Legislation Details (With Text)

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On agenda:	9/19/2016		
Final Action:	9/29/2016	**Ord. No.**	Ord 125135

Title: AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.22 to the Seattle Municipal Code; establishing secure scheduling requirements for covered retail and food services establishments; prescribing remedies and enforcement procedures; amending Section 14.20.025 of the Seattle Municipal Code to add good faith estimates of work schedules to notice of employment information; amending Section 6.208.020 of the Seattle Municipal Code to condition business license registration on compliance with secure scheduling requirements; and amending Section 3.14.945 of the Seattle Municipal Code to add Chapter 14.22 to the list of ordinances administered and enforced by the Office of Labor Standards.

Sponsors: Lisa Herbold, M. Lorena González

Indexes:

Attachments: 1. Summary and Fiscal Note, 2. Central Staff Memo and Proposed Amendments (9/7/16), 3. Revised Amendment 4 (added 9/8/16), 4. Final Memo - Amendments to Secure Scheduling (added 9/12/16), 5. Revised Amendments 6 and 7 (added 9/13/16), 6. Signed Ord 125135, 7. Affidavit of Publication

Date	Ver.	Action By	Action	Result
9/29/2016	2	City Clerk	attested by City Clerk	
9/29/2016	2	Mayor	Signed	
9/29/2016	2	Mayor	returned	
9/23/2016	2	City Clerk	submitted for Mayor's signature	
9/19/2016	1	City Council	passed	Pass
9/13/2016	1	Civil Rights, Utilities, Economic Development, and Arts Committee	pass as amended	Pass
9/7/2016	1	Civil Rights, Utilities, Economic Development, and Arts Committee	discussed	
8/15/2016	1	City Council	referred	
8/15/2016	1	Council President's Office	sent for review	
8/15/2016	1	City Clerk	sent for review	
8/15/2016	1	Mayor	Mayor's leg transmitted to Council	
8/15/2016	1	City Council	referred	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to employment in Seattle; adding a new Chapter 14.22 to the Seattle Municipal

Code; establishing secure scheduling requirements for covered retail and food services establishments; prescribing remedies and enforcement procedures; amending Section 14.20.025 of the Seattle Municipal Code to add good faith estimates of work schedules to notice of employment information; amending Section 6.208.020 of the Seattle Municipal Code to condition business license registration on compliance with secure scheduling requirements; and amending Section 3.14.945 of the Seattle Municipal Code to add Chapter 14.22 to the list of ordinances administered and enforced by the Office of Labor Standards.

WHEREAS, businesses need an appropriate level of staffing to provide services and sell goods; however, the appropriate level of staffing cannot always be precisely estimated or can change due to numerous factors, such as weather conditions and local and national events; and

WHEREAS when an employer pays per hour, its labor costs are determined by the number of hours an employee works, as compared to the fixed cost of a salaried employee, and it has an economic incentive to be able to respond to changing business needs by reducing and adding employee hours; and

WHEREAS, when an employee's hours are reduced, it changes the amount of income an employee will earn that pay period; and

WHEREAS, when an employee is asked to work additional hours or an employee's hours are changed with minimal notice, such changes often create conflicts with an employee's other responsibilities such as child care, other jobs, or school schedules; and

WHEREAS, when an employee is required to remain available to come in to work if needed, but is not compensated if not needed, the employee is therefore not compensated for foregoing the opportunity to tend to other responsibilities or pursue other interests; and

WHEREAS, if employers maintain a large pool of part-time employees to draw on when extra staff are needed, employees in that pool might work fewer and more variable hours than employees who are not part-time; and

WHEREAS, in *Schedule Unpredictability among Early Career Workers in the US Labor Market: a National Snapshot*, using data from a national survey of early career adults aged 26-32 years, Professor Susan Lambert of the University of Chicago, found that 40 percent of hourly workers knew their work schedule less than one week in advance, and 74 percent had fluctuating hours during a single month,

with 50 percent having fluctuations of more than eight hours or one day's pay; and

WHEREAS, Professor Lonnie Golden of Pennsylvania State University found that, by income level, nationally the lowest income workers face the most irregular schedules and that 43 percent of part-time workers were working fewer hours per week than they preferred; and

WHEREAS, part-time work has a correlation with national poverty levels; for example, the poverty rate for households with children is 11.2 percent with one full-time worker in the household and 27.5 percent with a part-time worker, the poverty rate for Hispanics is 9.4 percent with one full-time worker in the household and 44.1 percent with a part-time worker, and the poverty rate for African-Americans is 6.9 percent with one full-time worker in the household and 55.5 percent with a part-time worker; and

WHEREAS, the City contracted with Vigdor Measurement and Evaluation to provide data on scheduling practices in Seattle; and

WHEREAS, as discussed in *Scheduling in Seattle: Current State of Practice and Prospects for Intervention,* Seattle scheduling practices are not dissimilar to national scheduling practices: while many respondents were satisfied with their schedules, 30 percent of part-time workers want to work more hours, 31 percent reported working both a closing and opening shift consecutively, nearly half of the survey respondents would sacrifice a 20 percent pay premium in order to have one week's advance notice of their schedule; and African-American and Latino respondents reported significantly higher rates of scheduling-related hardship and were more likely to receive short notice of their schedules, to work on-call shifts, and to have their hours reduced; and

WHEREAS, 1930s federal labor laws, such as the Fair Labor Standards Act that limited the number of work hours in a day and week, addressed the manufacturing industry that was the predominant employer at the time but are inadequate to address the conditions that have arisen in the service and retail industries in which an ever-increasing number of U.S. employees are employed; and

