



Legislation Details (With Text)

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**Title:** AN ORDINANCE relating to employment in Seattle; adding a new Chapter 8.38 to the Seattle Municipal Code; and amending Sections 3.02.125 and 14.20.025 of the Seattle Municipal Code.

**Sponsors:** Teresa Mosqueda

**Indexes:**

**Attachments:** 1. Summary and Fiscal Note, 2. Central Staff Memo, 3. Presentation, 4. Signed Ordinance 126665, 5. Affidavit of Publication

Date	Ver.	Action By	Action	Result
9/19/2022	1	City Clerk	attested by City Clerk	
9/19/2022	1	Mayor	returned	
9/19/2022	1	Mayor	Signed	
9/9/2022	1	City Clerk	submitted for Mayor's signature	
9/6/2022	1	City Council	passed	Pass
8/17/2022	1	Finance and Housing Committee	pass	Pass
8/11/2022	1	Finance and Housing Committee	discussed	
8/9/2022	1	City Council	referred	
8/1/2022	1	Council President's Office	sent for review	
7/27/2022	1	City Clerk	sent for review	
7/27/2022	1	Mayor	Mayor's leg transmitted to Council	

**CITY OF SEATTLE**

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

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

AN ORDINANCE relating to employment in Seattle; adding a new Chapter 8.38 to the Seattle Municipal Code; and amending Sections 3.02.125 and 14.20.025 of the Seattle Municipal Code.

WHEREAS, the Council finds that it is necessary and appropriate to regulate the emerging cannabis industry within the City to improve workforce training and development, provide employee protections, and remedy the damage caused by cannabis prohibition and the failed War on Drugs to communities of color and marginalized communities; and

WHEREAS, the Council intends to address equity and workforce development within the cannabis industry by passing a package of ordinances; and

WHEREAS, jobs in the cannabis industry pose unusual risks to workers in both retail and processing due to the prevalence of cash-based transactions, use of volatile chemicals in manufacturing, and contagion exposure, and which involves a product that is highly regulated in Washington and remains illegal under federal law; and

WHEREAS, the Council encourages every cannabis business to insure that ten percent of all hours worked by employees are performed by employees who have an arrest or conviction for the possession, use, manufacture, or cultivation of cannabis that occurred prior to January 1, 2014 or has otherwise demonstrated impact from the failed War on Drugs (including having a parent, sibling, spouse, or child who has such conviction); and

WHEREAS, it is in the City's interest to retain cannabis workers who are trained in safety and compliance;

NOW, THEREFORE,

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

Section 1. A new Chapter 8.38 is added to the Seattle Municipal Code as follows:

**Chapter 8.38 CANNABIS EMPLOYEE JOB RETENTION**

**8.38.010 Short title**

This Chapter 8.38 shall constitute the "Cannabis Employee Job Retention Ordinance" and may be cited as such.

**8.38.020 Definitions**

For purposes of this Chapter 8.38:

"Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against any person for any reason prohibited by this Chapter 8.38. "Adverse action" for an

employee may involve any aspect of employment, including pay, work hours, responsibilities or other material change in the terms and conditions of employment.

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

"Aggrieved party" means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this Chapter 8.38.

"Cannabis business" means an organization licensed or required to be licensed under Chapter 6.500.

"Change in control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a cannabis business or a discrete portion of the cannabis business that continues in operation as a cannabis business of the same business type, or a controlling interest (including by consolidation, merger, or reorganization) of the outgoing cannabis employer or any person who controls the outgoing cannabis employer.

"City" means The City of Seattle.

"Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required pay or paid leave, and reimbursement for employer expenses. For reimbursement for employer expenses, an employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

"Director" means the Director of the Office of Labor Standards or the Director's designee.

"Employ" means to suffer or permit to work.

"Employee" means any individual employed by an employer, including but not limited to full-time employees, part-time employees, and temporary workers. An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged

employer.

"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 the employer in relation to the employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by any other employer.

"Employment commencement date" means the date on which an employee retained by the incoming cannabis employer pursuant to this Chapter 8.38 commences work for the incoming cannabis employer in exchange for benefits and compensation under the terms and conditions established by the incoming cannabis employer or as required by law.

"Incoming cannabis employer" means an employer that owns, controls, or operates a cannabis business that is subject to a change in control after the change in control.

"Outgoing cannabis employer" means an employer that owns, controls, or operates a cannabis business that is subject to a change in control prior to the change in control.

