



Seattle City Council

Central Staff - Memorandum

Date: December 9, 2015
To: **Public Safety, Civil Rights and Technology Committee**
From: Patricia Lee, Council Central Staff
Subject: CB 118585
Wage Theft Prevention and Labor Standards Harmonization Ordinance

This memo outlines proposed amendments and proposed technical changes to CB 118585, the Wage Theft Prevention and Labor Standards Harmonization Ordinance. The following abbreviations have been used in this memo:

PSST Paid Sick and Safe Leave
JAO Job Assistance Ordinance, proposed to be changed to Fair Chance
MWO Minimum Wage Ordinance
WT Wage Theft

I. **Proposed Amendments**

- 1. Clarification of what constitutes a subsequent violation.** The Office of Labor Standards (OLS) has requested clarification in the ordinance, for all four labor standards laws, that when determining whether there has been a previous violation, previous settlement agreements that include a stipulation that a violation has occurred, as well as previous Director's Orders will be counted in determining the number of previous violations. This is OLS's practice and the new ordinance language would correctly reflect this. The new language is shown in Underline below:

PSST SMC 14.16.080 F, Remedies (page 54).

For a first violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to \$500 per aggrieved party, payable to the aggrieved job applicant, employee or other aggrieved person. For a second violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to \$1,000 per aggrieved party, payable to the aggrieved job applicant, employee, or other aggrieved person. For a third or any subsequent violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to \$5,000 per aggrieved party, payable to the aggrieved job applicant, employee, or other aggrieved person. If there is no identified job applicant, employee, or aggrieved person, the penalty required by this subsection 14.17.055.F shall be paid to the Agency as a civil penalty. For purposes of this Section 14.17.055, 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.

The same language would be added to the other labor standards laws:

- JAO 14.17.055.F, Remedies, page 85
- MWO 14.19.080.F, Remedies, page 124
- WT 14.20.060.F, Remedies, page 156

2. Clarification of criteria for waiving or reducing penalties in Settlement Agreements.

The OLS Director has the authority to determine the amount of liquidated damages, civil penalties and fines due. The proposed ordinance sets out the factors the OLS Director will consider in determining those amounts when the Director issues a Director's Order.

OLS has requested that language be added, to all four labor standards laws, clarifying that the OLS Director will use the same criteria in Settlement Agreements.

The new language is shown in Underline below.

PSST, 14.16.080.A.3, Remedies, page 52

When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 14.17.055 for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties and fines due to the Agency for timely payment of remedy due to an aggrieved party under subsection 14.17.055.A.2, the Director shall consider the total amount of unpaid wages, liquidated damages, penalties, fines, and interest due; the nature and persistence of the violations; the extent of the respondent's culpability; the substantive or technical nature of the violations; the size, revenue, and human resources capacity of the respondent; the circumstances of each situation; the amount of penalties in similar situations; and other factors as established by rules issued by the Director.

The same language would be added to the other labor standards laws:

- JAO 14.17.055A3, Remedies, page 83
- MWO 14.19.080.A.3, Remedies, page 122
- WT 14.20.060.A.3, Remedies, page 154

II. Technical Amendments

1. PSST, 14.16.015.A, page 12 (*change 14.15.015.B to 14.16.015.B*)

- A. Subject to subsection 14.156.015.B, an employee is covered by this Chapter 14.16 if the employee performs work within the geographic boundaries of the City.

2. PSST, 14.16.025.M, page 21 (*delete the second "for"*)

- M. When an employer quits, sells out, exchanges, or disposes the employer's business, or the employer's business is otherwise acquired by a successor, an employee shall retain all accrued paid sick and paid safe time and is entitled to use all paid sick and paid safe time as provided in this Chapter 14.16 ~~for~~ for work scheduled within the geographic boundaries of the City for the successor employer.

3. PSST 14.16.105 page 60 (*add "or any court of competent jurisdiction"*)

- B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 14.16.085.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, 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 14.16.085.B, and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

4. PSST, 14.16.125.B, page 66 (*change references to subsections to "this Chapter 14.16" and strike "respectively for Tier 1 and Tier 2 employers"*)

- B. The paid sick and paid safe time required by this Chapter 14.16 is in addition to a contractor's obligations under 41 U.S.C. chapter 67 (Service Contract Act) and 40 U.S.C. chapter 31, subchapter IV (Davis-Bacon Act), or under chapter 39.12 RCW and contractors may not receive credit toward their prevailing wage or fringe benefit obligations under those Acts and Washington state law for any paid sick and paid safe time provided in satisfaction of the requirements of this Chapter 14.16. A contractor's existing paid leave policy provided in addition to the fulfillment of those Acts and Washington state law obligations, if applicable, and made available to all

employees covered by this Chapter 14.16, will satisfy the requirements of this Chapter 14.16 provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and paid safe time as set forth in ~~Section 14.16.030~~ this Chapter 14.16; and
2. Paid leave is accrued at the rate consistent with ~~subsection 14.16.025.B.1~~ this Chapter 14.16; and
3. Use of paid leave within any benefit year is limited to no less than the amounts specified ~~respectively for Tier 1 and Tier 2 employees in subsection 14.16.025.C~~ this Chapter 14.16; and
4. Any accrued but unused paid leave may be carried over to the following benefit year consistent with ~~subsection 14.16.025.G~~ this Chapter 14.16.

