive ordinance requirements shall reference the ordinance by name and citation, the Secure Scheduling ordinance, SMC 14.22, and reference the employee ratification of an alternative structure for secure scheduling that meets the public policy goals of the ordinance.

**3. Impasse.** The employer and employee impasse during negotiation of a collective bargaining agreement does not constitute a waiver of this ordinance (SMC 14.22).

## ENFORCEMENT

### SHRR 120-350 Practice and procedures for enforcement of ordinance

**a. In general.** The Office of Labor Standards shall have the power to investigate violations of this ordinance. OLS authorized to coordinate implementation and enforcement of this ordinance and shall promulgate appropriate guidelines or rules for such purposes. The Director of OLS is authorized and directed to promulgate rules consistent with this ordinance. 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 ordinance. SMC 14.22.075.

**b. Chapter 40.** The enforcement practices and procedures for this ordinance (SMC 14.22) are determined by the Seattle Office for Civil Rights Rules (SHRR) Chapter 40, or a subsequent Chapter created because the Office of Labor Standards has been established as an independent office.