"Preferential hiring list" means a list of the names, addresses, dates of hire, and job classifications for all employees that worked in the City for the outgoing cannabis employer for at least 30 calendar days prior to the execution of a transfer document.

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

"Respondent" means an employer or any person who is alleged to have committed a violation of this Chapter 8.38.

"Successor" means any person to whom an 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 any 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.

"Transfer document" means the purchase agreement or other document(s) creating a binding agreement to effect a change in control.

### **8.38.030 Employee coverage**

For the purposes of this Chapter 8.38, covered employees are limited to those who have worked in the City for an outgoing cannabis business for at least 30 calendar days prior to the execution of a transfer document.

### **8.38.040 Employer coverage**

A. For the purposes of this Chapter 8.38, covered employers are limited to those who own, control, or operate a cannabis business in the City, including but not limited to integrated enterprises.

B. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 8.38. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 8.38 where a separate entity controls the operation of another entity. The factors to consider include but are not limited to:

1. Degree of interrelation between the operations of multiple entities;
2. Degree to which the entities share common management;
3. Centralized control of labor relations;
4. Degree of common ownership or financial control over the entities; and
5. Use of a common brand, trade, business, or operating name.

### **8.38.050 Outgoing cannabis employer obligations**

A. When a cannabis business undergoes a change in control, the outgoing employer shall, within 15 calendar days after the execution of a transfer document, provide a preferential hiring list to the incoming

cannabis employer.

B. The outgoing cannabis employer shall post written notice of the change in control at the affected business within five business days following the execution of the transfer document. Notice shall be posted in a conspicuous place so as to be readily viewed by employees and applicants for employment. Notice shall include, but not be limited to, the name of the outgoing cannabis employer and its contact information, the name of the incoming cannabis employer and its contact information, and the effective date of the change in control.

### **8.38.060 Incoming cannabis employer obligations**

A. The incoming cannabis employer shall keep the notice required by subsection 8.38.050.B posted during any closure of the cannabis business and for 180 calendar days after the cannabis business is open to the public under its control.

B. The incoming cannabis employer shall:

1. Maintain the preferential hiring list provided by the outgoing cannabis employer, as set forth in subsection 8.38.050.A; and
2. Hire from that preferential hiring list for a period beginning upon the execution of the transfer document and continuing for 180 calendar days after the cannabis business is open to the public under the incoming cannabis employer. The incoming cannabis employer must hire by seniority within each job classification to the extent that comparable job classifications exist.

C. If the incoming cannabis employer extends an offer of employment to an employee, the offer shall be in writing and remain open for at least ten business days.

D. If the employee accepts the written job offer, the incoming cannabis employer shall retain that employee for no fewer than 90 calendar days following the employee's employment commencement date. During this 90-day transition employment period, the employee shall be employed under the terms and conditions established by the incoming cannabis employer, or as required by law, except for as provided in

subsection 8.38.060.E.

E. During the 90-day transition employment period established by subsection 8.38.060.D, the incoming cannabis employer shall:

1. Only lay off employees if the incoming cannabis employer determines that fewer cannabis employees were required than by the outgoing cannabis employer. In this circumstance, the incoming cannabis employer shall retain employees by seniority within each job classification to the extent that comparable job classifications exist; and

2. Only discharge an employee for just cause.

F. At the end of the 90-day transition employment period established by subsection 8.38.060.D, the incoming cannabis employer shall provide a written performance evaluation to each employee. If the employee's performance during the 90-day transition employment period is satisfactory, the incoming cannabis employer shall consider offering the employee continued employment under the terms and conditions established by the incoming cannabis employer, or as required by law.

### **8.38.100 Notice and posting**

A. The Agency shall create and make available a poster that gives notice of the rights afforded by this Chapter 8.38. The Agency shall create the poster in English, Spanish, and other languages. The poster shall give notice of:

1. The right to notice that the cannabis business is changing ownership;
2. The right to be offered a job with the incoming cannabis employer;
3. The right to just cause employment for the first 90 days of employment;
4. If layoff is required, the right to be laid off by seniority within one's job classification for the first 90 days of employment;
5. The right to a written performance evaluation after 90 days of employment;
6. The right to be protected from retaliation for exercising in good faith the rights protected by

this Chapter 8.38; and

7. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 8.38.