5. JAO, 14.17.015 Employment in Seattle, page 72 (*keep underlined language, but delete underline because this is a new section*)

- An employee is covered by this Chapter 14.17 when the physical location of such services is in whole or in substantial part (at least 50 percent of the time) within the geographic boundaries of the City.

6. JAO, 14.17.045.A Investigation, page 78 (*change Chapter 14.16 to 14.17*)

- A. The Agency shall have the power to investigate any violations of this Chapter 14.17 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, 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 14.167 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an employee or other person.

7. JAO, 14.17.055 Remedies, page 83 (*move #2 to the next line*)

1. Effective January 1, 2017, the amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 14.17.055 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.**2.** If there is a remedy due to an aggrieved party, the Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full

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

8. JAO, 14.17.055.F Remedies, page 85 (change "of" to "if")

- For a first violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to \$500 per aggrieved party, payable to the aggrieved job applicant, employee or other aggrieved person. For a second violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to \$1,000 per aggrieved party, payable to the aggrieved job applicant, employee, or other aggrieved person. For a third or any subsequent violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to \$5,000 per aggrieved party, payable to the aggrieved job applicant, employee, or other aggrieved person. If there is no identified job applicant, employee, or aggrieved person, the penalty required by this subsection 14.17.055.F shall be paid to the Agency as a civil penalty. For purposes of this Section 14.17.055, a violation is a second, third, or subsequent violation ~~of~~ if 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.

9. JAO, 14.17.080, Debt to the City, p.90 (add "or any court of competent jurisdiction")

- B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 14.16.085.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, 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 14.16.085.B, and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

10. MWO, 14.19.015.A Employment in Seattle, p. 96 (*add “subject to subsection 14.19.015.B” and make “e” lowercase in “employees.”*)

- A. Subject to subsection 14.19.015.B, Employees are covered by this Chapter 14.19 for each hour worked within the geographic boundaries of the City.
- B. An employee who is typically based outside the City and performs work in the City on an occasional basis is covered by this Chapter 14.19 in a two-week period only if the employee performs more than two hours of work for an employer within the City during that two-week period.

11. MWO, 14.19.070.A Investigation, page 117 (*change Chapter 14.16 to Chapter 14.19*)

- The Agency shall have the power to investigate any violations of this Chapter 14.19 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 14.16~~9~~ or the workforce is unlikely to volunteer information regarding such violations.

12. MWO, 14.17.080, Debt to the City, p.90 (*add “or any court of competent jurisdiction”*)

- B. If a respondent fails to appeal a Director’s Order to the Hearing Examiner within the time period set forth in subsection 14.16.085.B, the Director’s Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, 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 14.16.085.B, and therefore has failed to exhaust the respondent’s administrative remedies, shall also be admissible without further evidentiary foundation.

13. WT, 14.20.050.A Investigation, page 148 (*change Chapter 14.16 to Chapter 14.20*)

- The Agency shall have the power to investigate any violations of this Chapter 14.20 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 14.1620 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an employee or any other person.

14. MWO, 14.19.110.B-E Private right of action, page 130 *(this amendment removes underlined text in the introduced council bill to correctly indicate that this is in a wholly new section of the SMC.)*

- B. For purposes of determining employer size for this Section 14.19.110,
 1. An employee who is not covered by this Chapter 14.19 shall be included in any determination of the size of the employer.
 2. Employer size for the current calendar year will be calculated based upon the average number of employees who worked for compensation per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the employer schedule will be calculated based upon the average number of employees who worked for compensation per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.
 3. All employees who worked for compensation shall be counted, including but not limited to:
 - a. Employees who worked inside the City;
 - b. Employees who worked outside the City; and
 - c. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.
 4. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.19. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.19 where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:
 - a. Degree of interrelation between the operations of multiple entities;
 - b. Degree to which the entities share common management;
 - c. Centralized control of labor relations; and
 - d. Degree of common ownership or financial control over the entities.
- C. For purposes of this Section 14.19.110, "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.

D. For purposes of determining membership within a class of persons entitled to bring an action under this Section 14.19.110, two or more employees are similarly situated if they:

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

E. For purposes of subsection 14.19.110.D, employees shall not be considered dissimilar solely because their:

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

15. 14.17.080 WT Debt to the City, p.165 (add "or any court of competent jurisdiction")

- B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 14.16.085.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, 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 14.16.085.B, and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.