WHEREAS, several jurisdictions across the country, including Oregon, California, New York, North Carolina,

Connecticut, Washington D.C., and Illinois are considering scheduling legislation to address the issues faced by employees with unpredictable work schedules and consequently unpredictable income; and

WHEREAS, the City and County of San Francisco recently enacted two ordinances, the Hours and Retention Protections for Formula Retail employees, and Predictable Scheduling and Fair Treatment for Formula Retail Employees, commonly referred to together as the Formula Retail Workers Bill of Rights, that require a two-week advance notice of work schedules, additional compensation for certain changes to an employee's work schedule, equal treatment of part-time employee in wages, time off and promotion opportunities, offering additional hours of work to existing employees before hiring new employees, and certain protections if a business is sold; and

WHEREAS, to gain a fuller understanding of scheduling practices in Seattle the Mayor and Seattle City Council convened stakeholder meetings with both business owners and worker advocates who met 17 times over six months and the Mayor and Council's staff met individually with businesses and workers; and

WHEREAS, the Seattle City Council's Civil Rights, Utilities, Economic Development, and Arts (CRUEDA) committee heard reports from these stakeholders at ten meetings over six months and from researchers in the field and the San Francisco Office of Labor Standards Enforcement; and

WHEREAS, clearer communication between employers and employees, at time of hire and periodically, about the employer's scheduling needs and employee's availability and preference of hours would establish a stronger basis of understanding between employers and employees; and

WHEREAS, the Seattle City Council, in recognition of the growing income inequality in the city, enacted a new minimum wage and minimum compensation in recognition that the federal minimum wage was inadequate and that local governments must act in the absence of action by the federal government; and

WHEREAS, increased wages will not help decrease the income inequality gap if employees can not work sufficient hours to support themselves and their dependents or know what hours and therefore what

income they can count on that week; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 14.22 is added to the Seattle Municipal Code as follows:

14.22 SECURE SCHEDULING

14.22.005 Short title

This Chapter 14.22 shall constitute the "Secure Scheduling Ordinance" and may be cited as such.

14.22.010 Definitions

For purposes of this Chapter 14.22:

“Adverse action” means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of employment, 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 Section 14.22.035. "Adverse action" for an employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

“Agency” means the Office for Civil Rights and any division therein.

“Aggrieved party” means the employee or other person who suffers tangible or intangible harm due to the employer or other person’s violation of this Chapter 14.22.

“At time of hire” means the period after offer and acceptance of employment, and on or before the commencement of employment.

“Bona fide business reason” means:

1. An action that would cause the employer to violate a law, statute, ordinance, code and/or governmental executive order; or

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2. A significant and identifiable burden of additional costs to the employer; or

3. A significant and identifiable detrimental effect on the employer's ability to meet organizational demands, including:

a. A significant inability of the employer, despite best efforts, to reorganize work among existing employees;

b. A significant detrimental effect on business performance;

c. A significant inability to meet customer needs or demands; or

d. A significant insufficiency of work during the periods the employee proposes to work.

"City" means the City of Seattle.

"Career-related educational or training program" means

1. An educational or training program;

2. A pre-apprenticeship or apprenticeship program; or

3. A program of study offered by a public, private, or nonprofit career and technical education school, institution of higher education, or other entity that provides academic education, career and technical education, or training, including but not limited to remedial education or English as a second language, as appropriate.

"Caregiver" means an employee who has the responsibility of providing

1. Ongoing care or education, including responsibility for securing the ongoing care or education of a child;

2. Ongoing care, including the responsibility for securing the ongoing care of

a. An individual with a serious health condition who is in a family relationship with the

employee; or

b. A parent of the individual.

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of an individual standing in loco parentis who is:

1. Under 18 years of age; or

2. 18 years of age or older, and incapable of self-care because of a mental or physical disability.

"Director" means the Division Director of the Office of Labor Standards within the Office for Civil Rights or the Division Director's designee.

"Employ" means to suffer or permit to work.

"Employee" means any individual employed by the employer, including but not limited to full-time employees, part-time employees, and temporary workers. An alleged employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself (i.e. independent contractor) 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 the other employer.

"Family relationship" means a relationship with

1. A child, spouse, parent, grandchild, grandparent, sibling, or parent of a spouse of the employee; or

2. Any individual related to the employee involved by blood or affinity, whose close association with the employee is the equivalent of a family relationship as described in subsection 1 of this definition.

"Food services establishment" means the fixed point of sale location for food services contractors;

caterers; mobile food services; drinking places (alcoholic beverages); full service restaurants; limited-service restaurants; cafeterias, grill buffets, and buffets; and snack and nonalcoholic beverage bars, as defined under the 2012 North American Industry Classification System ("NAICS") 722.

"Franchise" means a written agreement by which:

1. A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designated, owned by, or licensed by the grantor or its affiliate; and

3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

"Franchisee" means a person to whom a franchise is offered or granted.

"Franchisor" means a person who grants a franchise to another person.

"Front pay" means the compensation the employee would earn or would have earned if reinstated to the employee's former position.

"Grandchild" means the child of a child of the employee.

"Grandparent" means a parent of a parent of the employee.

"Hearing Examiner" means the official appointed by the City Council and designated as the Hearing Examiner, under Chapter 3.02 or that person's designee (e.g., Deputy Hearing Examiner or Hearing Examiner Pro Tem).

