

Legal Alerts

# Update on Seattle Wage Theft Prevention and Harmonization Ordinance

03.08.16 01.07.26

Garvey Schubert Barer Legal Update, March 8, 2016.

In December 2015, the City of Seattle passed the "Wage Theft Prevention and Harmonization Ordinance," which made changes to all four of Seattle's labor standards ordinances-Paid Sick and Safe Time (PSST), Minimum Wage, Wage Theft, and Fair Chance Employment.

Across the board, the new law provides harsher penalties for noncompliance than in the past. For example, there is now a rebuttable presumption that an employer has retaliated if it takes adverse action within 90 days of the employee's exercise of protected rights. An employer in this situation must demonstrate by clear and convincing evidence that the protected activity was not a factor in the decision to take adverse action. Thus, it is **essential** to carefully document all responses to concerns about employees' protected rights as well as reasons for adverse employment actions.

The new law also allows employees to sue employers for violations of the Minimum Wage and PSST ordinances. Employees will have the opportunity to receive an injunction, monetary relief, and attorneys' fees. The private right of action goes into effect on April 1, 2016 for employers with 50 or more employees and on April 1, 2017 for employers with fewer than 50 employees. There is now more incentive than ever to be in close compliance with Seattle's labor standards ordinances.

The new law also requires employers to implement certain changes immediately. Other changes must be implemented by April 1, 2016.

## **What employers must do right now:**

- Elect a "benefit year." The new law allows employers to elect either the calendar year or one of a variety of alternate 12-month periods as the benefit year (e.g. tax year, fiscal year, contract year, or a year running from an employee's employment anniversary). Care must be taken when changing from a calendar year to another benefit year so that employees receive the full benefit of the law.
- Permit the use of PSST in 15 minute increments by non-exempt employees, if feasible under an employer's payroll system. Change to this minimum increment may require reevaluation of increments used to administer other protected leave.

- Keep employees' records of hours worked and PSST hours used for 3 years.
- Keep track of the hours that any "occasional basis" employees work in Seattle. These are employees who work in Seattle on an irregular basis, although they typically work outside of the city.
  - Once an "occasional basis" employee has worked more than 240 hours in Seattle in a benefit year, he or she will be covered by the PSST ordinance. Those 240 hours and any additional hours worked in Seattle count toward PSST accrual. In these situations, an employer must be able to retroactively award PSST hours.
  - In addition, once an "occasional basis" employee has passed the 240 hour threshold, his or her hours worked in Seattle will be covered by Seattle's PSST ordinance for the duration of his or her employment with that employer in all future benefit years.
  - How does the use of PSST work for "occasional basis" employees? The last word from the City, in May 2015, was that an "occasional basis" employee can only use PSST hours under Seattle's ordinance when he or she is working in Seattle.
- When counting employees to determine the total number of employees under Seattle's minimum wage ordinance, count worldwide employees rather than just employees within the United States.
- Work study employers, formerly exempt, must comply with Seattle's minimum wage ordinance.

**What employers must do by April 1, 2016:**

- Provide all employees with a written PSST policy that includes:
  - all policies and procedures for meeting PSST requirements, and
  - the method used to determine the benefit year for PSST.
- Provide **all** employees (existing and new) with a "notice of employment information", which includes:
  - the employer's name and contact information,
  - the employee's pay rate and pay basis (e.g., hour, shift, day, commission), and
  - the regular day on which employees are paid (must be at least once a month).

- The Office of Labor Standards has provided a sample notice [here](#) (scroll down to the Wage Theft Ordinance section).
- Post new workplace posters for all of Seattle's labor standards ordinances in a conspicuous and accessible place. The Office of Labor Standards will prepare posters that comply with the law by April 1, 2016. They will be available [here](#).
- The poster must be in English and the primary language(s) spoken by employees.
  - The Office of Labor Standards will prepare translated posters.
- If there is no regular workplace or job site, it may be possible to issue the poster in electronic format.

This is also a good time for Seattle employers with employees making minimum wage to ensure that they are in compliance with the [January 1, 2016, increase in the minimum wage](#). The increase is part of the scaled phase-in of the \$15/hour minimum wage in Seattle.

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