SEATTLE CITY COUNCIL

Legislative Summary

CB 118585

Record No.: CB 118585 **Type:** Ordinance (Ord) **Status:** Passed

Version: 2 124960 **In Control:** City Clerk

File Created: 11/17/2015

Final Action: 12/17/2015

Title: AN ORDINANCE relating to employment in Seattle; amending Chapters 14.16, 14.17, 14.19, and 14.20 of the Seattle Municipal Code to prescribe additional remedies and enforcement procedures, harmonize ordinance language, and add provisions to facilitate compliance; amending Section 3.14.931 of the Seattle Municipal Code to update duties of the Seattle Human Rights Commission; and amending Section 5.55.230 of the Seattle Municipal Code to require labor standards compliance for business license tax certificates.

Notes:

Sponsors: Harrell

Attachments:

Drafter: adam.schaefer@seattle.gov

	Date
Filed with City Clerk:	12/17/2015
Mayor's Signature:	12/17/2015
Vetoed by Mayor:	
Veto Overridden:	
Veto Sustained:	

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	11/17/2015	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk						
	Notes:						
1	City Clerk	11/17/2015	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	11/17/2015	sent for review	Public Safety, Civil Rights, and Technology Committee			

Action Text: The Council Bill (CB) was sent for review. to the Public Safety, Civil Rights, and Technology Committee
Notes:

1	Full Council	11/30/2015	referred	Public Safety, Civil Rights, and Technology Committee	

Action Text: The Council Bill (CB) was referred. to the Public Safety, Civil Rights, and Technology Committee
Notes:

1	Public Safety, Civil Rights, and Technology Committee	12/02/2015	discussed		

Action Text: The Council Bill (CB) was discussed.
Notes:

1	Public Safety, Civil Rights, and Technology Committee	12/10/2015	pass as amended		Pass

Action Text: The Committee recommends that Full Council pass as amended the Council Bill (CB).
Notes:

In Favor: 5 Member Bagshaw, Chair Harrell, Burgess, Licata, González

Opposed: 0

1	Full Council	12/14/2015	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:

In Favor: 8 Council President Burgess, Councilmember Godden, Councilmember González , Councilmember Harrell, Councilmember Licata, Councilmember O'Brien, Councilmember Rasmussen, Councilmember Sawant

Opposed: 0

2	City Clerk	12/16/2015	submitted for Mayor's signature	Mayor	

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:

2	Mayor	12/17/2015	Signed		

Action Text: The Council Bill (CB) was Signed.
Notes:

2	Mayor	12/17/2015	returned	City Clerk	

Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:

2	City Clerk	12/17/2015	attested by City Clerk		

Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:

CITY OF SEATTLE

ORDINANCE 124960

COUNCIL BILL 118585

AN ORDINANCE relating to employment in Seattle; amending Chapters 14.16, 14.17, 14.19, and 14.20 of the Seattle Municipal Code to prescribe additional remedies and enforcement procedures, harmonize ordinance language, and add provisions to facilitate compliance; amending Section 3.14.931 of the Seattle Municipal Code to update duties of the Seattle Human Rights Commission; and amending Section 5.55.230 of the Seattle Municipal Code to require labor standards compliance for business license tax certificates.

WHEREAS, the Seattle City Council issued a statement of legislative intent to prepare legislation to increase remedies for violations of Seattle's labor standards ordinances and strengthen enforcement procedures; and

WHEREAS, the Office of the City Auditor performed an enforcement audit of Chapter 14.16, the Paid Sick and Safe Time Ordinance, for the period of September 1, 2012 through December 31, 2013, issued its report on October 17, 2014, and made 13 recommendations to address its findings, strengthen enforcement, and enhance implementation; and

WHEREAS, clear and comprehensive remedies for labor standards ordinance violations, including retaliation, are critical to protecting workers from theft of wages, tips, and benefits, and other compensation due by reason of employment, and substandard working conditions, as well as protecting employers from unfair competition from employers who do not comply; and

WHEREAS, data-driven directed investigations are more effective than complaint-based investigations at creating and maintaining employer compliance with labor standards laws; and

WHEREAS, the state of New York recently moved to end wage theft and retaliation in the nail salon industry through a comprehensive package of targeted culturally competent outreach, directed investigations, strengthened remedies, and monitored future compliance; and

WHEREAS, the City of Seattle Office of Labor Standards strives to advance workplace equity for all Seattle workers, including but not limited to vulnerable or historically disadvantaged communities who are disproportionately represented among low income workers or who may not otherwise have access to the minimum requirements and protections of Seattle's labor standards ordinances; and

WHEREAS, the City of Seattle Office of Labor Standards, like the United States Department of Labor's Wage and Hour Division and the Washington State Department of Labor and Industries, must rely on the cooperation of willing workers to report and testify about substandard working conditions; and

WHEREAS, cooperating victim-witnesses of qualifying criminal activities who have suffered substantial physical or mental abuse may apply for a "U" Visa from the U.S. Citizenship and Immigration Service, if an agency that investigates and detects such criminal activity certifies their applications; and

WHEREAS, retaliation against one person can induce an entire workforce to accept substandard working conditions, and preventing retaliation is of the highest importance; and

WHEREAS, misclassification of bona fide employees as independent contractors may deprive those employees of the protections of Seattle's labor standards ordinances; and

WHEREAS, liability may extend to "joint employers" even when there is no formal employment relationship if employment by one employer is not completely disassociated from employment by the other employer;

WHEREAS, damages as a multiple of unpaid wages and compensation due, and penalties payable to aggrieved parties, serve to compensate workers for labor standards ordinance violations; and

WHEREAS, civil penalties and fines serve to deter employer labor standards ordinance violations; and

WHEREAS, equitable remedies, such as orders directing managers to attend training, submit payroll documents on an ongoing basis, and provide notices to workers in their own languages about their rights, serve to sustain employer compliance following an investigation as well as empower workers; and

WHEREAS, RCW 49.48.086 allows the Washington State Department of Labor and Industries to file warrants to collect unpaid wages in courts of competent jurisdiction; and

WHEREAS, liberally construing the protections afforded in Chapters 14.16, 14.17, 14.19, and 14.20 in favor of the employee shall accomplish the purposes of Seattle's labor standards ordinances; and

WHEREAS, the City of Seattle finds it necessary and appropriate to create a stronger incentive for employees to report labor standards violations and for employers to comply with labor standards requirements; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 14.16.005 is added to the Seattle Municipal Code as follows:

14.16.005 Short title

This Chapter 14.16 shall constitute the "Paid Sick and Safe Time Ordinance" and may be cited as such.

Section 2. Section 14.16.010 of the Seattle Municipal Code, last amended by Ordinance 124644, is amended as follows:

14.16.010((.)) Definitions

For purposes of this ((~~chapter~~)) Chapter 14.16:

"Adverse action" means ((~~the discharge, suspension, discipline, transfer, demotion, or denial of promotion by an employer of an employee~~)) denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to nonemployee, or otherwise discriminating against any person for any reason prohibited by ((~~14.16.040~~)) Section 14.16.055. "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" ((~~shall mean~~)) means the Office for Civil Rights and any division therein.

"Aggrieved party" means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this Chapter 14.16.

"Benefit year" means any fixed, consecutive 12-month period of time that is normally used by an employer for calculating wages and benefits, including: January 1 through December 31; a tax year, fiscal year, or contract year; or the year running from an employee's one-year anniversary date of employment. An employer must provide written notice of the employer's choice of benefit year in the employer's policy and procedure for meeting the paid sick and paid safe time requirements of this Chapter 14.16, pursuant to subsection 14.16.045.C. If an employer

transitions from one type of benefit year to another, the employer must ensure that the transition process maintains the accrual, use and carry-over of paid sick and paid safe time hours that are required by this Chapter 14.16.

"Business" and "engaging in business" has the same meanings as in Chapter 5.30.

"City" ((~~shall mean~~)) means the City of Seattle.

"City department" means any agency, office, board, or commission of the City, or any Department employee acting on its behalf, but ((~~shall~~)) "City department" does not mean a public corporation chartered under Ordinance 103387 as amended, or its successor ordinances, or any contractor, consultant, concessionaire, or lessee.

((~~"Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director when the Director files a charge.~~

~~"Commission" means the Seattle Human Rights Commission.~~))

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

"Eating and/or drinking establishment" means a place where food and/or beverages are prepared and sold at retail for immediate consumption either on- or off-premise, but excludes food and beverage service sites, such as cafeterias, that are accessory to other activities and primarily serve students, patients, and/or on-site employees.

"Employ" means to suffer or permit to work.

"Employee" ((~~shall mean~~)) means any individual employed by an employer, ((~~and shall include traditional~~)) including but not limited to full-time employees, ((~~temporary workers, and~~)) part-time employees, and temporary workers. ((~~Individuals performing services under a work~~

~~study agreement are not covered by this chapter. Employees are covered by this chapter if they perform their work in Seattle. An employee who performs work in Seattle on an occasional basis is covered by this chapter only if he performs more than 240 hours of work in Seattle within a calendar year. An employee who is not covered by this Chapter is still included in any determination of the size of the employer. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be deemed to be an employee of the staffing agency for all purposes of this chapter, except as provided in subsection 14.16.010.T.4.b.~~))

1. An employer bears the burden of proof that the individual is in business for oneself rather than dependent upon the alleged employer.

2. For purposes of this Chapter 14.16, "employee" does not include an individual performing services under a work study agreement.

"Employer" ((~~shall mean, as defined in subsection 14.04.030.K, any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. Employer size shall be determined as provided in subsection 14.16.010.T.~~)) 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 an employer in relation to an employee.

1. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer.

2. For purposes of this ((~~act,~~)) Chapter 14.16, "employer" does not include any of the following:

((~~1.~~))a. The United States government;

((~~2.~~))b. The State of Washington, including any office, department, agency, authority, institution, association, society, or other body of the state, including the legislature and the judiciary;

((~~3.~~))c. Any county or local government other than the City.

"Employment agency" or "staffing agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

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

"Full-time equivalent" ((~~shall mean~~)) means the number of hours worked for compensation that add up to one full-time employee, based either on an eight-hour day and a five-day week or as full-time is defined, in writing or in practice, by the employer.

"Health care professional" ((~~shall mean~~)) means any person authorized by the City, any state government, and/or the federal government to diagnose and treat physical or mental health conditions, including a doctor, nurse, emergency medical care provider, and/or a public health clinic worker, so long as that person is performing within the scope of their practice as defined by the relevant law.

"Paid sick time" and/or "paid sick days" ((~~shall mean~~)) means accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in subsection 14.16.030.A.1 of this ((~~chapter~~)) Chapter 14.16, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an employee is scheduled to have worked.

1. For purposes of determining eligibility for "paid sick time," "family member" ((~~shall mean~~)) means, as defined in the Washington Family Care Act, RCW 49.12.265 and 49.12.903, as follows:

a. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under ((~~eighteen~~)) 18 years of age; or (b) ((~~eighteen~~)) 18 years of age or older and incapable of self-care because of a mental or physical disability.

b. "Grandparent" means a parent of a parent of an employee.

c. "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

d. "Parent-in-law" means a parent of the spouse of an employee.

e. "Spouse" means husband, wife, or domestic partner. For purposes of this ((~~chapter~~)) Chapter 14.16, 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~~)) Chapter 14.16, 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.

"Paid safe time" ((~~and/or "paid safe days" shall~~)) means accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the

reasons specified in subsection 14.16.030.A.2, for which time an employee shall be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is taken.

1. For ((~~the~~)) purposes of determining eligibility for "paid safe time":

a. "Family or household members" shall mean, as defined in RCW 49.76.020, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons ((~~sixteen~~)) 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons ((~~sixteen~~)) 16 years of age or older with whom a person ((~~sixteen~~)) 16 years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

b. "Domestic violence" ((~~shall mean~~)) means:

1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2) ((~~sexual~~)) Sexual assault of one family or household member by another; or

3) ((~~stalking~~)) Stalking, as defined ((~~below~~)) in subsection 14.16.010.P.1.c, of one family or household member by another family or household member.

c. "Stalking" ((~~shall be~~)) means stalking as defined as in RCW 9A.46.110 ((~~;~~)) .

d. "Dating relationship" ((~~shall mean~~)) means, as defined in RCW 49.76.020, a social relationship of a romantic nature.

e. "Sexual assault" ((~~shall be~~)) means sexual assault as defined ((~~as~~)) in RCW 49.76.020.

((~~"Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter and the Office for Civil Rights.~~))

((~~"Person," as used in this ((chapter))~~ ~~Chapter 14.16~~~~, includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firm, institution, entities, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons, and further includes any department, office, agency or instrumentality of the City.~~))

"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.

"Respondent" means an employer or any person who is alleged or found to have committed a violation of this ((~~chapter~~)) Chapter 14.16.

"Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this definition, "person" means 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.

"Tier ((~~One~~)) 1," "Tier ((~~Two~~)) 2," and "Tier ((~~Three~~)) 3" employers are defined as follows:

1. "Tier ((~~One~~)) 1 employer" ((~~shall mean~~)) means an employer that employs more than ((4)) four and fewer than 50 full-time equivalents, regardless of where those employees are employed, on average per calendar week.

2. "Tier ((~~Two~~)) 2 employer" ((~~shall mean~~)) means an employer that employs at least 50 and fewer than 250 full-time equivalents, regardless of where those employees are employed, on average per calendar week.

3. "Tier ((~~Three~~)) 3 employer" ((~~shall mean~~)) means an employer that employs 250 or more full-time equivalents, regardless of where those employees are employed, on average per calendar week.

((~~4. The determination of employer tier for the current calendar year will be calculated based upon the average number of full-time equivalents paid for per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. To determine the number of full-time equivalents, all compensated hours of all employees shall be counted, including:~~

~~a. work performed outside of the City; and~~

~~b. compensated hours made available by part-time employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.~~

~~5. For employers that did not have any employees during the previous calendar year, the employer tier will be calculated based upon the average number of full-time equivalents paid for per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.~~))

"Wage" means compensation due to an 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.

Section 3. A new Section 14.16.015 is added to the Seattle Municipal Code as follows:

14.16.015 Employment in Seattle

A. Subject to subsection 14.16.015.B, an employee is covered by this Chapter 14.16 if the employee performs work within the geographic boundaries of the City.

B. An employee who is typically based outside of the City and performs work in the City on an occasional basis is covered by this Chapter 14.16 only if the employee performs more than 240 hours of work in the City within a benefit year.

1. Once an employee who works in the City on an occasional basis performs more than 240 hours of work in the City within a benefit year, all previous hours worked in the City during that benefit year count toward the accrual of paid sick and paid safe time and the employee shall remain covered by this Chapter 14.16 for the duration of employment with the

employer in all future benefit years, provided, however, that separations in employment shall be governed by subsection 14.16.025.L.

2. Time spent in the City solely for the purpose of travelling through the City from a point of origin outside the City to a destination outside the City with no employment-related or commercial stops in the City except for refueling or the employee's personal meals or errands, is not covered by this Chapter 14.16.

Section 4. Section 14.16.020 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.020((~~. Accrual of Paid Sick Time and Paid Safe Time~~)) <u>Employer tier determination</u>

((~~A. All employees of Tier 1, Tier 2 and Tier 3 employers have the right to paid sick time and paid safe time as provided in this section.~~

~~B. Employees shall accrue paid time, to be used as either paid sick or safe time, as follows:~~

~~1. Employees of a Tier One or Tier Two employer shall accrue at least one hour of paid time for every 40 hours worked.~~

~~2. Employees of a Tier Three employer shall accrue at least one hour of paid time for every 30 hours worked.~~

~~C. No Tier One employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 40 hours in a calendar year. No Tier Two employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 56 hours in a calendar year. No Tier Three employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 72 hours in a calendar year.~~

~~D. In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.) (hereinafter referred to as "FLSA" exempt employees), no employer shall be required to accrue leave for such employees for hours worked beyond a 40-hour work week. If their normal work in a work week is less than 40 hours, paid sick time and paid safe time accrues based upon that employee's normal work week.~~

~~E. Paid sick time and paid safe time as provided in this section shall begin to accrue at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect. Accrual rates shall not apply to hours worked before this ordinance takes effect.~~

~~F. Except as provided in Section 14.16.090, employees shall be entitled to use accrued paid sick time or safe time beginning on the 180th calendar day after the commencement of their employment. When an employee is separated from employment and rehired within seven months of separation by the same employer, the previous period of employment shall be counted for purposes of determining the employee's eligibility to use accrued sick time or safe time under this subsection, provided that if separation does occur, the total time of employment used to determine eligibility must occur within two calendar years.~~

~~G. Unused paid sick time and paid safe time shall be carried over to the following calendar year; however, no Tier One employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 40 hours, no Tier Two employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 56 hours and no Tier Three employer shall be required to allow~~

~~an employee to carry over a combined total of paid sick time and paid safe time in excess of 72 hours.~~

~~H. A Tier One or Tier Two employer with a combined or universal paid leave policy, such as a paid time off (PTO) policy, is not required to provide additional paid sick and safe leave, provided that:~~

~~1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time as set forth in Section 14.16.030; and~~

~~2. Paid leave is accrued at the rate consistent with subsection 14.16.020.B.1; and~~

~~3. Use of paid leave within any calendar year is limited to no less than the amounts specified respectively for Tier One and Tier Two employers in subsection 14.16.020.C; and~~

~~4. Any accrued but unused paid leave may be carried over to the following calendar year consistent with subsection 14.16.020.G.~~

~~I. A Tier Three employer with a combined or universal paid leave policy, such as a paid time off (PTO) policy, is not required to provide additional paid sick and safe leave, provided that:~~

~~1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and safe time as set forth in Section 14.16.030; and~~

~~2. Paid leave is accrued at a rate consistent with subsection 14.16.020.B.2; and~~

~~3. Use of paid leave within any calendar year is limited to no less than 108 hours; and~~

~~4. Any accrued but unused paid leave may be carried over to the following calendar year; however no Tier Three employer with a combined or universal leave policy shall be required to carry over unused leave in excess of 108 hours.~~

~~J. Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick and safe time that has not been used.~~

~~K. If an employee is transferred to a separate division, entity, or location within the City, or transferred out of the City and then transferred back to a division, entity, or location within the City, but remains employed by the same employer, the employee is entitled to all paid sick and safe time accrued at the prior division, entity, or location and is entitled to use all paid sick and safe time as provided in this section.~~

~~L. When there is a separation from employment and the employee is rehired within 7 months of separation by the same employer, previously accrued paid sick and safe time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick and safe time and accrue additional sick and safe time immediately upon the re-commencement of employment, provided that the employee had previously been eligible to use paid sick and safe time. If there is a separation of more than 7 months, an employer shall not be required to reinstate accrued paid sick and safe time and for the purposes of this chapter the rehired employee shall be considered to have newly commenced employment.~~

~~M. Subject to terms and conditions established by the employer, the employer may, but is not required to, loan paid sick time and paid safe time to the employee in advance of accrual by such employee.~~))

A. An employee who is not covered by this Chapter 14.16 shall be included in any determination of employer tier.

B. The determination of employer tier for the current calendar year will be calculated based upon the average number per calendar week of full-time equivalents 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 employer tier will be calculated based upon the average number per calendar week of full-time equivalents who worked for compensation during the first 90 calendar days of the current year in which the employer engaged in business.

C. To determine the number of full-time equivalents, all hours worked for compensation by all employees shall be counted, including but not limited to:

1. Work performed inside the City;

2. Work performed outside the City; and

3. Work performed 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.

D. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.16. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.16 where a separate entity controls the operation of another entity. The factors to consider in making this assessment 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.

Section 5. A new Section 14.16.025 is added to the Seattle Municipal Code as follows:

14.16.025 Accrual of paid sick and paid safe time

A. All employees of Tier 1, Tier 2, and Tier 3 employers have the right to paid sick time and paid safe time as provided in this Section 14.16.025.

B. Employees shall accrue paid time, to be used as either paid sick or paid safe time, as follows:

1. Employees of a Tier 1 or Tier 2 employer shall accrue at least one hour of paid time for every 40 hours worked.

2. Employees of a Tier 3 employer shall accrue at least one hour of paid time for every 30 hours worked.

C. No Tier 1 employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 40 hours in a benefit year. No Tier 2 employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 56 hours in a benefit year. No Tier 3 employer shall be required to allow an employee to use a combined total of paid sick time and paid safe time exceeding 72 hours in a benefit year.

D. In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.) and RCW 49.46.130(2) (hereinafter referred to as "overtime exempt" employees), no employer shall be required to accrue leave for such employees for hours worked beyond a 40-hour work week. If their normal work in a work week is less than 40 hours, paid sick time and paid safe time accrues based upon that employee's normal work week.

E. Paid sick time and paid safe time as provided in this Section 14.16.025 shall begin to accrue at the commencement of employment. For individuals employed on September 1, 2012, accrual shall begin on September 1, 2012. Accrual rates shall not apply to hours worked before September 1, 2012.

F. Except as provided in Section 14.16.040, employees shall be entitled to use accrued paid sick time or paid safe time beginning on the 180th calendar day after the commencement of their employment. When an employee is separated from employment and rehired within seven months of separation by the same employer, the previous period of employment shall be counted for purposes of determining the employee's eligibility to use accrued sick time or safe time under this subsection, provided that if separation does occur, the total time of employment used to determine eligibility must occur within three calendar years.

G. Unused paid sick time and paid safe time shall be carried over to the following benefit year; however, no Tier 1 employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 40 hours, no Tier 2 employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 56 hours and no Tier 3 employer shall be required to allow an employee to carry over a combined total of paid sick time and paid safe time in excess of 72 hours.

H. A Tier 1 or Tier 2 employer with a combined or universal paid leave policy, such as a paid time off (PTO) policy, is not required to provide additional paid sick and paid safe leave, provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and paid safe time as set forth in Section 14.16.030; and

2. Paid leave is accrued at the rate consistent with subsection 14.16.025.B.1; and

3. Use of paid leave within any benefit year is limited to no less than the amounts specified respectively for Tier 1 and Tier 2 employers in subsection 14.16.025.C; and

4. Any accrued but unused paid leave may be carried over to the following benefit year consistent with subsection 14.16.025.G.

I. A Tier 3 employer with a combined or universal paid leave policy, such as a PTO policy, is not required to provide additional paid sick and paid safe leave, provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and paid safe time as set forth in Section 14.16.030; and

2. Paid leave is accrued at a rate consistent with subsection 14.16.025.B.2; and

3. Use of paid leave within any benefit year is limited to no less than 108 hours; and

4. Any accrued but unused paid leave may be carried over to the following benefit year; however no Tier 3 employer with a combined or universal leave policy shall be required to carry over unused leave in excess of 108 hours.

J. Nothing in this Section 14.16.025 shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued paid sick and paid safe time that has not been used.

K. When an employee is transferred to a separate division, entity, or location within the geographic limits of the City, or transferred out of the geographic limits of the City and then

transferred back to a division, entity, or location within the geographic limits of the City, but remains employed by the same employer, the employee is entitled to all paid sick and paid safe time accrued at the prior division, entity, or location and is entitled to use all paid sick and paid safe time as provided in this Chapter 14.16.

L. When there is a separation from employment and the employee is rehired within seven months of separation by the same employer, previously accrued paid sick and paid safe time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued paid sick and paid safe time and accrue additional sick and safe time immediately upon the re-commencement of employment, provided that the employee had previously been eligible to use paid sick and paid safe time. If there is a separation of more than seven months, an employer shall not be required to reinstate accrued paid sick and safe time and for the purposes of this Chapter 14.16 the rehired employee shall be considered to have newly commenced employment.

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

N. Subject to terms and conditions established by the employer, the employer may, but is not required to, loan paid sick time and paid safe time to the employee in advance of accrual by such employee.

Section 6. Section 14.16.030 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.030((~~. Use of Paid Sick Time and Paid Safe Time~~)) <u>Use of paid sick time and paid safe time</u>

A.

1. Paid sick time shall be provided to an employee by an employer for the following reasons:

a. An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care; <u>or</u>

b. To allow the employee to provide care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care of a family member who needs preventive medical care.

2. Paid safe time shall be provided to an employee by an employer for the following reasons:

a. When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material((,)); <u>;</u>

b. To accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason ((.)); <u>or</u>

c. For any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030:

1) To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2) To enable the employee to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

3) To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4) To enable the employee to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or

5) To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

B. Paid sick time and paid safe time shall be provided upon the request of an employee. When possible, the request shall include the expected duration of the absence. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences and/or requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid leave is foreseeable, a written request shall be provided at least ((~~10~~)) ten days, or as early as possible, in advance of the paid leave, unless the employer's normal notice policy requires less advance notice;

2. If the paid leave is unforeseeable, the employee must provide notice as soon as is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures, provided that such requirements do not interfere with the purposes for which the leave is needed.

C. For employees covered by the overtime requirements of ((~~the FLSA,~~)) state and federal laws, accrued paid sick time and paid safe time ((~~may be used in hourly increments or smaller increments if an employer so designates.~~)) shall be used in the smaller of hourly increments or, if feasible by the employer's payroll system, increments that round to the nearest quarter of an hour. When using quarter-hour increments, employers shall use an employee's available paid sick and paid safe time to round up or down to the nearest quarter hour if necessary to prevent an employer's absence control policy from counting paid sick or paid safe time covered under this Chapter 14.16 as an absence that may lead to or result in any adverse action taken against the employee. For ((~~FLSA~~)) overtime exempt employees, an employer may make deductions of paid sick time and paid safe time in accordance with ((~~the FLSA~~)) state and federal laws. For ((~~FLSA~~)) overtime exempt public employees, paid sick time and paid safe time must be used in accordance with a pay system established by statute, ordinance or regulation or by a policy or practice established pursuant to the principles of public accountability.

D. When the use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of sick or safe time in a manner that does not unduly disrupt the operations of the employer.

E. For use of paid sick time of more than three consecutive days for a reason set out in subsection 14.16.030.A.1, an employer may require reasonable documentation that the sick time is covered by subsection 14.16.030.A.1. Documentation signed by a health care provider indicating that sick time is necessary shall be considered reasonable documentation. An employer may not require that the documentation explain the nature of the illness. For any employee who is not offered health insurance by the employer, the employer and the employee shall each pay half the cost of any out-of-pocket expense incurred by the employee in obtaining the employer-requested documentation. These expenses are limited to the cost of services provided by health care professionals, the services of health care facilities, testing prescribed by health care professionals and transportation to the location where such services are provided. An employee who has declined to participate in the health insurance program offered by ((~~his or her~~)) the employer shall not be entitled to reimbursement for out-of-pocket expenses.

F. For use of "paid safe time" of more than three consecutive days for a reason set out in subsection 14.16.030.A.2,

1. an employer may require that requests under subsections 14.16.030.A.2.a and 14.16.030.A.2.b be supported by verification of a closure order by a public official of the employee's child's school or childcare establishment, and the employee may satisfy this verification request by providing notice of the closure order in whatever format the employee received the notice;

2. an employer may require that requests under subsection 14.16.030.A.2.c be supported by verification that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, and that the leave taken was for one of the

purposes covered by subsection 14.16.030.A.2.c. As set out in RCW 49.76.040(4), an employee may satisfy this verification requirement by one or more of the following methods:

a. a police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

b. a court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

c. documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: ((~~An~~)) an advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional. The provision of documentation under this ((~~section~~)) Section 14.16.030 does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subsection 14.16.030.F.2.c; or

d. an employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes of subsection 14.16.030.A.2.c.

G. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid sick or

paid safe time for the original missed hours or shifts. However, the employer may not require the employee to work such additional hours or shifts. Should the employee work additional shifts, the employer shall comply with any applicable federal, state, or local laws concerning overtime pay.

H. Nothing in this ((~~chapter~~)) Chapter 14.16 shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange assigned hours or "trade shifts."((~~.~~))

I. When paid sick or paid safe time is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for sick and safe time, whichever is smaller, may be deducted from the employee's accrued sick and safe time. Should the employee work the substitute hours or shifts, the employer shall comply with any applicable federal, state or local laws concerning overtime pay. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

J. Nothing in this ((~~chapter~~)) Chapter 14.16 shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued paid sick leave to another employee.

K. Each time wages are paid, employers shall provide, in writing, information stating an updated amount of paid time available to each employee for use as either sick time or safe time. Employers may choose a reasonable system for providing this notification, including, but

not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information.

Section 7. A new Section 14.16.035 is added to the Seattle Municipal Code as follows:

14.16.035 Confidentiality and nondisclosure

A. Except as provided in subsection 14.16.035.B, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe days under this Section 14.16.035, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this Chapter 14.16, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

B. Information given by an employee may be disclosed by an employer only if it is:

1. Requested or consented to by the employee;

2. Ordered by a court or administrative agency; or

3. Otherwise required by applicable federal or state law.

Section 8. Section 14.16.040 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.040((~~. Exercise of Rights Protected; Retaliation Prohibited~~)) <u>New employers</u>

((~~A. It shall be a violation for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.~~

~~B. It shall be a violation for an employer to take adverse action or to discriminate against an employee because the employee has exercised in good faith the rights protected under this chapter. Such rights include but are not limited to the right to use paid sick time and/or paid~~

~~safe time pursuant to this chapter; the right to file a complaint with the Agency about any employer's alleged violation of this chapter; the right to inform his or her employer, union or similar organization, and/or legal counsel about an employer's alleged violation of this section; the right to cooperate with the Agency in its investigations of alleged violations of this chapter; the right to oppose any policy, practice, or act that is unlawful under this section; and the right to inform other employees of his or her potential rights under this section.~~

~~C. It shall be a violation for an employer's absence control policy to count paid sick or safe time covered under this chapter as an absence that may lead to or result in any adverse action taken against the employee.~~

~~D. The protections afforded under subsection 14.16.040.B shall apply to any person who mistakenly but in good faith alleges violations of this Section 14.16.040.~~))

The provisions of this Chapter 14.16 shall not apply to Tier 1 and Tier 2 employers until 24 months after the hire date of their first employee. For purposes of this Section 14.16.040, employer tier shall be calculated based upon the average number of full-time equivalents who worked for compensation per calendar week during the first 90 calendar days following the hire date of their first employee.

Section 9. A new Section 14.16.045 is added to the Seattle Municipal Code as follows:

14.16.045 Notice and posting

A. The Agency shall create and distribute a poster giving notice of the rights afforded by this Chapter 14.16. The Agency shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with subsection 14.16.045.B. The poster shall give notice of:

1. The right to paid sick and paid safe time guaranteed by this Chapter 14.16;

2. The amount of paid sick and paid safe time and the terms of its use guaranteed under this Chapter 14.16;

3. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.16; and

4. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 14.16, including an employer's denial of paid sick time and paid safe time as required by this Chapter 14.16, and an employer or other person's retaliation against an employee or other person for requesting or taking paid sick and paid safe time or otherwise engaging in an activity protected by this Chapter 14.16.

B. Employers shall display the poster in a conspicuous and accessible location 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, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

C. Effective April 1, 2016, employers shall give employees written notice of the employer's policy and procedure for meeting the requirements of this Chapter 14.16, including but not limited to the employer's choice of benefit year; tier size; rate of accrual, use and carry-over of paid sick and paid safe time hours; manner of providing employees with an updated amount of available paid sick and safe time hours each time wages are paid; and notification requirements for absences and requesting leave. The Agency shall create and distribute a model policy that employers may use for complying with this subsection 14.16.045.C.

Section 10. Section 14.16.050 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.050((~~. Notice and Posting~~)) Employer records

((~~A. Employers shall give notice that employees are entitled to paid sick time and paid safe time; the amount of paid sick and safe time and the terms of its use guaranteed under this chapter; that retaliation against employees who request or use paid sick and safe time is prohibited; and that each employee has the right to file a complaint or bring a civil action if paid sick time or paid safe time as required by this section is denied by the employer or the employee is retaliated against for requesting or taking paid sick time or paid safe time.~~

~~B. The Agency shall create and make available to employers a poster and a model notice, hereinafter referred to as the "Notice," which contains the information required under subsection A of this Section for their use in complying with this subsection. The poster shall be printed in English and Spanish and any other languages that the Agency determines are needed to notify employees of their rights under this chapter.~~

~~C. Employers may comply with this section by displaying the Agency's poster in a conspicuous and accessible place in each establishment where such employees are employed.~~

~~D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.~~

~~E. To meet the requirements of paragraph D of this section, employers may duplicate the text of the Notice or may use another format so long as the information provided includes, at a minimum, all of the information contained in that Notice.~~

~~F. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed $125 for the first violation and $250 for subsequent violations.~~))

A. Each employer shall retain records documenting hours worked by employees and paid sick and paid safe time used by covered employees. Such records shall be retained for a period of three years from the date such hours were worked or such paid sick and paid safe time was used. Employers shall not be required to modify their recordkeeping policies to comply with this Section 14.16.050, as long as records reasonably indicate employee hours worked in Seattle, accrued paid sick and paid safe time, and used paid sick and paid safe time.

B. If an employer fails to retain adequate records required under subsection 14.16.050.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 14.16 for the periods and for each employee for whom records were not retained.

C. 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 14.16.050.C. The Hearing Examiner shall issue such subpoenas upon a showing that the records are required to fulfill the purpose of this subsection 14.16.050.C.

D. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of this

Chapter 14.16, are required to be maintained as confidential medical records in separate files/records from the employer's usual personnel files. If the Americans with Disabilities Act (ADA) or the Health Insurance Portability and Accountability Act (HIPAA) applies, then these records must comply with such confidentiality requirements.

Section 11. A new Section 14.16.055 is added to the Seattle Municipal Code as follows:

14.16.055 Retaliation prohibited

A. No employer or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 14.16.

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 14.16. Such rights include but are not limited to the right to use paid sick time and/or paid safe time pursuant to this Chapter 14.16; the right to make inquiries about the rights protected under this Chapter 14.16; the right to inform others about their rights under this Chapter 14.16; 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 14.16; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 14.16; the right to cooperate with the Agency in its investigations of this Chapter 14.16; the right to testify in a proceeding under or related to this Chapter 14.16; 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 14.16.

C. No employer or any other person shall communicate to a person exercising rights protected in this Section 14.16.055, 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 family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 14.16.

D. It shall be a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 14.16.055. However, in the case of seasonal work that ended before the close of the 90 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 14.16.055 shall be sufficient upon a showing that an employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 14.16.055 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 14.16.055 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.16.

G. A complaint or other communication by any person triggers the protections of this Section 14.16.055 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.16.

Section 12. Section 14.16.060 of the Seattle Municipal Code, last amended by Ordinance 124809, is amended as follows:

14.16.060((~~. Employer Records~~)) Enforcement power and duties

((~~A. Employers shall retain records documenting hours worked by employees and paid sick time taken by employees, for a period of two years.~~

~~B. Employers shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this Chapter 14.16.~~

~~C. 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.~~

~~D. Employers shall not be required to modify their recordkeeping policies to comply with this section, as long as records reasonably indicate employee hours worked in Seattle, accrued paid sick and safe time, and paid sick and safe time taken. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to an employee under this Chapter 14.16, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick and safe time taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this Chapter 14.16.~~

~~E. Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of this chapter, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) applies, then these records must comply with the ADA confidentiality requirements.~~))

A. The Agency shall have the power to investigate violations of this Chapter 14.16, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.16 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 14.16 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 14.16 and the Administrative Code. 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 14.16.

Section 13. A new Section 14.16.065 is added to the Seattle Municipal Code as follows:

14.16.065 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.16 is a violation.

Section 14. Section 14.16.070 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.070((~~. Regulations~~)) Investigation

((~~The Agency shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines or regulations for such purposes.~~))

A. The Agency shall have the power to investigate any violations of this Chapter 14.16 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the Director including, but not limited to, situations when the Director has reason to believe that

a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.16 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an employee or other person.

B. An employee or other person may report to the Agency any suspected violation of this Chapter 14.16. The Agency shall encourage reporting pursuant to this Section 14.16.070 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 14.16 or for other appropriate purposes.

2. An 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 of 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 the employee's primary language 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. This 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 14.16 and any administrative enforcement proceeding under this Chapter 14.16 based upon the same facts. For purposes of this Chapter 14.16:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.16, or the Agency opens an investigation under this Chapter 14.16.

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 an employer to produce the records identified in subsection 14.16.050.A, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under subsection 14.16.050.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 paid sick and paid safe time under this Chapter 14.16 and/or to whether an employer has violated any provision of this Chapter 14.16. 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 14.16 or the workforce is unlikely to volunteer information regarding such violations.

F. An employer that fails to comply with the terms of any subpoena issued under subsection 14.16.070. E. in an investigation by the Agency under this Chapter 14.16 prior to the issuance of a Director's Order issued pursuant to subsection 14.16.075.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 14.16.070.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 wages, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 14.16.085.

Section 15. A new Section 14.16.075 is added to the Seattle Municipal Code as follows:

14.16.075 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 14.16 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 14.16, 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 14.16 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 14.16 for each violation, including payment of unpaid wages, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 14.16.080. 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 14.16.080.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 14.16, 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 14.16.085.

Section 16. Section 14.16.080 of the Seattle Municipal Code, last amended by Ordinance 123899, is amended as follows:

14.16.080((~~. Enforcement~~)) <u>Remedies</u>

((~~A. Powers and duties~~

~~1. of Agency~~

~~a. The Agency shall receive, investigate, and pass upon charges alleging violations of this chapter as defined herein, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent~~

~~hearing thereon under and pursuant to the terms of this chapter; and shall have such powers and duties in the performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Agency shall further assist other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.~~

~~b. The Director of the Agency is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code.~~

~~2. of Commission~~

~~The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy thereof. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in subsections 14.16.080.H and 14.16.080.I. The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law.~~

~~B. Charge filing, timing, amendments, notice and investigation.~~

~~1. A charge alleging a violation of this chapter shall be in writing on a form or in a format determined by the Agency, and signed by or on behalf of a charging party, and shall describe the violation complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.~~

~~2. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made.~~

~~3. A charge shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.~~

~~4. A charge alleging a violation of this chapter or pattern of such violations may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.~~

~~5. Charges filed under this chapter must be filed within 180 days after the occurrence of the alleged violation of this chapter with the Agency.~~

~~6. In addition to any relief authorized by this chapter, liability may accrue and an aggrieved person may obtain relief as provided in this chapter, including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful practices that have occurred during the charge filing period are similar or related to unlawful practices with regard to sick time or safe time that occurred outside the time for filing a charge.~~

~~7. The charging party or the Agency may amend a charge to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The amendment must be filed within 180 days after the occurrence of the additional violation and/or retaliation and prior to the Agency's issuance of findings of fact and a~~

~~determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Agency will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Agency with evidence concerning such allegations before the issuance of findings of fact and a determination.~~

~~8. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.~~

~~9. The investigation shall be directed to ascertain the facts concerning the violation of this Chapter alleged in the charge, and shall be conducted in an objective and impartial manner.~~

~~10. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include the taking of interrogatories and oral depositions.~~

~~11. The Director may require a fact finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and charging party during the investigation in order to define the issues, determine which elements are~~

~~undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal counsel present if desired.~~

~~C. Findings of fact and determination of reasonable cause or no reasonable cause.~~

~~1. The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that a violation of this chapter has been or is being committed, which determination shall also be in writing and issued with the written findings of fact. Where a City department is a respondent the Director shall issue such findings and determination only after having submitted proposed findings and determinations to the respondent and charging party for review and comment. With respect to the findings and determination, "issued" shall be defined as signed and dated by the Director.~~

~~2. The findings of fact and determination shall be furnished promptly to the respondent and charging party.~~

~~3. Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Seattle Human Rights Commission after an appeal taken pursuant to Section 14.16.080.D or 14.16.080.G provided, that the Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.~~

~~D. Determination of no reasonable cause - Appeal from and dismissal. If a determination is made that there is no reasonable cause for believing a violation of this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a~~

~~written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error. The Commission shall promptly deliver a copy of the statement to the Agency and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or remanding it to the Director with appropriate instructions. In considering such appeals the Commission shall only review whether the investigation was adequate and the Director's findings are supported by a preponderance of the evidence. The burden shall be on the charging party to demonstrate that the matter should be remanded to the Director. In the event no appeal is taken or such appeal results in affirmance, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Agency.~~

~~E. Determination of reasonable cause—Conciliation and settlement of cases involving all respondents except City departments.~~

~~1. In all cases except a case in which a City department is the respondent, if a reasonable cause determination is made, the Director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. Conditions of settlement may include (but are not limited to) the elimination of the unlawful practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Any settlement agreement shall be reduced to writing and signed by the Director, the charging party and the respondent. An order shall then be entered by the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.~~

~~2. In case of failure to reach an agreement and of conciliation and upon a written finding to that effect furnished to the charging party and respondent, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this chapter pursuant to Section 14.16.080.H.~~

~~F. Determinations of reasonable cause—Conciliation, settlement and conclusion of cases involving City departments as respondents. In all cases in which a City department is a respondent:~~

~~1. A determination of reasonable cause by the Director shall be deemed a finding that an unlawful practice has been committed by respondent and is dispositive of this issue for all future proceedings under this chapter, unless appealed, reversed and remanded as provided in this chapter.~~

~~2. Within sixty days of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which remedy may include (but is not limited to) hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Such remedy shall be reduced to writing in an order of the Director.~~

~~3. The charging party must sign a release in the form and manner requested by the Department, releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual~~

~~relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.~~

~~4. In all cases where the remedy determined by the Director before or after any appeal includes a monetary payment which exceeds the sum of $5,000, the charge or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within 90 days, the Director shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.~~

~~5. Where the Director's order includes a monetary payment of $5,000 or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims.~~

~~G. Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents. In all cases in which a City department is a respondent:~~

~~1. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within 30 days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.~~

~~2. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either~~

~~affirming the Director's determination or order or remanding it to the Director with appropriate instructions.~~

~~3. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.~~

~~4. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's determination or order only upon a finding that it is clearly erroneous.~~

~~H. Complaint and hearing of cases with all respondents except City departments.~~

~~1. Following submission of the investigatory file from the Director in cases involving all respondents under 14.16.080.E, the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement of the reasons therefore shall be filed with the Department, charging party and the respondent.~~

~~2. The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished to the charging party.~~

~~3. Within 20 days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.~~

~~4. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than 90 days nor later than 120 days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.~~

~~5. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to prepare their case with respect to additional or expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.~~

~~6. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with SMC Chapter 3.02 and the Hearing Examiner rules applicable to cases brought under this Title 14.~~

~~7. The Commission, within 30 days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the~~

~~Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.~~

~~8. The review of all matters properly brought under this subsection 14.16.080.H shall be de novo. Nothing in this paragraph shall be construed to limit or prevent de novo review of matters brought before the Hearing Examiner (or the Hearing Examiner and members of the Commission as the case may be) under Sections 14.04.170, 14.06.110, 14.08.170, or 14.10.130.~~

~~I. Decision and order.~~

~~1. Within 30 days after conclusion of the hearing, the Hearing Examiner (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order, file it as a public record with the City Clerk, and provide a copy to each party of record and to the Agency.~~

~~2. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefore.~~

~~3. In the event the Hearing Examiner (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice,~~

~~effectuate the purpose of this Chapter 14.16, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed $10,000. Back pay liability shall not accrue from a date more than 2 years prior to the initial filing of the charge.~~

~~4. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Agency as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.~~

~~K. Violation – Penalty. It is unlawful for any person to willfully engage in an unfair practice under this chapter or willfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.02 of the Seattle Criminal Code (Ordinance 102843, as amended), and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed $500.~~))

A. The payment of unpaid wages, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 14.16 are cumulative and are not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. Effective January 1, 2017, the amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 14.16.080 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If there is a remedy due to an aggrieved party, the Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the Director's Order. The Director shall not waive any amount of civil penalties and fines due to the Agency if the Director determines that the respondent has not paid the full remedy due to the aggrieved party after 15 days of service of the Director's Order.

3. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 14.16.080 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 14.16.080.A.2, the Director shall consider the total amount of unpaid wages, liquidated damages, penalties, fines, and interest due; the nature and persistence of the violations; the extent of the respondent's culpability; the substantive or technical nature of the violations; the size, revenue, and human resources capacity of the respondent; the circumstances of each

1 situation; the amount of penalties in similar situations; and other factors pursuant to rules issued
2 by the Director.
3 B. A respondent found to be in violation of this Chapter 14.16 shall be liable for full
4 payment of unpaid wages due, provided that the employee is not entitled to payment for lost tips
5 or commissions for paid sick and paid safe time as defined in Section 14.16.010, plus interest in
6 favor of the aggrieved party under the terms of this Chapter 14.16 and other equitable relief. For
7 a first violation of this Chapter 14.16, the Director may assess liquidated damages in an
8 additional amount of up to twice the unpaid wages. For subsequent violations of this Chapter
9 14.16, the Director shall assess liquidated damages in an additional amount of twice the unpaid
10 wages. If the violation is ongoing when the Agency receives a complaint or opens an
11 investigation, the Director may order payment of amounts that accrue after receipt of the
12 complaint or after the investigation opens and before the date of the Director's Order. Interest
13 shall accrue from the date the unpaid wages were first due at 12 percent per annum, or the
14 maximum rate permitted under RCW 19.52.020. For purposes of this Section 14.16.080, a
15 violation is a subsequent violation if at least one Director's Order has issued against the
16 respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.
17 C. A respondent found to be in violation of Section 14.16.055 for retaliation shall be
18 subject to any appropriate relief at law or equity including, but not limited to reinstatement of the
19 aggrieved party, front pay in lieu of reinstatement with full payment of unpaid wages plus
20 interest in favor of the aggrieved party under the terms of this Chapter 14.16, and liquidated
21 damages in an additional amount of up to twice the unpaid wages. The Director also shall order
22 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 Section 14.16.045 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 14.16 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 14.16, the Director may assess a civil penalty of up to $500 per aggrieved party. For a second violation of this Chapter 14.16, 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 wages, whichever is greater. For a third or any subsequent violation of this Chapter 14.16, 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 wages, whichever is greater. The maximum civil penalty for a violation of this Chapter 14.16 shall be $20,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. For purposes of this Section 14.16.080, 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, ore 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 notification each time wages	$500

are paid, an updated amount of paid time available for use as paid sick and paid safe time under subsection 14.16.030.K	
Failure to provide employees with written notice of rights under subsection 14.16.045.B	$500
Failure to provide employees with employer's written policy and procedure for meeting paid sick and paid safe time requirements under Section 14.16.045.C	$500
Failure to maintain employer records for three years under subsection 14.16.050.A	$500 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.16.055	$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.16.070.B.2	$500
Failure to provide notice of failure to comply with final order to public under subsection 14.16.100.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 respondent 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 wages, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 14.16, including but not limited to reasonable attorneys' fees.

I. An employer that is the subject of a final order for which all appeal rights have been exhausted shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If an 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 14.16.080.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 14.16.080.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 14.16.080.I.

Section 17. A new Section 14.16.085 is added to the Seattle Municipal Code as follows:

14.16.085 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 14.16 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 14.16.080, 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.

Section 18. Section 14.16.090 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.090((~~. New Employers~~)) Appeal procedure and failure to appear

((~~The provisions of this Chapter shall not apply to Tier One and Tier Two employers until 24 months after the hire date of their first employee. For the purposes of this section, employer tier shall be calculated based upon the average number of full-time equivalents employed per calendar week during the first 90 calendar days following the hire date of their first employee.~~))

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

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

Section 19. A new Section 14.16.095 is added to the Seattle Municipal Code as follows:

14.16.095 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 14.16.095.

Section 20. Section 14.16.100 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.100((~~. Confidentiality and Nondisclosure~~)) Failure to comply with final order

((~~A. Except as provided in subsection B of this section, an employer shall maintain the confidentiality of information provided by the employee or others in support of an employee's request for sick or safe days under this section, including health information and the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this act, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.~~

~~B. Information given by an employee may be disclosed by an employer only if it is~~

~~1. requested or consented to by the employee;~~

~~2. ordered by a court or administrative agency; or~~

~~3. otherwise required by applicable federal or state law.~~))

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 Director's Order or a final order of the Hearing Examiner under Section 14.16.105.

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 14.16.100.A.4.

B. No respondent that is the subject of a final order issued under this Chapter 14.16 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 a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the 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.

Section 21. A new Section 14.16.105 is added to the Seattle Municipal Code as follows:

14.16.105 Debt owed The City of Seattle

A. All monetary amounts due under the 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 wages, 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 14.16.085.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the Director's Order by entering judgment in favor of the City finding that the

respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 14.16.085.B, and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 14.16.095.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 14.16.095.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.16.105.B and 14.16.105.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 14.16.

Section 22. Section 14.16.110 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.110((~~. Encouragement of more generous sick time policies; no effect on more generous policies~~)) Private right of action

((~~A. Nothing in this chapter shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick and safe time policy more generous than the one required herein.~~

~~B. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick and safe time to an employee than required herein.~~

~~C. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding paid sick or safe time or use of sick or safe time as provided under federal or Washington state law, or the Seattle Municipal Code.~~))

A. Effective April 1, 2016, for claims against employers that employ 50 or more employees and effective April 1, 2017 for claims against employers that employ fewer than 50 employees, any person or class of persons that suffers financial injury as a result of a violation of this Chapter 14.16 or is the subject of prohibited retaliation under Section 14.16.080, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter 14.16 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 wages plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid wages; and a penalty payable to any aggrieved party of up to $5000 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid wages were first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of determining employer size for this Section 14.16.110,

1. An employee who is not covered by this Chapter 14.16 shall be included in any determination of employer size.

2. Employer size for the current calendar year will be calculated based upon 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 employer size 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.

3. All employees who worked for compensation shall be counted, including but not limited to:

a. Employees who worked inside the City;

b. Employees who worked outside the City; and

c. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.

4. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.16. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.16 where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

a. Degree of interrelation between the operations of multiple entities;

b. Degree to which the entities share common management;

c. Centralized control of labor relations; and

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

C. For purposes of this Section 14.16.110, "person" includes any entity a member of which has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury or retaliation.

D. For purposes of determining membership within a class of persons entitled to bring an action under this Section 14.16.110, two or more employees are similarly situated if they:

1. Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period,

2. Allege one or more violations that raise similar questions as to liability, and

3. Seek similar forms of relief.

E. For purposes of subsection 14.16.110.D, employees shall not be considered dissimilar solely because their

1. Claims seek damages that differ in amount, or

2. Job titles or other means of classifying employees differ in ways that are unrelated to their claims.

Section 23. A new Section 14.16.115 is added to the Seattle Municipal Code as follows:

14.16.115 Encouragement of more generous policies

A. Nothing in this Chapter 14.16 shall be construed to discourage or prohibit an employer from the adoption or retention of a paid sick and paid safe time policy more generous than the one required herein.

B. Nothing in this Chapter 14.16 shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous sick and paid safe time to an employee than required herein.

C. Nothing in this Chapter 14.16 shall be construed as diminishing the rights of public employees regarding paid sick or paid safe time or use of sick or paid safe time as provided under federal or Washington state law or the Seattle Municipal Code.

Section 24. Section 14.16.120 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.120((~~. Waiver of the Provisions of the Chapter~~)) Waiver; Effect on collective bargaining rights

The provisions of this ((~~chapter~~)) Chapter 14.16 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 in clear and unambiguous terms.

Any waiver by an individual of any provisions of this ((~~chapter~~)) Chapter 14.16 shall be deemed contrary to public policy and shall be void and unenforceable.

Section 25. A new Section 14.16.125 is added to the Seattle Municipal Code as follows:

14.16.125 Other legal requirements

A. This Chapter 14.16 provides minimum requirements pertaining to paid sick and paid safe time 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 accrual or use by employees of sick or safe time, whether paid or unpaid, or that extends other protections to employees; and nothing in this Chapter 14.16 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter 14.16 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 14.16 affecting such person.

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

1. Available paid leave may be used for the same purposes and under the same conditions as paid sick and paid safe time as set forth in this Chapter 14.16; and

2. Paid leave is accrued at the rate consistent with this Chapter 14.16; and

3. Use of paid leave within any benefit year is limited to no less than the amounts specified in this Chapter 14.16; and

4. Any accrued but unused paid leave may be carried over to the following benefit year consistent with this Chapter 14.16.

Section 26. Section 14.16.130 of the Seattle Municipal Code, enacted by Ordinance 123698, is amended as follows:

14.16.130((~~. Other Legal Requirements~~)) <u>Severability</u>

((~~This chapter provides minimum requirements pertaining to paid sick and safe time 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 accrual or use by employees of sick or safe time, whether paid or unpaid, or that extends other protections to employees; and nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.~~))

<u>The provisions of this Chapter 14.16 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.16, or the application thereof to any employer, employee, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 14.16, or the validity of its application to other persons or circumstances.</u>

Section 27. A new Section 14.17.005 is added to the Seattle Municipal Code as follows:

14.17.005 Short Title

This Chapter 14.17 shall constitute the "Fair Chance Employment Ordinance" and may be cited as such.

Section 28. Section 14.17.010 of the Seattle Municipal Code, last amended by Ordinance 124644, is amended as follows:

14.17.010 Definitions

For ((~~the~~)) purposes of this ((~~chapter~~)) Chapter 14.17:

"Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, 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 14.17.030. "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" ((~~shall mean~~)) means the Office for Civil Rights and any division therein.

"Aggrieved party" means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this Chapter 14.17.

"Arrest record" ((~~shall mean~~)) means information indicating that a person has been apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency or military authority due to an accusation or suspicion that the person committed a crime.

"City" ((~~shall mean~~)) means the City of Seattle.

((~~"Charging party" means a person who files an Agency charge claiming he was aggrieved by an alleged violation of this chapter.~~

"~~Commission" means the Seattle Human Rights Commission.~~))

"Conviction Record" and "Criminal History Record Information" ((~~is~~)) are meant to be consistent with chapter 10.97 RCW ((~~10.97~~)) and means information regarding a final criminal adjudication or other criminal disposition adverse to the subject, including a verdict of guilty, a finding of guilty, or a plea of guilty or nolo contendere. A criminal conviction record does not include any prior conviction that has been the subject of an expungement, vacation of conviction, sealing of the court file, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a prior conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the adverse disposition has been vacated or expunged.

"Criminal background check" ((~~shall mean~~)) means requesting or attempting to obtain, directly or through an agent, an individual's Conviction Record or Criminal History Record Information from the Washington State Patrol or any other source that compiles and maintains such records or information.

"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" ((~~shall mean~~)) means any individual employed by an employer, ((~~who performs any services for an employer, when the physical location of such services is in whole or in substantial part (at least 50 % of the time) within the City.~~)) including but not limited to full-time employees, part-time employees, and temporary workers.

1. An employer bears the burden of proof that the individual is in business for oneself rather than dependent upon the alleged employer.

2. For purposes of this ((~~chapter~~)) Chapter 14.17, "employee" does not include an individual whose job duties or prospective job duties include law enforcement, policing, crime prevention, security, criminal justice, or private investigation services. In addition, "employee" does not include an individual who will or may have unsupervised access to children under ((~~sixteen~~)) 16 years of age, developmentally disabled persons, or vulnerable adults during the course of ((~~his or her~~)) the individual's employment.

"Employer" ((~~shall mean any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer. For purposes of this chapter, "employer" includes job placement, referral, and employment agencies.~~)) 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 an employer in relation to an employee.

1. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer.

2. For purposes of this Chapter 14.17, "employer" ((~~"Employer"~~)) does not include any of the following:

((~~1.~~))a. The United States government;

((~~2.~~))b. The State of Washington, including any office, department, agency, authority, institution, association, society, or other body of the state, including the legislature and the judiciary;

((~~3.~~))c. Any county or local government other than the City.

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

"Job applicant" ((~~shall mean~~)) means any individual who applies or is otherwise a candidate to become an employee, as defined in this Chapter 14.17.

A "legitimate business reason" shall exist where, based on information known to the employer at the time the employment decision is made, the employer believes in good faith that the nature of the criminal conduct underlying the conviction or the pending criminal charge either:

1. Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or

2. Will harm or cause injury to people, property, business reputation, or business assets, and the employer has considered the following factors:

a. the seriousness of the underlying criminal conviction or pending criminal charge ((~~,~~)) ; and ((~~;~~))

b. the number and types of convictions or pending criminal charges ((~~,~~)) ; and ((~~;~~))

c. the time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration ((~~,~~)) ; and ((~~;~~))

d. any verifiable information related to the individual's rehabilitation or good conduct, provided by the individual ((~~,~~)) ; and ((~~;~~))

e. the specific duties and responsibilities of the position sought or held ((~~,~~)) ; and ((~~;~~))

f. the place and manner in which the position will be performed.

"Pending criminal charge" means an existing accusation that an individual has committed a crime, lodged by a law enforcement agency or military authority through an indictment, information, complaint, or other formal charge, where the accusation has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal, or withdrawal.

"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.

"Respondent" means an employer or any ((~~employer~~)) person who is alleged or found to have committed a violation of this ((~~chapter~~)) Chapter 14.17.

"Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this definition, "person" means 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.

"Tangible adverse employment action" means a decision by an employer to reject an otherwise qualified job applicant, or to terminate, suspend, discipline, demote, or deny a promotion to an employee.

"Wage" means compensation due to an 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.

Section 29. A new Section 14.17.015 is added to the Seattle Municipal Code as follows:

14.17.015 Employment in Seattle

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

Section 30. A new Section 14.17.025 is added to the Seattle Municipal Code as follows:

14.17.025 Notice and posting

A. The Agency shall create and distribute a poster giving notice of the rights afforded by this Chapter 14.17. The Agency shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with subsection 14.17.025.B. The poster shall give notice of:

1. the right to fair chance employment and regulation of an employer's use of arrest and conviction records by this Chapter 14.17;

2. the right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.17; and

3. the right to file a complaint with the Agency for violation of the requirements of this Chapter 14.17, including an employer's improper use of arrest and conviction records in an employment decision, and an employer or other person's retaliation against an employee or other person for engaging in an activity protected by this Chapter 14.17.

B. Effective April 1, 2016, employers shall display the poster in a conspicuous and accessible location where any of their employees work. Employers shall display the poster in

English and in the primary language of the employee(s) at the particular workplace. If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace, 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.

Section 31. Section 14.17.030 of the Seattle Municipal Code, enacted by Ordinance 124201, is amended as follows:

14.17.030 ((~~Effect on Collective Bargaining Rights And Other Laws~~)) <u>Retaliation prohibited</u>

((~~A. This chapter shall not be construed to interfere with, impede, or in any way diminish any provision in a collective bargaining agreement or the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment.~~

~~B. This chapter shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including Title VII of the Civil Rights Act of 1964, the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as amended, the Washington State Fair Credit Reporting Act, RCW 19.182, as amended, the Washington State Criminal Records Privacy Act, RCW 10.97, as amended, and state laws regarding criminal background checks, including those related to individuals with access to children or vulnerable persons, RCW 43.43.830, et seq., as amended. In the event of any conflict, state and federal requirements shall supersede the requirements of this chapter.~~

~~C. This chapter shall not be interpreted or applied as imposing an obligation on the part of an employer to provide accommodations or job modifications in order to facilitate the~~

~~employment or continued employment of an applicant or employee with a conviction record or who is facing pending criminal charges.~~

~~D. Nothing in this chapter shall be construed to discourage or prohibit an employer from adopting employment policies that are more generous to employees and job applicants than the requirements of this chapter.~~

~~E. This chapter shall not be construed to create a private civil right of action to seek damages or remedies of any kind.~~))

A. No employer or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 14.17.

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 14.17. Such rights include but are not limited to the right to right to fair chance employment and regulation of an employer's use of arrest and conviction records by this Chapter 14.17; the right to make inquiries about the rights protected under this Chapter 14.17; the right to inform others about their rights under this Chapter 14.17; 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 14.17; the right to file an oral or written complaint with the Agency for an alleged violation of this Chapter 14.17; the right to cooperate with the Agency in its investigations of this Chapter 14.17; the right to testify in a proceeding under or related to this Chapter 14.17; 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 14.17.

C. No employer or any other person shall communicate to a person exercising rights protected in this Section 14.17.030, 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 family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 14.17.

D. It shall be a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 14.17.030. However, in the case of seasonal work that ended before the close of the 90 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 14.17.030 shall be sufficient upon a showing that an employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 14.17.030 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 14.17.030 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.17.

G. A complaint or other communication by any person triggers the protections of this Section 14.17.030 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.17.

Section 32. A new Section 14.17.035 is added to the Seattle Municipal Code as follows:

14.17.035 Enforcement power and duties

A. The Agency shall have the power to investigate violations of this Chapter 14.17, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.17 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 14.17 and shall promulgate appropriate guidelines or rules for such purposes.

C. The Director is authorized and directed to promulgate rules consistent with this Chapter 14.17 and the Administrative Code. 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 14.17.

D. The Director shall convene a panel of stakeholders with a balance of perspectives, including members of the employer, social service, legal community and the Seattle Human Rights Commission to help develop the appropriate guidelines and rules to implement this ordinance, and to oversee and provide input and feedback to the Director on the implementation of this ordinance for at least the first six months after the effective date of Ordinance 124201.

E. The Director shall maintain data on the number of complaints filed pursuant to this Chapter 14.17, demographic information on the complainants, the number of investigations it conducts and the disposition of every complaint and investigation. The Director shall submit this data to the City Council every six months for the two years following the effective date of Ordinance 124201.

F. Upon the written request of an employer, the Director has the authority to extend the implementation date for that employer, for a reasonable amount of time, to provide the employer time to make the necessary changes to their employment systems or forms.

Section 33. Section 14.17.040 of the Seattle Municipal Code, enacted by Ordinance 124201, is amended as follows:

14.17.040 ((~~Regulations~~)) Violation

((~~A. The Agency shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines or regulations for such purposes. The Agency shall convene a panel of stakeholders with a balance of perspectives, including members of the employer, social service, legal community and the Seattle Human Rights Commission to help develop the appropriate guidelines and regulations to implement this ordinance, and to oversee and provide input and feedback to the Director on the implementation of this ordinance for at least the first six months after the ordinance's effective date. Upon the written request of an employer, the Director has the authority to extend the implementation date for that employer, for a reasonable amount of time, to provide the employer time to make the necessary changes to their employment systems or forms.~~

~~B. The Agency will maintain data on the number of complaints filed pursuant to this chapter, demographic information on the complainants, the number of investigations it conducts and the disposition of every complaint and investigation. This data shall be submitted to the City Council every six months for the two years following the date this ordinance takes effect.~~))

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.17 is a violation.

Section 34. A new Section 14.17.045 is added to the Seattle Municipal Code as follows:

14.17.045 Investigation

A. The Agency shall have the power to investigate any violations of this Chapter 14.17 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the Director including, but not limited to, situations when the Director has reason to believe that a violation has occurred or will occur, when circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.17 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an employee or other person.

B. An employee or other person may report to the Agency any suspected violation of this Chapter 14.17. The Agency shall encourage reporting pursuant to this Section 14.17.045 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 14.17 or for other appropriate purposes.

2. An 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 of 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 the employee's primary language 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. This 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 14.17 and any administrative enforcement proceeding under this Chapter 14.17 based upon the same facts. For purposes of this Chapter 14.17:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.17, or the Agency opens an investigation under this Chapter 14.17.

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 for the attendance and testimony of witnesses, or for the production of documents relevant to the issue of whether an employer has violated any provision of this Chapter 14.17. 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 14.17 or the workforce is unlikely to volunteer information regarding such violations.

F. An employer that fails to comply with the terms of any subpoena issued under subsection 14.17.045.E. in an investigation by the Agency under this Chapter 14.17 prior to the issuance of a Director's Order issued pursuant to subsection 14.17.050.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 14.17.045.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 wages, interest, damages and penalties due. A respondent may appeal any such order in accordance with subsection 14.17.060.B.

Section 35. Section 14.17.050 of the Seattle Municipal Code, enacted by Ordinance 124201, is amended as follows:

14.17.050 ((~~Exercise of Rights Protected; Retaliation Prohibited~~)) <u>Findings of fact and determination</u>

((~~A. It shall be a violation for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.~~

~~B. It shall be a violation for an employer or any other person to retaliate against an employee or job applicant because the employee or applicant has exercised in good faith the right to file a complaint with the Agency about any employer's alleged violation of this chapter, the right to cooperate in the Agency's investigation, or the right to oppose any policy, practice, or act that is unlawful under this chapter.~~

~~C. The protections afforded under subsection 14.17.050.B shall apply to any person who mistakenly but in good faith alleges violations of this chapter.~~))

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 14.17 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 14.17, 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 14.17 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 14.17 for each violation, including payment of unpaid wages, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 14.17.055. 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 14.17.055.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 14.17, 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 14.17.060.

Section 36. A new Section 14.17.055 is added to the Seattle Municipal Code as follows:

14.17.055 Remedies

A. The payment of unpaid wages, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 14.17 are cumulative and are not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. Effective January 1, 2017, the amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 14.17.055 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If there is a remedy due to an aggrieved party, the Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the Director's Order. The Director shall not waive any amount of civil penalties and fines due to the Agency if the Director determines that the respondent has

not paid the full remedy due to the aggrieved party after 15 days of service of the Director's Order.

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

B. If a 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 wages were first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

C. A respondent found to be in violation of this Chapter 14.17 for retaliation under Section 14.17.040 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 wages plus interest in favor of the aggrieved party under the terms of this Chapter 14.17, and liquidated damages in an additional amount of up to twice the unpaid wages. The Director also shall order a penalty payable to the aggrieved party of up to $5,000.

D. A respondent who willfully violates the notice and posting requirements of Section 14.17.025 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 14.17 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 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to $500 per aggrieved party, payable to the aggrieved job applicant, employee or other aggrieved person. For a second violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to $1,000 per aggrieved party, payable to the aggrieved job applicant, employee, or other aggrieved person. For a third or any subsequent violation of this Chapter 14.17, the Director shall issue an order requiring the respondent to pay a penalty of up to $5,000 per aggrieved party, payable to the aggrieved job applicant, employee, or other aggrieved person. If there is no identified job applicant, employee, or aggrieved person, the penalty required by this subsection 14.17.055.F shall be paid to the Agency as a civil penalty. For purposes of this Section 14.17.055, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two Settlement Agreements, respectively, stipulating that a violation has occurred; and or one, two, or more than two Director's Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

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

Violation	Fine

Failure to provide employees with written notice of rights under Section 14.17.025.B	$500
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.17.030	$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.17.045.B.2	$500
Failure to provide notice of failure to comply with final order to public under subsection 14.17.075.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 wages, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 14.17, including but not limited to reasonable attorneys' fees.

I. An employer that is the subject of a final order for which all appeal rights have been exhausted shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If an 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 14.17.055.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 14.16.080.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 14.17.055.I.

Section 37. Section 14.17.060 of the Seattle Municipal Code, enacted by Ordinance 124201, is amended as follows:

14.17.060 ((~~Enforcement~~)) Appeal period and failure to respond

((~~A. The same complaint, investigation, and enforcement procedures set forth in SMC 14.16.080 apply under this chapter, except that when there is a determination that a respondent has violated this chapter, the exclusive remedy available under this chapter is a notice of infraction and offer of Agency assistance for the first violation; an order requiring the respondent to pay a monetary penalty of up to $750, payable to the charging party, for the second violation; and a monetary penalty of up to $1000, payable to the charging party, for each subsequent violation. In the event the Hearing Examiner or panel majority determines that a respondent has committed a violation of this chapter, the Hearing Examiner or panel majority may order the respondent to pay the Agency's attorney's fees in addition to a monetary penalty. No other remedies, damages, or affirmative action may be ordered by the Agency, Commission, or Hearing Examiner.~~

~~B. The Agency has the authority to initiate investigation procedures on its own, without a complaint from a Charging Party, and enforcement procedures after a complaint has been received either from an applicant who feels unjustly treated, or from the applicant's~~

~~representative, or when the Agency has reasonable cause based on substantial and verifiable information to believe that an employer has violated subsection SMC 14.17.020.A of this chapter.~~))

A. An employee or other person who claims an injury as a result of an alleged violation of this Chapter 14.17 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 14.17.055, 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.

Section 38. A new Section 14.17.065 is added to the Seattle Municipal Code as follows:

14.17.065 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 proving by a preponderance of the evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing shall result in an order being entered finding that the respondent committed the violation stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

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

Section 39. A new Section 14.17.070 is added to the Seattle Municipal Code as follows:

14.17.070 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 14.17.070.

Section 40. A new Section 14.17.075 is added to the Seattle Municipal Code as follows:

14.17.075 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 Director's Order or a final order of the Hearing Examiner under Section 14.17.080.

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 14.17.075.A.4.

B. No respondent that is the subject of a final order issued under this Chapter 14.17 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 a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the 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.

Section 41. A new Section 14.17.080 is added to the Seattle Municipal Code as follows:

14.17.080 Debt owed The City of Seattle

A. All monetary amounts due under the 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 wages, 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 14.17.060.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the Director's Order by entering judgment in favor of the City finding that the respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 14.17.060.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 14.17.070.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 14.17.070.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.17.080.B and 14.17.080.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 14.17.

Section 42. A new Section 14.17.085 is added to the Seattle Municipal Code as follows:

14.17.085 Effect on collective bargaining rights

This Chapter 14.17 shall not be construed to interfere with, impede, or in any way diminish any provision in a collective bargaining agreement or the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment.

Section 43. A new Section 14.17.090 is added to the Seattle Municipal Code as follows:

14.17.090 Other legal requirements

A. This Chapter 14.17 shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including Title VII of the Civil Rights Act of 1964, the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et. seq., as amended, the Washington State Fair Credit Reporting Act, chapter 19.182 RCW, as amended, the Washington State Criminal Records Privacy Act, chapter 10.97 RCW, as amended, and state laws regarding criminal background checks, including those related to individuals with access to children or vulnerable persons, RCW 43.43.830 et seq., as amended. In the event of any conflict, state and federal requirements shall supersede the requirements of this Chapter 14.17.

B. This Chapter 14.17 shall not be interpreted or applied as imposing an obligation on the part of an employer to provide accommodations or job modifications in order to facilitate the employment or continued employment of an applicant or employee with a conviction record or who is facing pending criminal charges.

C. Nothing in this Chapter 14.17 shall be construed to discourage or prohibit an employer from adopting employment policies that are more generous to employees and job applicants than the requirements of this Chapter 14.17.

D. This Chapter 14.17 shall not be construed to create a private civil right of action.

Section 44. A new Section 14.17.095 is added to the Seattle Municipal Code as follows:

14.17.095 Severability

The provisions of this Chapter 14.17 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.17, or the application thereof to any employer, employee, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 14.17, or the validity of its application to other persons or circumstances.

Section 45. A new Section 14.19.005 is added to the Seattle Municipal Code as follows:

14.19.005 Short title

This Chapter 14.19 shall constitute the "Minimum Wage Ordinance" and may be cited as such.

Section 46. Section 14.19.010 of the Seattle Municipal Code, last amended by Ordinance 124644, is amended as follows:

14.19.010 Definitions

For ((~~the~~)) purposes of this Chapter 14.19:

"Actuarial value" means the percentage of total average costs for covered benefits that a health benefits package will cover;

"Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, 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 14.19.055. "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 an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this Chapter 14.19;

"Bonuses" means non-discretionary payments in addition to hourly, salary, commission, or piece-rate payments paid under an agreement between the employer and employee;

"Business" and "engaging in business" have the same meanings as in Chapter 5.30;

"City" means the City of Seattle;

"Commissions" means a sum of money paid to an employee upon completion of a task, usually selling a certain amount of goods or services;

"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 "employee," as defined under Section 12A.28.200,((~~. Employee does not include individuals performing services under a work study agreement~~)) including but not limited to full-time employees, part-time employees, and temporary workers. An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged employer.

"Employer" ((~~means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;~~)) 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 an employer in relation to an employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer;

"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; designating, 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;

"Hearing Examiner" means the official appointed by the Council and designated as the Hearing Examiner, or that person's designee (Deputy Hearing Examiner, Hearing Examiner Pro Tem, etc.);

"Hourly minimum compensation" means the minimum compensation due to an employee for each hour worked during a pay period;

"Hourly minimum wage" means the minimum wage due to an employee for each hour worked during a pay period;

"Medical benefits plan" means a silver or higher level essential health benefits package, as defined in 42 U.S.C. section 18022, or an equivalent plan that is designed to provide benefits that are actuarially equivalent to 70 percent of the full actuarial value of the benefits provided under the plan, whichever is greater;

"Minimum compensation" means the minimum wage in addition to tips actually received by the employee and reported to the Internal Revenue Service, and money paid by the employer towards an individual employee's medical benefits plan;

"Minimum wage" means all wages, commissions, piece-rate, and bonuses actually received by the employee and reported to the Internal Revenue Service;

"Piece-rate" means a price paid per unit of work;

"Rate of inflation" means ((~~the Consumer Price Index annual percent change for urban wage earners and clerical workers, termed CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States Department of Labor;~~)) 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;

"Respondent" means an employer or any person who is alleged or found to have committed a violation of this Chapter 14.19;

"Schedule 1 ((~~Employer~~)) employer" means all employers that employ more than 500 employees ((~~in the United States~~)), regardless of where those employees are employed, ((~~in the United States,~~)) and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate; ((~~in the United States;~~))

"Schedule 2 ((~~Employer~~)) employer" means all employers that employ 500 or fewer employees regardless of where those employees are employed. ((~~in the United States.~~)) Schedule 2 employers do not include franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate; ((~~in the United States;~~))

"Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this definition, "person" means 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;

"Tips" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip;

"Wage" means compensation due to an 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. Commissions, piece-rate, and bonuses are included in wages. Tips and employer payments toward a medical benefits plan do not constitute wages for purposes of this Chapter 14.19.

Section 47. A new Section 14.19.015 is added to the Seattle Municipal Code as follows:

14.19.015 Employment in Seattle

A. Subject to subsection 14.19.015.B, employees are covered by this Chapter 14.19 for each hour worked within the geographic boundaries of the City.

B. An employee who is typically based outside the City and performs work in the City on an occasional basis is covered by this Chapter 14.19 in a two-week period only if the employee performs more than two hours of work for an employer within the City during that two-week period.

1. To track time of employees who work in the City on an occasional basis, employers must use consecutive two-week periods in sequence as they occur. Employers shall not skip or shift two-week periods.

2. Once an employee who works in the City on an occasional basis performs more than two hours of work for an employer within the City during a two-week period, payment for all time worked in the City during that two-week period shall be made in compliance with the requirements of this Chapter 14.19.

3. Time spent in the City solely for the purpose of travelling through the City from a point of origin outside the City to a destination outside the City, with no employment-related or commercial stops in the City except for refueling or the employee's personal meals or errands, is not covered by this Chapter 14.19.

Section 48. Section 14.19.020 of the Seattle Municipal Code, enacted by Ordinance 124490, is amended as follows:

14.19.020 ((~~Employment in Seattle~~)) Employer schedule determination

((~~A. Employees are covered by this Chapter for each hour worked within the geographic boundaries of Seattle, provided that an employee who performs work in Seattle on an occasional basis is covered by this Chapter in a two-week period only if the employee performs more than two hours of work for an employer within Seattle during that two-week period. Time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle, with no employment-related or commercial stops in Seattle except for refueling or the employee's personal meals or errands, is not covered by this Chapter. An employee who is not covered by this Chapter is still included in any determination of the size of the employer.~~

~~B. For the purposes of determining whether a non-franchisee employer is a Schedule 1 employer or a Schedule 2 employer, separate entities that form an integrated enterprise shall be considered a single employer under this Chapter. Separate entities will be considered an~~

~~integrated enterprise and a single employer under this Chapter where a separate entity controls the operation of another entity. The factors to consider in making this assessment 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.~~

~~There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this section as long as (1) the separate legal entities operate substantially in separate physical locations from one another, and (2) each separate legal entity has partially different ultimate ownership. The determination of employer schedule for the current calendar year will be calculated based upon the average number of employees employed per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the employer schedule will be calculated based upon the average number of employees employed per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.~~

~~C. The Director shall have the authority to issue a special certificate authorizing an employer to pay a wage less than the City of Seattle minimum wage, as defined in this Chapter, but above the Washington State minimum wage, as defined in RCW 49.46.020. Such special certificates shall only be available for the categories of workers defined in RCW 49.46.060 and shall be subject to such limitations as to time, number, proportion, and length of service as the~~

~~Director shall prescribe. Prior to issuance, an applicant for a special certificate must secure a letter of recommendation from the Washington State Department of Labor and Industries stating that the applicant has a demonstrated necessity pursuant to WAC 296-128.~~

~~D. The Director shall by rule establish the minimum wage for employees under the age of eighteen years, provided that any percentage of the hourly rate established by rule shall not be lower than the percentage applicable under state statutes and regulations.~~))

A. An employee who is not covered by this Chapter 14.19 shall be included in any determination of the size of the employer.

B. The determination of employer schedule for the current calendar year will be calculated based upon the average number of employees who worked for compensation per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the employer schedule will be calculated based upon the average number of employees who worked for compensation per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

C. All employees who worked for compensation shall be counted, including but not limited to:

a. Employees who worked inside the City;

b. Employees who worked outside the City; and

c. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.

D. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.19. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.19 where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

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.

There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this Section 14.19.020 as long as (1) the separate legal entities operate substantially in separate physical locations from one another, and (2) each separate legal entity has partially different ultimate ownership.

Section 49. A new Section 14.19.025 is added to the Seattle Municipal Code as follows:

14.19.025 Special certificate and minors

A. The Director shall have the authority to issue a special certificate authorizing an employer to pay a wage less than the City of Seattle minimum wage, as defined in this Chapter 14.19, but above the Washington State minimum wage, as defined in RCW 49.46.020. Such special certificates shall only be available for the categories of workers defined in RCW 49.46.060 and shall be subject to such limitations as to time, number, proportion, and length of service as the Director shall prescribe. Prior to issuance, an applicant for a special certificate must secure a letter of recommendation from the Washington State Department of Labor and Industries stating that the application has a demonstrated necessity pursuant to WAC 296-128.

B. The Director shall by rule establish the minimum wage for employees under the age of 18 years, provided that any percentage of the hourly rate established by rule shall not be lower than the percentage applicable under state statutes and regulations.

Section 50. A new Section 14.19.035 is added to the Seattle Municipal Code as follows:

14.19.035 Hourly minimum wage - Schedule 2 employers

A. Effective April 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum wage of at least $10.00. Schedule 2 employers can meet the applicable hourly minimum wage requirement through a payment of the minimum wage, provided that the Schedule 2 employer is in compliance with all applicable law. Effective January 1, 2016 and each year thereafter, Schedule 2 employers shall pay each employee an hourly minimum wage that is the lower of (a) the applicable hourly minimum wage for Schedule 1 employers or (b) the hourly minimum wage shown in the following schedule:

Year	Hourly Minimum Wage
2016	$10.50
2017	$11.00
2018	$11.50
2019	$12.00
2020	$13.50
2021	$15.00
2022	$15.75
2023	$16.50

2024	$17.25

Effective January 1, of 2025, and January 1 of every year thereafter, the hourly minimum wage paid by a Schedule 2 employer to any employee shall equal the hourly minimum wage applicable to Schedule 1 employers.

B. Schedule 2 employers can meet the applicable hourly minimum wage requirements through a payment of the minimum wage, provided that the Schedule 2 employer is in compliance with all applicable law.

Section 51. Section 14.19.040 of the Seattle Municipal Code, enacted by Ordinance 124490, is amended as follows:

14.19.040 ((~~Hourly Minimum Wage - Schedule 2 Employers~~)) <u>Hourly minimum compensation - Schedule 2 employers</u>

((~~A. Effective April 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum wage of at least $10.00. Schedule 2 employers can meet the applicable hourly minimum wage requirement through a payment of the minimum wage, provided that the Schedule 2 employer is in compliance with all applicable law. Effective January 1 of 2016 and each year thereafter, Schedule 2 employers shall pay each employee an hourly minimum wage that is the lower of (a) the applicable hourly minimum wage for Schedule 1 Employers or (b) the hourly minimum wage shown in the following schedule:~~

~~Year~~	~~Hourly Minimum Wage~~
~~2016~~	~~$10.50~~
~~2017~~	~~$11.00~~

~~2018~~	~~$11.50~~
~~2019~~	~~$12.00~~
~~2020~~	~~$13.50~~
~~2021~~	~~$15.00~~
~~2022~~	~~$15.75~~
~~2023~~	~~$16.50~~
~~2024~~	~~$17.25~~

~~Effective on January 1 of 2025, and January 1 of every year thereafter, the hourly minimum wage paid by a Schedule 2 employer to any employee shall equal the hourly minimum wage applicable to Schedule 1 employers.~~

~~B. Schedule 2 employers can meet the applicable hourly minimum wage requirements through a payment of the minimum wage, provided that the Schedule 2 employer is in compliance with all applicable law.~~))

A. Effective April 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum compensation of at least $11.00. Effective January 1 of each year thereafter, Schedule 2 employers shall pay each employee an hourly minimum compensation that is the lower of (a) the applicable hourly minimum wage for Schedule 1 Employers or (b) the hourly minimum compensation shown in the following schedule:

Year	Hourly Minimum Compensation
2016	$12.00

2017	$13.00
2018	$14.00
2019	$15.00
2020	$15.75

Effective January 1, 2021, the hourly minimum compensation paid by a Schedule 2 employer to any employee shall equal the hourly minimum wage applicable to Schedule 1 employers.

B. Schedule 2 employers can meet the applicable hourly minimum compensation requirement through wages (including applicable commissions, piece-rate, and bonuses), tips and money paid by an employer towards an individual employee's medical benefits plan, provided that the Schedule 2 employer also meets the applicable hourly minimum wage requirements.

C. Effective January 1, 2025, minimum compensation will no longer be applicable as defined in this Chapter 14.19.

Section 52. A new Section 14.19.045 is added to the Seattle Municipal Code as follows:

14.19.045 Notice and posting

A. On an annual basis and by December 1 each year, the Agency shall create and distribute a poster that gives notice of the rights afforded by this Chapter 14.19. The Agency shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with subsection 14.19.045.B. The poster shall give notice of:

1. The right to the applicable rate of minimum wage and minimum compensation guaranteed by this Chapter 14.19;

2. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.19; and

3. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 14.19, including an employer or any person's failure to pay minimum wage or minimum compensation, and an employer or other person's retaliation against an employee or other person for engaging in an activity protected by this Chapter 14.19.

B. Employers shall display the poster in a conspicuous and accessible place at any workplace or job site where any of their employees work. Employers shall display the poster in English and in the primary language of the employee(s) at the particular workplace. 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.

Section 53. Section 14.19.050 of the Seattle Municipal Code, enacted by Ordinance 124490 is amended as follows:

14.19.050 ((~~Hourly Minimum Compensation - Schedule 2 Employers~~)) <u>Employer records</u>

((~~A. Effective April 1, 2015, Schedule 2 employers shall pay each employee an hourly minimum compensation of at least $11.00. Effective January 1 of each year thereafter, Schedule 2 employers shall pay each employee an hourly minimum compensation that is the lower of (a) the applicable hourly minimum wage for Schedule 1 Employers or (b) the hourly minimum compensation shown in the following schedule:~~

~~Year~~	~~Hourly Minimum Compensation~~

~~2016~~	~~$12.00~~
~~2017~~	~~$13.00~~
~~2018~~	~~$14.00~~
~~2019~~	~~$15.00~~
~~2020~~	~~$15.75~~

~~Effective January 1, 2021, the hourly minimum compensation paid by a Schedule 2 employer to any employee shall equal the hourly minimum wage applicable to Schedule 1 employers.~~

~~B. Schedule 2 employers can meet the applicable hourly minimum compensation requirement through wages (including applicable commissions, piece-rate, and bonuses), tips and money paid by an employer towards an individual employee's medical benefits plan, provided that the Schedule 2 employer also meets the applicable hourly minimum wage requirements.~~

~~C. Effective January 1, 2025, minimum compensation will no longer be applicable as defined in this Chapter.~~))

A. Each employer shall retain records documenting minimum wages and minimum compensation paid to each employee. Such records shall be retained for a period of three years from the date such hours were worked.

B. If an employer fails to retain adequate records required under subsection 14.19.050.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 14.19 for the periods and for each employee for whom records were not retained.

C. 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 14.19.050.C. The Hearing Examiner shall issue such subpoenas upon a showing that the records are required to fulfill the purpose of this subsection 14.19.050.C.

Section 54. A new Section 14.19.055 is added to the Seattle Municipal Code as follows:

14.19.055 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 14.19.

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 14.19. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 14.19; the right to inform others about their rights under this Chapter 14.19; 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 14.19; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 14.19; the right to cooperate with the Agency in its investigations of this Chapter 14.19; the right to testify in a proceeding under or related to this Chapter 14.19; 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 14.19.

C. No employer or any other person shall communicate to a person exercising rights protected under this Section 14.19.055, 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 14.19.

D. It shall be a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 14.19.055. However, in the case of seasonal work that ended before the close of the 90 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 14.19.055 shall be sufficient upon a showing that an employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 14.19.055 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 14.19.055 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.19.

G. A complaint or other communication by any person triggers the protections of this Section 14.19.055 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.19.

Section 55. Section 14.19.060 of the Seattle Municipal Code, last amended by Ordinance 124644, is amended as follows:

14.19.060 Enforcement power and duties

A. ((~~Powers and Duties~~

~~1.~~)) The Agency shall investigate ((~~alleged~~)) violations of this Chapter 14.19 as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.19 and otherwise necessary and proper in the performance of the same and provided for by law.

((~~2. The Director is authorized and directed to promulgate rules consistent with this Chapter.~~))

B. The Agency shall be authorized to coordinate implementation and enforcement of this Chapter 14.19 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 14.19 and the Administrative Code. 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 14.19.

((~~B. Exercise of Rights Protected; Retaliation Prohibited~~

~~1. It shall be a violation for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.~~

~~2. It shall be a violation for an employer to discharge, threaten, harass, demote, penalize, or in any other manner discriminate or retaliate against any employee because~~

~~the employee has exercised in good faith the rights protected under this Chapter. Such rights include but are not limited to the right to file an oral or written complaint with the Agency about any employer's alleged violation of this Chapter; the right to inform his or her employer, union or similar organization, and/or legal counsel about an employer's alleged violation of this Chapter; the right to cooperate with the Agency in its investigations of alleged violations of this Chapter; the right to oppose any policy, practice, or act that is unlawful under this Chapter; and the right to inform other employees of his or her potential rights under this Chapter.~~

~~3. It shall be a violation for an employer to communicate to a person filing a wage claim, directly or indirectly, explicitly or implicitly, the willingness to inform a government employee that the person is not lawfully in the United States, report or threaten 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.~~

~~C. Notice, Posting, and Records~~

~~1. Employers shall give notice to employees in English, Spanish and any other language commonly spoken by employees at the particular workplace that they are entitled to the minimum wage and minimum compensation; that retaliation against employees who exercise their rights under this Chapter is prohibited; and that each employee has the right to file a charge if the minimum wage or minimum compensation as defined in this Chapter is not paid or the employee is retaliated against for engaging in an activity protected under this Chapter.~~

~~2. Employers may comply with this section by posting in a conspicuous place at any workplace or job site where any covered employee works a notice published each year by the Agency informing employees of the current minimum wage and minimum~~

~~compensation rates applicable in that particular workplace or jobsite and of their rights under this Chapter in English, Spanish and any other languages commonly spoken by employees at the particular workplace or job site.~~

~~3. Employers shall retain payroll records pertaining to covered employees for a period of three years documenting minimum wages and minimum compensation paid to each employee.~~

~~D. Charges and Investigation~~

~~1. The Agency may investigate any violations of this Chapter. A charge alleging a violation of this Chapter should include a statement of the dates, places, and persons or entities responsible for such violation. A charge alleging a violation of this Chapter may also be filed by the Director on behalf of an aggrieved individual when the Director has reason to believe that a violation has occurred.~~

~~2. Charges filed under this Chapter must be filed within three years after the occurrence of the alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during the Department's investigation and any administrative enforcement proceeding under this Chapter based upon the same facts.~~

~~3. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within 20 days after the filing of the charge and shall promptly make an investigation thereof.~~

~~4. The investigation shall be directed to ascertain the facts concerning the alleged violation of this Chapter, and shall be conducted in an objective and impartial manner.~~

~~5. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the~~

~~respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, and the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the employer subpoenaed.~~

~~E. Findings of Fact and Notice of Violation. Except when there is an agreed upon settlement, the results of the investigation shall be reduced to written findings of fact, and a written determination shall be made by the Director that a violation of this Chapter has or has not occurred based on a preponderance of the evidence before the Director. The findings of fact shall be furnished promptly to the respondent and charging or aggrieved party in the form of a notice of violation or a written determination of no violation shown.~~

~~F. Remedies~~

~~1. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil penalty in an amount not to exceed $125 for the first violation and $250 for subsequent violations.~~

~~2. It is unlawful for any employer to willfully resist, prevent, impede or interfere with the Director in the performance of his or her duties under this Chapter. Conduct made unlawful by this subsection 14.19.060.F.2 constitutes a violation, and any employer who commits such a violation may be punished by a civil penalty of not less than $1,000 and not more than $5,000.~~

~~3. For a first time violation of this Chapter, the Director, in addition to the remedies provided in subsections 14.19.060.F.1, 14.19.060.F.2, and 14.19.060.F.4 of this Section, shall issue a warning and may assess a civil penalty of up to $500 for improper payment of minimum wage and minimum compensation as defined in this Chapter. For subsequent~~

~~violations, the Director, in addition to the remedies provided in subsections 14.19.060.F.1, 14.19.060.F.2, and 14.19.060.F.4 of this Section, shall assess a civil penalty for improper payment of minimum wage and minimum compensation as defined in this Chapter. A civil penalty for a second time violation of this Chapter shall be not greater than $1,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. A civil penalty for a third violation of this Chapter shall not be greater than $5,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a violation of this chapter shall be $20,000 per employee.~~

~~4. Within sixty days of a notice of violation of this Chapter, the Director shall confer with the parties and determine an appropriate remedy, which shall include full payment of unpaid wages and accrued interest due to the charging or aggrieved party under the terms of this Chapter and any civil penalties provided in the Section. Such remedy shall be reduced to writing in an order of the Director.~~

~~G. Appeal Period and Failure to Respond~~

~~An employer may appeal the Director's order, including all remedies issued pursuant to subsection 14.19.060.F of this Section, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service. If an employer fails to appeal the Director's order within 15 days of service, the Director's order shall be final and enforceable. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5:00 p.m. on the next business day.~~

~~H. Appeal Procedure and Failure to Appear~~

~~1. 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 Director shall have the burden of proof by a preponderance of the evidence before the Hearing Examiner. Failure to appear for a requested hearing will result in an order being entered finding that the employer cited 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.~~

~~2. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying or reversing the Director's order.~~

~~3. In the event an employer fails to comply with any final order issued by the Director or the Hearing Examiner, the Director shall refer the matter to the City Attorney for the filing of a civil action in superior court, the Seattle Municipal Court or any other court of competent jurisdiction to enforce such order.~~))

Section 56. Section 14.19.065 of the Seattle Municipal Code, enacted by Ordinance 124809, is amended as follows:

14.19.065 ((~~Records~~)) <u>Violation</u>

((~~A. Employers shall allow the Agency access to the records required to be kept under subsection 4.19.060.C.3 to investigate potential violations and to monitor compliance with the requirements of this Chapter 14.19.~~

~~B. Employers 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 failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.19 is a violation.

Section 57. Section 14.19.070 of the Seattle Municipal Code, enacted by Ordinance 124490, is amended as follows:

14.19.070 ((~~Severability~~)) Investigation

((~~The provisions of this Chapter are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of this Chapter, 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, or the validity of its application to other persons or circumstances.~~))

A. The Agency shall have the power to investigate any violations of this Chapter 14.19 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the Director including, but not limited to, situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.19 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 14.19. The Agency shall encourage reporting pursuant to this Section 14.19.070 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 14.19 or for other appropriate purposes.

2. An 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 of 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 the employee's primary language 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. This 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 14.19 and any administrative enforcement proceeding under this Chapter 14.19 based upon the same facts. For purposes of this Chapter 14.19:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.19, or the Agency opens an investigation under this Chapter 14.19.

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 an employer to produce the records identified in subsection 14.19.050.A, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under subsection 14.19.050.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 14.19 and/or to whether an employer has violated any provision of this Chapter 14.19. 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 14.19 or the workforce is unlikely to volunteer information regarding such violations.

F. An employer that fails to comply with the terms of any subpoena issued under subsection 14.19.070. E. in an investigation by the Agency under this Chapter 14.19 prior to the issuance of a Director's Order issued pursuant to subsection 14.19.075.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 14.19.070.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 wages, interest, damages and penalties due. A respondent may appeal any such order in accordance with subsection 14.19.085.B.

Section 58. A new Section 14.19.075 is added to the Seattle Municipal Code as follows:

14.19.075 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 14.19 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 14.19, 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 14.19 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 14.19 for each violation, including payment of unpaid wages, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 14.19.080. 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 14.19.080.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 14.19, 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 subsection 14.19.085.

D. If the Director has a reasonable belief that a notice of violation for this Chapter 14.19 also indicates a violation of Section 12A.08.060, the Director may refer the complaint to the Seattle Police Department for further investigation or to the City Attorney's Office for prosecution.

Section 59. Section 14.19.080 of the Seattle Municipal Code, enacted by Ordinance 124490, is amended as follows:

14.19.080 ((~~Other Legal Requirements~~)) <u>Remedies</u>

((~~This Chapter provides minimum wage and minimum compensation requirements 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 wages or compensation; and nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter affecting such person.~~))

<u>A. The payment of unpaid wages, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 14.19 are cumulative</u>

and are not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. Effective January 1, 2017, the amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 14.19.080 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If there is a remedy due to an aggrieved party, the Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the Director's Order. The Director shall not waive any amount of civil penalties and fines due to the Agency if the Director determines that the respondent has not paid the full remedy due to the aggrieved party after 15 days of service of the Director's Order.

3. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 14.19.080, 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 14.19.080.A.2, the Director shall consider the total amount of unpaid wages, liquidated damages, penalties, fines, and interest due; the nature and persistence of the violations; the extent of the respondent's culpability; the substantive or technical nature of the violations;

the size, revenue, and human resources capacity of the respondent; the circumstances of each situation; the 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 14.19 shall be liable for full payment of unpaid wages plus interest in favor of the aggrieved party under the terms of this Chapter 14.19 and other equitable relief. For a first violation of this Chapter 14.19, the Director may assess liquidated damages in an additional amount of up to twice the unpaid wages. For subsequent violations of this Chapter 14.19, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid wages. 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 wages were first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020. For purposes of this Section 14.19.080, a violation is a subsequent violation if at least one Director's Order has issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

C. A respondent found to be in violation of Section 14.19.080 for retaliation 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 wages plus interest in favor of the aggrieved party under the terms of this Chapter 14.19, and liquidated damages in an additional amount of up to twice the unpaid wages. 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 Section 14.19.045 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 14.19 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 14.19, the Director may assess a civil penalty of up to $500 per aggrieved party. For a second violation of this Chapter 14.19, 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 wages, whichever is greater. For a third or any subsequent violation of this Chapter 14.19, 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 wages, whichever is greater. The maximum civil penalty for a violation of this Chapter 14.19 shall be $20,000 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. For purposes of this Section 14.19.080, 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 employees with written	$500

notice of rights under subsection 14.19.045.B	
Failure to maintain payroll records for three years under subsection 14.19.050.A	$500 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.19.055	$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.19.070.B.2	$500
Failure to provide notice of failure to comply with final order to the public under Section 14.19.100.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 wages, 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 14.19, including but not limited to reasonable attorneys' fees.

I. An employer that is the subject of a final order for which all appeal rights have been exhausted shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If an 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 14.19.080.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 14.16.080.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 14.19.080.I.

Section 60. A new Section 14.19.085 is added to the Seattle Municipal Code as follows:

14.19.085 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 14.19 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 14.19.080, 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.

Section 61. A new Section 14.19.090 is added to the Seattle Municipal Code as follows:

14.19.090 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 proving by a preponderance of the evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing shall result in an order being entered finding that the respondent committed the violation stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

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

Section 62. A new Section 14.19.095 is added to the Seattle Municipal Code as follows:

14.19.095 Appeal from Hearing Examiner's 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 14.19.095.

Section 63. A new Section 14.19.100 is added to the Seattle Municipal Code as follows:

14.19.100 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 Director's Order or a final order of the Hearing Examiner under Section 14.19.105.

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 14.19.100.A.4.

B. No respondent that is the subject of a final order issued under this Chapter 14.19 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 a final order issued by the Director or the Hearing Examiner, shall become

immediately due and payable. If the amount due under the 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.

Section 64. A new Section 14.19.105 is added to the Seattle Municipal Code as follows:

14.19.105 Debt owed The City of Seattle

A. All monetary amounts due under the 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 wages, 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 14.19.085.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 14.19.085.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 14.19.095.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 14.19.095.A shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.19.105.B and 14.19.105.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 14.19.

Section 65. A new Section 14.19.110 is added to the Seattle Municipal Code as follows:

14.19.110 Private right of action

A. Effective April 1, 2016, for claims against employers that employ 50 or more employees and effective April 1, 2017 for claims against employers that employ fewer than 50 employees, any person or class of persons that suffers financial injury as a result of a violation of this Chapter 14.19 or is the subject of prohibited retaliation under Section 14.19.055, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter 14.19 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 wages plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid wages; and a penalty payable to any aggrieved party of up to $5000 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid wages were first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of determining employer size for this Section 14.19.110,

1. An employee who is not covered by this Chapter 14.19 shall be included in any determination of the size of the employer.

2. Employer size for the current calendar year will be calculated based upon the average number of employees who worked for compensation per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the employer schedule will be calculated based upon the average number of employees who worked for compensation per calendar week during the first 90 calendar days of the current year in which the employer engaged in business.

3. All employees who worked for compensation shall be counted, including but not limited to:

a. Employees who worked inside the City;

b. Employees who worked outside the City; and

c. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.

4. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.19. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.19 where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

a. Degree of interrelation between the operations of multiple entities;

b. Degree to which the entities share common management;

c. Centralized control of labor relations; and

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

C. For purposes of this Section 14.19.110, "Person" includes any entity a member of which has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury or retaliation.

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

1. Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period,

2. Allege one or more violations that raise similar questions as to liability, and

3. Seek similar forms of relief.

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

1. Claims seek damages that differ in amount, or

2. Job titles or other means of classifying employees differ in ways that are unrelated to their claims.

Section 66. A new Section 14.19.115 is added to the Seattle Municipal Code as follows:

14.19.115 Other legal requirements

This Chapter 14.19 provides minimum wage and minimum compensation requirements 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 wages or compensation; and nothing in this Chapter 14.19 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter 14.19 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 14.19 affecting such person.

Section 67. A new Section 14.19.120 is added to the Seattle Municipal Code as follows:

14.19.120 Severability

The provisions of this Chapter 14.19 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.19, 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 14.19, or the validity of its application to other persons or circumstances.

Section 68. A new Section 14.20.005 is added to the Seattle Municipal Code as follows:

14.20.005 Short title

This Chapter 14.20 shall constitute the "Wage Theft Ordinance" and may be cited as such.

Section 69. Section 14.20.010 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.010 Definitions

For ((~~the~~)) purposes of this Chapter 14.20:

"Adverse action" means denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, 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 14.20.035. "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 an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this Chapter 14.20;

"City" means the City of Seattle;

"Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses,

rest breaks, promised or legislatively-required paid leave, and reimbursement for employer expenses. For reimbursement for employer expenses, an employer shall indemnify the employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties, or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful;

"Director" means the 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 ((~~"employee," as defined under Section 12A.28.200. Employee does not include individuals performing services under a work study agreement;~~)) any individual employed by an employer, including but not limited to full-time employees, part-time employees, and temporary workers. An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged employer.

"Employer" ((~~means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;~~)) 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 an employer in relation to an employee. More than one entity may be the "employer" if employment by one employer is not completely disassociated from employment by the other employer;

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

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

"Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period, as defined in WAC 296-126-023 effective as of September 18, 2014;

"Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly, or monthly, as defined in WAC 296-126-023 effective as of September 18, 2014;

"Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly, or monthly, as defined in WAC 296-126-023 effective as of September 18, 2014;

"Piece-rate" means a price paid per unit of work;

"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;

"Respondent" means an employer or any person who is alleged or found to have committed a violation of this Chapter 14.20;

"Successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the

employer's business, a major part of the property, whether real or personal, tangible or intangible, of the employer's business. For purposes of this definition, "person" means 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;

"Tip" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip;

((~~"Wage" means compensation due to an 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. Commissions, piece-rate, and bonuses are included in wages. Tips and employer payments toward a medical benefits plan do not constitute wages for purposes of Chapter 14.20.~~))

Section 70. A new Section 14.20.015 is added to the Seattle Municipal Code as follows:

14.20.015 Employment in Seattle

A. Employees are covered by this Chapter 14.20 for each hour worked within the geographic boundaries of the City.

B. An employee who is typically based outside the City and performs work in the City on an occasional basis is covered by this Chapter 14.20 in a two-week period only if the employee performs more than two hours of work for an employer within the City during that two-week period.

1. To track time of employees who work in the City on an occasional basis, employers must use consecutive two-week periods in sequence as they occur. Employers shall not skip or shift two-week periods.

2. Once an employee who works in the City on an occasional basis performs more than two hours of work for an employer within the City during a two-week period, payment for all time worked in the City during that two-week period shall be made in compliance with the requirements of this Chapter 14.20.

3. Time spent in the City solely for the purpose of travelling through the City from a point of origin outside the City to a destination outside the City with no employment-related or commercial stops in the City except for refueling or the employee's personal meals or errands, is not covered by this Chapter 14.20.

Section 71. Section 14.20.020 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.020 ((~~Employment in Seattle~~)) <u>Compensation requirements</u>

((~~A. Employees are covered by Chapter 14.20 for each hour worked within the geographic boundaries of Seattle, provided that an employee who performs work in Seattle on an occasional basis is covered by Chapter 14.20 in a two-week period only if the employee performs more than two hours of work for an employer within Seattle during that two-week period.~~

~~B. Employees are not covered by Chapter 14.20 for time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle, with no employment-related or commercial stops in Seattle except for refueling or the employee's personal meal or errands.~~))

An employer shall pay all compensation owed to an employee by reason of employment on an established regular pay day at no longer than monthly payment intervals.

Section 72. A new Section 14.20.025 is added to the Seattle Municipal Code as follows:

14.20.025 Notice and posting

A. The Agency shall create and distribute a poster giving notice of the rights afforded by Chapter 14.20. The Agency shall create and distribute the poster in English, Spanish, and any other languages that are necessary for employers to comply with subsection 14.20.025.B. The poster shall give notice of:

1. The right to be paid all compensation owed by reason of employment on an established regular pay day at no longer than monthly intervals as guaranteed under the terms of this Chapter 14.20;

2. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.20; and

3. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 14.20, including an employer's failure to pay all compensation owed by reason of employment, and an employer or other person's retaliation against an employee or other person for engaging in an activity protected by this Chapter 14.20.

B. Employers shall display the poster in a conspicuous and accessible place at any workplace or job site where any of their employees work. Employers shall display the poster in English and in the primary language of the employee(s) at the particular workplace. If display of the poster in not feasible, including situations when the employee works remotely or does not have a regular workplace or job site, employers may provide the poster on an individual basis in

an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

C. The Agency shall create and distribute a model notice of employment information in English, Spanish and other languages that are necessary for employers to comply with subsection 14.20.025.D.

D. Employers shall give written notice of employment information to employees that contains items listed in subsections 14.20.025.D.1 through 14.20.025.D.7 in English and in the primary language of the employee(s) receiving the written information. Employers shall give this written notice at time of hire and 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. 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. If an employer fails to give this written notice, the failure shall constitute evidence weighing against the credibility of the employer's testimony regarding the agreed-upon rate of pay.

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

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

3. Telephone number and, if applicable, email address of the employer;

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

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

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

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

8. Pursuant to rules issued by the Director, other information that is material and necessary to effectuate the terms of this Chapter 14.20.

E. Each time compensation is paid, employers shall give written notice that contains the following information:

1. All hours worked with regular and overtime hours shown separately;

2. All rate or rates of pay whether paid on hourly, salary, commission, piece rate or combination thereof, or other basis during the pay period. Workers paid on rate other than hourly or salary are entitled to a detailed printed accounting of commissions, piece rate or other methods of payment earned during the pay period;

3. Tip compensation;

4. Pay basis (e.g. hour, shift, day, week, commission);

5. Gross wages; and

6. All deductions for that pay period.

7. Pursuant to rules issued by the Director, other information that is material and necessary to effectuate the terms of this Chapter 14.20.

Section 73. Section 14.20.030 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.030 ((~~Wage and tip compensation requirements~~)) <u>Employer records</u>

((~~An employer shall pay all wage and tip compensation owed to an employee on an established regular pay day at no longer than monthly payment intervals.~~))

A. Each employer shall retain payroll records that document each employee's name, address, occupation, dates of employment, rate or rates of pay, amount paid each pay period, and the hours worked. Additionally, for employees covered by Chapter 14.19, employers shall maintain payroll records of each employee's date of birth if under 18 years of age, time of day and day of the week that each employee's work week begins, hours worked each day and each work week, total daily or weekly earnings at straight-time rate, total overtime earnings for weeks in which overtime was worked, date of payment and the dates of pay period covered, total payment for each pay period, total tips for each pay period if applicable, all additions or deductions for each pay period and a record of the additions or deductions from pay. Pursuant to rules issued by the Director, the Agency may require employers to retain other information for payroll records of employees that is material and necessary to effectuate the terms of this Chapter 14.20. Such records shall be retained for a period of three years from the date such hours were worked.

B. If an employer fails to retain adequate records required under subsection 14.20.030.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 14.20 for the periods and for each employee for whom records were not retained.

C. 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 14.20.030.C. The Hearing Examiner shall issue such subpoenas upon a showing that the records are required to fulfill the purpose of this subsection 14.20.030.C.

Section 74. A new Section 14.20.035 is added to the Seattle Municipal Code as follows:

14.20.035 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 14.20.

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 14.20. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 14.20; the right to inform others about their rights under this Chapter 14.20; 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 14.20; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 14.20; the right to cooperate with the Agency in its investigations of this Chapter 14.20; the right to testify in a proceeding under or related to this Chapter 14.20; 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 14.20.

C. No employer or any other person shall communicate to a person exercising rights protected under this Section14.20.035, 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 14.20.

D. It shall be considered a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 14.20.035. However, in the case of seasonal work that ended before the close of the 90 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 14.20.035 shall be sufficient upon a showing that an employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in Section 14.20.035 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 14.20.035 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.20.

G. A complaint or other communication by any person triggers the protections of this Section 14.20.035 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.20.

Section 75. Section 14.20.040 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.040 ((~~Notice and posting~~)) <u>Enforcement power and duties</u>

((~~A. Employers shall comply with the notice requirements of this Section 14.20.040 by providing written information to employees in English, Spanish, and any other language commonly spoken by employees at the particular workplace. Employers may choose a~~

~~reasonable method for providing this information to employees, including, but not limited to a letter, paystub for the notice required by subsection C of this Section 14.20.040, or an employee-accessible online system.~~

~~B. At time of hire, or within one pay period prior to any change in employment, employers shall provide written notice to employees that contains the following information:~~

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

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

~~3. Telephone number of the employer;~~

~~4. Employee's rate or rates of pay;~~

~~5. Employee's tip policy, including any tip sharing, pooling, or allocation policies, if applicable;~~

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

~~7. Employee's established pay day for earned wage and tip compensation.~~

~~C. Each time wages and tips are paid, employers shall provide written notice that contains the following information:~~

~~1. Rate or rates of pay;~~

~~2. Tip compensation;~~

~~3. Pay basis (e.g. hour, shift, day, week, commission);~~

~~4. Gross wages; and~~

~~5. All deductions for that pay period.~~

~~D. Employers shall provide written notice to employees that they are entitled to the wage and tip compensation rights defined in Chapter 14.20; that retaliation against persons for their exercise of rights defined in Chapter 14.20 is prohibited; and that each employee has the right to file an administrative charge under Chapter 14.20 if the employer fails to comply with the wage and tip compensation rights defined in Chapter 14.20 or if the employer takes adverse action against a person in retaliation for engaging in activity protected under Chapter 14.20.~~

~~1. The Agency shall create and make available to employers a poster that contains the information required under this subsection 14.20.040.D for their use in complying with this subsection 14.20.040.D. The poster shall be printed in English, Spanish, and any other languages that the Agency determines are needed to notify employees of their rights under Chapter 14.20.~~

~~2. Employers may comply with this subsection 14.20.040.D by displaying the Agency's poster in each establishment where such employees are employed.~~

~~3. Employers may also comply with this subsection 14.20.040.D by including the poster in employee handbooks or other written guidance to employees; distributing a copy of the poster to each new employee upon hiring; or duplicating all of the poster's text for use in another format (e.g. employee letter or employee-accessible online system).~~

~~4. Employers may choose whether notice in this subsection is physical or electronic, but in either case the notice shall be reasonably conspicuous and accessible to all employees.~~))

A. The Agency shall have the power to investigate violations of this Chapter 14.20, as defined herein, and shall have such powers and duties in the performance of these functions as

are defined in this Chapter 14.20 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 14.20 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 14.20 and the Administrative Code. 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 14.20.

Section 76. A new Section 14.20.045 is added to the Seattle Municipal Code as follows:

14.20.045 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.20 is a violation.

Section 77. Section 14.20.050 of the Seattle Municipal Code, enacted by Ordinance 124809, is amended as follows:

14.20.050 ((~~Records~~)) Investigation

((~~A. For a period of three years, employers shall retain payroll records pertaining to covered employees that document the name, address, occupation, dates of employment, rate or rates of pay, amount paid each pay period, and the hours worked for each employee.~~

~~1. Employers shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this Chapter 14.20.~~

~~2. Employers 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.~~

~~B. If an issue arises as to an employee's entitlement to wage and tip compensation under this Chapter 14.20, if the employer does not maintain or retain adequate payroll records, or does not allow the Agency reasonable access to such records, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Chapter 14.20.~~))

A. The Agency shall have the power to investigate any violations of this Chapter 14.20 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the Director including, but not limited to, situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.20 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 14.20. The Agency shall encourage reporting pursuant to this Section 14.20.050 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 14.20 or for other appropriate purposes.

2. An 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 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. This 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 14.20 and any administrative enforcement proceeding under this Chapter 14.20 based upon the same facts. For purposes of this Chapter 14.20:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.20, or the Agency opens an investigation under this Chapter 14.20.

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

1 expired; or the Agency notifies the respondent in writing that the investigation has been
2 otherwise resolved.
3 D. The Agency's investigation shall be conducted in an objective and impartial
4 manner.
5 E. The Director may apply by affidavit or declaration in the form allowed under
6 RCW 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring an employer
7 to produce the records identified in subsection 14.20.030.A, or for the attendance and testimony
8 of witnesses, or for the production of documents required to be retained under subsection
9 14.20.030.A, or any other document relevant to the issue of whether any employee or group of
10 employees has been or is afforded proper amounts of compensation under this Chapter 14.20
11 and/or to whether an employer has violated any provision of this Chapter 14.20. The Hearing
12 Examiner shall conduct the review without hearing as soon as practicable and shall issue
13 subpoenas upon a showing that there is reason to believe that a violation has occurred if a
14 complaint has been filed with the Agency, or that circumstances show that violations are likely to
15 occur within a class of businesses because the workforce contains significant numbers of
16 workers who are vulnerable to violations of this Chapter 14.20 or the workforce is unlikely to
17 volunteer information regarding such violations.
18 F. An employer that fails to comply with the terms of any subpoena issued under
19 subsection 14.20.050. E. in an investigation by the Agency under this Chapter 14.20 prior to the
20 issuance of a Director's Order issued pursuant to subsection 14.20.055.C may not use such
21 records in any appeal to challenge the correctness of any determination by the Agency of
22 damages owed or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 14.20.050.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 subsection 14.20.065.B.

Section 78. A new Section 14.20.055 is added to the Seattle Municipal Code as follows:

14.20.055 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 14.20 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 14.20, 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 14.20 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 14.20 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 14.20.060. 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 14.20.060.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 14.20, 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 subsection 14.20.065.B.

D. If the Director has a reasonable belief that a notice of violation for this Chapter 14.20 also indicates a violation of Section 12A.08.060, the Director may refer the complaint to the Seattle Police Department for further investigation or to the City Attorney's Office for prosecution.

Section 79. Section 14.20.060 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.060 ((~~Exercise of rights protected; retaliation prohibited~~)) <u>Remedies</u>

((~~A. It shall be a violation for an employer or any other person to interfere with, restrain, deny, or attempt to deny the exercise of any right protected under Chapter 14.20.~~

~~B. It shall be a violation for an employer to take adverse action, including but not limited to discharging, threatening, harassing, demoting, penalizing, or in any other manner discriminating or retaliating against any person because the person has exercised in good faith the rights protected under Chapter 14.20. Such rights include but are not limited to the right to make inquiries about the rights protected under Chapter 14.20; the right to file an oral or written complaint with the Agency about any employer's alleged violation of Chapter 14.20; the right to inform an employer, union or similar organization, and/or legal counsel about an employer's alleged violation of Chapter 14.20; the right to cooperate with the Agency in its investigations of~~

~~alleged violations of Chapter 14.20; the right to oppose any policy, practice, or act that is unlawful under Chapter 14.20; and the right to inform other employees of their potential rights under Chapter 14.20.~~

~~C. It shall be a violation for an employer to communicate to a person filing a wage claim, directly or indirectly, explicitly or implicitly, the willingness to inform a government employee that the person is not lawfully in the United States, report or threaten 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 Chapter 14.20.~~

~~D. It shall be considered a rebuttable presumption of retaliation if an employer takes an adverse action against a person within 90 days of the person's exercise of rights protected in subsections B and C of this Section 14.20.060.~~))

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 14.20 are cumulative and are not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. Effective January 1, 2017, the amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 14.20.060 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If there is a remedy due to an aggrieved party, the Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the

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

3. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 14.20.060, 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 14.20.060.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 14.20 shall be liable for full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 14.20, and other equitable relief. For a first violation of this Chapter 14.20, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation. For subsequent violations of this Chapter 14.20, 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 were 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 14.20.060, the violation must have occurred within ten years of the Director's Order.

C. A respondent found to be in violation of this Chapter 14.20 for retaliation under Section 14.20.060 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 14.20, 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 Section 14.20.025.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 14.20 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 14.20, the Director may assess a civil penalty of up to $500 per aggrieved party. For a second violation of this Chapter 14.20, 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 14.20, 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 14.20 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 14.20.060, 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 employees with written notice of rights under subsection 14.20.025.B	$500
Failure to provide employee with written notice of employment information under subsection 14.20.025.D	$500 per aggrieved party
Failure to provide employees with written notice of pay information under subsection 14.20.025.E	$500 per aggrieved party
Failure to maintain payroll records for three years under subsection 14.20.030.A	$500 per missing record

Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.20.035	$1,000 per aggrieved party
Failure to provide notice of investigation to employees under subsection 14.20.050.B.2	$500
Failure to provide notice of failure to comply with final order to the public under Section 14.20.080.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 14.20, including but not limited to reasonable attorneys' fees.

I. An employer that is the subject of a final order for which all appeal rights have been exhausted shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If an 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 14.20.060.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 14.16.080.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 14.20.060.I.

Section 80. A new Section 14.20.065 is added to the Seattle Municipal Code as follows:

14.20.065 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 14.20 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 14.20.060, 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.

Section 81. Section 14.20.070 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.070 ((~~Enforcement~~)) Appeal procedure and failure to appear

((~~A. Powers and Duties~~

~~1. The Agency shall investigate charges alleging violations of Chapter 14.20 as defined herein, and shall have such powers and duties in the performance of these functions as are defined in Chapter 14.20 and otherwise necessary and proper in the performance of the same and provided for by law.~~

~~2. The Director is authorized and directed to promulgate rules consistent with Chapter 14.20.~~

~~B. Charges and Investigation~~

~~1. The failure of an employer to comply with any requirement imposed on an employer under Chapter 14.20 shall be a violation. The Agency may investigate any violations of Chapter 14.20. A charge alleging a violation of Chapter 14.20 should include a statement of the dates, places, and persons or entities responsible for such violation. A charge alleging a violation of Chapter 14.20 or pattern of such violations may also be filed by the Director if the Director has reason to believe that any person has been engaged or is engaging in a violation of Chapter 14.20.~~

~~2. The Agency shall encourage reporting pursuant to this Section by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose this employee's or person's name and identifying information as necessary to enforce Chapter 14.20 or for other appropriate purposes.~~

~~3. Charges filed under Chapter 14.20 must be filed within three years after the occurrence of the alleged violation.~~

~~4. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the employer within 20 days after the filing of the charge and shall promptly make an investigation thereof.~~

~~5. The investigation shall be directed to ascertain the facts concerning the alleged violation of Chapter 14.20, and shall be conducted in an objective and impartial manner.~~

~~6. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge that the charging party or the employer wishes to submit. The Director shall have the authority to sign and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, including but not limited to books, records, correspondence, and documents in the possession or under the control of the individual or entity subpoenaed.~~

~~C. Findings of Fact and Notice of Violation.~~

~~1. Except when there is an agreed upon settlement, the results of the investigation shall be reduced to written findings of fact, and a written determination shall be made by the Director that a violation of Chapter 14.20 has or has not occurred based on a preponderance of the evidence before the Director. The findings of fact shall be furnished promptly to the respondent and charging party or aggrieved party in the form of notice of violation or a written determination of no violation shown.~~

~~2. If the Director has a reasonable belief that a notice of violation for Chapter 14.20 also indicates a violation of Section 12.A.08.060, the Director may refer the complaint to the Seattle Police Department for further investigation or to the City Attorney's Office for prosecution.~~

~~D. Remedies~~

~~1. In addition to the civil penalties, provided for in this subsection 14.20.070.D, an employer found to be in violation of Chapter 14.20 shall be subject to full payment of unpaid wages and tip compensation plus accrued interest due to the charging or aggrieved party under the terms of Chapter 14.20. If the alleged amount of unpaid wage and tip~~

~~compensation is ongoing at the time of the filing of the charge, the Director may order payment of amounts that accrue after the filing of the charge and before the date of the Director's order.~~

~~2. An employer who willfully violates the notice and posting requirements of this Section shall be subject to a civil penalty in an amount not to exceed $125 for the first violation and $250 for subsequent violations.~~

~~3. An employer who willfully resists, prevents, impedes, or interferes with the Director in the performance of the Director's duties under Chapter 14.20 shall be subject to a civil penalty of not less than $1,000 and not more than $5,000.~~

~~4. For a first time violation of Chapter 14.20, the Director shall issue a warning and may assess, in addition to the remedies provided in subsections D.1, D.2, and D.3 of this Section 14.20.070, a civil penalty of up to $500. For subsequent violations, the Director shall assess, in addition to the remedies provided in subsections D.1, D.2, and D.3 of this Section 14.20.070, a civil penalty as provided in this subsection 14.20.070.D.4. A civil penalty for a second time violation of Chapter 14.20 shall not be greater than $1,000 per employee or an amount equal to ten percent of the total amount of unpaid wage and tip compensation, whichever is greater. A civil penalty for a third violation of Chapter 14.20 shall not be greater than $5,000 per employee or an amount equal to ten percent of the total amount of unpaid wage and tip compensation, whichever is greater. The maximum civil penalty for a violation of Chapter 14.20 shall be $20,000 per employee.~~

~~5. Within 60 days of a notice of violation, the Director shall confer with the parties and determine the remedy due. The remedy shall be reduced to writing in an order of the Director.~~

~~6. If any employer quits business, sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of the remedy, as defined in the Director's order, against the employer's business under Chapter 14.20 if, at the time of the conveyance of the business, the successor has: (a) actual knowledge of the fact and amount of the Director's order or (b) a prompt, reasonable, and effective means of accessing and verifying the fact and amount of the Director's order.~~

~~E. Appeal Period and Failure to Respond~~

~~An employer may appeal the Director's order, including all remedies issued pursuant to subsection D, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service. If an employer fails to appeal the Director's order within 15 days of service, the Director's order shall be final and enforceable. 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 5:00 pm on the next business day.~~

~~F. Appeal Procedure and Failure to Appear~~

~~1.~~))

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 ((~~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.

((~~2.~~))

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

((~~3. If an employer fails to comply with any final order issued by the Director or the Hearing Examiner, the Director shall 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.~~

~~4. If prompt compliance with the remedy, as defined in a Director's order for which all appeal rights have been exhausted, is not forthcoming, the Director may request that the City's Department of Finance and Administrative Services refuse to issue, 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 a Director's order. The City's Department of Finance and Administrative Services shall have the authority to refuse to issue, refuse to renew, or revoke any business license in accordance with this subsection 14.20.070.F.4.~~))

Section 82. A new Section 14.20.075 is added to the Seattle Municipal Code as follows:

14.20.075 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 14.20.075.

Section 83. Section 14.20.080 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.080 ((~~Severability~~)) Failure to comply with final order

((~~The provisions of Chapter 14.20 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of Chapter 14.20, 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 Chapter 14.20, or the validity of its application to other persons or circumstances.~~))

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 Director's Order or a final order of the Hearing Examiner under Section 14.20.085.

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 14.20.080.A.4.

B. No respondent that is the subject of a final order issued under this Chapter 14.20 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 a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the 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.

Section 84. A new Section 14.20.085 is added to the Seattle Municipal Code as follows:

14.20.085 Debt owed The City of Seattle

A. All monetary amounts due under the 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 14.20.065.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 14.20.065.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 14.20.075.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 14.20.075.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.20.085.B and 14.20.085.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 14.20.

Section 85. Section 14.20.090 of the Seattle Municipal Code, enacted by Ordinance 124645, is amended as follows:

14.20.090 ((~~Other legal requirements~~)) <u>Private right of action</u>

((~~Chapter 14.20 defines wage and tip compensation requirements for employees performing work within City limits 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 Chapter 14.20 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall Chapter 14.20 be~~

~~construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under Chapter 14.20 affecting such person.~~))

A. Effective April 1, 2016, for claims against employers that employ 50 or more employees and effective April 1, 2017 for claims against employers that employ fewer than 50 employees, any person or class of persons that suffers financial injury as a result of a violation of this Chapter 14.20 or is the subject of prohibited retaliation under Section 14.20.035, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter 14.20 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 were first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of determining employer size for this Section 14.20.090,

1. An employee who is not covered by this Chapter 14.20 shall be included in any determination of employer size.

2. Employer size for the current calendar year will be calculated based upon 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 employer size 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.

3. All employees who worked for compensation shall be counted, including but not limited to:

a. Employees who worked inside the City;

b. Employees who worked outside the City; and

c. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.

4. Separate entities that form an integrated enterprise shall be considered a single employer under this Chapter 14.20. Separate entities will be considered an integrated enterprise and a single employer under this Chapter 14.20 where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

a. Degree of interrelation between the operations of multiple entities;

b. Degree to which the entities share common management;

c. Centralized control of labor relations; and

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

C. For purposes of this Section 14.20.090, "person" includes any entity a member of which has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury or retaliation.

D. For purposes of determining membership within a class of persons entitled to bring an action under this Section 14.20.090, two or more employees are similarly situated if they:

1. Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period,

2. Allege one or more violations that raise similar questions as to liability, and

3. Seek similar forms of relief.

E. For purposes of subsection 14.20.090.D, employees shall not be considered dissimilar solely because their

1. Claims seek damages that differ in amount, or

2. Job titles or other means of classifying employees differ in ways that are unrelated to their claims

Section 86. A new Section 14.20.095 is added to the Seattle Municipal Code as follows:

14.20.095 Other legal requirements

This Chapter 14.20 defines requirements for compensation owed by reason of employment to employees performing work within City limits 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 14.20 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter 14.20 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 14.20 affecting such person.

Section 87. A new Section 14.20.100 is added to the Seattle Municipal Code as follows:

14.20.100 Severability

The provisions of this Chapter 14.20 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.20, 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 14.20, or the validity of its application to other persons or circumstances.

Section 88. Section 3.14.931 of the Seattle Municipal Code, last amended by Ordinance 123698, is amended as follows:

3.14.931 Seattle Human Rights Commission – Duties

The Seattle Human Rights Commission shall act in an advisory capacity to the Mayor, City Council, Office for Civil Rights, and other City departments in respect to matters affecting human rights and in furtherance thereof shall have the following specific responsibilities:

A. To consult with and make recommendations to the Director of the Office for Civil Rights and other City departments and officials with regard to the development of programs for the promotion of equality, justice, and understanding among all citizens of the City;

B. To consult with and make recommendations to the Director of the Office for Civil Rights with regard to problems arising in the City which may result in discrimination because of race, religion, creed, color, national origin, sex, marital status, parental status, sexual orientation, gender identity, political ideology, age, ancestry, the presence of any sensory, mental, or physical disability, the possession or use of a Section 8 rent certificate, or

the use of a trained guide or service dog by a handicapped person, and to make such investigations and hold such hearings as may be necessary to identify such problems;

C. As appropriate, recommend policies to all departments and offices of the City in matters affecting civil rights and equal opportunity, and recommend legislation for the implementation of such policies;

D. Encourage understanding between all protected classes and the larger Seattle community, through long range projects;

E. Hear appeals and hearings as set forth in Chapters 14.04 ((~~,~~)) and 14.08 ((~~, and 14.16~~)) of the Seattle Municipal Code ((~~.~~)) ;

F. Report on a semi-annual basis to the Mayor and the City Council. The reports shall include an annual or semi-annual work plan, a briefing of the Commission's public involvement process for soliciting community and citizen input in framing their annual work plans, and updates on the work plans; and

G. Meet on a quarterly basis through a designated representative with the Seattle Women's Commission, the Seattle LGBT (Lesbian, Gay, Bisexual, Transgender) Commission, and the Seattle Commission for People with Disabilities to ensure coordination and joint project development.

Section 89. Subsection 5.55.230.A of the Seattle Municipal Code, which section was last amended by Ordinance 124808, is amended as follows:

5.55.230 Denial, revocation of, or refusal to renew business license tax certificate

A. The Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license tax certificate or amusement device license issued under the provisions of this ((~~chapter~~)) Chapter 5.55. The Director, or the Director's

designee, shall notify such applicant or licensee in writing by mail in accordance with ((~~section~~)) Section 5.55.180 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 business license tax certificate or other license issued under this chapter 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 5.55.

3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.40, 5.45, 5.46, 5.48, 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 ((~~Section~~)) 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 RCW 49.46, 49.48, or 49.52, 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 RCW 49.46, 49.48, or 49.52 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 RCW 49.46, 49.48 or 49.52, 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 ((~~14.20.070.F.6,~~)) 14.16.100.A.4, 14.17.075.A.4, 14.19.100.A.4, and 14.20.080.A.4, the applicant or licensee has failed to ((~~promptly~~)) comply ((~~with a~~)) 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 ((~~final order by the Division Director of the Office of Labor Standards within the Office for Civil Rights issued~~)) under ((~~Chapter 14.20,~~)) Chapters 14.16, 14.17, 14.19 and 14.20, 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 ((~~refuse to issue,~~)) deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The ((~~refusal to issue,~~)) denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under ((~~Chapter 14.20 is~~)) Chapters 14.16, 14.17, 14.19, and 14.20 are remedied.

10. The business is one that requires a license under Title VI and is operating without one or cannot lawfully obtain one at the time of its application.

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

* * *

Section 90. The Agency shall provide a written status report to the Chair of the Council committee with oversight over labor standards, on the implementation and results from the changes made by CB 118585. This report shall be submitted by the end of July 2016.

Section 91. 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 14 day of December, 2015, and signed by me in open session in authentication of its passage this 14th day of December, 2015.

President _____ of the City Council

Approved by me this 17th day of December, 2015.

Edward B. Murray, Mayor

Filed by me this 17th day of December, 2015.

Monica Martinez Simmons, City Clerk

(Seal)

STATE OF WASHINGTON -- KING COUNTY

--ss.

332162 No.

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:124956-124968 TITLE

was published on

01/08/16

The amount of the fee charged for the foregoing publication is the sum of $219.47 which amount has been paid in full.

MELISSA M. DOWD
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
11-21-19

Subscribed and sworn to before me on

01/08/2016

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

The full text of the following legislation, passed by the City Council on December 14, 2015, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar. Contact: Office of the City Clerk at (206) 684-8344.

Ord 124956

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Ord 124957

AN ORDINANCE related to cable television; authorizing the Mayor or the Mayor's designee to enter into a renewed Cable Television Franchise Agreement with Comcast Cable Communications Management, LLC; and authorizing the Chief Technology Officer to enter into other agreements for the purpose of implementing or administering the renewed franchise.

Ord 124958

AN ORDINANCE approving and confirming the plat of "Greenbelt Station" in the portions of Southwest 1/4 of Northeast 1/4 of Section 34, Township 24 North, Range 4 East, W.M. in King County, Washington.

Ord 124959

AN ORDINANCE relating to City employment commonly referred to as the Fourth Quarter 2015 Employment Ordinance; establishing new salaries that implement 2016 increases required by Ordinance 124490; amending Ordinance 124927; increasing funds; designating positions as exempt from Civil Service status; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

Ord 124960

AN ORDINANCE relating to employment in Seattle; amending Chapters 14.16, 14.17, 14.19, and 14.20 of the Seattle Municipal Code to prescribe additional remedies and enforcement procedures, harmonize ordinance language, and add provisions to facilitate compliance; amending Section 3.14.931 of the Seattle Municipal Code to update duties of the Seattle Human Rights Commission; and amending Section 5.55.230 of the Seattle Municipal Code to require labor standards compliance for business license tax certificates.

Ord 124961

AN ORDINANCE authorizing, in 2015, acceptance of funding from non-City sources; authorizing the heads of the Executive Department, City Budget Office, Department of Neighborhoods, Department of Parks and Recreation, Human Services Department, Seattle Fire Department, Seattle Police Department, Department of Information Technology, and Seattle Public Utilities to accept specified grants, private funding donations and subsidized loans and to execute, deliver, and perform corresponding agreements; and ratifying and confirming certain prior acts.

Ord 124962

AN ORDINANCE relating to the 2015 Budget; amending Ordinance 124648, which adopted the 2015 Budget, including the 2015-2020 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; revising project allocations for certain projects in the 2015-2020 CIP; creating both exempt and nonexempt positions; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

Ord 124963

AN ORDINANCE relating to the creation of a Title 6 business license; adding a new Chapter 6.208 to the Seattle Municipal Code; and amending Sections 5.30.030, 5.32.150, 5.55.230, 6.10.005, 6.20.050, 6.214.310, 6.250.030, 6.500.140, 7.04.645, 21.16.060, 21.16.080, and 22.214.060 of the Seattle Municipal Code.

Ord 124964

AN ORDINANCE relating to historic preservation; imposing controls upon the Seattle Post-Intelligencer Globe, a landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code, and adding it to the Table of Historical Landmarks contained in Chapter 25.32 of the Seattle Municipal Code.

Ord 124965

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to execute amendments to wheeling agreements between The City of Seattle and North City Water District and between The City of Seattle and Olympic View Water and Sewer District.

Ord 124966

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to enter into a Joint Project Agreement with King County to design, construct, operate, and maintain the Ship Canal Water Quality Project, in partial fulfillment of the objectives of the Consent Decree authorized under Ordinances 123908 and 124129, and the "Plan to Protect Seattle's Waterways" authorized under Ordinance 124766, to reduce Combined Sewer Overflows; and ratifying and confirming certain prior acts.

Ord 124967

AN ORDINANCE vacating the south 168 feet of the alley adjacent to Lots 17 through 24, lying between Block 55 and Block 56, Boston Company's Plat of West Seattle, near the Alaska Junction of the West Seattle neighborhood of Seattle, on the petition of Fauntleroy Place LLC (Clerk File 308171), and ratifying and confirming certain prior acts.

Ord. 124968

AN ORDINANCE relating to taxicab, transportation network company, and for-hire vehicle drivers; amending Section 6.310.110 of the Seattle Municipal Code; adding a new Section 6.310.735 to the Seattle Municipal Code; and authorizing the election of driver representatives.

Date of publication in the Seattle Daily Journal of Commerce, January 8, 2016.

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