B. 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 of the employee(s) at the particular workplace. Employers shall make a good faith effort to determine the primary languages of the employees at that particular workplace. If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace or job site, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

C. Employers shall give written notice to employees of the name and any trade ("doing business as") names used by any associated integrated enterprise. Such information shall be included in the written notice of employment information required by subsection 14.20.025.D.

### **8.38.110 Employer records**

A. Each employer shall retain records that document compliance with this Chapter 8.38 including:

1. A written copy of the preferential hiring list required by subsection 8.38.050.A;
2. Written verification of offers of employment extended to each employee as required by subsection 8.38.060.B. The verification shall include the name, address, date of hire, and employment occupation classification of each employee;
3. Written records of the performance evaluations required by subsection 8.38.060.F; and
4. Pursuant to rules issued by the Director, other records that are material and necessary to effectuate the terms of this Chapter 8.38.

B. Records required by subsection 8.38.110.A shall be retained for a period of three years.

C. If the employer fails to retain adequate records required under subsection 8.38.110.A, there shall be a

presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 8.38 for the periods for which records were not retained for each employee for whom records were not retained.

### **8.38.120 Retaliation prohibited**

A. No employer or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this Chapter 8.38.

B. No employer or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 8.38. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 8.38; the right to inform others about their rights under this Chapter 8.38; the right to inform the person's employer, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this Chapter 8.38; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 8.38; the right to cooperate with the Agency in its investigations of this Chapter 8.38; the right to testify in a proceeding under or related to this Chapter 8.38; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice or act that is unlawful under this Chapter 8.38.

C. No employer or any other person shall communicate to a person exercising rights protected in this Section 8.38.120, directly or indirectly, the willingness to inform a government employee or contracted organization that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 8.38.

D. It shall be a rebuttable presumption of retaliation if the employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 8.38.120. However, in the case of seasonal employment that ended before the close of the 90-calendar day

period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this Section 8.38.120 shall be sufficient upon a showing that the employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 8.38.120 was a motivating factor in the adverse action, unless the employer can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 8.38.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 8.38.

G. A complaint or other communication by any person triggers the protections of this Section 8.38.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 8.38.

#### **8.38.125 Rulemaking authority**

The Director is authorized to administer and enforce this Chapter 8.38. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary, appropriate, or convenient to administer, evaluate and enforce the provisions of this Chapter 8.38 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 8.38. Any 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 Chapter 8.38.

#### **8.38.130 Enforcement power and duties**

The Agency shall have the power to administer and enforce this Chapter 8.38 and shall have such powers and duties in the performance of these functions as are defined in this Chapter 8.38 and otherwise necessary and proper in the performance of the same and provided for by law.

#### **8.38.140 Violation**

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 8.38 is a violation.

### **8.38.150 Investigation**

A. The Agency shall have the power to investigate any violations of this Chapter 8.38 by any respondent. The Agency may prioritize investigations of workforces that are vulnerable to violations of this Chapter 8.38. The Agency may initiate an investigation pursuant to Director's Rules 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 either the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 8.38 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.

B. An employee or other person may report to the Agency any suspected violation of this Chapter 8.38. The Agency shall encourage reporting pursuant to this Section 8.38.150 by taking the following measures:

1. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. However, with the authorization of such person, the Agency may disclose the employee's or person's name and identifying information as necessary to enforce this Chapter 8.38 or for other appropriate purposes.

2. The Agency may require the employer to post or otherwise notify other employees working for the employer that the Agency is conducting an investigation. The network company shall provide the notice of investigation in a form, place, and manner designated by the Agency. The Agency shall create the notice of investigation in English and other languages.

3. The Agency may certify the eligibility of eligible persons for "U" Visas under the provisions of 8 U.S.C. § 1184(p) and 8 U.S.C. § 1101(a)(15)(U). This certification is subject to applicable federal law and regulations, and Director's Rules.

C. The Agency's investigation shall commence within three years of the alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this Chapter 8.38 and any administrative enforcement proceeding under this Chapter 8.38 based upon the same facts. For purposes of this Chapter 8.38:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 8.38, or the Agency provides notice to the respondent that an investigation has commenced under this Chapter 8.38.

2. The Agency's investigation ends when the Agency issues a final order concluding the matter and any appeals have been exhausted; the time to file any appeal has expired; or the Agency notifies the respondent in writing that the investigation has been otherwise resolved.

