

May 29, 2020

**MEMORANDUM**

**To:** Seattle City Council  
**From:** Karina Bull, Analyst  
**Subject:** CB 119793: Paid Sick and Safe Time for Gig Workers Ordinance

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On June 1, 2020, the City Council (Council) will discuss and may act on [CB 119793](#), legislation sponsored by Councilmember Mosqueda and introduced on May 18, 2020. To comply with Washington Governor Jay Inslee’s [Proclamation 20-28.2](#), the legislation includes findings to demonstrate it is necessary to respond to the COVID-19 public health emergency.

This memo (1) summarizes the legislation and (2) presents potential amendments reflected in a substitute bill also sponsored by Councilmember Mosqueda for Council’s consideration on June 1. See “Amendments” section (pg. 4) for more details.

**Background**

The Paid Sick and Safe Time (PSST) Ordinance, [Seattle Municipal Code Chapter 14.16](#), was enacted in 2012 and requires employers to provide employees working in Seattle with paid leave to care for their personal and family members’ health conditions or safety needs.

During the COVID-19 emergency, gig workers providing services for food delivery network companies and transportation network companies have been working in Seattle without a right to PSST. These gig workers accept offers for prearranged delivery or transportation services from food delivery network companies and transportation network companies using an online-enabled application or platform. Since the nature of this work can involve close contact with the public, these gig workers risk catching and/or spreading illnesses. However, they do not have a right to use PSST to stay home if they are sick because they are hired as “independent contractors.”

**Summary**

In response to the COVID-19 emergency, the legislation would provide gig workers working for covered hiring entities with a right PSST. The right to PSST would entitle gig workers to accrue and use paid leave to care for themselves and family members. See Table 1 for an overview of the authorized uses for PSST.

*Table 1: Paid Sick and Safe Time*

Issue	Description
<b>Paid sick time</b>	<ul style="list-style-type: none"> <li>• Diagnosis, care, or treatment of an injury, illness, or health condition</li> <li>• Preventive care</li> </ul>

Issue	Description
<b>Paid safe time</b>	<ul style="list-style-type: none"> <li>• Hiring entity has discontinued operations by order of a public official during a public health emergency</li> <li>• Hiring entity has reduced or discontinued operations for any health or safety reason</li> <li>• Closure of family member’s school or place of care</li> <li>• Services for domestic violence, sexual assault, or stalking</li> </ul>

The legislation would apply to gig workers working for hiring entities with 250 or more gig workers worldwide. Covered hiring entities would include:

1. **Food delivery network companies** that offer prearranged delivery services for compensation using an online-enabled application or platform to connect customers with workers for delivery from (a) eating and drinking establishments, (b) food processing establishments, (c) grocery stores, or (d) any facility intended to fulfill customer orders from a business whose business model relies on the delivery of groceries or prepared food and beverages.
2. **Transportation network companies (TNCs)** that offer prearranged transportation services for compensation using an online enabled application or platform to connect passengers with drivers using a TNC endorsed vehicle.

Covered gig workers would include food delivery network company workers and transportation network company drivers working in whole or part in Seattle.

The legislation would condition a gig worker’s accrual, use, and payment of PSST on days worked for the hiring entity with a work-related stop in Seattle. Examples of work-related stops would include shopping in stores to fill online orders, making deliveries, and picking-up or dropping off customers. Work-related stops would not include running personal errands, stopping to refuel, or driving through Seattle without a commercial stop.

Accrual of PSST would depend on the gig worker’s start date with the hiring entity. Gig workers who commenced work for the hiring entity **before** the effective date of the ordinance would accrue PSST according to the hiring entity’s choice of one of the following accrual methods: (1) accrue one day of PSST for every 30 days worked since October 1, 2019, or (2) accrue at least five days of PSST as of the effective date of the ordinance and then accrue at least one day for every 30 days worked after the effective date of the ordinance. Gig workers who commenced work for the hiring entity **on or after** the effective date of this ordinance would begin accruing PSST upon commencement of work and would accrue at least one day of PSST for every 30 days worked on or after the effective date of this ordinance.