"Interactive process" means a timely, good faith process that includes a discussion between the employer and the employee for the purpose of arriving at a mutually beneficial arrangement for a work schedule that meets the needs of the employee and the employer. The discussion may include the proposal of alternatives by the employee and the employer.

"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.

"On-call shift" means any time that the employer requires the employee to be available to work, contact the employer or the employer's designee, or wait to be contacted by the employer or the employer's designee, for the purpose of determining whether the employee must report to work. During such time, on-call status applies regardless of whether the employee is located on or off the employer's premises.

"Parent" means a biological or adoptive parent, a stepparent, or a person who stood in loco parentis to the employee when the employee was a child.

"Rate of inflation" means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bremerton 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.

"Regular rate of pay" means the hourly rate that is used to determine the employee's overtime premium (i.e. one and one-half times the regular rate of pay) for all hours worked in excess of forty per work week.

"Respondent" means the employer or any person who is alleged or found to have committed a violation of this Chapter 14.22.

"Retail establishment" means the fixed point-of-sale location of a store retailer, as defined under the 2012 North American Industry Classification System ("NAICS") 441 through 453998.

"Scheduled rate of pay" means the hourly rate that the employee is entitled to earn for an hour worked in a particular work shift.

"Seasonal employment" means a period of employment that is cyclical in nature, occurs at approximately the same time each year, often to accommodate a seasonal increase in business, and lasts for a duration of less than twelve months during any year.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

2. Continuing treatment by a health care provider.

"Sibling" means a brother or sister, whether related by half blood, whole blood, or adoption, or as a stepsibling. Where necessary to implement this Chapter 14.22, gender-specific terms such as brother and sister used in any statute, rule, or other law shall be construed to be gender-neutral.

"Spouse" means husband, wife, or domestic partner. For purposes of this Chapter 14.22 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 to the extent that such interpretation does not conflict with federal law. Where necessary to implement this Chapter 14.22, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender-neutral and applicable to individuals in city or state registered domestic partnerships.

"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.

"Wage" means compensation due to the employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such

deductions, charges, or allowances as may be permitted by rules of the Director.

"Work schedule" means the hours, days and times, including regular and on-call shifts, when the employee is required by the employer to perform duties of employment for which the employee will receive compensation for a given period of time.

"Work schedule change" means any employer-requested modification to the employee's work schedule that occurs after the advance notice required in Section 14.22.040, including but not limited to: the addition or reduction of hours; cancellation of a work shift or portion of a work shift; a change in the date or time of a work shift by the employer; or scheduling the employee for an on-call shift for which the employee does not need to report to work.

"Work shift" means the specific and consecutive hours the employer requires the employee to work or to be on call to work.

"Work week" means a fixed and regularly recurring period of 168 hours or seven consecutive 24 hour periods; it may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

"Written" or "writing" means a printed or printable communication in physical or electronic format including a communication that is transmitted through email, text message or a computer system, or is otherwise sent and maintained electronically.

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"Year" means any fixed, consecutive 12 month period of time.

14.22.012 Intent of secure scheduling

The intent of this Chapter 14.22 is to establish predictable work schedules that advance race and social equity, promote greater economic security, further the health, safety and welfare of employees, create opportunity for employee input into scheduling practices, and create a mechanism for employees to obtain access to additional hours of work before the employer hires new employees from an external applicant pool or subcontractors,

including hiring through the use of temporary services or staffing agencies.

14.22.015 Employee coverage

For the purposes of this Chapter 14.22, covered employees under this Chapter 14.22 are limited to those who:

A. Are defined under Section 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.

14.22.020 Employer coverage

A. For the purposes of this Chapter 14.22, covered employers are limited to:

1. retail establishments that employ 500 or more employees worldwide regardless of where those employees are employed, including but not limited to chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employ more than 500 employees in aggregate.

2. food services establishments that employ 500 or more employees worldwide regardless of where those employees are employed, including but not limited to chains, integrated enterprises, or franchises associated with a franchisor or network of franchises that employ more than 500 employees in aggregate. In addition to employing 500 or more employees worldwide, “full service restaurants” also must have 40 or more full service restaurant locations worldwide, including but not limited to locations that are a part of a chain, integrated enterprise, or franchise where the franchisor owns or operates 40 or more such establishments in aggregate.

B. To determine the number of employees for the current calendar year, the calculation shall be based upon:

1. The average number per calendar week of employees who worked for compensation 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 number of employee will be calculated based upon the average number per calendar week of employees who worked for compensation during the first 90 calendar days of the current year in which the employer engaged in business; and

2. All hours worked for compensation by all employees, including but not limited to:

a. Work performed by employees who are not covered by this Chapter 14.22;

b. Work performed by employees inside the City;

c. Work performed by employees outside the City; and

d. Work performed by employees 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.

C. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.22. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.22 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; and

4. Degree of common ownership or financial control over the entities.

14.22.025 Good faith estimate of work schedule

A. 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.

1. 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.

2. 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.

3. The employer shall include the good faith estimate, in English and the employee's primary language, with the written notice of employment information required by subsection 14.20.025.D.

14.22.030 Right to request input into the work schedule

A. 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.

B. The employer shall consider and respond to employee requests under subsection 14.22.030A as follows:

1. If the employee's request is not due to a major life event, the employer shall engage in an interactive process with the employee to discuss the request. The employer may grant or deny the request for any reason that is not unlawful.