D. The Agency's investigation shall be conducted in an objective and impartial manner.

E. The Director may apply by affidavit or declaration in the form allowed under RCW 5.50.050 to the Hearing Examiner for the issuance of subpoenas requiring an employer to produce the records required by Section 8.38.110, or the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 8.38.110, or any other document relevant to the issue of whether any employee or group of employees received the information or other benefits required by this Chapter 8.38 and/or to whether the employer has violated any provision of this Chapter 8.38. The Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue subpoenas upon a showing that there is reason to believe that: a violation has occurred; a complaint has been filed with the Agency; or circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.38, the workforce is unlikely to volunteer information regarding such violations, or the Agency has gathered preliminary information indicating that a violation may have occurred.

F. An employer that fails to comply with the terms of any subpoena issued under subsection 8.38.150.E

in an investigation by the Agency under this Chapter 8.38 before the issuance of a Director's Order issued pursuant to subsection 8.38.160.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of liability, damages owed, or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 8.38.150.E to the City Attorney to seek a court order to enforce any subpoena.

H. Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 8.38.180.

### **8.38.160 Findings of fact and determination**

A. Except when there is an agreed upon settlement, the Director shall issue a written determination with findings of fact resulting from the investigation and statement of whether a violation of this Chapter 8.38 has or has not occurred based on a preponderance of the evidence before the Director.

B. If the Director determines that there is no violation of this Chapter 8.38, the Director shall issue a "Determination of No Violation" with notice of an employee or other person's right to appeal the decision, pursuant to Director's Rules.

C. If the Director determines that a violation of this Chapter 8.38 has occurred, the Director shall issue a "Director's Order" that shall include a notice of violation identifying the violation or violations.

1. The Director's Order shall state with specificity the amounts due under this Chapter 8.38 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 8.38.170.

2. The Director's Order may specify that civil penalties and fines due to the Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party pursuant to subsection

8.38.170.A.4.

3. The Director's Order may specify that civil penalties and fines are due to the aggrieved party rather than due to the Agency.

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 8.38, including, but not limited to, monitored compliance for a reasonable time period.

5. The Director's Order shall include notice of the respondent's right to appeal the decision, pursuant to Section 8.38.180.

### **8.38.170 Remedies**

A. The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 8.38, is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines and procedures.

1. The amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 8.38.170 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 a violation is ongoing when the Agency receives a complaint or opens an investigation, the Director may order payment of unpaid compensation plus interest that accrues after receipt of the complaint or after the investigation opens and before the date of the Director's Order.

3. Interest shall accrue from the date the unpaid compensation was first due at 12 percent annum, or the maximum rate permitted under RCW 19.52.020.

4. If there is a remedy due to an aggrieved party, the Director may waive part or all civil penalties and fines due to the Agency based on timely payment of the full remedy due to the aggrieved party.

a. 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.

b. 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.

c. 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.

5. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 8.38.170, 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 8.38.170.A.4, the Director may consider:

a. The total amount of unpaid compensation, liquidated damages, penalties, fines, and interest due;

b. The nature and persistence of the violations;

c. The extent of the respondent's culpability;

d. The substantive or technical nature of the violations;

e. The size, revenue, and human resources capacity of the respondent;

f. The circumstances of each situation;

g. The amount of penalties in similar situations; and

h. Pursuant to rules that the Director may issue, other factors that are material and necessary to effectuate the terms of this Chapter 8.38.

B. A respondent found to be in violation of this Chapter 8.38 shall be liable for full payment of unpaid

compensation due plus interest in favor of the aggrieved party under the terms of this Chapter 8.38, and other equitable relief.

1. If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records, or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may:

a. Determine unpaid compensation as a matter of just and reasonable inference, including the use of representative evidence such as testimony or other evidence from representative employees or other aggrieved parties establishing violations for a class of employees or aggrieved parties; or

b. Assess a daily amount for unpaid compensation in a minimum amount of \$150 for each day that each violation occurred or continued. This amount 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. For a first violation of this Chapter 8.38, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

3. For subsequent violations of this Chapter 8.38, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation.

4. For purposes of establishing a first and subsequent violation for this Section 8.38.170, the violation must have occurred within ten years of the settlement agreement or Director's Order.

C. A respondent found to be in violation of this Chapter 8.38 for retaliation under Section 8.38.120 shall be subject to any appropriate relief at law or equity including, but not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 8.38, and liquidated damages in an additional amount of up to twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to \$5,755.31.

