

DRAFT: 11/2/2017

PAID SICK LEAVE RULES

For Tacoma Municipal Code 18.10

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* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

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RULE 1.0
WORKING IN THE CITY

1.1 In General

The Paid Sick Leave Ordinance (“Ordinance” shall mean Chapter 18.10, “Paid Sick Leave” of the Tacoma Municipal Code) applies to all Employees who work within the geographical boundaries of the City of Tacoma (the “City” or “Tacoma”) for more than 80 hours in a Benefit Year, regardless of whether their Employer is physically located in the City or not. For example, Employees who live in or travel to the City and conduct their work are covered by the Ordinance; Employees who make pick-ups, deliveries or sales calls within the City are covered by the Ordinance for the hours that the Employees are physically in the City and performing work.

1.2 Once an Employee is covered by the Ordinance, the Employee remains covered in subsequent Benefit Years as long as they continue to do work in the City.

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1.3 When there is a reasonable expectation that Employees will work 80 hours in a Benefit Year, Employees shall be immediately covered by the Ordinance. Employees who work either infrequently or irregularly shall become eligible as soon as there is a reasonable expectation that they will work 80 hours within Tacoma in a Benefit Year. Once an Employee is covered by the Ordinance, an Employer shall provide the Employee with the amount of Paid Sick Leave equal to what would have been accrued for the hours worked to date during the current Benefit Year.

1.4 Work outside the City

An Employee who performs work outside the City, even if the Employer is based in the City, is not covered by the Ordinance for hours worked outside the City.

1.5 Telecommuting

An Employee who telecommutes, or works from home or another location outside of the primary place of business, is covered by the Ordinance for all hours that they perform while physically located in the City, even if the Employer is physically located outside the City. However, the Ordinance and this rule apply only if the Employee has or will perform more than 80 hours of work in Tacoma within a Benefit Year.

1.6 An Employee who performs work for an Employer by telecommuting is not covered by the Ordinance for the hours the Employee is not physically located in the City, even if the Employer is physically located in the City.

1.7 Traveling Through the City

An Employee who travels through the City is not covered by the Ordinance if they make no stops for work purposes, or only make incidental stops that are not considered to be making a stop for work purposes (e.g., purchasing gas, eating a meal, or changing a flat tire).

1.8 An Employee who travels through the City, and stops in the City as a purpose of their work (e.g. to make pickups or deliveries), is covered by the Ordinance for all hours worked in the City, including travel within the City when it would typically occur during paid work time. However, the Ordinance and this rule apply only if the Employee has or will perform more than 80 hours of work in the City within a Benefit Year.

1.9 An Employer may make a reasonable estimate of an Employee’s time spent working in the City for purposes of Paid Sick Leave accrual and use. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, Employee logs, delivery addresses and estimated travel times, or historical averages.

RULE 2.0

EMPLOYER ATTENDANCE POLICIES

2.1 In General

As outlined in TMC 18.10.030.D, 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.

2.2 Written Policy for Reasonable Notice – State Requirements Observed

As required by WAC 296-128-650, as currently enacted or hereinafter amended, Employers must have a

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written policy outlining any requirements of an Employee to give reasonable notice for the use of Paid Sick Leave, and must make notification of such policy or agreement, prior to requiring an Employee to provide reasonable notice. An Employer must make this information readily available to all Employees. If an Employer does not require an Employee to give reasonable notice for the use of Paid Sick Leave, a written policy is not required.

2.3 Employee Representative

In accordance with the requirements outlined by TMC 18.10.030.D, in the event it is impracticable for an Employee to provide notice to their Employer, a person may provide notice to the Employer on the Employee's behalf.

2.4 Verification & Documentation Requirements

For absences exceeding three days, an Employer may take reasonable measures to verify or confirm that an Employee's use of Paid Sick Leave is for an authorized purpose as outlined in TMC 18.10.030.C.

2.5 "Absences exceeding three days" means absences exceeding three consecutive days an Employee is scheduled to work. For example, assume an Employee is scheduled to work on Mondays, Wednesdays, and Fridays, and then the Employee uses Paid Sick Leave for any portion of those three work days in a row. If the Employee uses paid sick leave again on the following Monday, the Employee would have absences exceeding three days.

2.6 If an Employer requires verification for the use of Paid Sick Leave, the Employer must have a written policy outlining any such requirements. Said policy must clearly describe:

- a) The forms or types of documentation that the Employer may require and the circumstances for requiring each form or type of documentation;
- b) The "reasonable time period" as defined in Rule 2.7 below in which the Employee is required to submit such documentation or verification;
- c) Any consequences resulting from an Employee's failure or delay in providing such written documentation or other verification; and
- d) The Employee's right to assert that the verification requirement results in an unreasonable burden or expense on the Employee.