Use of PSST would be available in daily increments for gig workers who worked for the hiring entity and had a work-related stop in Seattle within 90 calendar days before their request to use PSST.

Payment for PSST would be based on the gig worker's "average daily compensation," a daily average of compensation (i.e., hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers) for each day worked for the hiring entity during the highest earning calendar month since October 1, 2019 or since the commencement of work for the hiring entity, whichever date is latest. Average daily compensation would be recalculated every month to reflect changes in gig worker's earnings.

In addition to providing accrual, use, and payment of PSST, hiring entities would need to follow other requirements, such as providing monthly notification of a gig worker's current rate of average daily compensation and available PSST; waiting until after a gig worker has used PSST for more than three consecutive days to ask for reasonable verification; carrying-over up to nine days accrued, unused PSST to the following calendar year; providing each gig worker with a written notice of rights and PSST policy; retaining records for three years; and complying with anti-retaliation prohibitions.

The Office of Labor Standards (OLS) would implement and enforce PSST requirements and aggrieved parties would have a private right of action. As with the City's other labor standards, OLS would be required to commence any investigation within three years of the alleged violation.

Hiring entity requirements for accrual and use of PSST would be in effect until 180 days after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020 or the termination of any concurrent civil emergency applicable to the City, whichever date is latest. However, the recitals reflect that the Council may reconsider PSST requirements if the City passes legislation that affords gig workers a right to minimum compensation or if gig workers have access to a commensurate PSST program.

After requirements for accrual and use of PSST sunset, the remaining requirements would stay in effect for a limited period to retain provisions necessary for record-keeping, notice of rights, preventing retaliation, and enforcement. Specifically, the legislation would stay in effect and then be automatically repealed without subsequent Council action on the latest of the following dates:

1. Three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020;
2. Three years after the termination of any concurrent civil emergency proclaimed by a public official in response to COVID-19; or
3. On December 31, 2023.

## Financial Impacts

This legislation would establish an implementation and enforcement role for OLS and an appeal role for the Hearing Examiner. The City could either:

1. Require these entities to reprioritize their existing portfolios of work; or
2. Add resources to support the newly created roles during the 2020 budget rebalancing process or the 2021 budget adoption process.

## Amendments

As of May 29, there is a substitute bill for the Council’s consideration. The substitute bill contains technical corrections and substantive amendments. See Table 2 for an overview of the amendments. Any additional amendments, if identified, will be distributed as soon as they are available.

Table 2: Substitute Bill

Issue	Description
<b>A. Recitals</b>	<p><b>The substitute bill would add new language to a recital.</b></p> <p>WHEREAS, the City intends to make it clear that provision of paid sick and paid safe time should not result in <del>reductions to a gig worker’s baseline compensation or garnishments of tips;</del> <u>food delivery network companies and transportation network companies reducing a gig worker’s compensation, or reducing or otherwise modifying the areas of the City that are served by the companies.</u></p> <p><b>The substitute bill would add a new recital.</b></p> <p>WHEREAS, the City Council (Council) may reconsider paid sick and paid safe time requirements if the City passes legislation that affords gig workers with a right to minimum compensation or if gig workers have access to commensurate paid sick and safe time through another program.</p>
<b>B. Definitions</b>	<p><b>The substitute bill would add or modify the following definitions:</b></p> <ul style="list-style-type: none"><li>• <b>“Driver platform”</b> means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a TNC driver, that enables the prearrangement of passenger trips for compensation.</li><li>• <b>“Food delivery network company”</b> means an organization whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that offers prearranged delivery services for compensation using an online-enabled application or platform, <u>such as an application dispatch system,</u> to connect customers with workers for delivery from one or more</li></ul>