D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.38 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

1. For a first violation of this Chapter 8.38, the Director may assess a civil penalty of up to \$575.31 per aggrieved party.

2. For a second violation of this Chapter 8.38, the Director shall assess a civil penalty of up to \$1,150.63 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

3. For a third or any subsequent violation of this Chapter 8.38, the Director shall assess a civil penalty of up to \$5,755.31 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. For purposes of this Section 8.38.170, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than two Director's Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

E. The Director is authorized to assess fines for a violation of this Chapter 8.38 and may specify that fines are due to the aggrieved party rather than due to the Agency. The Director is authorized to assess fines as follows:

<b>Violation</b>	<b>Fine</b>
Failure to post notice of the change in control of cannabis business as required by subsections 8.38.050.B and 8.38.060.A	\$575.31 per aggrieved party
Failure to hire from the preferential hiring list as required by Section 8.38.060	\$575.31 per aggrieved party
Failure to retain an employee for at least 90 days as required by Section 8.38.060	\$575.31 per aggrieved party
Failure to provide employees with written notice of rights under Section 8.38.100	\$575.31 per aggrieved party
Failure to retain records for three years under Section 8.38.110	\$575.31 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.38.120	\$1,150.63 per aggrieved party

Failure to provide notice of investigation to employees under subsection 8.38.150.B.2	\$575.31 per aggrieved party
Failure to provide notice of failure to comply with final order to the public under subsection 8.38.210.A.1	\$575.31 per aggrieved party

The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is \$5,755.31 per aggrieved party. If a fine for retaliation is issued, the maximum amount that may be imposed is \$23,020 per aggrieved party.

F. A respondent that willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 8.38 shall be subject to a civil penalty of not less than \$1,150.63 and not more than \$5,755.31.

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 8.38, including but not limited to reasonable attorney's fees.

H. A respondent that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the respondent is the subject of a final order two times or more within a five-year period, the respondent shall not be allowed to bid on any City contract for two years. This subsection 8.38.170.H shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter, provided that nothing in this subsection 8.38.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all employers subject to debarment under this subsection 8.38.170.H.

**8.38.180 Appeal period and failure to respond**

A. An employee or other person who claims an injury as a result of an alleged violation of this Chapter 8.38 may appeal the Determination of No Violation, pursuant to Director’s Rules.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 8.38.170, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.

#### **8.38.190 Appeal procedure and failure to appear**

A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de novo and the Director shall have the burden of proving by a preponderance of the evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing shall result in an order being entered finding that the respondent committed the violation stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying, or reversing the Director's Order, consistent with Ordinance 126068.

#### **8.38.200 Appeal from Hearing Examiner order**

A. The respondent may obtain judicial review of the decision of the Hearing Examiner by applying for a Writ of Review in the King County Superior Court within 30 days from the date of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable law, and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 8.38.200.

#### **8.38.210 Failure to comply with final order**

A. If a respondent fails to comply within 30 days of service of any settlement agreement with the

Agency, or with any final order issued by the Director or the Hearing Examiner for which all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following measures to secure compliance:

1. The Director may require the respondent to post or distribute public notice of the respondent's failure to comply in a form and manner determined by the Agency.
2. The Director may refer the matter to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the amounts due.
3. The Director may refer the matter to the City Attorney for the filing of a civil action in King County Superior Court, the Seattle Municipal Court, or any other court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a settlement agreement, a Director's Order, or a final order of the Hearing Examiner under Section 8.38.220.
4. The Director may request that the City's Department of Finance and Administrative Services deny, suspend, refuse to renew, or revoke any business license held or requested by the employer or person until such time as the employer complies with the remedy as defined in the settlement agreement or final order. The City's Department of Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke any business license in accordance with this subsection 8.38.210.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter 8.38 shall quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the Agency and without first notifying the respondent's successor of the amounts owed under the settlement agreement or final order at least three business days prior to such transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in the settlement agreement or the final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the settlement agreement or final order is not paid by respondent within ten days from the

date of such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment of the amount due, provided that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due. The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment shall be deemed a payment upon the purchase price in the amount paid, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

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

A. All monetary amounts due under a settlement agreement or Director's Order shall be a debt owed to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies; provided that amounts collected by the City for unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be paid by the City to the aggrieved party.