The Employer must notify the Employee of such policy prior to requiring the Employee to provide verification. An Employer must make this information readily available to all Employees.

2.7 If an Employer requires verification that the use of Paid Sick Leave is for an authorized purpose under TMC 18.10.030.C, verification must be provided to the Employer within a reasonable time period during or after the leave. For the purpose of this rule set, "reasonable time period" is a period of time defined by a written policy, but may not be less than ten calendar days following the first day upon which the Employee uses Paid Sick Leave.

2.8 If an Employer requires an Employee to provide verification from a health care provider identifying the need for use of Paid Sick Leave for an authorized purpose, the Employer must not require that the information provided explain the nature of the condition. If the Employer obtains any health infor-

mation about an Employee or an Employee's family member, the Employer must treat such information in a confidential manner consistent with applicable privacy laws.

2.9 Unreasonable Burden or Expense: Employer-required verification may not result in an unreasonable burden or expense on the Employee. If an Employer requires verification, and the Employee anticipates that the requirement will result in an unreasonable burden or expense, the Employee must be allowed to provide an oral or written explanation to their Employer which asserts:

- a) That the Employee's use of Paid Sick Leave was for an authorized purpose under as outlined in TMC 18.10.030.C.; and
- b) How the Employer's verification requirement creates an unreasonable burden or expense on the Employee.

The Employer must consider the Employee's explanation. Within ten calendar days of the Employee providing an explanation to their Employer about the existence of an unreasonable burden or expense, the Employer must make a reasonable effort to identify and provide alternatives for the Employee to meet the Employer's verification requirement in a manner which does not result in an unreasonable burden or expense on the Employee.

A reasonable effort by the Employer to identify and provide alternatives could include, but is not limited to:

- a) Accepting the oral or written explanation provided by the Employee; or
- b) Mitigating the Employee's out-of-pocket expenses associated with obtaining medical verification.

If after the Employer considers the Employee's explanation, the Employer and Employee disagree that the Employer's verification requirement results in an unreasonable burden or expense on the Employee: 1.) The Employer and Employee may consult with the City of Tacoma's Employment Standards Office regarding the verification requirement; and/or 2.) The Employee may file a complaint with the City of Tacoma's Employment Standards Office.

2.10 If an Employer requires verification that the use of Paid Sick Leave is for an authorized purpose under the Domestic Violence Leave Act, chapter 49.76 RCW, any such verification requirements must comply with the provisions outlined in WAC 296-135-070. For use of Paid Sick Leave for purposes authorized under federal, state, or other local laws that permit Employers to make medical inquiries, an Employer may require verification from an Employee that complies with such certification requirements.

2.11 If an Employer obtains any records or information about an Employee or an Employee's family member related to domestic violence, harassment, sexual assault, stalking or other safety related issues, such records or information are confidential and may not be released without express written permission of the Employee, unless specifically required otherwise by law.

2.12 Written Policy Requirements

In any circumstance where a written policy is required, the requirement may be fulfilled by capturing said policy in a ratified collective bargaining agreement.

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2.13 Instances of Abuse

The Ordinance's protections for exercise of rights and prohibition against retaliation do not prevent an Employer from taking reasonable action (e.g., discipline) when an Employee's use of Paid Sick Leave is not in good faith, such as a clear instance of abuse. Disciplinary actions may not include deductions from an Employee's legitimately earned or donated Paid Sick Leave hours.

2.14 Declaring the Benefit Year

The Employer shall consistently use one option to serve as their "Benefit Year" for all Employees and/or groups of similarly situated Employees; the definition may not be changed to avoid Employee accrual or use of Paid Sick Leave.

2.15 Universal Paid Sick Leave Policy / Paid Time Off

As outlined in TMC 18.10.020.E, Employers may use a combined or universal Paid Sick Leave program to comply with the Ordinance. For the purposes of the Ordinance, a combined or universal Paid Sick Leave program may include, but is not limited to: universal paid time off, vacation, floating holidays, or any other program that allows an Employee to take paid time off for combined or universal purposes (collectively referred here as PTO).

2.16 An Employer using a PTO program to comply with the Ordinance shall allow Employees to use all of their PTO hours for all the purposes and under the same conditions as set forth in Section 18.10.030. In addition, the PTO program shall meet or exceed the accrual rate in TMC 18.10.020 and payment for the PTO shall be at the Employee's normal hourly compensation as defined in Rule 8.3.

2.17 An Employer using a PTO program to comply with the Ordinance shall have a written policy, readily available to all Employees, informing Employees that the Employer will use their PTO program to comply with the Ordinance. An Employer must notify Employees of such policy prior to using a PTO program to meet the Ordinance requirements. Said policy shall include:

- a) A clear description identifying the particular PTO program and the Employer's intent to use that program and/or complete bank of hours to comply with the Ordinance; and
- b) Information letting Employees know that all of their hours in such PTO program can be used for all the same purposes and under the same conditions as set forth in 18.10.030.

2.18 An Employer using a PTO program to comply with the Ordinance shall also comply with Rule 5.2 (Record Keeping for Employers Using PTO) and Rule 6.3 (Noticing).

2.19 If an Employee chooses to use their PTO leave for purposes other than those authorized under Sec.18.10.030, and the need for use of Paid Sick Leave later arises when no additional PTO leave is available, the Employer is not required to provide any additional PTO leave to the Employee as long as the Employer's PTO program meets or exceeds the provisions of the Ordinance, and all applicable rules.

2.20 Frontloading

An Employer may, but is not required to, frontload Paid Sick Leave to an Employee in advance of accrual.

2.21 The Employer must have a written policy which addresses the requirements for use of frontloaded Paid Sick Leave. An Employer must notify Employees of such policy prior to frontloading an Employee Paid Sick Leave, and must make this information readily available to all Employees.

2.22 If an Employer frontloads Paid Sick Leave, the Employer must ensure that such frontloaded Paid Sick Leave complies with the provisions of the Ordinance and all applicable rules.

2.23 If an Employer frontloads Paid Sick Leave, the Employer must do so by using a reasonable calculation, consistent with the accrual requirement set forth under TMC 18.10.020, to determine the amount of Paid Sick Leave the Employee would be projected to accrue during the period of time for which Paid Sick Leave is being frontloaded.

2.24 If the Employer calculates and frontloads, and an Employee subsequently uses, an amount of Paid Sick Leave which exceeds the Paid Sick Leave the Employee would have otherwise accrued absent frontloading, the Employer shall not seek reimbursement from the Employee for such Paid Sick Leave used during the course of ongoing employment.

2.25 If an Employer frontloads Paid Sick Leave to an Employee, but such frontloaded Paid Sick Leave is less than the amount the Employee was entitled to accrue under TMC 18.10.020, the Employer must make such additional amounts of Paid Sick Leave available for use by the Employee as soon as practicable, but no later than thirty days after identifying the discrepancy.

2.26 An Employer may not make a deduction from an Employee's final wages for frontloaded Paid Sick Leave used prior to the accrual rate required by TMC 18.10.020, unless there is a specific agreement in place with the Employee allowing for such a deduction. Such deductions must also meet the requirements set forth under Washington State law, RCW 49.48.010 and WAC 296-126-025, as currently enacted or hereinafter amended.

RULE 3.0 INCREMENTAL USE OF PAID SICK LEAVE

3.1 In General

Employers may establish a minimum increment of use of accrued Paid Sick Leave time according to the terms established by the State of Washington in WAC 296-128-630 and WAC 296-128-640 as currently enacted or hereinafter amended, subject to the FLSA, provided that the Employer shall not require Employees covered by the overtime requirements of the FLSA to use accrued Paid Sick Leave time in increments greater than one hour unless necessary due to a reasonable business need.

3.2 Increment of Use – State Requirements Observed

Employers must comply with the terms established by the State of Washington in WAC 296-128-630 as currently enacted or hereinafter amended for “employees” as defined by RCW 49.46, the terms of which

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currently state: “Unless a greater increment is approved by a variance as provided by WAC 296-128-640, Employers must allow Employees to use Paid Sick Leave in increments consistent with the Employer's payroll system and practices, not to exceed one hour. For example, if an Employer's normal practice is to track increments of work for the purposes of compensation in fifteen-minute increments, then an Employer must allow Employees to use Paid Sick Leave in fifteen-minute increments.”

3.3 Variance from Required Increment of Use

Employers who wish to adopt an increment of use for Employees covered by the overtime requirements of the FLSA that is inconsistent with the Employer's payroll system or in excess of one hour must seek and receive a variance from the Washington State Department of Labor and Industries as outlined in WAC 296-128-640 as currently enacted or hereinafter amended.

3.4 If an Employer applies for and obtains a variance from Washington State Department of Labor, the Employer must provide the involved Employees with information about the increments of use requirements that apply within fifteen (15) days of receiving notification of such approval from the Washington State Department of Labor and Industries. An Employer must make this information readily available to all Employees.

3.5 Increment of Use for FLSA-Exempt Employees

For FLSA-exempt Employees, the Employer may make deductions of Paid Sick Leave in reasonable increments, in accordance with the FLSA or in accordance with a pay system established by statute, ordinance, or regulation.

RULE 4.0 DONATED PAID SICK LEAVE

4.1 In General

An Employer may establish a policy whereby an Employee may choose to donate unused Paid Sick Leave to another Employee.

4.2 Written Policy & Notice

If an Employer establishes a donated Paid Sick Leave policy, the Employer must have a written policy which specifies that an Employee may donate accrued, unused Paid Sick Leave to a co-worker. The Employer must notify Employees of such policy prior to allowing donations of Paid Sick Leave. An Employer must make this information readily available to all Employees. Donations shall be made at the Employee's discretion, and policies requiring compulsory donations are prohibited.

RULE 5.0 EMPLOYER RECORDS REQUIREMENTS

5.1 In General

Per Washington State WAC 296-128-010 as currently enacted or hereinafter amended, Employers shall be required to keep and preserve payroll or other records containing the following information and data with respect to each and every Employee covered by TMC Chapter 18.10:

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- a) Name in full, and on the same record, the Employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes;
- b) Home address;
- c) Occupation in which employed;
- d) Date of birth if under eighteen;
- e) Time of day and day of week on which the Employee's workweek begins.
- f) Hours worked each workday and total hours worked each workweek in Tacoma (for purposes of this section, a "workday" shall be any consecutive twenty-four hours);
- g) Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;
- h) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;
- i) Total additions to or deductions from wages paid each pay period. Every Employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;
- j) Total wages paid each pay period;
- k) Date of payment and the pay period covered by payment;
- l) Paid sick leave accruals each month, and any unused Paid Sick Leave available for use by an Employee;
- m) Paid sick leave reductions each month including, but not limited to: Paid sick leave used by an Employee, Paid Sick Leave donated to a co-worker through a shared leave program, or Paid Sick Leave not carried over to the following Benefit Year; and
- n) The date of commencement of the Employee's employment

Employer may use symbols where names or figures are called for so long as such symbols are uniform and defined

5.2 Universal Paid Time Off Programs

Employers using a PTO policy to comply with the Ordinance must track leave accrued and used; however, they are not required to track the specific reasons for the use of PTO. The Employer is also required to comply with all of the Washington State requirements, including those stated in Rule .

RULE 6.0 CERTIFICATION OF COMPLIANCE & NOTICING

6.1 Certification of Compliance

An Employer shall annually certify compliance with the Ordinance upon application for and renewal of their Tacoma business license.

6.2 An Employer that does not “engage in business” in Tacoma and is not required to obtain a Tacoma business license according to Title 6 of the TMC shall certify compliance with the Ordinance on a form and frequency as determined by the Director.

6.3 Noticing

Employers are required to provide notice as outlined in TMC 18.10.050 to Employees in the Employee’s primary language when the City of Tacoma has created a notice in that language and made it available to Employers electronically or in print.

RULE 7.0 BREAKS IN SERVICE

7.1 In General

When an Employee is separated from employment and rehired by the same Employer within twelve (12) months of separation, previously unused Paid Sick Leave shall be reinstated according to TMC 18.10.020.G.

7.2 Payout of Accrued Leave upon Separation

If an Employee separates from employment, the Employer may, but is not required to, provide financial or other reimbursement to the Employee for accrued, unused Paid Sick Leave at the time of separation. An Employer may choose to reimburse an Employee for any portion of their accrued, unused Paid Sick Leave at the time the Employee separates from employment.

7.3 If an Employer chooses to reimburse an Employee for any portion of their accrued, unused Paid Sick Leave at the time the Employee separates from employment, any such terms for reimbursement must be mutually agreed upon in writing by both the Employer and the Employee, unless the right to such reimbursement is set forth elsewhere in state law or through a collective bargaining agreement.

7.4 An Employer need not reinstate any hours of Paid Sick Leave previously provided to the Employee through financial or other reimbursement at the time of separation, as long as the value of the Paid Sick Leave was established and paid at a rate that was at least equal to the Employee's normal hourly compensation.

RULE 8.0 RATE OF PAY

8.1 In General

When using Paid Sick Leave, an Employee shall be compensated by the Employer at the same hourly rate or the effective minimum wage (as required by Washington State law and/or TMC 18.20), whichever is greater, and with the same benefits, including health care benefits, as the Employee would have earned during the time the Paid Sick Leave is used.

8.2 Same Hourly Rate Defined – State Requirements Observed

For the purposes of the Ordinance and these rules, "same hourly rate" is equivalent to “normal hourly compensation” as defined by Washington State WAC 296-128-600 as currently enacted or hereinafter amended. Per WAC 296-128, “For Employees who use Paid Sick Leave for hours that would have been

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overtime hours if worked, Employers are not required to apply overtime standards to an Employee's normal hourly compensation. Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the Employer or a collective bargaining agreement allows for such considerations. However, where an Employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate."

8.3 Per the requirements set by WAC 296-128-670 as currently enacted or hereinafter amended, an Employer must calculate an Employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an Employee would have earned for the time during which the Employee used Paid Sick Leave. Examples of reasonable calculations to determine normal hourly compensation include, but are not limited to:

- a) **Commissions:** For an Employee paid partially or wholly on a commission basis, dividing the total earnings by the total hours worked in the full pay periods in the prior ninety days of employment;
- b) **Piece Rate:** For an Employee paid partially or wholly on a piece rate basis, dividing the total earnings by the total hours worked in the most recent workweek in which the Employee performed identical or substantially similar work to the work they would have performed had they not used Paid Sick Leave;
- c) **Non-exempt Salaried Employees:** For a non-exempt Employee paid a salary, dividing the annual salary by fifty-two (52) to determine the weekly salary and then dividing the weekly salary by the Employee's normal scheduled hours of work;
- d) **Exempt Salaried Employees:** The hourly rate of pay for an Employee who is paid an annual salary and who is exempt from overtime laws provided under the Fair Labor Standards Act and/or state wage and hour laws shall be determined by dividing the annual salary by fifty-two (52) to determine the weekly salary and then dividing the weekly salary by 40 hours, or, if they typically work less than 40 hours per week, the number of hours of the Employee's normal work week.
- e) **Fluctuating Rate of Pay:**
 - i. Where the Employer can identify the hourly rates of pay for which the Employee was scheduled to work, a calculation equal to the scheduled hourly rates of pay the Employee would have earned during the period in which Paid Sick Leave is used;
 - ii. Where the Employer cannot identify the hourly rates of pay for which the Employee would have earned if the Employee worked, a calculation based on the Employee's average hourly rate of pay in the current or preceding thirty days, whichever yields the higher hourly rate.

8.4 Shifts of Indeterminate Length

For Employees who are scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the rate of pay may be calculated by multiplying the Employee's normal hourly compensation by the total hours worked by a replacement Employee in the same shift, or similarly situated Employees who worked that same or similar shift. An Employer must

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apply a consistent methodology when calculating the normal hourly compensation of similarly situated Employees.

RULE 9.0

ADDITIONAL HOURS/SHIFTS, SUBSTITUTE HOURS/SHIFTS, & SHIFT SWAPPING

9.1 Written Policy

If an Employer allows substitute hours/shifts and/or swapping shifts in conjunction with or in lieu of using Paid Sick Leave, as outlined by TMC 18.10.030.G-J, then the Employer must have a written policy, readily available to all Employees, that clearly describes the process.

RULE 10.0

USE & CARRY OVER OF PAID SICK LEAVE

10.1 Concurrent Leave

An Employee's use of Paid Sick Leave may also qualify for concurrent leave under other federal, state, or local laws (e.g., family medical leave, workplace injury, etc.).

10.2 Use for On-Call Shifts

For Employees who are scheduled for on-call shifts and are compensated for their scheduled time regardless of whether work is performed, Employers must permit use of Paid Sick Leave. Employers may, but are not required to, permit use of Paid Sick Leave for on-call shifts when Employees are compensated only when work is performed.

10.3 Carry Over of Paid Sick Leave

The Ordinance requires that an Employer shall allow Employees to carry over up to 40 accrued but unused hours of Paid Sick Leave time. An Employer policy may enact a more generous policy that allows Employees to carry over more than 40 hours of accrued but unused hours and/or provides Employees with the cash value of unused Paid Sick Leave in excess of 40 hours.

RULE 11.0

PAYMENT OF PAID SICK LEAVE BENEFITS

11.1 In General

Unless verification/documentation for absences exceeding three days is required by an employer as outlined in Rule 2.5, the employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee.

11.2 Verification/Documentation Required

If verification is required by the employer as outlined in Rule 2.4, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

RULE 12.0
RETALIATION

12.1 It is unlawful for an employer to interfere with, restrain, or deny the exercise of any employee right provided under or in connection with the Ordinance. This means an employer may not use an employee's exercise of any of the rights provided under the Ordinance as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under the Ordinance.

12.2 It is unlawful for an employer to adopt or enforce any policy that counts the use of paid sick leave for a purpose authorized under the Ordinance as an absence that may lead to or result in discipline by the employer against the employee.

12.3 It is unlawful for an employer to take any adverse action against an employee because the employee has exercised their rights provided under the Ordinance. Such rights include, but are not limited to: Filing an action, or instituting or causing to be instituted any proceeding under or related to chapter the Ordinance; exercising their right to paid sick leave, minimum wage, overtime, tips and gratuities; or testifying or intending to testify in any such proceeding related to any rights provided under the Ordinance.

12.4 Adverse action means any action taken or threatened by an employer against an employee for their exercise of rights under the Ordinance, which may include, but is not limited to:

- a) Denying use of, or delaying payment for, paid sick leave, minimum wages, overtime wages, all tips and gratuities, and all service charges, except those service charges itemized as not being payable to the employee or employees servicing the customer;
- b) Terminating, suspending, demoting, or denying a promotion;
- c) Reducing the number of work hours for which the employee is scheduled;
- d) Altering the employee's preexisting work schedule;
- e) Reducing the employee's rate of pay; and
- f) Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member.

12.5 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 any rights provided under the Ordinance. 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.

12.6 Proof of retaliation under the Ordinance should be sufficient upon a showing that: 1.) An Employer or any other person has taken an adverse action against a person; 2.) The person's exercise of rights, as protected under the Ordinance, was a motivation factor in the adverse action; and 3.) The Employer cannot prove that the action would have been taken in the absence of such protected activity.

RULE 13.0
STATE RESTRICTED POLICIES

13.1 In General

Where State and City rules and regulations conflict, those provisions most generous to the Employee prevail. The following provisions are considered less generous than State law and, therefore, do not apply to “employees” as defined by RCW 49.46.

13.2 Collective Bargaining Agreement (CBA) Waivers

RCW 49.46 as currently enacted does not provide an exemption from the Paid Sick Leave requirements set forth in RCW 49.46.200 and 49.46.210 for a valid collective bargaining agreement, nor does RCW 49.46 as currently enacted specify a means of waiver of the requirements under RCW 49.46.200 and 49.46.210 by collective bargaining agreement. Where current or future Washington State regulations permit for waiver of the right to Paid Sick Leave by collective bargaining agreement, the conditions set by TMC 18.10.090 shall apply.

13.3 Memorandums of Understanding, Letters of Agreement, or other fully-vetted amendments to collective bargaining agreements that have been approved by the Employer and ratified by the bargaining group can be used to meet the waiver requirement.

13.4 Premium Pay Programs

In response to questions presented during the rulemaking process, the Washington State Department of Labor and Industries indicated that under its interpretation, Employers may not pay wages in lieu of sick leave benefits (often referred to as "Premium Pay Programs") to meet the state requirements for the Paid Sick Leave law which goes into effect January 1, 2018. Specifically, Labor and Industries' Concise Explanatory Statement stated that "an Employer who provides any payment in lieu of the Employee accruing Paid Sick Leave would be in direct conflict with the (State) statute."

In the event that current or future interpretations permit the use of Premium Pay Programs, the following criteria will apply to Premium Pay Programs being used to meet the requirements of the Ordinance in the City of Tacoma.

13.5 An Employer that offers extra pay in lieu of paid time off can be in compliance with the Ordinance if the program meets or exceeds the requirements of the Ordinance, subject to approval by the Director.

13.6 Application, Review, and Approval of Premium Pay Programs

The Director shall review proposed Premium Pay Programs to make a determination of compliance with the Ordinance. Employers shall submit an outline of their proposed Premium Pay Program at least 90 days before the intended Premium Pay Program start date. Proposals should demonstrate how the Employer's Premium Pay Program meets or exceeds the minimum requirements and provide an overview of the program, including:

- a) How Employee base pay is determined;
- b) How extra pay would be calculated;

* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

- c) How other forms of compensation/benefits will be or have recently been changed (if applicable);
- d) The frequency and method for distributing extra pay to Employees;
- e) Information on which Employees would be receiving extra pay in lieu of benefits (e.g., Employees who opt-in, all Employees, overtime-exempt staff, etc);
- f) The specific types of records that will be maintained by the Employer to document the extra pay;
- g) How the Employer will address accrued but unused Paid Sick Leave hours if they are transitioning from Paid Sick Leave accrual to a Premium Pay Program; and
- h) The anticipated program start date. The Director may request additional information or documentation as needed to make a determination of compliance.

13.7 The Director will issue a written determination within 60 days of receiving the request for review of a Premium Pay Program stating whether the proposed Premium Pay Program is approved. If the Premium Pay Program is not approved, the determination will include reasons why the program does not meet the Ordinance requirements. If the Director requires additional information from the Employer after the initial request is received, the time to issue a determination may extend past 60 days. Notice of the extended date will be provided by the Director in writing.

13.8 If an Employer fails to submit sufficient information that explains how the Premium Pay Program meets or exceeds the requirements of the Ordinance, then the Director shall not approve the program.

13.9 An Employer may request administrative review of the Director's determination of compliance according to the process outlined in the Ordinance and Rule 16 "Request for Administrative Review."

13.10 Premium Pay Program Criteria

Premium Pay Programs will be evaluated based on how the proposed extra pay compares to the value of benefits outlined in the Paid Sick Leave Ordinance, including the following criteria:

- a) Extra pay must meet or exceed the value of the Paid Sick Leave benefit outlined in the Ordinance;
- b) Extra pay must be readily available for expenditure, similar to wages, and not placed in a restricted account such as a retirement or flexible spending account unless mutually agreed upon by the Employee and Employer;
- c) Extra pay cannot be provided in the form of goods/services; and
- d) Extra pay is dispersed at reasonable intervals, not less than once per month, or "frontloaded." Additional, reasonable criteria may be applied as deemed necessary by the Director to ensure that the Premium Pay Program meets or exceeds the minimum requirements of the Ordinance. If a Premium Pay Program is not approved, the specific criteria that resulted in such a determination will be disclosed to the Employer.

13.11 Premium Pay Program Records Requirements

If an Employer enacts an approved Premium Pay Program, the Employer will be responsible for maintaining documentation of the extra pay provided each pay period, as well as Employee name, hire date, and all records outlined in an approved Premium Pay Program proposal, for a minimum of three

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years and shall allow Director access to such records according to the parameters outlined in TMC 18.10.060(B).

13.12 Premium Pay Program – Written Policy Required

If an Employer elects to enact an approved Premium Pay Program, then it must be documented in a written policy and made readily available to Employees prior to enacting an approved Premium Pay Program.

13.13 Other Ordinance Requirements Remain in Effect

Employers who enact an approved Premium Pay Program are not exempt from other requirements of the ordinance including, but not limited to, Noticing and Posting requirements and the “Employer Responsibilities” outlined in TMC 18.10.050.

RULE 14.0

THIRD PARTY ADMINISTRATORS

14.1 In General

Employers may contract with a third-party administrator in order to administer the Paid Sick Leave requirements under the Ordinance, and all applicable rules.

14.2 Employer Responsibility

Employers are not relieved of their obligations under the Ordinance, and all applicable rules, if they elect to contract with a third-party administrator to administer Paid Sick Leave requirements.

14.3 Paid Sick Leave Pools for Multiple Employers

With the consent of Employers, third-party administrators may pool an Employee's accrued, unused Paid Sick Leave from multiple Employers as long as the accrual rate is at least equal to one hour of Paid Sick Leave for every forty hours worked as an Employee. For example, if a group of Employers have Employees who perform work for various Employers at different times, the Employers may choose to contract with a third-party administrator to track the hours worked and rate of accrual for Paid Sick Leave for each Employee, and pool such accrued, unused Paid Sick Leave for use by the Employee when the Employee is working for any Employers in the same third-party administrator network. A collective bargaining agreement may outline the provisions for an Employer to use a third-party administrator as long as such provisions meet all Paid Sick Leave requirements under the Ordinance, and all applicable rules.

RULE 15.0

ADMINISTRATION

15.1 In General

The Director shall attempt to conciliate and settle by agreement any alleged violation or failures to comply with the Ordinance.

15.2 Amending a Charge

A Charging Party may amend their charge at any time prior to the issuance of a determination by the

* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

Director so long as the responding party has adequate time to present additional evidence if needed. The amendment must be filed in writing.

15.3 Withdrawing a Charge

A Charging Party may request, in writing, that their charges be withdrawn at any time prior to the issuance of a determination. A Complainant that withdraws a charge may not file another charge that alleges the same facts and violation as the withdrawn charge.

15.4 Access to Records

All records (including written documents, emails, photographs, or recordings) created, prepared, owned, or retained for investigation or enforcement of the Ordinance are public records pursuant to RCW 42.56. If a records request is made, the records must be disclosed unless an exemption applies. One potential exemption that may apply is for “information revealing the identity of persons who are witnesses to or victims of a crime... if disclosure would endanger any person’s life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern (RCW 42.56.240).”

15.5 Records and information provided by one party may be disclosed to the other party if, in the judgement of the Director, such disclosure would promote the effective enforcement of the Ordinance.

15.6 Worker Documentation

Investigations will not seek information on whether or not a worker has provided documentation showing that they are qualified to work in the United States.

15.7 Fact Finding & Settlement Conferences

When deemed appropriate by the Director, fact finding and settlement conferences may be held during investigation of a charge. The Charging Party and the respondent shall attend the conference and notice will be provided at least 10 days in advance. Conferences may be rescheduled by the City. The purpose of the conference shall be to identify undisputed elements of the charge, define and resolve the disputed elements of the charge if possible, and attempt to settle the charge by agreement.

15.8 Findings of Fact/Standard of Proof

The Director shall affirm the citation and notice of assessment if, in the judgement of the Director, a preponderance of the credible evidence establishes that a violation of the Ordinance is occurring or has occurred.

15.9 Calculation of Remedies Owed

Specific investigation findings and/or ongoing violations of the Ordinance may result in a financial remedy payable to affected Employees as well as restored access to Paid Sick Leave hours. As noted in TMC 18.10.010.R, any such remedy, when applicable, will be outlined in a Notice of Assessment provided in writing to the Employer.

15.10 Financial Remedies: The financial remedies owed to affected Employees will be calculated based on the most recent available data regarding “the frequency of work-loss days” for adults aged 18 and over as published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, plus interest of one percent per month from the last day of each year of noncompliance

For example: Based on the 2014 National Health Interview Survey, Summary Health Statistics for U.S. Adults, the financial remedy for each affected Employee may include but is not limited to payment for thirty (30) Paid Sick Leave or PTO hours for each year of noncompliance at the Employee's rate of pay on the last day of each year of noncompliance, plus interest of one percent per month from the last day of each year of noncompliance

Financial remedies may be applied in circumstances where an Employee did not have knowledge of or access to Paid Sick Leave, including but not limited to the following scenarios:

- a) When an investigation results in a finding that: i.) The Employer unlawfully failed to provide Employees with notice of their rights and/or written policy describing the Employer's intent to use their PTO policy to comply with the Ordinance; and ii.) Failed to provide Employees with their notification of Paid Sick Leave or PTO balance as outlined in TMC 18.10.030.L.; and
- b) When an investigation results in a finding that the Employer unlawfully withheld Paid Sick Leave or universal Paid Sick Leave accrual, use, and/or carry-over.

15.11 Restored Access to Paid Sick Leave Hours: In addition to the wages owed for Paid Sick Leave violations as outlined above, each affected Employee will receive access to accrued Paid Sick Leave hours.

- a. If payroll records exist, this will involve calculation of the Paid Sick Leave hours that would have accrued for each year of noncompliance. The Department will subtract from the accrual the number of hours paid out and restore the remaining balance of Paid Sick Leave hours that each Employee should have accrued, minus carryover restrictions; or
- b. If payroll records do not exist, the Employer shall restore the maximum amount of Paid Sick Leave hours that the Employee could have accrued for the period of noncompliance, minus carryover restrictions.

When remedies include restored access to Paid Sick Leave hours, the number of Paid Sick Leave hours carried over between Benefit Years shall not be capped or limited for two subsequent years after the Paid Sick Leave has been restored.

15.12 Payment of Assessments

Failure to pay assessments or comply with agreed upon terms of conciliation may constitute a willful violation of the Ordinance.

RULE 16.0

REQUEST FOR ADMINISTRATIVE REVIEW

16.1 In General

Any Citation and Notice of Assessment (Citation), Determination of Compliance (Determination) or Civil Penalty (Penalty) issued by the Director may be reviewed at the request of an Employee or Employer.

16.2 Request for Administrative Review

An Employee or Employer may request an administrative review by filing a written request with the Director within ten calendar days from the date of the Citation, Determination or Penalty. The request shall state, in writing, the reasons the Director should review the Citation, Determination, or Penalty. If the basis for review is not stated in the written request, the request for administrative review will be dismissed and the violation affirmed.

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16.3 Decision of Director

For all properly submitted requests for administrative review, the Director shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Citation, Determination or Penalty. The decision shall be delivered in writing to all parties.

16.4 Appeals of Director's Decision

An Employee or Employer may appeal the Director's decision within 10 calendar days from the date of the Director's decision by filing a written notice of appeal, clearly stating the reason the appeal is being requested, with the Hearing Examiner. Appeals of the Hearing Examiner's decision shall be governed by TMC 1.23.

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