Issue	Description
	<p>of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility <del>intended to fulfill customer orders from a business whose business model relies on the delivery of</del> <u>supplying groceries or prepared food and beverages for an online order</u></p> <ul style="list-style-type: none"> <li>• <b>“Food delivery network company worker”</b> means a person affiliated with and accepting an offer of prearranged <u>delivery</u> services for compensation from a food delivery network company. For purposes of this ordinance, at any time that a food delivery network company worker is logged into the worker platform, the worker is considered a food delivery network company worker.</li> <li>• <b>“Online order”</b> means an order placed through an online-enabled application or platform, such as an application dispatch system, provided by a hiring entity for delivery services or transportation services in Seattle.</li> <li>• <b>“Worker platform”</b> means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by a food delivery network worker, that enables the prearrangement of delivery services for compensation.</li> <li>• <b>“Work-related stop in Seattle”</b> means a time spent by a gig worker on a commercial stop in Seattle that is related to the provision of delivery or transportation services associated with an online order, and does not include stopping for refueling, stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle.</li> </ul>
C. Accrual	<p><b>The substitute bill would provide hiring entities with an option for mitigating the cost of PSST accrued before the effective date of the ordinance.</b> Hiring entities could choose to subtract the amount of compensation provided to a gig worker for other paid leave, used for a PSST purpose, between October 1, 2019 and the effective date of the ordinance. Hiring entities would need to itemize any subtractions in an accompanying compensation statement.</p>
D. Frontloading	<p><b>The substitute bill would provide hiring entities with an option of frontloading PSST that would accrue after the effective date of the ordinance.</b> Hiring entities would be allowed to frontload PSST in advance of accrual if they followed ordinance requirements for accrual, use, carry-over, and other provisions.</p>

Issue	Description
E. Use	<p><b>The substitute bill would clarify limitations on using PSST.</b> A gig worker would not have a right to use PSST when deactivated due to a verified allegation of sexual assault perpetrated by the gig worker.</p> <p><b>The substitute bill would clarify a gig worker’s ability to request PSST.</b> A gig worker could choose to request PSST for immediate use or in advance of use, including consecutive days in advance.</p> <p><b>The substitute bill would clarify a hiring entity’s ability to take certain actions during a gig worker’s use of PSST.</b> Hiring entities would be prohibited from taking measures to restrict the gig worker from working during the gig worker’s use of PSST. However, if a gig worker accepted a hiring entity’s offer of prearranged services for compensation during the 24-hour period when the gig worker’s requested to use PSST, a hiring entity could determine that the gig worker did not use PSST for an authorized purpose and could follow procedures (under subsection 100.030.J) to withhold compensation for the requested PSST.</p> <p><b>The substitute bill would clarify reasonable verification requirements by adopting OLS rules for PSST for employees (i.e., SHRR Chapter 70).</b> In accordance with many of the rules in <a href="#">SHRR 70-080</a>, the substitute bill would establish guidelines for hiring entities requiring reasonable verification to show that the gig worker used PSST for an authorized purpose. Examples of the proposed guidelines would include:</p> <ul style="list-style-type: none"> <li>• Clarification of policies and procedures if a gig worker anticipates that the hiring entity’s requirement for reasonable verification would result in an unreasonable burden or expense.</li> <li>• Change in reasonable verification requirements for paid sick time that would prohibit hiring entities from requiring verification from a healthcare provider during a civil emergency “in response to COVID-19.” The introduced language would prohibit hiring entities from requiring verification from a healthcare provider during any civil emergency “due to a health or safety-related reason.”</li> <li>• Permission for hiring entities to withhold compensation for requested PSST if the hiring entity could demonstrate that the gig worker did not use PSST for an authorized purpose. Hiring entities choosing to withhold compensation would not be allowed to deduct the PSST from the gig worker’s available days for use.</li> </ul>

Issue	Description
<b>F. Notice of Rights</b>	<b>The substitute bill would clarify requirements for providing notice of rights.</b> Hiring entities would be required to provide the notice of rights in an electronic format via smartphone application or online web portal, in English and any language that the hiring entity knows or has reason to know is the primary language of the gig worker(s).

### Next Steps

Council action could occur at the Full Council meeting on June 1, 2020.

Please contact me if you have questions.

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