2. If the employee's request is due to a major life event, the employer shall engage in an interactive process with the employee to discuss the request, and may require verifying information from the employee with adequate notice and reasonable time to respond. The employer shall grant the request unless the employer has a bona fide business reason for denial and shall provide a written response. 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.

14.22.035 Right to rest between work shifts

A. Unless the employee requests or consents to work such hours, the employer shall not schedule or require the employee to work:

1. Less than ten hours after the end of the previous calendar day's work shift; or

2. Less than ten hours following the end of a work shift that spanned two calendar days.

B. The employer shall compensate the employee who works hours under subsection 14.22.035.A at one and one-half times the employee's scheduled rate of pay for the hours worked that are less than ten hours apart.

C. The requirement for additional compensation in subsection 14.22.035.B shall not apply for work hours that constitute a split shift subject to rules issued by the Director.

D. An employee compensated for hours worked under subsection 14.22.035.B shall not be additionally compensated for those hours under Section 14.22.050.

14.22.040 Advance notice of work schedule

A. Subject to the provisions of subsection 14.22.040.B, the employer shall provide employees with a written work schedule at least 14 calendar days before the first day of the work schedule

B. 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 subsection 14.20.040.B.

C. The written work schedule shall include all regular and on-call shifts for the work period.

D. The employer shall post the written work schedule in a conspicuous and accessible location, in English and in the primary language(s) of the employee(s) at the particular workplace.

14.22.045 Notice of work schedule changes

A. For employer-requested changes to the written work schedule that occur after the advance notice required in Section 14.22.040:

1. 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

2. The employee may decline to work any hours not included in the employee's work schedule.

B. For employee-requested changes to the written work schedule that occur after the advance notice required in Section 14.22.040:

1. 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

2. 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.

3. The employer's ability to ask or require the employee to find a replacement employee for coverage of any hours during which the employee is unable to work a scheduled shift is as follows:

a. The employer shall not ask or require the employee to find replacement coverage if the employee is unable to work the scheduled hours due to a reason covered by another local, state or federal law that prohibits asking such questions or protects the absence from employer interference, including but not limited to work schedule changes related to use of paid sick and safe time under Chapter 14.16.

b. 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 subsection 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.

c. The employer may ask and require the employee to find replacement coverage if the

employee is unable to work the scheduled hours due to a reason other than a reason covered by a local, state or federal law pursuant to subsection 14.22.045.B.3.a or an emergency or major life event pursuant to 14.22.045.B.3.b.

14.22.050 Compensation for work schedule changes

A. Subject to the provisions of this subsection 14.22.050.A, the employer shall compensate employees for each employer-requested change to the employee's written work schedule that occurs after the advance notice required in Section 14.22.040.

1. The employer shall compensate the employee with one hour of pay at the employee's scheduled rate of pay, in addition to wages earned, for the following reasons:

a. Adding hours of work; or

b. Changing the date or start or end time of a work shift with no loss of hours.

2. The employer shall compensate the employee with no less than one-half times the employee's scheduled rate of pay per hour for any scheduled hours the employee does not work for the following reasons:

a. Subtracting hours from a regular work shift before or after the employee reports for duty;

b. Changing the date or start or end time of a work shift resulting in a loss of hours;

c. Cancelling a work shift; or

d. Scheduling the employee for an on-call shift for which the employee does not need to report to work.

B. The requirements for additional compensation in subsection 14.22.050.A shall not apply under the following circumstances:

1. Mutually agreed upon work shift swaps or coverage among employees. The employer may require that it pre-approve work shift swaps or coverage and may assist employees in finding such arrangements. Assistance shall be limited to helping an employee identify other employees who may be

available to provide coverage or shift swap and does not include the employer arranging the shift swap or coverage.

2. Additional hours that the employee volunteers to work in response to a mass communication, in writing from the employer, 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;

3. Additional hours that an employer requests employees who are currently working, through an in-person group communication, to work in order to address present and unanticipated customer needs, so long as the hours are consecutive to the hours the employee is currently working and the employee consents to take the hours.

4. Additional hours that the employee consents to work as the result of accepting an offer of work pursuant to Section 14.22.055;

5. Employee-requested changes including additional or subtracted hours that the employee voluntarily makes to the employee's work schedule and documents in writing;

6. Employee hours that are subtracted due to disciplinary reasons, provided the employer documents in writing the incident leading to discipline;

7. Operations cannot begin or continue due to threats to employees or property, or due to the recommendation of a public official that work cannot begin or continue;

8. Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

9. Operations cannot begin or continue due to natural disaster or other cause not within the

employer's control pursuant to rules issued by the Director.

14.22.052 Pattern or practice of underscheduling

The employer shall not engage in a systemic pattern or practice of significant underscheduling where the hours that employees actually work are significantly above the hours in the written work schedule required by Section 14.22.040.

14.22.055 Access to hours for existing employees

A. Before hiring new employees from an external applicant pool or subcontractors, including hiring through the use of temporary services or staffing agencies, an 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.

1. The notice must contain the following information:

a. Description and title of the position;

b. Required qualifications for the position;

c. Total hours of work being offered;

d. Schedule of available work shifts;

e. Whether the available work shifts will occur at the same time each week; and

f. Length of time the employer anticipates requiring coverage of the additional hours.

2. The employer must post the notice in a conspicuous and accessible location where employee notices are customarily posted. If the employer posts the notice in electronic format, all employees in the workplace must have access to it on-site.