B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 8.38.180.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 5.50.050 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 8.38.180.B and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 8.38.200.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 8.38.200.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 8.38.220.B and 8.38.220.C, the Seattle Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this Chapter 8.38.

### **8.38.230 Private right of action**

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.38 or is the subject of prohibited retaliation under Section 8.38.120 may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter 8.38 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to \$5,755.31 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of this Section 8.38.230, "person" includes any entity a member of which has suffered

an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 8.38.230, 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.

D. For purposes of subsection 8.38.230.C, employees shall not be considered dissimilar solely because:

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

E. An order issued by the court may include a requirement for an employer to submit a compliance report to the court and to the City.

### **8.38.233 Waiver**

Any waiver by an individual of any provisions of this Chapter 8.38 shall be deemed contrary to public policy and shall be void and unenforceable.

### **8.38.240 Other legal requirements-Effect on other laws**

A. The provisions of this Chapter 8.38:

1. Supplement and do not diminish or replace any other basis of liability or requirement established by statute or common law;
2. Shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard for minimum labor and compensation requirements, or which extends other protections to employees of a cannabis business; and

3. Shall not be interpreted or applied so as to create any power or duty in conflict with federal or state law.

B. This Chapter 8.38 shall not be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 8.38 affecting such person. Nothing in this Section 8.38.240 shall be construed as restricting an employee's right to pursue any other remedies at law or equity for violation of the employee's rights.

### **8.38.250 Severability**

The provisions of this Chapter 8.38 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.38, or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 8.38 or the validity of its application to other persons or circumstances.

Section 2. Subsection 14.20.025.D of the Seattle Municipal Code, which section was last amended by Ordinance 125135, is amended as follows:

### **14.20.025 Notice and posting**

\* \* \*

D. Employers shall give written notice of employment information to employees that contains items listed in subsections 14.20.025.D.4.a through 14.20.025.D.4.((†))j in English and in the primary language(s) of the employee(s) receiving the written information.

1. Employers shall give this written notice to employees at time of hire and to all employees who work for the employer as of that date and in the future.

2. Employers shall revise this written notice before any change to such employment information, or as soon as practicable for retroactive changes to such employment information, pursuant to rules issued by the Director. For the written good faith estimate of the employee's work schedule in subsection 14.20.025.D.4.h, the employer is required to revise the notice once every year and when there is a significant change to the

work schedule due to changes in the employee's availability or to the employer's business needs, pursuant to Section 14.22.025.

3. If an employer fails to give this written notice for the items listed in subsections 14.20.025.D.4.a through 14.20.025.D.4.g, the failure shall constitute evidence weighing against the credibility of the employer's testimony regarding the agreed-upon rate of pay.

4. The written notice shall include the following items:

- a. Name of employer and any trade ("doing business as") names used by the employer;
- b. Physical address of the employer's main office or principal place of business and, if different, a mailing address;
- c. Telephone number and, if applicable, email address of the employer;
- d. Employee's rate or rates of pay, and, if applicable, eligibility to earn an overtime rate or rates of pay;
- e. Employer's tip policy, with an explanation of any tip sharing, pooling, or allocation policies;
- f. Pay basis (e.g. hour, work shift, day, week, commission);
- g. Employee's established pay day for earned compensation due by reason of employment;
- h. For employees covered by Chapter 14.22, a written good faith estimate of the employee's work schedule including the median number of hours the employee can expect to work each work week, and whether the employee will be expected to work on-call shifts; ~~((and))~~
- i. For employees covered by Chapter 8.38, the information required by subsection 8.38.100.C; and
- ~~((i.))~~ j. Pursuant to rules issued by the Director, other information that is material and necessary to effectuate the terms of this Chapter 14.20.

Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 126283, is amended as follows:

**3.02.125 Hearing Examiner filing fees**

A. The filing fee for a case before the City Hearing Examiner is \$85, with the following exceptions:

Basis for Case	Fee in dollars
* * *	
Cable Communications (Chapter 21.60)	No fee
Cannabis Jobs Retention Ordinance (Chapter 8.38)	No fee
* * *	

\* \* \*

Section 4. Sections 1 and 2 of this ordinance shall take effect nine months after the effective date of this ordinance.

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

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2022, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2022.

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

Approved / returned unsigned / vetoed this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_

Bruce A. Harrell, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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Elizabeth M. Adkisson, Interim City Clerk

(Seal)

Attachments: