Seattle Office of Labor Standards

Wage Theft Ordinance

Questions and Answers

Seattle's Wage Theft Ordinance protects against wage theft by creating requirements for payment of wages and tips in Seattle.

The **Seattle Office of Labor Standards (OLS**) is responsible for the administration of this law, providing outreach, compliance assistance and enforcement services to workers and employers

If you have a question that this Q&A does not cover, visit the Office of Labor Standards website. You may also call 206-256-5297 or reach us electronically:

- Employees with questions and complaints – submit an online inquiry form.
- Employers with requests for technical assistance – send an email to business.laborstandards@seattle.gov or submit an on-line inquiry form.

The Office of Labor Standards created this document to provide an explanation of the law. *Note: Information provided by the Office of Labor Standards does not constitute legal advice, create an agency decision, or establish an attorney-client relationship with the reader.*

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A. General Information

1. **When did the Wage Theft Ordinance take effect?**
   The Wage Theft Ordinance took effect on April 1, 2015.

2. **Where can I view a copy of the law?**
   The language of the law can be viewed by clicking here.

3. **Which City department administers this law?**
   The City of Seattle's Office of Labor Standards (OLS) administers this law. OLS provides a range of services for employees and employers, including education and compliance assistance. OLS also investigates potential violations of this law.

4. **Where do employees call with questions? Can employees remain anonymous?**
   Employees can call 206-256-5297, email workers.laborstandards@seattle.gov, or submit an online inquiry form. Upon request, and to the extent permitted by law, OLS protects the identifying information (e.g., name, job title) of employees who report violations and witnesses who provide information during investigations. OLS will not disclose the person's identifying information during or after the investigation, to the extent permitted by law. OLS may need to release names of employees who are owed payment as a result of an investigation.

5. **What happens when employees contact OLS?**
   Employees may contact OLS with questions or complaints. When employees contact OLS, they will be directed to an intake investigator who will provide information about the law or gather information about issues at the workplace. If employees wish to make a complaint, OLS may collect information from additional witnesses and/or request documents from employees. After reviewing information provided by employees, OLS will decide if and how it can help, which may take a variety of forms, including simply providing information to the employer, trying to informally resolve the issue without a full investigation, or conducting a formal investigation. If OLS decides to

investigate, and if OLS cannot investigate the employer immediately, it may place the case on a waitlist.

6. **Does an employee's immigration status impact coverage or application of this law?**
   No, immigration status does not impact coverage/application of the ordinance. As a matter of policy, the City of Seattle does not ask about the immigration status of anyone using City services. Read OLS' Commitment to Immigrant and Refugee Communities for more information.

7. **Can employers call OLS with their questions?**
   Yes! OLS provides compliance assistance and training for employers. Employers can call 206-256-5297, send an email to business.laborstandards@seattle.gov, or submit an online inquiry form. OLS does **not** share information about the identity of employers with our enforcement team. Conversations are kept separate from the investigation process.

8. **What happens when an employer calls OLS with a question about compliance?**
   OLS encourages employers to call or email their questions to our office. Our goal is to help employers attain full compliance with Seattle's labor standards and we will answer many types of labor standards questions. OLS has staff dedicated to business engagement who respond to inquiries and who are not members of the enforcement team. Phone conversations and email exchanges with the business engagement staff are kept separate from the investigation process.

9. **Does OLS provide language interpretation for its services?**
   Yes. If OLS staff do not speak your preferred language, OLS will arrange for an interpreter to help with the conversation. OLS's services are free of charge regardless of whether interpretation services are required.

B. Employees

1. **Which employees are covered by the Wage Theft Ordinance?**
   Seattle's Wage Theft Ordinance covers all employees who work within Seattle city limits regardless of employment status (e.g., full-time, part-time, temporary, seasonal, overtime eligible, and overtime exempt), the location of the employer, or employer size. Employees who are based outside of the city and work in Seattle on an occasional basis are covered by the ordinance after working two hours within a two-week period. See below for more information on "occasional basis employees."

2. **Does the Wage Theft Ordinance cover all government employees who work in Seattle?**
   Yes, the ordinance covers city, state, and federal government employees that work in Seattle.

3. **Does the Wage Theft Ordinance apply to independent contractors?**
   No. The ordinance only applies to employees. However, some independent contractors are entitled to similar protections under the Independent Contractor Protections ordinance—click here to learn more. OLS determines whether an individual is an employee or an independent contractor by analyzing the "Economic Realities Test" that is used by the Fair Labor Standards Act and the Washington State Minimum Wage Act. If there is a dispute regarding a worker's status, the employer is responsible for proving that the worker is an independent contractor rather than an employee (i.e., the law favors employee status and an employer must prove otherwise).

   Under the Economic Realities Test, factors for distinguishing an employee from an independent contractor include:
   a. **Is the work an integral part of the employer's business?** (If the answer is yes, this factor weighs in favor of employee status);
   b. **Does the worker's managerial skill affect the worker's opportunity for profit or loss?** (If the answer is yes, this factor weighs in favor of independent contractor status);
   c. **How does the worker's relative investment compare to the employer's investment?** (If the worker's investment is less than the employer's, this factor weighs in favor of employee status);
   d. **Does the work performed require special skill and initiative?** (If the answer is yes, this factor weighs in favor of independent contractor status);

e. **Is the relationship between the worker and the employer permanent or indefinite?** (If the relationship is permanent or indefinite, this factor weighs in favor of employee status); and
f. **What is the nature and degree of the employer's control?** (If the employer exercises control over the way the work is performed, this factor weighs in favor of employee status).

For more information, see OLS' Worker Classification Guide.

4. **Where can I find a map of Seattle city boundaries?**
This interactive map can be used to determine whether a work location is within Seattle City limits.

5. **What does it mean to work in Seattle on an occasional basis?**
Employees who are typically based outside of Seattle and perform work in Seattle on an irregular basis (i.e. not regularly scheduled) are considered to work in Seattle on an occasional basis. Employees who work in Seattle on an occasional basis are covered by the Wage Theft Ordinance after working more than two hours within Seattle city limits during a two-week period. Once employees meet this threshold requirement, payment for all hours worked in Seattle for that pay period must comply with the Wage Theft Ordinance.

6. **How does an employer determine what two-week period to use for occasional basis employees?**
Employers can choose how to determine a two-week period as long as it is consecutive and consistently applied. The two-week period can be a calendar period, pay period, or a rolling period measured forward or backward from the first hour worked in Seattle.

7. **Who is responsible for tracking the hours of an employee who occasionally works in Seattle?**
Employers may require employees to track their own hours. However, employers are responsible for providing their employees with information about the Wage Theft Ordinance. They also must make sure that their employees have the ability to track the hours they work in Seattle. Additionally, employers must retain the required payroll records documenting compliance with the ordinance.

8. **Does the ordinance cover employees who travel through Seattle?**
Employees who are simply traveling through Seattle (from a starting point outside Seattle to a destination outside of Seattle) are not covered by the law. Incidental stops to refuel, eat a meal, or take care of an errand are not considered employment-related stops. Employees who work in Seattle on an occasional basis and make work-related stops in Seattle may be covered by the law, depending on how many hours of work they perform in Seattle during a two-week period (see questions 5, 6, and 7 in this section).

C. Employers

1. Which employers are covered by the Wage Theft Ordinance?

The law covers any employer with employees working in Seattle.

2. What are joint employers?

Separate business entities (with separate owners, managers & facilities) may be treated as joint employers under this law and each be liable for violations of the law. An individual may also be a joint employer. While a joint employment relationship generally exists when an employee performs work that benefits two or more employers, the final determination depends on several nonexclusive factors that are part of an "economic realities test." The five primary factors are:

1) The nature and degree of control of the workers;
2) The degree of supervision (direct or indirect) of the work;
3) The power to determine the pay rates or the methods of payment of the workers;
4) The right (directly or indirectly) to hire, fire or modify the employment conditions of the workers;
5) Preparation of payroll and the payment of wages.

Other factors include:

- Whether the work is a specialty job on the production line;
- Whether responsibility between a labor contractor and an employer passes from one labor contractor to another without material changes;
- Whether the premises and equipment of the employer are used for the work;
- Whether the employees have a business organization that shifts as a unit from one work site to another;
- Whether the work is piecework and not work that requires initiative, judgment or foresight (i.e. considering if the service rendered requires a special skill);
- Whether the employee has an opportunity for profit or loss depending upon the employee's managerial skill;
- Whether there is permanence in the working relationship; and
- Whether the service rendered is an integral part of the employer's business.

For more information, see the U.S. Department of Labor's Factsheet on Joint Employment. *

* Although this document was withdrawn by the Department of Labor, OLS continues to rely on this guidance because its reasoning is persuasive and consistent with caselaw.

Seattle Office of Labor Standards

D. Notice and Posting

1. **What are the notice and posting requirements of the ordinance?**
   Employers must display an 11" x 17" **OLS Workplace Poster,** updated annually, in a conspicuous and accessible location where employees work in Seattle. Employers must display the poster in English and in the primary language(s) of the employees at the particular workplace.

   OLS creates the poster, provides annual updates by December 1st of each year, and translates it into different languages.

2. **How do employers comply with the workplace poster requirement if employees telecommute or work off-site with no central work location?**
   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 the employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

3. **How do employers comply with the workplace poster requirement for out-of-town employees who work in Seattle on an occasional basis?**
   Employers can meet the workplace poster requirement for occasional basis employees that work at a fixed Seattle location by displaying the poster at the Seattle location in a manner that is conspicuous and accessible to Seattle-based and occasional basis employees.

   In instances when display of the poster is not feasible (i.e. there is no fixed Seattle location) and an employee works in Seattle on an occasional basis, the employer may provide the poster on an individual basis in the employee's primary language in physical or electronic format. In such a case, the employer must comply with the workplace poster requirements reasonably in advance of the employee's first period of work in Seattle. If employers are not able to anticipate that an employee will work on an occasional basis in Seattle, the employer must comply with the workplace poster requirements once the employee is covered by the Wage Theft Ordinance (i.e. after performing more than two hours of work in Seattle during a two-week period).

4. **Where can employers get the workplace poster?**
   The 2022 OLS Workplace Poster can be downloaded in English and other languages on our Resources and Languages Webpage. Currently, the following languages are available: Amharic,

Arabic, Simplified Chinese, Farsi, French, Japanese, Khmer, Korean, Malay, Mixtec, Oromo, Portuguese, Punjabi, Russian, Somali, Spanish, Tagalog, Thai, Tigrigna, and Vietnamese. OLS regularly translates the poster and other materials into additional languages. Employers are encouraged to notify OLS of the need for additional translations.

Employers may also pick up the poster at our office or at one of the City of Seattle's Customer Service Centers.

E. Compensation Requirements

1. **What are the ordinance's compensation requirements?**
   The ordinance requires employers to pay employees all compensation owed by reason of employment on an established regular pay day at no longer than monthly payment intervals. Compensation includes salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, promised or legislatively required paid leave, and reimbursement for employer expenses.

2. **How often must compensation be paid?**
   An employer may choose the amount of time between pay days (i.e. the payment interval). The payment interval may be daily, weekly, biweekly, semi-monthly, or monthly. The payment interval may not be more than one month.

   On the established pay day, an employer must pay an employee for all hours worked during the pay period. A pay period is a defined amount of time for which an employee will receive a paycheck. An employer may choose to set a daily, weekly, bi-weekly, semi-monthly, or monthly pay period.

   For example: Sabrina's employer has established two regular pay days each month on the first and fifteenth days of the month. On the first of the month, Sabrina is paid for the work she performed between the fifteenth day and last day of the previous month. On the fifteenth of the month, Sabrina is paid for the work she performed between the first and fourteenth day of that month. The payment interval is semi-monthly because there are two pay days each month. The pay periods are also semi-monthly because there are two pay periods each month.

For example: Toby's employer has established a regular pay day on the fifth day of each month. On the fifth of the month, Toby is paid for the work he performed during the previous calendar month. The payment interval is monthly, and the pay period is one month.

3. **What happens if an employer is late in providing a paycheck?**
   By not paying wages when they are owed, an employer violates the Wage Theft Ordinance's requirement that an employer pay an employee all compensation owed by the reason of employment on the established regular pay day. This is true even if the employer eventually pays the employee the outstanding wages.

4. **What actions violate the ordinance's requirement to pay all compensation due to an employee?**
   The ordinance provides a mechanism of enforcement for all compensation due to an employee under Seattle, Washington state, or federal law. Examples, include:

   - Failure to pay minimum wage
   - Failure to pay overtime
   - Failure to pay for all hours worked
   - Failure to pay the amount promised
   - Failure to pay tips
   - Failure to provide rest and meal breaks
   - Failure to provide paid sick and safe time
   - Failure to pay for off-the-clock work
   - Misclassifying an employee as an independent contractor and failing to pay all compensation due;
   - Making improper deductions from an employee's pay
   - Failure to provide reimbursement for employer expenses.

   For example: Samin works at a restaurant and her employer has not provided her with the meal and rest breaks required by Washington state law. By not providing rest breaks and compensation for missed meal breaks, Samin's employer has failed to pay Samin "all compensation owed" by reason of employment and has violated the Wage Theft Ordinance. Samin's employer's failure to provide meal and rest breaks can be enforced through private litigation under the Wage Theft Ordinance or by OLS. This also could result in liability for violations of the Washington Industrial Welfare Act, RCW 49.12.

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F. Notice of Employment Information

1. **What is a notice of employment information?**
   Employers must provide written notice of employment information to every employee working in Seattle at the time of hire. Employers must revise the notice if any of the required employment information changes.

2. **What information must be included in the notice of employment information**
   The notice of employment information must include the following information:
   - The employer's name and any trade ("doing business as") names;
   - The employer's address, telephone number, and email;
   - The employee's rate(s) of pay, including overtime rate(s) of pay;
   - The employee's eligibility to earn overtime pay;
   - The employer's tip policy;
   - Pay basis (e.g., hour, week, commission);
   - The employer's established pay day; and
   - For employees covered by the Secure Scheduling Ordinance, a written good faith estimate of hours the employee can expect to work.

3. **Is there a model notice of employment information that employers can use?**
   Employers may use the model Notice of Employment Information that OLS provides, which is available for download on the OLS Resource website.

4. **Are employers required to use the model notice created by OLS?**
   No. There is no OLS mandated notice of employment Information template. Employers are free to design a notice of employment information template that meets the needs of the particular business. OLS does provide an optional notice of employment information template on the OLS Resource website.

5. **When must notice of employment information be given?**
   Employers must provide written notice of employment information at the time of hire and before any change to the employment information. If a change to employment information is retroactive, the employer must provide a revised notice of employment information as soon as practicable.

For example: Rosa started work for her employer on April 1, 2021. Her starting hourly wage was $18.00/hour, and overtime wage was $27.00/hour. Rosa's employer provided her with a Notice of Employment Information before her first day of work. After a performance review, Rosa's employer increased her hourly wage by $2.00/hour. Before the wage increase goes into effect, Rosa's employer must provide her with a revised notice of employment information that states Rosa's new hourly wage of $20.00/hour, and overtime rate of $30.00/hour.

For example: Mary works at a bakery. A larger company is in the process of buying the bakery. It may not be possible for the new owner to provide employees with a revised notice of employment information until the sale is finalized because the new owner does not yet have control of the business or access to its employees. As soon as practicable after the sale is finalized, the new owner must provide revised notices of employment information to all the employees of the bakery that show the retroactive change in ownership.

For example: Jaime works at a clothing store and earns a base hourly wage plus a 5% commission on any items of clothing he sells. Jaime's employer decides to implement a new commission structure so employees now earn a 2% commission on the first $500 in sales each month, and a 7% commission on any additional sales. This constitutes a change to the pay basis and the employer must provide a revised notice of employment information to all employees who earn commissions that explains the new pay basis for those employees.

6. **Are there requirements for format and method of providing the notice of employment information?**
   Yes. The notice of employment information must be provided in writing to employees. Employers may provide a physical or electronic copy of the notice.

7. **Can employers provide the notice of employment information via an electronic system or online portal?**
   No. Employers must affirmatively provide employees with the notice of employment information, not just make the information available through an electronic system or portal.

8. **Does the notice of employment information need to be in a single document?**
   The ordinance does not require the notice of employment information to be in a single document. A best practice for employers is to provide employees with a single written notice of employment information that includes all of the required information.

9. **Are employers required to provide the notice of employment information in languages other than English?**
   Employers must provide the notice in English and in the primary language of the employee receiving the written information.

   OLS' model notice of employment information has been translated into multiple language and is available on the OLS Resource Webpages. Employers are encouraged to notify OLS of the need for additional translations.

10. **Can an employer provide a group of employees with one notice, such as by posting the notice in a common space or break room?**
    No. An employer must provide each employee with a written notice of employment information. An employer can do this by giving the employee a physical or electronic copy of the notice. An employer does not meet this obligation by making the notice generally available for a group of employees, such as by posting the notice in a common space or break room. The employer is responsible for giving the notice to each employee.

11. **Is information contained in a collective bargaining agreement or employment agreement sufficient for the notice requirements?**
    It depends. An employer must affirmatively provide each employee with written notice of employment information that covers all the required information. In certain circumstances, documents such as an employment agreement or collective bargaining agreement that contain the required information may satisfy this requirement. A best practice for employers is to provide a single, stand-alone document that contains all the required information presented in a manner that is accessible and understandable to employees. Providing the information dispersed throughout a large document may not comply with the notice requirements.

12. **Do employers have to provide the entire notice of employment information again if only one piece of information changes?**
    Employers must provide written notice to employees any time there is a change to the employment information. A best practice for employers is to provide employees with a revised notice of employment information that contains all the required information any time there is a change to any of the information.

13. **Do employers need to provide a notice of employment information to employees who are typically based outside of Seattle and perform work in Seattle on an irregular basis?**
Yes. For employees who work in Seattle on an occasional basis, employers must provide notice of employment information once the employee is covered by the Wage Theft Ordinance (i.e. after performing more than two hours of work in Seattle during a two-week period).

G. Pay Statements

1. **What are the pay statement requirements under Seattle's Wage Theft Ordinance?**
Employers must provide each employee with a written notice of the following information each time that wages are paid:
    - All hours worked with regular and overtime hours shown separately;
    - Rate or rates of pay, regardless of whether employees are paid on hourly, salary, commission, piece rate or combination thereof, or other basis during the pay period. Employees paid on a 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;
    - Tip compensation;
    - Pay basis (e.g. hour, shift, day, week, commission);
    - Gross wages; and
    - All deductions for that pay period.

    Note – Other Pay Statement Requirements: The Paid Sick and Safe Time (PSST) Ordinance requires employers to provide the following information each time wages are paid: (1) total PSST accrued, (2) amount of available PSST hours; and (3) amount of PSST used since the last notification. Employers may choose a reasonable system for providing this information, such as stating accrued, available, and used PSST via each pay stub, an on-line system, email, memo, etc. For more information, see OLS' Paid Sick and Safe Time Question and Answers on the OLS Paid Sick and Safe Time website.

2. **What are pay statement requirements under Washington law?**
Under Washington law, employers must provide an itemized pay statement to employees on each pay day showing the following information:

- Rate or rates of pay;
- Pay basis (e.g. hours or days worked, piece rate basis, or salary);
- Gross wages;
- All deductions for that pay period;
- Pay period (identified by month, day, year, and payment date); and
- All records required for Washington paid sick leave.

For more information about pay statement requirements under Washington law, see the Washington State Department of Labor and Industries' Payroll & Personnel Records website and WAC 296-126-040. For more information on the records required for Washington paid sick leave, visit the Washington State Department of Labor and Industries' Paid Sick Leave website.

3. What is the difference between the City and state pay statement requirements?

	City of Seattle	Washington State
Hours worked with regular and overtime hours shown separately	X	
Rate(s) of pay	X	X
Pay basis	X	X
Gross wages	X	X
Deductions	X	X
Pay period		X
Records for Seattle paid sick and safe time	X *	
Records for Washington state sick leave		X

***** Employers may provide this information in an employee's pay statement or through another reasonable system.

4. Can a pay statement be provided electronically?

Yes. Employers may provide pay statements to employees in either electronic or physical format.

5. **Does the pay statement need to be separate from an employee's paycheck?**
   Yes. The pay statement is a written statement that must be separate from the paycheck itself. A paycheck that has a tear off component with the pay statement information meets the requirement that the pay statement be separate from the paycheck itself.

6. **When is an employer required to provide a pay statement?**
   Employers are required to provide a pay statement on each pay day. Employers must establish a regular pay day for paying employees wages for hours working during a pay period. An employer may choose to set a daily, weekly, bi-weekly, semi-monthly, or monthly pay period. Employers may choose the amount of time between established pay days (i.e. the payment interval), which may be daily, weekly, biweekly, semi-monthly, or monthly. The payment interval may not be more than one month.

H. Rest and Meal Breaks

1. **Are rest and meal period violations enforceable under the Wage Theft Ordinance?**
   Yes. The law requires employers to pay employees "all compensation owed" by reason of employment. This broad requirement means a failure to follow Washington state meal and rest break law in Seattle can be enforced through private litigation under this ordinance or enforced by OLS.

2. **What Washington law creates the right to rest and meal breaks for non-agricultural employees?**
   Washington's rest and meal break requirements for non-agricultural employees are part of Washington's Industrial Welfare Act, RCW 49.12. The information in this section applies only to non-agricultural employees. For more information, see the State of Washington Department of Labor and Industries' Rest Breaks, Meal Periods, and Schedules website and Administrative Policies ES.C.6.1 and ES.C.6.2 on the Administrative Policies website.

3. **What Washington law creates the right to rest and meal breaks for agricultural employees?**
   RCW 49.30 and WAC 296-131-020 give agricultural employees the right to rest and meal breaks. This section does not discuss requirements for agricultural employees. For more information on these requirements, see the State of Washington Department of Labor and Industries' Rest Breaks

and Meal Periods for Agricultural Employees website and Administrative Policy ES.C.6.2 on the Administrative Policies website.

4. **Which employees are covered by Washington's rest and meal period requirements?**
   Under Washington's Industrial Welfare Act (IWA), employees are those "employed in the business of their employer," regardless of the type of work they perform. Some workers are exempt from the rest and meal break requirements, such as newspaper vendors, domestic workers, agricultural workers, individuals employed in a bona fide executive, administrative, or professional capacity, outside salespersons, and independent contractors. Additionally, the IWA's rest and meal break requirements for employees in the construction trades, such as laborers, carpenters, sheet metal, and ironworkers, may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act if the agreement specifically addresses rest and meal breaks.

   For more information on employee coverage, see the State of Washington Department of Labor and Industries Administrative Policy ES.C.1 (Industrial Welfare Act: Applications, Exemptions, and Interpretations), available on the Administrative Policies website.

5. **Do domestic workers in Seattle have the right to rest and meal breaks?**
   Yes. Seattle's Domestic Workers Ordinance provides certain domestic workers with the right to rest and meal breaks. For more information, see OLS' Domestic Workers website.

6. **What are rest period requirements under Washington State law?**
   Employers must provide employees with one paid, ten-minute rest period for every four hours of work. If employers do not provide this, the rest period is considered missed.

   Employees can take rest periods intermittently if: (1) the intermittent breaks add up to 10 minutes over the four-hour period, and (2) each intermittent break is long enough to give a true break from work and an opportunity for relaxation.

7. **Can an employee waive their rest period?**
   No, employees cannot waive their rest periods.

8. **What are meal period requirements under Washington State law?**
   For work shifts of more than five consecutive hours, employees must receive a meal period of at least 30 minutes between two and five hours from the start of the shift. If these conditions are not

met, the meal period is considered missed. An employee cannot be required to work more than five hours without a meal period.

Meal periods may be unpaid only if: (1) The employee receives at least 30 minutes of uninterrupted mealtime, and (2) the employee is completely relieved of work duties.

Meal periods may be intermittent, so long as: (1) the total amount of mealtime during which the employee is completely relieved of work duties adds up to 30 minutes, and (2) the mealtime is paid.

If an employee must remain on the worksite and act in the interest of the employer, any time spent performing work tasks is not considered part of the meal period.

9. **Can an employee waive their meal period?**
   Yes. An employee can choose to waive a meal period, but the waiver must be knowing and voluntary. The employee may change their mind at any time and request the meal period. The employer bears the burden of proving the employee waived meal breaks. A best practice for employers is to obtain a meal break waiver in writing from the employee before the meal break is required to begin.

10. **What are payment requirements for missed rest and meal periods?**
    An employer must pay an employee for a missed rest or meal period in addition to payment for the active time that the employee worked. The examples below help explain.

    For example: A restaurant employee worked a six-hour shift and had two intermittent breaks of three minutes for a total of six minutes. The employer gave the employee a meal at the end of the shift for the employee to eat after clocking out. The employee missed one 10-minute rest period and one 30-minute meal period.

    The employer must pay the employee for six hours of active work, one missed rest period, and one missed meal period.

    For example: A construction employee worked from 8 am to 4:30 pm and took 10-minute rest breaks at 10 am and 2 pm during which time they stopped working and walked away from the

jobsite. At noon, they stopped working for 15 minutes to eat lunch, but then went back to work. The employee had two rest periods and missed one 30-minute meal period.

The employer must pay the employee for eight hours and 30 minutes of active work, and one missed meal period.

For example: A security employee worked from 3 pm to 11 pm. Their duties required them to be always reachable by walkie-talkie. The employer encouraged them to take 10-minute rest breaks at 5 pm and 9 pm, and a 30-minute meal period at 7 pm. At 5 pm, they began a rest break that was interrupted after six minutes. Twenty minutes later, they took four more minutes of break time (for a total of 10 minutes). At 7 pm, they began eating their meal at the desk, but had to respond to the walkie-talkie three times during their meal, though they did not leave the desk. They spent 30 minutes eating their meal and relaxing. Before 9 pm, the fire alarm sounded, and the employee was busy through the end of their shift.

The employee received one intermittent 10-minute rest period and one intermittent 30-minute meal period and missed one 10-minute rest period. The employer must pay the employee for seven hours and 30 minutes of active work, for a paid 30-minute meal break, and for one missed rest break.

I. Tip Pools

1. **What is a tip?**
   A tip is an amount of money presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip.

2. **Do employees have the right to retain all tips?**
   Yes. Tips are the property of the employee or employees receiving the tips, including employees who receive tips through a valid tip pool.

3. **Can employers retain employee tips?**
   No. Tips are the property of the employee or employees who receive them from customers, including employees who receive tips through a valid tip pool. An employer may not keep tips from a tip pool for any purpose.

4. **Can an employer, manager, or supervisor keep tips they earn?**
   Yes. Employers, managers, and supervisors can keep the tips they receive directly from customers based on services they directly and solely provide.

5. **Are employers allowed to require tip pooling?**
   Yes. Employers are permitted to require employee participation in a valid tip pool. Employers may institute a mandatory tip pool that includes both front of the house and back of the house employees.

6. **Who may participate in a tip pool?**
   Only individuals who qualify as "employees" under Washington's Minimum Wage Act may be included in the tip pool. For more information on the definition of employee in Washington's Minimum Wage Act, see Revised Code of Washington (RCW) 49.46.010 and the State of Washington Department of Labor and Industries Administrative Policy ES.A.1 (Minimum Wage Act Applicability) on the Administrative Policies website.

7. **Who may not participate in a tip pool?**
   Employees who are exempt from the definition of "employee" under the Washington Minimum Wage Act, RCW 49.46.010(3), may not participate in a tip pool. This includes employees who qualify for the executive, administrative, or professional exemptions under the Minimum Wage Act based on their job duties and being paid on a salary basis.[†]

   Additionally, managers and supervisors who meet the job duties requirement of the executive exemption under the Minimum Wage Act may not participate in a tip pool regardless of whether they are paid on a salary or hourly basis. Specifically, a manager or supervisor may not participate in a tip pool if they meet the following requirements:
   - Their primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and
   - They customarily and regularly direct the work of two or more other employees; and
   - They have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.

[†] For more information on overtime requirements, see the State of Washington Department of Labor and Industries' Overtime and Exemptions website.

8. **Can employers require tipped employees to share their tips with managers and shift supervisors?**
   No. Neither hourly nor salaried managers are permitted to participate in mandatory tip pools (see question 6 in this section).

   For more information on the participation of managerial employees in mandatory tip pools, see the federal tip-pooling regulation promulgated under the Fair Labor Standards Act, 29 CFR § 531.54.‡

9. **[UPDATE] Can an employee's tips be counted toward minimum compensation requirements under Seattle's Minimum Wage Ordinance?**
   Starting January 1, 2025, tips will no longer count toward minimum compensation requirements under Seattle's Minimum Wage Ordinance. All employers, regardless of business size, will be required to pay the same minimum wage. For more information on the Seattle minimum wage requirements, see the Seattle Minimum Wage Question and Answers available on OLS' Minimum Wage website.

10. **Where can I find more information about tip-pooling requirements?**
    For more information on tip-pooling requirements, see Washington State Department of Labor and Industries Administrative Policy ES.A.12 (Tips, Gratuities, and Service Charges) on the Administrative Policies website, and the federal tip-pooling regulation promulgated under the Fair Labor Standards Act, 29 CFR § 531.54. If there are differences in the federal, state, or local laws on an issue of wages, the standard most favorable to the employee is applied. *See* RCW 49.46.120.

J. Reimbursement for Employer Expenses

1. **Is an employer required to reimburse employees for employer expenses?**
   Yes. The Wage Theft Ordinance requires employers to pay employees "all compensation owed" by reason of employment. The term "compensation" includes reimbursement for employer expenses. More specifically, the law requires that an employer reimburse employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties…." SMC 14.20.020 (defining "compensation).

‡ If there are differences in the federal, state, or local laws on an issue of wages, the standard most favorable to the employee is applied. *See* RCW 49.46.120.

This broad requirement brings the failure to reimburse employees for employer expenses under the jurisdiction of the Seattle Office of Labor Standards.

2. **What "expenditures or losses" must be reimbursed?**
Reimbursable expenses are those that are reasonably necessary to perform the employee's job duties or that foreseeably occurred because of an employer's instructions. The employer must reimburse employees for the cost of items or services that are explicitly or implicitly necessary, or required by the employer, to carry out the employee's work duties. Whether an expense is reimbursable will depend on the particular situation. Ultimately, the employee must be made whole for the cost or loss actually incurred.

3. **Are voluntary costs reimbursable?**
As a general rule, an employer is not required to reimburse an employee for costs that an employee voluntarily chooses to incur (e.g. for their convenience), but are not necessary for the job.

For example: Jorge teleworks from home and can accomplish his work duties on a 15" computer monitor. But Jorge decides to buy a 32" monitor. Jorge's employer is not responsible for the full cost of the 32" monitor. Rather, the employer must reimburse a reasonable portion of the larger-than-necessary monitor, which would likely be the cost of the 15" monitor. On the other hand, if Jorge's employer requires employees to buy 32" monitors for the job, then the employer must reimburse employees for the full expense.

For example: Tanya teleworks from home. Tanya's employer requires all its teleworking employees, including Tanya, to use their personal cell phones and home internet service to perform their work. Tanya's employer is responsible for reimbursing Tanya for any expense or loss that Tanya incurs as a result of using her personal cell phone and home internet service. This can include reimbursement for the portion of Tanya's internet or cell phone plan that would be reasonably required to perform work (based on some reasonable calculation) and any upgrade in equipment required to account for Tanya's work use of the phone or internet plan, such as higher speed internet or increased cell phone data limits.

4. **Is an employer required to reimburse the costs of an employee who teleworks by choice?**
Whether an employer is required to reimburse expenses associated with "optional" teleworking depends on whether teleworking and the associated costs were reasonably necessary to

perform the employee's job duties. Relevant considerations could include whether the employee was encouraged to work at home, whether the employer has provided sufficient space at its physical location for the employee to perform their work, how clearly the employer communicated that telework was voluntary, and whether other factors that benefit the employer made work at home necessary even though the overall telework policy was voluntary on its face. If the employee's choice to telework rather than work at the employer's office is truly voluntary, the employer is not required to reimburse the costs that the employee incurs as a result of teleworking.

5. **Can an employer institute a reimbursement system? Does the law require a specific method or procedure for reimbursement?**
   The Wage Theft Ordinance does not prohibit employers from instituting a reimbursement system, including requiring pre-approval for expenses. A best practice for employers is to have a clear and detailed policy that specifies the reimbursement process and method, including whether pre-approval is required and whether there are any circumstances that would excuse the need for advanced notice or approval, and that is provided to employees in advance. As an overarching principle, whatever policy is instituted, the employee must be made whole for all necessary expenses.

6. **Can an employer deny reimbursement if an employee did not get permission in advance?**
   It depends. If an employer has provided employees with a clear policy that requires pre-approval of expenses, the employer may not be required to reimburse an unapproved employee expense. Absent such a policy, the employer must reimburse the employee for all necessary expenditures directly tied to the discharge of the employee's duties. Nevertheless, an employer may be required to reimburse an expense that is not pre-approved if it is a necessary expenditure. The analysis of whether the employer must reimburse the expense would turn on the necessity of the expense and not whether the employee sought pre-approval.

   For example, Acme Corp has a clear policy requiring all employees to seek pre-approval of all expenses for reimbursement. Ahmed is required to distribute new training materials to employees at an off-site location. When Ahmed arrives, he discovers that half of the materials printed incorrectly. Ahmed pays for a local copy shop to print the additional materials and rushes to the training session. Acme is required to reimburse Ahmed for this expense despite their policy requiring pre-approval as it was a necessary expenditure directly tied to the discharge of the employee's duties.

7. **Can an employer limit how much can be reimbursed for a particular expense?**
   The law does not prohibit a limitation on expenses. But any limitation cannot be so low that it prevents the employee from purchasing the item or service required perform the employee's job duties.

8. **Can an employer institute a monthly allowance to satisfy reimbursements?**
   There is no prohibition on the use of a monthly allowance to satisfy on-going reimbursements. Any stipend or allowance must be a reasonable estimation of the actual expenses or losses incurred by the employee. As always, an employer must fully reimburse an employee for the expenses that the employee has incurred. To achieve that, an employee must be able to seek reimbursement for reasonable expenses above the employer's standard allowance.

K. Overtime

1. **What overtime pay requirements apply to Seattle employees?**
   The Wage Theft Ordinance requires employers to pay employees "all compensation owed" by reason of employment, including overtime wages. Washington law requires employers to pay employees at least one and one-half times the employee's regular rate for hours worked over forty in a workweek.

   For more information on overtime requirements, see the State of Washington Department of Labor and Industries' Overtime and Exemptions website.

2. **[UPDATE] What are the overtime rates for employees earning Seattle's minimum wage?**

Starting January 1, all employers, regardless of business size, will be required to pay the same minimum wage and overtime rate for employees earning Seattle's minimum wage.

SEATTLE EMPLOYERS (*regardless of employer size)*	
2025	$20.76 Overtime = $31.14*
* These overtime rates may require the employer to round up to the nearest cent.	

For more information on the Seattle minimum wage requirements, see the Seattle Minimum Wage Question and Answers available on OLS' Minimum Wage website.

3. **What employees must be paid overtime wages?**
   Employers must pay overtime wages to all workers who qualify as employees under Seattle's Minimum Wage Ordinance and Washington's Minimum Wage Act. Under both laws, an employee is any individual employed by an employer. Employees including full-time, part-time, seasonal, temporary employees, and employees who are jointly employed by one or more employers (e.g. employee hired through the services of a staffing agency or similar entity). See Seattle Municipal Code (SMC) 12A.28.200 for more details on the definition of employee in Seattle's Minimum Wage Ordinance, and Revised Code of Washington (RCW) 49.46.010 for more information on the (identical) definition of employee in the State of Washington's Minimum Wage Act.

   Employers are not required to pay overtime wages to employees who are excluded from Washington's Minimum Wage Act, including casual laborers, exempt "white collar" workers, volunteers, newspaper vendors/carriers, railroad workers, live-in workers, and others. Exempt white collar workers include employees who work in bona fide executive, administrative, professional, computer professional, and outside sales capacities. For more information on overtime exemptions, see Washington State Department of Labor and Industries Overtime website and Administrative Policies website.

L. Service Charges

1. **Does the failure to follow Washington State service charge law violate the Wage Theft Ordinance?**
   The ordinance requires employers to pay employees "all compensation owed" by reason of employment. This broad requirement means that an employer's failure to follow Washington State service charge law in Seattle is a violation of Seattle's Wage Theft Ordinance and can be enforced either through private litigation or by OLS.

2. **What is a service charge?**
   Service charges are automatic, separately designated amounts added to a customer's bill that appear to be for services provided by employees. Service charges include automatic charges that

appear on receipts as a "service charge," "automatic gratuity," "mandatory gratuity," "delivery charge," or "porterage charge." It is not a service charge if it is not described in a way that a customer might reasonably believe it was for services provided by an employee (for example: a late fee, cancellation fee, or parking fee).

3. **What must an employer share with the customer about service charges?**
   Under Washington law, employers who include service charges must disclose the percentage of the service charge that is paid directly to the employee(s) serving the customer.

4. **Where must an employer disclose information about service charges to the customer?**
   The disclosure must appear on itemized receipts and on any menus provided to the customer. This includes physical and electronic versions of menus and customer receipts.

   For example: A dine-in restaurant employer decides to incorporate online ordering and delivery into its business. The employer wants to charge a delivery charge to customers to offset administrative costs. The employer must include the delivery charge disclosure on physical menus and itemized customer receipts generated at each of its Seattle restaurant locations. The employer must also disclose the delivery charge in its online menu environment and any itemized receipts received by the customer solely electronically.

5. **Who gets the service charge?**
   Employers must pay employees the percentage of a service charge that is disclosed on the menu or receipt as payable to the employee(s). If any portion of a service charge is not clearly disclosed as being retained by the employer, employers must pay this amount to the employee or employees serving the customer.

   For example: Cindy works at a restaurant with the following service charge policy written on its menu: "A mandatory gratuity of 20% will be added to your bill. 50% of this service charge is paid to the employee or employees who served you today." During one of Cindy's shifts, the customers who Cindy served paid a total of $100 in service charges. Cindy's employer must pay half of the service charges—$50—directly to Cindy and the other employees that served those customers, and may keep the other half.

For more examples, see the State of Washington Department of Labor and Industries Administrative Policy ES.A.12 (Tips, Gratuities, and Service Charges) on the Administrative Policies website.

6. **When can an employer keep the entire service charge?**
   If an employer discloses a service charge on a menu or receipt to the customer as not payable to the employee ("payable to the house"), the employer may keep the service charge. In other words, when an employer informs customers that service charges are not payable to the employee, then service charges are simply revenue in the same way that a customer's payments for food would be. The employer is free to decide how to use this revenue.

7. **[UPDATE] Do service charges count towards an employer's obligations under Seattle's Minimum Wage Ordinance?**
   Employers can count service charges paid to the employee as commissions but only for the employee's earnings above the Washington State minimum wage. Employers can also count service charges paid to the employee toward Seattle's minimum wage but only for the employee's earnings above the Washington State minimum wage.

   For example: In 2024, the Washington State minimum wage was $16.28 and the Seattle minimum wage was $19.97 for large employers. Scott works as a bellboy at a hotel that charges each customer an automatic porterage fee. The hotel may pay Scott an hourly wage of no less than $16.28, as long as Scott's share of the porterage fee results in an average minimum hourly wage of at least $19.97. If Scott's share of the porterage fee does not raise his average hourly wage to at least $19.97, Scott's employer must make up the difference to ensure payment of Seattle's minimum wage.

   Note: Starting January 1, 2025, small employers will no longer be able to count tips toward an employee's minimum compensation wage. The information below is for information purposes only on prior instances, per the Seattle Minimum Wage Ordinance:

   Under Seattle's Minimum Wage Ordinance, small employers of 500 or fewer employees worldwide can count tips towards a certain portion of their obligation to pay an employee minimum compensation. Service charges are not tips and cannot be counted towards this part of their obligation. For more information about tips and their relationship to the Minimum Wage Ordinance, please see the Minimum Wage Ordinance Question and Answers on the OLS Minimum Wage website.

M. Employer Records

1. **How long must employers retain payroll records?**
   Employers must retain payroll records for three years.

2. **What information are employers required to retain?**
   Payroll records for employees covered by the Wage Theft Ordinance must contain the following information:
   - Employee's name, address, and occupation;
   - Dates of employment;
   - Rate or rates of pay;
   - Amount paid each pay period; and
   - Hours worked.

   Additionally, payroll records for employees who are also covered by Seattle's Minimum Wage Ordinance must contain the following information:
   - Employee's date of birth (if under eighteen);
   - Time of day and day of week on which the employee's workweek begins.
   - Hours worked each workday and total hours worked each workweek.
   - Total daily or weekly straight-time earnings or wages.
   - Total overtime compensation for the workweek.
   - Total tips for each pay period;
   - Total additions to or deductions from wages paid each pay period;
   - Total wages, including non-discretionary bonuses, commissions and piece-rate, paid each pay period; and
   - Date of payment and the pay period covered by payment.

   Payroll records also must have information regarding medical benefits and tips that demonstrate the payment of Seattle minimum wages and minimum compensation to each employee. The records must demonstrate that the total of wages, tips, and payments toward medical benefits (if

applicable) equal minimum wage and minimum compensation requirements.[§] Specifically, records must include payments toward the individual employee's medical benefits, the actuarial value of the employee's medical benefits, and payments of tips and service charges to the employee. *See* SMC 14.20.030 and Seattle Human Rights Rule 90-110 on Payroll Records.

N. Prohibition of Retaliation

1. Does the ordinance prohibit retaliation?

Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against employees who assert their rights under the Wage Theft Ordinance in good faith.

These rights include (but are not limited to):

- Asking questions about their rights or the ordinance (e.g. asking about required rest and meal breaks);
- Informing an employer, union, or legal counsel about alleged Wage Theft violations;
- Filing a complaint about alleged violations of the Wage Theft Ordinance;
- Participating in an investigation of alleged violations of the Wage Theft Ordinance;
- Talking to the Office of Labor Standards or other coworkers about their rights or the ordinance; and
- Informing other employees of their rights under the Wage Theft Ordinance.

[§] For more information on the requirements of Seattle's Minimum Wage Ordinance, see OLS' Minimum Wage website.