3. The employer must post the notice in English and the primary language(s) of the employee(s)

at the particular workplace. The Agency shall create and distribute a model notice in English, Spanish and other languages that are necessary for employers to comply with this subsection 14.20.055.B.3.

4. The employer may post the notice concurrently to external candidates.

C. The employer shall offer additional hours of work to an existing employee who has responded to the offer of work, and who, to a reasonable employer acting in good faith is qualified with the skills and experience to perform the work.

1. The employer shall give the employee at least two consecutive calendar days, running from the date of the employer's offer, to accept the additional hours of work.

2. If more than one qualified employee responds to the offer of additional hours of work, the employer may distribute the hours among interested employees or may offer all of the available hours to one qualified employee. The employer may limit distribution of hours to full work shifts rather than parceling hours among employees. The employer may choose among qualified internal candidates following the employer's usual and customary hiring procedures.

3. If the employee accepts additional hours of work for seasonal employment, the employer may reasonably delay scheduling such hours and permit new employees to start working for training purposes, provided that the employer follows the employer's usual and customary practices for training new employees and the employer provides the existing employee with a prospective start date for the additional hours.

4. The employer is encouraged to make reasonable efforts to offer employees training opportunities to gain the skills and experience to perform work for which the employer typically has additional needs.

D. If no employee responds to the written notice of additional hours of work following the three consecutive calendar day posting requirement, or accepts an offer of additional hours during the two consecutive calendar day acceptance period, the employer may immediately proceed with hiring new employees from an external applicant pool or subcontractors to work the additional hours.

E. This Section 14.22.055 shall not apply, in whole or in part, as follows:

1. 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.

2. If the employer chooses to maintain a written access to hours list, the requirement to offer additional hours of work in subsection 14.022.055 A. may be limited to employees on the access to hours list.

a. At time of hire, the employer shall notify the employee of ~~the ability to be on~~ the access to hours list for written notice of additional hours.

b. The employer shall place the employee on the access to hours list, identifying their availability for additional hours.

c. The employee may opt out of the availability list.

d. The employee may choose to be added or removed from the access to hours list by notifying the employer at any time during employment.

e. When being added to the access to hours list, each employee shall, to the extent possible, identify those days and times that they are available for additional work.

f. The employer shall make the access to hours list accessible to employees for viewing upon request.

g. The employer's written notice of additional hours of work shall contain the items described in subsection 14.22.055.B.1 and shall be posted for each employee on the access to hours list in a conspicuous and accessible format, including but not limited to placement where employee notices are customarily posted, in-person delivery, telephone call, email, text message, or other electronic or written format, in English and the primary language(s) of the employee(s) at the particular workplace.

h. If the employer provides notice of additional hours of work to all employees on the

access to hours list and receives written confirmation from all such employees that they are not interesting in accepting the 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.

3. If additional hours become available, the employer must first attempt to use the access to hours list before hiring externally.

a. The employer may limit the distribution of hours to full shifts.

b. If the employer makes a good faith effort to contact employees on the access to hours list and the employees decline or do not respond to the offer, the employer may then hire externally.

c. Employers may use an online or computer based scheduling system and notify the employee through the scheduling system when hours that match their availability from the access to hours list become available.

d. For purposes of this section 14.22.055 E, an employee may not qualify for the additional hours under the following circumstances:

i. Overtime or predictability pay would be required if the employee received the additional hours;

ii. The employee is not currently in good standing due to a bona fide employer documented discipline or improvement plan;

iii. The employee is barred by other laws from conducting the work required in the available hours.

4. Section 14.22.050 does not apply when an employee consents to work additional hours, on less than 14 days' notice, when the employee is accepting a long-term schedule change based on an access to

hours posting.

5. This Section 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.

6. This Section 14.22.055 shall not be construed to require the employer to offer employees work hours paid at the overtime premium (i.e. one and one-half times the regular rate of pay) nor to prohibit any employer from offering such work hours.

14.22.060 Notice and posting

A. The Agency shall create and distribute a poster giving notice of the rights afforded by Chapter 14.22. The Agency shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with subsection 14.22.060.B. The poster shall give notice of the following rights under this Chapter 14.22:

1. The right to a good faith estimate of work schedules; the right to request input into the work schedule; the right to advance notice of work schedules; the right to rest between work shifts; the right to notice of work schedule changes; the right to compensation for work schedule changes; the right to access additional hours of work;

2. The right to be protected from a pattern or practice of underscheduling;

3. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.22; and

4. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 14.22, including the employer's failure to pay all compensation owed by reason of employment, and the employer or other person's retaliation against an employee or other person for engaging in

an activity protected by this Chapter 14.22.

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 (s) of the employee(s) at the 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.

14.22.065 Employer records

A. Each employer shall retain records that document compliance with this Chapter 14.22 including:

1. Written good faith estimates of employee work schedules pursuant to Section 14.22.025;

2. Written documentation regarding the employer's bona fide reason for denying the employee's request for a limitation or change in work schedule due to a major life event pursuant to Section 14.22.030;

3. Work schedules, including but not limited to work schedules created pursuant to Section 14.22.040;

4. Payroll records, including documentation of additional compensation paid to each employee pursuant to Section 14.22.035 and Section 14.22.050;

5. Written documentation of employee-requested changes to the employee's work schedule that do not incur additional compensation pursuant to Section 14.22.050;

6. Written employer mass communications, provided to employees about the availability of additional hours, that do not incur additional compensation pursuant to Section 14.22.050;

7. Written documentation of the incident leading to employee discipline that results in hours subtracted from the employee's work schedule but does not incur additional compensation pursuant to Section 14.22.050;

8. Written notices for additional hours of work available for employees pursuant to Section

14.22.055;

9. Written records of employees who have opted out of receiving written notice of additional hours of work (i.e. access to hours list) pursuant to Section 14.22.055;

10. Written confirmation from all employees, or employees on the access to hours list, that they are not interested in accepting additional hours of work if the employer elects to reduce the notice requirements for access to hours pursuant to Section 14.22.055; and

11. Pursuant to rules issued by the Director, other records that are material and necessary to effectuate the terms of this Chapter 14.22.

12. Upon request, the Office of Labor Standards, in partnership with business and community organizations contracting with the City, will provide technical assistance to employers on implementation of this Chapter 14.22, including but not limited to review of employer record-keeping systems for documenting compliance. The intent of technical assistance is to support employers and employees with methods or procedures for implementation that are effective, efficient and not unreasonably burdensome or impractical.

B. Records required by this Section 14.22.065 shall be retained for a period of three years.

C. If the employer fails to retain adequate records required under subsection 14.22.065.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 14.22 for the periods and for each employee for whom records were not retained.

D. Respondents in any case closed by the Agency shall allow the Office of City Auditor access to such records to permit the Office of City Auditor to evaluate the Agency's enforcement efforts. Before requesting records from such a respondent, the Office of City Auditor shall first consult the Agency's respondent records on file and determine if additional records are necessary. The City Auditor may apply by affidavit or declaration in the form allowed under RCW 9A.72.085 to the Hearing Examiner for the issuance of subpoenas under this subsection 14.22.065.D. The Hearing Examiner shall issue such subpoenas upon a showing that the records are required to fulfill the purposes of this subsection 14.22.065.D.

14.22.070 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 14.22.

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 14.22. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 14.22; the right to inform others about their rights under this Chapter 14.22; the right to inform the person's employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this Chapter 14.22; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 14.22; the right to cooperate with the Agency in its investigations of this Chapter 14.22; the right to testify in a proceeding under or related to this Chapter 14.22; 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 14.22.

C. No employer or any other person shall communicate to a person exercising rights protected under this Section 14.22.070, directly or indirectly the willingness to inform a government employee 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 14.22.

D. It shall be considered a rebuttable presumption of retaliation if the employer or any other person takes an adverse action against a person within 90 calendar days of the person's exercise of rights protected in this Section 14.22.070. 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. Standard of proof. Proof of retaliation under this Section 14.22.070 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 Section 14.22.070 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 14.22.070 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.22.

G. A complaint or other communication by any person triggers the protections of this Section 14.22.070 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.22.

14.22.075 Enforcement power and duties

A. The Agency shall have the power to investigate violations of this Chapter 14.22, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.22 and otherwise necessary and proper in the performance of the same and provided for by law.

B. The Agency shall be authorized to coordinate implementation and enforcement of this Chapter 14.22 and shall promulgate appropriate guidelines or rules for such purposes.

C. The Director of the Agency is authorized and directed to promulgate rules consistent with this Chapter 14.22 and Chapter 3.02. 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 Chapter 14.22.

14.22.080 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.22 is a violation.

14.22.085 Investigation

A. The Agency shall have the power to investigate any violations of this Chapter 14.22 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 14.22 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 14.22. The Agency shall encourage reporting pursuant to this Section 14.22.085 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 14.22 or for other appropriate purposes.

2. The employer must post or otherwise notify its employees that the Agency is conducting an investigation, using a form provided by the Agency and displaying it on-site, in a conspicuous and accessible location, and in English and the primary language(s) spoken by the employee(s) at the particular workplace. If display of the form is not feasible, including situations when the employee works remotely or does not have a regular workplace, employers may provide the form on an individual basis in physical or electronic format that is reasonably conspicuous and accessible.

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). The certification is subject to applicable federal law and regulations, and rules issued by the Director.

C. The Agency’s investigation must 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 14.22 and any administrative enforcement proceeding under this Chapter 14.22 based upon the

same facts. For purposes of this Chapter 14.22:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.22, or the Agency opens an investigation under this Chapter 14.22.

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 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring the employer to produce the records identified in subsection 14.22.065.A, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under subsection 14.22.065.A, or any other document relevant to the issue of whether any employee or group of employees has been or is afforded proper amounts of compensation under this Chapter 14.22 and/or to whether the employer has violated any provision of this Chapter 14.22. 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 if a complaint has been filed with the Agency, or that 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 14.22 or the workforce is unlikely to volunteer information regarding such violations.

F. The employer that fails to comply with the terms of any subpoena issued under subsection 14.22.085.E in an investigation by the Agency under this Chapter 14.22 prior to the issuance of a Director's Order issued pursuant to subsection 14.22.090.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of damages owed or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection

14.22.085.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 14.22.100.

14.22.090 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 14.22 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 14.22, the Director shall issue a "Determination of No Violation" with notice of an employee or other person's right to appeal the decision, subject to the rules of the Director.

C. If the Director determines that a violation of this Chapter 14.22 has occurred, the Director shall issue a "Director's Order" that shall include a notice of violation identifying the violation or violations. The Director's Order shall state with specificity the amounts due under this Chapter 14.22 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 14.22.095. 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 under subsection 14.22.095.A.2. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 14.22, including, but not limited to, monitored compliance for a reasonable time period. The Director's Order shall include notice of the respondent's right to appeal the decision, pursuant to Section 14.22.100.

14.22.095 Remedies

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 14.22 are cumulative and are 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 14.22.095 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year. 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.

3. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 14.22.095, 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 14.22.095.A.2, the Director shall consider the total amount of unpaid compensation, 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 amounts of penalties in similar situations; and other factors pursuant to rules issued by the Director.

B. A respondent found to be in violation of this Chapter 14.22 shall be liable for full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 14.22, and other

equitable relief. For a first violation of this Chapter 14.22, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation. For subsequent violations of this Chapter 14.22, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation. If the violation is ongoing when the Agency receives a complaint or opens an investigation, the Director may order payment of amounts that accrue after receipt of the complaint or after the investigation opens and before the date of the Director's Order. 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. For purposes of establishing a first and subsequent violation for this Section 14.22.095, the violation must have occurred within ten years of the Director's Order.

C. A respondent found to be in violation of this Chapter 14.22 for retaliation under Section 14.22.070 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 14.22, 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 $5,000.

D. A respondent who willfully violates the notice and posting requirements of subsection 14.22.060.B shall be subject to a civil penalty of $750 for the first violation and $1,000 for subsequent violations.

E. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 14.22 shall be subject to a civil penalty of not less than $1,000 and not more than $5,000.

F. For a first violation of this Chapter 14.22, the Director may assess a civil penalty of up to $500 per aggrieved party. For a second violation of this Chapter 14.22, the Director shall assess a civil penalty of up to $1,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater. For a third or any subsequent violation of this Chapter 14.22, the Director shall assess a

civil penalty of up to $5,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater. The maximum civil penalty for a violation of this Chapter 14.22 shall be $20,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater. For purposes of this Section 14.22.095, 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.

G. For the following violations, the Director may assess a fine in the amounts set forth below:

Violation	Fine
Failure to provide a good faith estimate of work schedule under Section 14.22.025	$500
Failure to provide a written response for denial of the employee's request for a limitation or change in work schedule due to a major life event under subsection 14.22.030	$500
Failure to compensate employee at one and one-half times pay for working hours that are separated by less than ten hours from the previous shift under Section 14.22.035	$500
Failure to provide at least 14 calendar days of advance notice of work schedule under Section 14.22.040	$500
Failure to provide notice of work schedule changes under Section 14.22.045	$500
Failure to comply with prohibitions against asking or requiring an employee to find coverage for scheduled hours if the employee is unable to work for a reason covered by other laws or a major life event under Section 14.22.045	$500
Failure to compensate employee with additional compensation for work schedule changes under Section 14.22.050	$500

Failure to comply with prohibition against systemic pattern or practice of significant underscheduling under Section 14.22.052	$500
Failure to offer additional hours of work to existing employees under Section 14.22.055	$500
Failure to provide employees with written notice of rights under subsection 14.22.060	$500
Failure to maintain records for three years under Section 14.22.065	$500 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.22.070	$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.22.085.B.2	$500
Failure to provide notice of failure to comply with final order to the public under Section 14.22.115.A.1	$500

The fine amounts shall be increased cumulatively by 50 percent of the fine for each preceding violation for each subsequent violation of the same provision by the same employer or person within a ten year period. The maximum amount that may be imposed in fines in any one year period for each type of violation listed above is $5,000 unless a fine for retaliation is issued, in which case the maximum amount is $20,000.

H. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City reasonable costs incurred in enforcing this Chapter 14.22, including but not limited to reasonable attorneys' fees.

I. The employer that is the subject of a settlement agreement stipulating that a violation shall count for debarment, or 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 employer is the subject of a final order two times or more within a five-year period, the contractor or subcontractor shall not be allowed to bid on any City contract for two years. This subsection 14.22.095.I 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 14.22.095.I 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 14.22.095.I.

14.22.100 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 14.22 may appeal the Determination of No Violation Shown, pursuant to the rules of the Director.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 14.22.095, 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.

14.22.105 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 review shall be conducted de novo and the Director shall have the burden of proof by a preponderance of the evidence before the Hearing Examiner. 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 will result in an order being entered finding that the employer 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.

14.22.110 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 14.22.110.

14.22.115 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 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, Director’s Order or a final order of the Hearing Examiner under Section 14.22.120.

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 14.22.115.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter

14.22 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 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.

14.22.120 Debt owed The City of Seattle

A. All monetary amounts due under the 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 14.22.100.B the Director's Order 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 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 14.22.100.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 14.22.110.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 14.22.110.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.22.120.B and 14.22.120.C, the 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 14.22.

14.22.125 Private right of action

A. Any person or class of persons that suffers financial injury as a result of a violation of this Chapter 14.22 or is the subject of prohibited retaliation under Section 14.22.070, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter 14.22 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; a penalty payable to any aggrieved party of up to $5,000 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 14.22.125, "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.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 14.22.125, 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 14.22.125.C, 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.

14.22.130 Study of application of secure scheduling requirements

A. The Council shall request the City Auditor, in collaboration with the Agency, to contract with academic researchers who have a proven track record of rigorous analysis of the impacts of labor standards regulations to conduct an evaluation of the impacts of the ordinance introduced as Council Bill 118765for the baseline, one-year, and two-year periods following implementation. Areas of evaluation shall include, but not

be limited to the impacts to businesses, including costs, and the impacts on employees of the requirements of this Chapter 14.22, differences and challenges between limited and full service restaurants in implementing the ordinance, and the interplay of diversity programs and access to hours lists.

B. The Council shall use the results of the evaluation to identify possible areas for revision to accomplish the goals of Council Bill 118765.

C. Efforts to identify whether other industries have scheduling practices that should be considered for coverage under SMC 14.22 et. seq. could be conducted under a separate study, by contracting with academic researchers who have a proven track record of rigorous analysis of labor standards regulations.

14.22.135 Encouragement of more generous policies

A. Nothing in this Chapter 14.22 shall be construed to discourage or prohibit the employer from the adoption or retention of scheduling policies more generous than the one required herein.

B. Nothing in this Chapter 14.22 shall be construed as diminishing the obligation of the employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous scheduling policies to an employee than required herein.

C. Nothing in this Chapter 14.22 shall be construed as diminishing the rights of public employees regarding scheduling policies as provided under federal or Washington state law or the Seattle Municipal Code.

14.22.140 Other legal requirements

This Chapter 14.22 defines requirements for secure scheduling and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater requirements; and nothing in this Chapter 14.22 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter 14.22 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 14.22 affecting such person.

14.22.145 Collective bargaining agreement for secure scheduling

A. The requirements of this Chapter 14.22 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 Chapter 14.22.

B. Any waiver by an individual employee of any provisions of this Chapter 14.22 shall be deemed contrary to public policy and shall be void and unenforceable.

14.22.147 Effective date

The provisions of this Chapter 14.22 shall take effect on July 1, 2017.

14.22.150 Severability

The provisions of this Chapter 14.22 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.22, 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 14.22, 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 enacted by Ordinance 124960, 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.((~~1~~))4.a through 14.20.025.D.((~~7~~))4.i 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 14.20.025.4.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. ((~~Effective April 1, 2016, employers shall give this written notice to all employees who work for the employer as of that date and in the future.~~))

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:

((~~1.~~))a. Name of employer and any trade ("doing business as") names used by the employer;

((~~2.~~))b. Physical address of the employer's main office or principal place of business and, if different, a mailing address;

((~~3.~~))c. Telephone number and, if applicable, email address of the employer;

((~~4.~~))d. Employee's rate or rates of pay, and, if applicable, eligibility to earn an overtime rate or rates of pay;

((~~5.~~))e. Employer's tip policy, with an explanation of any tip sharing, pooling, or allocation policies;

((~~6.~~))f. Pay basis (e.g. hour, work shift, day, week, commission);

((~~7.~~))g. Employee's established pay day for earned compensation due by reason of employment; ((~~and~~))

((~~8.~~))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

((~~9.~~))i. 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. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 124963, is amended as follows:

6.208.020 Denial, revocation of, or refusal to renew business license

A. In addition to any other powers and authority provided under this Title 6, the Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license issued under the provisions of this Chapter 6.208. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or refusal to renew, the license and on what grounds such a decision was based. The Director may deny, revoke or refuse to renew any license issued under this Chapter 6.208 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.

2. The licensee has failed to comply with any provisions of this Chapter 6.208.

3. The licensee has failed to comply with any provisions of Chapters0, 5.35, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.

4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.

5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.

6. The applicant or licensee has been convicted of theft under subsection 12A.08.060.A.4 within the last ten years.

7. The applicant or licensee is a person subject within the last ten years to a court order entering

final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of either:

a. the expiration of the time for filing an appeal from the final judgment order under the court rules in effect at the time of the final judgment order; or

b. if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial affirmation of the findings of violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

8. The applicant or licensee is a person subject within the last ten years to a final and binding citation and notice of assessment from the Washington Department of Labor and Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and penalties assessed therewith were not satisfied within 30 days of the date the citation became final and binding.

9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, ((~~and~~)) 14.20.080.A.4, and 14.22.115.A.4, the applicant or licensee has failed to comply within 30 days of service of any settlement agreement, any final order issued by the Division Director of the Office of Labor Standards within the Office for Civil Rights, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17, 14.19, ((~~and~~)) 14.20, and 14.22, for which all appeal rights have been exhausted, and the Division Director of the Office of Labor Standards within the Office for Civil Rights has requested that the Director deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under Chapters 14.16, 14.17, 14.19, ((~~and~~)) 14.20, and 14.22 are remedied.

10. The business is one that requires an additional license under this Title 6 and the business does not hold that license.

11. The business has been determined under a separate enforcement process to be operating in violation of law.

* * *

Section 4. Section 3.14.945 of the Seattle Municipal Code, last amended by Ordinance 124643, is amended as follows:

3.14.945 Office of Labor Standards

There is established in the Office for Civil Rights an Office of Labor Standards, under the direction of the Mayor. There shall be a Division Director to manage the Office of Labor Standards. The Director of the Office for Civil Rights shall appoint the Division Director subject to the approval of the Mayor. The mission of the Office of Labor Standards is to protect workers' wages, working conditions, and safety and health, and to end barriers to workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers. The functions of the Office of Labor Standards are as follows:

A. Promoting labor standards by means of outreach and education and technical assistance and training;

B. Collecting and analyzing data on the city's work force and workplaces;

C. Administering and enforcing City of Seattle ordinances relating to minimum wage and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), ((~~and~~)) wage and tip compensation requirements (Chapter 14.20), and secure scheduling (Chapter 14.22).

Section 5. Sections 2 through 4 of this ordinance shall take effect on July 1, 2017.

Section 6. 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 _____, 2016, and signed by me in open session in authentication of its passage this _____ day of _____, 2016.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2016.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2016.

_____

Monica Martinez Simmons, City Clerk

(Seal)