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# Seattle's Paid Sick and Safe Time Ordinance Enforcement Audit



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Seattle Office of City Auditor

## REPORT SUMMARY

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Since September 2012, when the City's Paid Sick and Safe Time Ordinance took effect, to December 31, 2013, the Seattle Office for Civil Rights (SOCR) primarily used a non-adversarial advisory letter process to enforce the Ordinance, which focused on businesses achieving compliance rather than SOCR conducting formal investigations or imposing sanctions. Although the process may have corrected businesses' future practices, it did not always hold them accountable for past practices. We identified issues with the advisory letter process and question its extensive use as a long term enforcement strategy.

# Seattle's Paid Sick and Safe Time Ordinance Enforcement Audit

## SEATTLE OFFICE OF CITY AUDITOR

### Report Highlights

#### Background

In 2011, the Seattle City Council passed the Paid Sick and Safe Time (PSST) Ordinance (123698), which took effect September 1, 2012. The PSST Ordinance requires employers with more than four full-time employees to provide workers with paid leave for illness, preventative care, and critical safety needs related to domestic violence, sexual assault, or stalking. The Ordinance also requested that our office conduct an audit of the City's enforcement of the PSST Ordinance. During the first 16 months the law was in effect, the Seattle Office for Civil Rights (SOCR), which is charged with enforcement of the PSST Ordinance, primarily used a non-adversarial advisory letter process to address complaints. SOCR focused on helping businesses achieve compliance with the law by providing them technical assistance. According to SOCR's response to this audit (Appendix E), SOCR's decisions regarding enforcement and outreach efforts were made in consideration of several factors including: the political context and climate during the debate, passage and initial implementation of the PSST Ordinance, business and community stakeholders' input, and staff resource constraints. Consequently, SOCR intentionally did not pursue employer fines and back pay for employees because the ordinance was new and they believed this was the direction they received from policy makers on enforcement.

#### What We Found

We identified the following issues with the advisory letter process that raise questions about whether it should continue to be used extensively in the future as the City's primary enforcement tool:

- The process did not call for SOCR to conduct formal investigations or site visits and limited its inquiries to matters specifically mentioned in the employee complaint. Consequently, resolution of the complaints did not ensure that businesses were in complete compliance with all of the ordinance's requirements.
- Resolution of employees' complaints was geared toward addressing and preventing future instances of the issues raised in the complaint rather than holding employers accountable for past violations of the ordinance.
- While some advisory letters resulted in business owners taking corrective actions such as agreeing to pay back wages owed to



#### WHY WE DID THIS AUDIT

This audit was conducted in response to the Paid Sick and Safe Leave Ordinance (123698), which called for our office to audit SOCR's enforcement of the Ordinance.

#### HOW WE DID THIS AUDIT

- Reviewed advisory letter case data from SOCR's case management system covering the period September 1, 2012 through December 31, 2013;
- Interviewed officials and assessed research from the Center for Law and Social Policy (CLASP), a non-profit organization that has issued reports on the implementation and enforcement of sick and safe leave laws;
- Assessed SOCR's responses to our information requests;
- Reviewed 32 randomly selected SOCR advisory letter files and the six open charge cases as of December 31, 2013;
- Interviewed SOCR officials and officials from other jurisdictions with paid sick and safe time laws as of December 31, 2013. This included San Francisco, Washington D.C. and Connecticut; and
- Interviewed five employers and five employees who had participated in the advisory letter process from 10 different businesses in Seattle.

employees for sick and safe time leave, SOCR did not routinely address individual employee or companywide remedies, such as back pay for paid sick and safe time requests that were denied by employers.

- In some cases, SOCR used the advisory letter process when it would have been more appropriate to conduct investigations to assess the extent of noncompliance.
- San Francisco, after several years of enforcement, has largely abandoned its use of a non-adversarial enforcement approach that involved letters to businesses, and now conducts companywide and confidential investigations. These investigations have resulted in settlements that included recovered back wages, penalties, and civil fines.
- SOCR did not follow-up with complainants after it closed cases to ensure that employers' planned actions to address complaints were implemented.

According to SOCR, starting in 2014, it started giving all complainants the choice of using either the advisory letter process or filing a charge that would initiate a formal SOCR investigation. In addition, in 2014, the SOCR Director has filed three charges that resulted in company-wide investigations.

## **Recommendations**

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We make 13 recommendations to address our findings:

- Five recommendations are intended to strengthen the advisory letter process,
- Four recommendations suggest using more proactive enforcement approaches,
- Three recommendations are intended to improve SOCR's outreach efforts, and
- One recommendation suggests a change to the ordinance to allow the Office of City Auditor to conduct PSST Ordinance compliance audits of private business records subject to the law.

In SOCR's response to this audit (Appendix E), they concurred with 12 of our 13 recommendations and stated that they believe one recommendation warrants further study.

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## I. INTRODUCTION

In 2011, the Seattle City Council passed the Paid Sick and Safe Time (PSST) Ordinance (123698), which took effect September 1, 2012. The PSST Ordinance requires employers with more than four full-time employees to provide workers with paid leave for their own or their family members' health needs as well as critical safety needs related to domestic violence, sexual assault, or stalking. This report is in response to Section 4 of PSST Ordinance 123698, which requested that our office assess the impacts of the PSST Ordinance on employers and employees, and review the City's enforcement of the PSST Ordinance. Before this audit, our office issued four reports<sup>1</sup> concerning the impacts of the PSST Ordinance on employers and employees.

### Objective, Scope and Methodology

The objective of this audit was to assess the effectiveness of SOCR's enforcement of the PSST Ordinance between September 1, 2012 and December 31, 2013. The focus of the audit was SOCR's use of the advisory letter process, which was SOCR's primary enforcement tool to address PSST Ordinance violation complaints. Our review of the advisory letter process included:

- Reviewing SOCR advisory letter case data covering September 1, 2012 through December 31, 2013 that we gathered from SOCR's Martin case management system;
- Interviewing officials and assessing research from the Center for Law and Social Policy (CLASP), a non-profit organization that has conducted research and issued reports on the implementation and enforcement of sick and safe leave policies;
- Assessing SOCR's responses to our information requests;
- Reviewing 32 randomly selected SOCR advisory letter files and the six open charge cases as of December 31, 2013;
- Interviewing SOCR officials and officials from other jurisdictions with paid sick and safe time laws (as of December 31, 2013), including San Francisco, Washington D.C. and Connecticut; and
- Interviewing five employers and five employees from 10 different businesses that had participated in the advisory letter process. We identified these individuals from our review of 32 advisory letter files.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>1</sup> Other PSST reports include:

- Findings from the Initial Employer Survey, July 8, 2013
- Initial Findings from Employer Interviews, September 18, 2013
- Early Outcomes of the City of Seattle Paid Sick and Safe Time Ordinance, April 23, 2014
- Union Waivers of Seattle's Paid Sick and Safe Time Regulations, May 28, 2014

## Paid Sick and Safe Time Ordinance Background

Seattle's Paid Sick and Safe Time Ordinance took effect on September 1, 2012. The PSST Ordinance set minimum standards for Seattle employers to provide paid sick and safe time to Seattle workers, including accrual, usage, and carry-over provisions. The law specifies employer responsibilities regarding notifying employees about the law, and documenting and notifying employees about the amount of PSST available to them. It prohibits employers from retaliating against employees who exercise their rights under the ordinance.

The ordinance gave the Seattle Office for Civil Rights authority to enforce the law and establish the rules for compliance, including investigating allegations of PSST Ordinance violations, conciliating and settling those allegations, and monitoring and enforcing any agreements or orders resulting from investigations, conciliations, and settlements. For employers that willfully violate the law, the law also allows for civil fines up to \$500 and the accrual of liability including two years' worth of back pay for violations.

Exhibit 1 provides some highlights of Seattle's Paid Sick and Safe Time Ordinance and its enforcement provisions.

**Exhibit 1.**

**Highlights of Seattle's Paid Sick and Save Time Law, SMC 4.16:**

- Effective September 1, 2012.
- Paid leave may be used for an employee's or family member's illness, injury, or preventative care, and to address issues of safety related to domestic abuse, sexual harassment, and stalking.
- Applies to businesses with more than 4 full time equivalent employees, and is applicable to full-time, part-time, temporary, and occasional-basis employees.
- Accrual started on September 1, 2012 or when the employee started working in Seattle after this date and can be used 180 days after this date or after the employee start date.
- Employees can accrue either one hour for every 40 hours worked or one hour for every 30 hours worked depending on the size of the business.
- Employees can use or carryover up to 40, 56 or 72 accrued hours to the following year depending on the size of the business.
- Combined paid vacation and sick leave, often called personal time off (PTO), qualifies as meeting the PSST Ordinance, provided the employer complies with its provisions.
- Requires employers to provide physical (e.g., a wall poster) or electronic notice of the law.
- Mandates that employers provide notification of available PSST each time wages are paid.
- Prohibits employers from retaliating against employees who exercise their rights under the law.

**Highlights of SMC 4.16 Enforcement Provisions:**

- Provides for the Seattle Office for Civil Rights to enforce the law.
- Requires employers to maintain records for two years and allows SOCR access to such records.
- Allows SOCR to investigate potential violations and to monitor compliance with the requirements.
- Allows SOCR to receive and investigate charges alleging violations, settle and conciliate charges, and monitor and enforce agreements or orders.
- Allows charges to be filed by charging parties or the Director of SOCR (Director's Charges).
- Outlines conditions of settlement that may include: the elimination of the unlawful practice; hiring, reinstatement or upgrading an employee; back pay; lost benefits; attorney's fees; admittance or restoration to membership in a labor organization; or other actions.
- Allows for a \$125 fine for first time violators of the notice requirement and \$250 for subsequent notice requirement violations.
- Allows for up to \$500 in civil fines.
- Allows for the accrual of liability including up to two years' worth of back pay for violations during that time.

### **The Seattle Office for Civil Rights Used Advisory Letters to Enforce the PSST Ordinance**

The PSST Ordinance provides for an enforcement process similar to the City of Seattle's enforcement of civil rights violations, which involves filing charges, conducting investigations, and seeking early resolutions or conciliations prior to SOCR issuing formal cause findings.<sup>2</sup> However, given the Ordinance's direction to settle and conciliate charges of PSST noncompliance, and the City's desire to work with businesses to achieve compliance in a non-punitive manner during the initial implementation of the law, SOCR primarily used a non-adversarial advisory letter process. According to SOCR's response to this audit (Appendix E), SOCR's decisions regarding enforcement and outreach efforts were made in consideration of several factors including: the political context and climate during the debate, passage and initial implementation of the PSST Ordinance; business and community stakeholders' input; and resource constraints.

Consequently, SOCR intentionally did not pursue employer fines and back pay for employees because the ordinance was new and they believed this was the direction they received from policy makers on enforcement.

During the first 16 months the law was in effect, SOCR intentionally did not pursue employer fines as part of its initial implementation phase-in period. In the advisory letter process, SOCR offers respondent employers technical assistance to achieve compliance and avoids filing charges, conducting site visits, doing full investigations, or making judgments about the validity of the allegations. SOCR uses a complaint-based system to address allegations of PSST Ordinance non-compliance; an employee must raise a complaint with SOCR to get SOCR involved in trying to obtain compliance for that employee's issue. The advisory letter informs the employer that they have 30 days to resolve the specific complaint against them or charges may be filed. The advisory letter process may not result in the employer achieving full compliance with the law, because SOCR focuses only on an individual employee's complaint. While some advisory letters resulted in business owners agreeing to pay back wages owed to employees for sick and safe time SOCR did not always ensure that employers paid back wages owed to employees. The advisory letter process includes:

Step 1: A complainant (most often an employee) notifying SOCR of an alleged employer violation.

Step 2: SOCR sending an advisory letter to the complainant's employer (respondent) stating that they may not be in compliance with the law (see sample advisory letter in Attachment A). The letter also notifies the employer that they have 30 days to resolve the complaint or they risk charges being filed against them.

Step 3: SOCR contacting the employer to provide technical assistance in understanding the law, addressing the complainant's issues, and/or achieving compliance with the law.

Step 4: SOCR contacting the complainant who raised the issue to let them know that SOCR has contacted the employer (through the advisory letter and sometimes phone or email), informing the complainant of its discussions with the employer including informing the employer that if they have not addressed the complaint in 30 days the complainant may file a formal charge.

Step 5: SOCR closes the case after the complainant informs SOCR that they are satisfied with how their employer addressed the complaint. If SOCR does not hear from the complainant within a month, SOCR deems the case resolved and closes it.

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<sup>2</sup> Cause findings are the results of investigations which are reduced to written findings of fact based on the SOCR Director's determination that there is reasonable cause for believing that the allegations occurred.



According to SOCR, the goal of the advisory letter is to achieve compliance with the PSST Ordinance within 30 days and settle complaints without filing charges and to avoid conducting a potentially-lengthy investigation. SOCR devised the advisory letter process as a non-punitive approach to enforcement “as an expedient way to resolve PSST complaints within the framework of a complaint-based enforcement model.” The advisory letter process allows a quick exchange of information using efficient modes of communication such as phone calls and emails to rapidly identify potential areas of non-compliance and achieve resolution.

## II. RESULTS AND RECOMMENDATIONS

We found that from September 2012 through December 31, 2013, SOCR primarily used the advisory letter process to enforce the PSST Ordinance and that most businesses who participated in the process reported needing to change their businesses' practices to comply with the Ordinance. However, we found several issues with the advisory letter process and question its extensive use as a long-term enforcement strategy. This section provides the results of our audit and 13 recommendations to improve the enforcement of the Ordinance. SOCR concurred with 12 of our 13 recommendations and believes one recommendation warrants further study.

We identified the following issues regarding the advisory letter process:

- The process did not involve formal investigative methods such as gathering evidence, site visits, formally documented interviews, and developing findings. Therefore, findings of fact about non-compliance were not established, and resolution of the complaints was geared toward preventing future occurrences of the issues raised rather than achieving compliance with all of the ordinance's requirements or ensuring that businesses paid back wages for sick and safe leave owed to all employees.
- SOCR used the advisory letter process when it would have been more appropriate to conduct formal investigations to assess the extent of noncompliance.
- San Francisco, after several years of enforcement, largely abandoned its use of a non-adversarial enforcement approach that involved letters to businesses, and now conducts companywide and confidential investigations. These investigations have resulted in settlements that included recovered back wages for all employees, penalties, and civil fines.
- Typically, SOCR limited the issues it addressed to an employee's specific complaints. However, more than 40 percent of the advisory letters sent from September 1, 2012 to December 31, 2013 involved complaints that the employer was not providing PSST to all or a group of employees. This meant that when SOCR resolved the complaint of an individual employee through an advisory letter, it presumed that the other employees not mentioned in the complaint would also begin to receive PSST benefits.
- During the process, SOCR did not routinely discuss or help negotiate individual employee or companywide remedies, such as back pay for a paid sick and safe time request that was denied, nor did it negotiate formal agreements or settlements between the complainant and employer. SOCR has collected detailed information on only a few instances of informal settlements (those reached without SOCR's participation) between employees and employers.
- SOCR did not follow-up with complainants after it closed cases to ensure that employers' actions to address complaints were implemented.

Exhibit 2 provides our assessment of the pros and cons of the advisory letter process based on our review of data concerning 141 advisory letter cases, 32 randomly selected closed SOCR advisory letter case files, and interviews we conducted with five employees and five employers.

<b>Exhibit 2. Pros and Cons of the Advisory Letter Process</b>		
<b>Issue</b>	<b>Pros</b>	<b>Cons</b>
Efficiency	Most advisory letters were sent within two days of the complaint being received by SOCR. SOCR enforcement staff's PSST workload was handled by approximately 1 FTE.	SOCR sent advisory letters to twelve businesses, and then sent subsequent advisory letters to the same businesses about complaints that were from the same or different employees on predominantly different issues.
Validity of Allegations	Many businesses accepted the validity of allegations in the advisory letter (without an investigation) and reported needing to change their policies and business practices.	Because there were no investigations, the validity of the allegations was not routinely confirmed and the extent of the alleged noncompliance was not established.
Compliance	Employers reported companywide workplace compliance, even when companywide compliance was not the focus of the advisory letter allegation.	Noncompliance issues that were not noted in the complaint may not have been addressed or resolved. Companywide compliance may not have been achieved.
Confidentiality	Allows the complainant's identity to remain anonymous in most cases.	SOCR used the advisory letter process when the complainant was not concerned with maintaining confidentiality and was willing to confront the employer about the noncompliance issue. In such cases, charges could have been filed, but weren't in some cases.
Remedies and Penalties	Remedies are voluntary and penalties are not imposed.	SOCR did not routinely assess or remedy employees' loss of income or back pay owed for PSST not provided. The lack of a punitive outcome may send the message that the City is not serious about enforcement of the PSST Ordinance.
Closure	SOCR contacts complainants before closing a case.	If SOCR was unable to make direct contact with the complainant they sent an email or left a phone message. If SOCR did not hear from the complainant after the 30 day period employers have to address the complaint, SOCR assumed the employee's issues were resolved satisfactorily and they closed the case without further follow-up, when they had no evidence that the case had been satisfactorily resolved.
Follow-up After Case Closure	Not applicable	SOCR did not conduct follow-up after case closures to ensure that employers implemented agreed upon resolutions to complaints, that employees were satisfied with the resolution, or that employers had achieved compliance with all the provisions of the ordinance. SOCR did not conduct follow-up when it was unable to make direct contact with the employee before closing the case. In the cases we reviewed, any follow-up after case closure by SOCR was initiated at the request of an employee complainant.

## SOCR Enforcement Actions Reflect a Non-Adversarial Approach to Addressing Allegations of PSST Ordinance Violations

Of 337 PSST inquiries made by employees, SOCR determined that 143 were complaints that met prima facie<sup>3</sup> elements of a case. SOCR addressed 141 of those complaints by sending advisory letters to employers offering technical assistance, and holding discussions with employers and the complainant about how issues raised by the complaint would be addressed. SOCR closed most of those cases by relying on the employers' assurances that they would address the issues raised in the complaints or employees' statements that their complaints had been resolved (i.e., SOCR did not routinely obtain documentary evidence of employer compliance).

In addition, SOCR addressed six cases through the traditional civil rights discrimination enforcement model (i.e., employee files a charge, SOCR attempts to reach a settlement between the charging party and the respondent/employer while conducting a full investigation of the allegations). Four of the six charge cases started in the advisory letter process. Because the charge process usually requires disclosure of the complainant's identity, complainants may be reluctant to file a charge.

The PSST Ordinance provides the option for the SOCR Director to initiate charges. If the SOCR Director initiates charges, and conducts a companywide investigation, the complainant's identity is more likely to remain anonymous. From September 1, 2012 through December 31, 2013, no Director's charges were filed. It is also possible for the Director to conduct an investigation without a charge being filed, but none were conducted. According to SOCR they intentionally did not file Director's charges during the first 16 months after the Ordinance took effect to permit employers to transition to compliance with the new law.

Exhibit 3 shows SOCR's PSST Ordinance enforcement activities from September 1, 2012 to December 31, 2013.

Exhibit 3. SOCR PSST Enforcement Activities September 1, 2012 to December 31, 2013					
PSST Employee Inquiries <sup>4</sup>	Advisory Letters Sent	Advisory Letter Allegations	Advisory Letters Closed	Charge Cases Filed	Director's Charges Filed
337	141	230	133	6	0

A person making a complaint to SOCR may allege multiple violations of non-compliance. As noted in Exhibit 3, complainants raised 230 allegations with SOCR that were addressed in 141 advisory letters. The allegations that employees raised fell into seven categories that SOCR defined as follows:

**No PSST:** The employer is not offering PSST to all or some employees. For example, an employer may be providing PSST to full time employees but not part time employees.

**Accrual:** The employer is not offering the minimum required rate of PSST accrual. For example, an employer offers a flat three days of sick leave per year for full time employees rather than one hour for every 30 hours worked.

<sup>3</sup> Prima facie means the case meets standards of evidence at first glance.

<sup>4</sup> Inquiries are questions and/or complaints.

**Use:** The employer is not allowing the employee to use the PSST accrued in accordance with the Ordinance. For example, an employer does not allow PSST for dentist appointments, or the employer does not allow the employee to use PSST for caring for a sick child, or the employer is requiring a doctor's note for every use of sick leave.

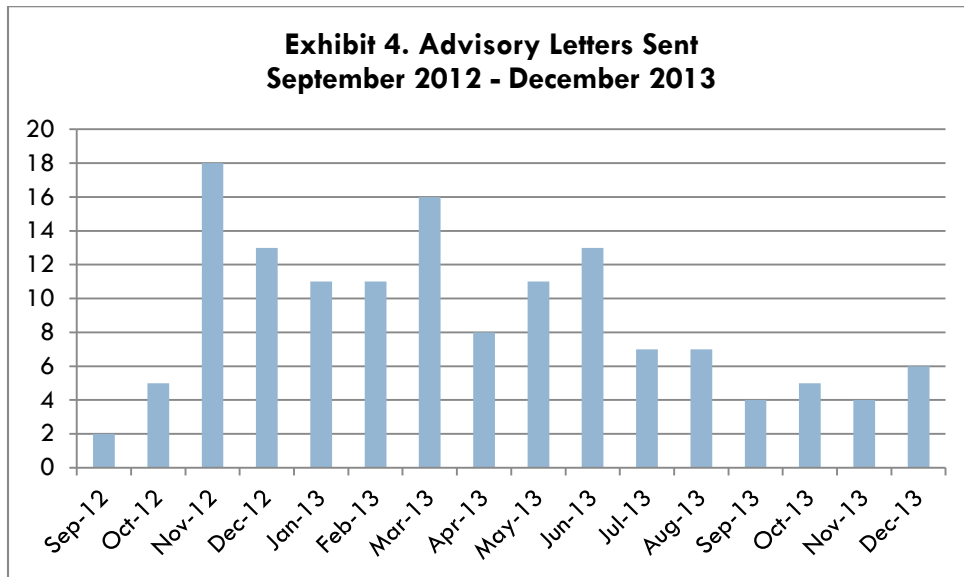
**Notification:** Employers are not providing employees with information about their accrued PSST every pay period.

**Carryover:** The employer is not properly carrying over accrued time into the following year. For example, an employer may be zeroing-out the PSST accrued and not used by January 1<sup>st</sup>.

**Notice:** Employers are not providing notice of their PSST policy in physical form (such as a poster) or in electronic form specifying the terms of the policy consistent with the Ordinance.

**Retaliation:** The employer is implementing an absence control policy to limit use of PSST or has retaliated against an employee for claiming PSST rights. Examples include reducing the employee's hours, providing the employee with less desirable working conditions, or firing the employee.

During the 16 month audit period (September 1, 2012 through December 31, 2013) the average number of advisory letters sent peaked in November 2012, the third month after the ordinance took effect, with 18 letters sent. After March 2013, the number of advisory letters SOCR sent decreased through year end. Exhibit 4 shows the number of advisory letters sent by month from September 2012 through December 2013.



Similar to the enforcement process that SOCR uses for employment and housing discrimination cases, complainants also have the option, though it is rarely used, to engage in a charge process, which initiates a formal investigation to enforce the Ordinance. The charge process originates from the person aggrieved by an alleged violation, from a person making a charge on another person's behalf, or from the SOCR Director (a Director's charge) whenever the Director has reason to believe that any person is in violation of the Ordinance.

When SOCR sends an advisory letter, it also informs the employee that if they are not satisfied with the employer's actions to address their noncompliance issue 30 days after the date the advisory letter was

sent, they have the option to file a formal charge with SOCR. The charge process requires the complainant to sign a formal charge and reveal their identity. The charge process is what initiates a formal investigation or an attempt to obtain a settlement such as back pay. If after an investigation no settlement is reached, the SOCR Director reviews the findings of fact and issues a determination. From September 1, 2012 to December 31, 2013 six cases were filed as charge cases, four of which originated in the advisory letter process, but none of the six were resolved by December 31, 2013. During that time the SOCR Director did not initiate charges.

The PSST Ordinance also allows for SOCR or the SOCR Director to:

- Monitor and enforce any agreements or orders,
- Conduct hearings,
- Issue subpoenas, and
- Require fact finding conferences.

As of January 1, 2014, because only six charge cases had been filed and none closed, SOCR had not used these four tools in the enforcement of PSST.

We interviewed five employees whose complaints resulted in advisory letters being sent to their employers. None of the employees we interviewed filed a charge. In one case, the complainant was prepared to file a charge, but reported that SOCR did not follow through on an appointment and the employee was not given the opportunity to file the charge. Two employees stated they did not file a charge because it was not presented as an option after the advisory letter was sent, and another employee did not file a charge because they didn't want to reveal their identity. Only one employee stated they did not file a charge because their issue got resolved.

### **SOCR Used the Advisory Letter Process When Investigations May Have Been Warranted**

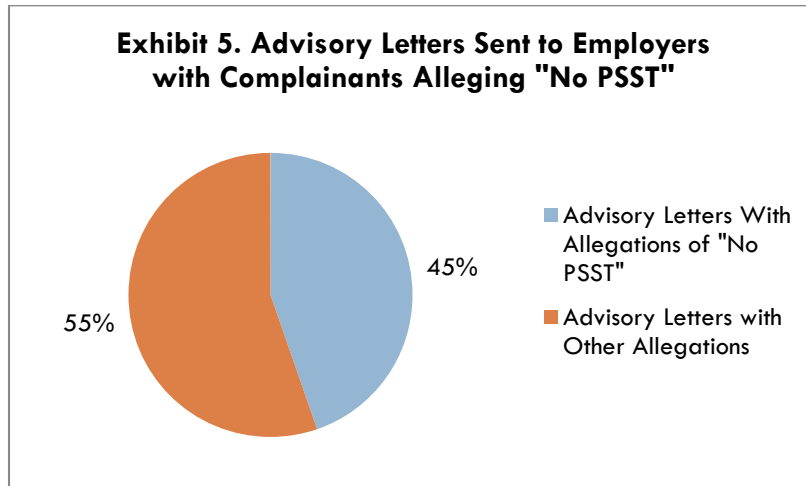
There are certain circumstances in which an advisory letter approach may not be appropriate and an investigation may be warranted, including:

- 1) If an employee alleges that PSST is not being provided to a group of employees or any employees, or if an employee is making an allegation on behalf of a group of employees;
- 2) If an employee alleges retaliation;
- 3) If more than one employee is alleging the same non-compliance issues;
- 4) If SOCR has sent more than one advisory letter to the same employer about the same or different issues.

What follows is additional information on why an advisory letter approach may not be appropriate.

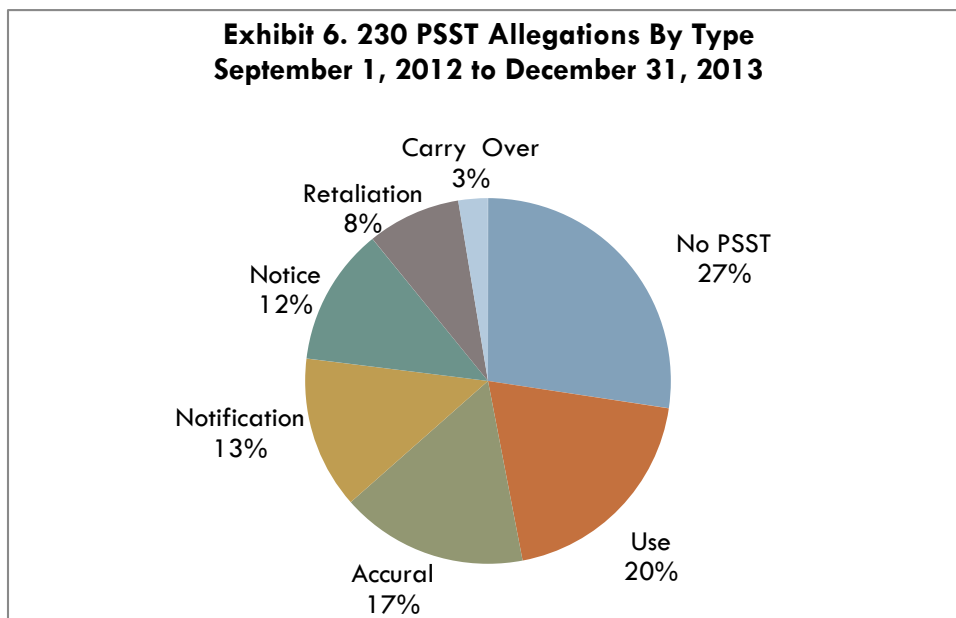
- 1) **No PSST:** Of the 141 advisory letters sent to employers between September 2012 and December 2013, about 45 percent of the complainants alleged "No PSST", i.e., that the employer was not providing PSST to any employees or a sub-group of employers (see Exhibit 5 below). Approximately 55 percent of the other advisory letters sent involved complaints consisting of other noncompliance allegations such as not providing the correct accrual rates, or not providing notice of the business's PSST policy.

Exhibit 5 shows the percentage of advisory letters sent to employers with allegations of "No PSST" being provided to all or some employees.



Because some complainants raised more than one allegation in the complaints they lodged with SOCR, the total number of allegations raised from the 141 advisory letter cases was 230. The most common allegation (63 out of the 230 allegations or 27 percent) was that the employer did not offer PSST to some or all employees. At businesses where all employees or a group of employees were denied PSST, an investigation may have been more appropriate than an advisory letter to determine if and how much in back wages was owed. Nevertheless, some businesses reported correcting their paid leave policies for all employees.

Exhibit 6 shows the type and frequency of allegations raised between September 1, 2012 and December 31, 2013.



- 2) **Retaliation:** Because retaliation by an employer against an employee could involve the employee losing past and future earnings and employment, such an allegation merits closer examination of the employer's practices and records than is provided through the advisory letter process. There were 19 allegations of retaliation, which represented 8 percent of the total number of PSST allegations made

to SOCR from November 1, 2012 to December 31, 2013. Three of the 19 allegations of retaliation resulted in SOCR making formal charges, which initiated investigations.

- 3) More than one employee from the same company raising the same or different issue of noncompliance:** According to SOCR, complaints addressed in the advisory letters consist of only what the employees allege. If during its conversations with complainants and respondents SOCR discovers other non-compliance issues affecting additional employees, these are not included in the advisory letter process. If there is a second employee from the same company with the same or a different complaint than the first complainant, SOCR requests that the employee lodge a complaint, even when the employee who made the original complaint is representing a larger group of employees. Rather than SOCR conducting a companywide investigation to determine the extent of the non-compliance, other employees with the same or different complaints must initiate contact with SOCR and file a separate complaint. Based on the data provided by SOCR, it is unclear how many allegations applied to more than one employee in a company. If there is evidence that non-compliance may be affecting more than one employee, an investigation would be appropriate to determine the extent of noncompliance.
- 4) More than one letter sent to the same employer regarding the same or different allegations:** SOCR reported that advisory letters were sent to 12 employers after a previous letter had been sent to those employers. SOCR had closed the advisory letter case and assumed that the allegations had been resolved. One business received 8 advisory letters.<sup>5</sup> According to SOCR, with few exceptions subsequent advisory letters sent to the same employers involved different allegations of non-compliance. According to a San Francisco's Office of Labor Enforcement, (OLSE) official, they dealt more harshly with businesses that violated the Paid Sick Leave law after having been sent a "Watch" letter. In such cases OLSE would conduct an investigation because the employer had been previously advised how to comply but didn't.

**Recommendation 1:** SOCR should develop a policy that explains when an advisory letter should be sent, and when an investigation or other enforcement tools should be used in addressing allegations. The policy should consider whether the allegations apply to multiple employees at one company, the duration of the noncompliance, whether there are issues of confidentiality, whether back wages could be owed, whether there has been a previous advisory letter sent to the employer, and whether retaliation is an issue.

#### **Many Resolved Advisory Letter Cases Lacked Documentation Proving Compliance**

According to SOCR, of the 141 advisory letters sent between September 1, 2012 and December 31, 2013, 133 letters were closed and 8 remained open because SOCR was still working on the case. Of the 133 closed advisory letters, 125 were resolved through early resolution, and 8 cases were referred to intake (the initial step of the charge process) and subsequently considered for charge cases. Charges were filed for four cases, and in four other cases the employees decided not to pursue the complaints. Exhibit 7 shows the number of advisory letters closed and how those complaints were resolved.

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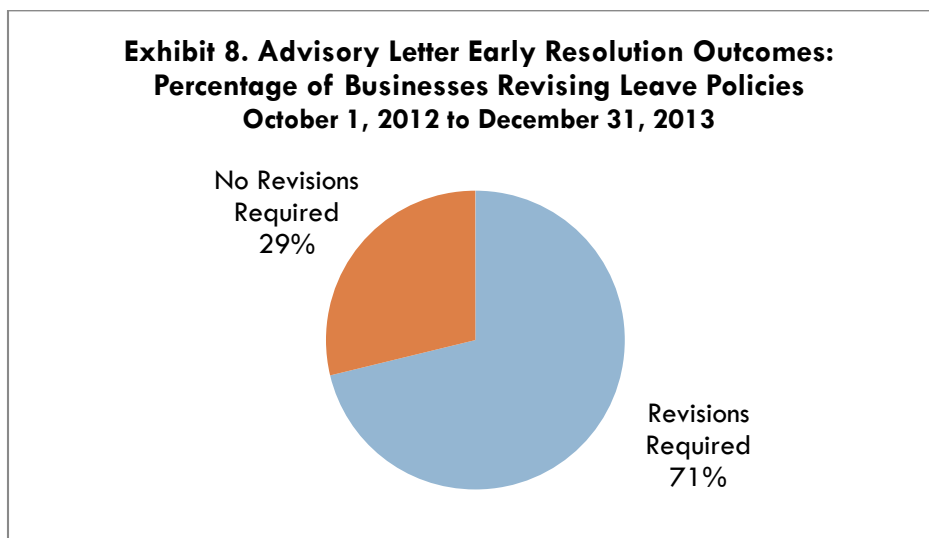
<sup>5</sup> In May 2014, SOCR filed a company-wide, Director's charge against this employer.



Exhibit 7. Advisory Letter Closures September 1, 2012 to December 31, 2013				
Advisory Letters Closed	Early Resolutions	Cases Referred to Intake for Possible Charges	Cases not pursued	Charges Filed
133	125	8	4	4

Our analysis of SOCR’s closed advisory letter case data indicated that a majority of respondent employers reported that they needed to correct their businesses’ leave policies related to the allegations to achieve compliance with the PSST Ordinance. Of the 125 letters SOCR resolved early through the advisory letter process, approximately 70 percent of the businesses reported needing to revise their existing leave policies and practices in order to comply. The remaining 30 percent reported not requiring revisions because their leave policies met PSST Ordinance rules.

Exhibit 8 shows the percentage of complaints addressed through the advisory letter process that resulted in the businesses reporting that they modified their leave policies to comply with the PSST Ordinance.



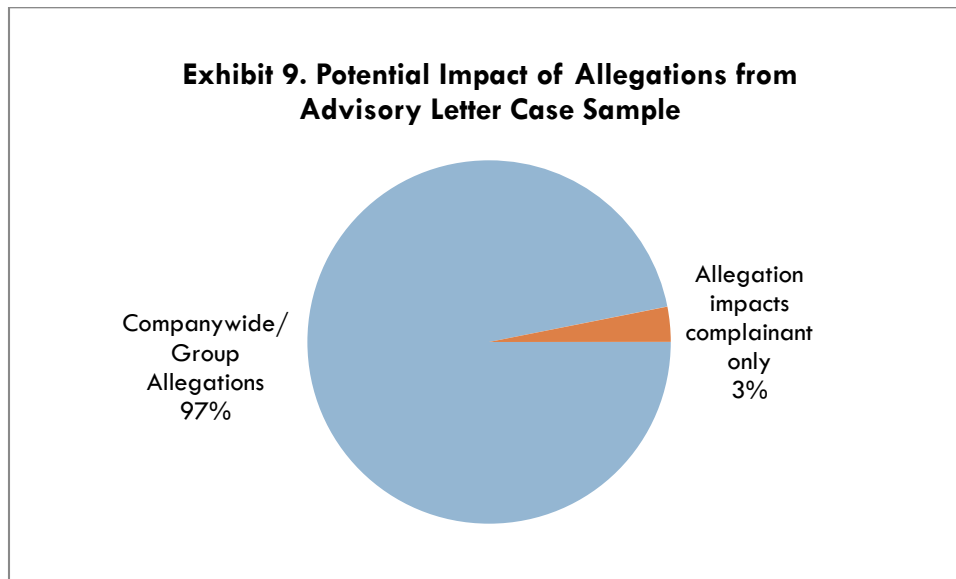
Because SOCR did not require that businesses submit evidence of compliance in the advisory letter process we were unable to confirm that 70 percent of the businesses revised their policies. In our review of 32 cases we found 22 out of 32 cases lacked documentary evidence from the employer to prove compliance. We also found one instance in which the advisory letter case was closed because the complainant was unable to provide evidence of how much time paid sick leave he requested, rather than placing the burden of proof of compliance on the business by asking them to submit evidence of compliance.

**Recommendation 2:** When addressing employee complaints with an advisory letter, SOCR should request documentary evidence from the employer to prove that the employer took the necessary action(s) to achieve compliance with the PSST Ordinance.

### Employee Focused Enforcement Approach Missed Opportunities for Companywide Solutions

During our review of SOCR PSST enforcement cases, we evaluated allegations of noncompliance to determine whether they affected more workers than the employee who filed the complaint. Ninety-seven percent of the files we reviewed involved allegations that affected employees companywide or a group of employees (for example, PSST not being provided to part-time employees). Only one file contained allegations that concerned only the employee making the allegations.

Exhibit 9 shows whether the allegations were company/group wide or specific to one individual.



We confirmed through our interviews with five employers and five employees that issues raised in the complaints pertained to multiple employees. We asked interviewees questions about whether the issues raised in the complaint were employee-specific, affected a group of employees, or were companywide issues. Three employers told us that the issue raised by their employee pertained to multiple employees. One employer stated the issue was specific only to the employee that raised the issue, and one employer was unsure whether the issue was employee specific or whether it affected more than the employee with the complaint. All five employees we interviewed stated that the noncompliance issue or issues they raised were companywide issues.

### SOCR Did Not Conduct Follow-up after Closing Advisory Letter Cases Without Evidence of Compliance

In our file review, we noted that if SOCR did not hear from the complainant after the 30 day period that employers are given to address the complaint, SOCR assumed that the employee's issues had been resolved satisfactorily and closed the case with no further follow-up. If SOCR was unable to make direct contact with the complainant after the 30 day period, they sent an email or left a phone message informing them that the case was going to be closed. In these cases, SOCR did not conduct further follow-up after the case was closed to ensure that agreements made by the employer were implemented, that employees were satisfied with the resolution, or that the employer had achieved full compliance with the Ordinance. Even when SOCR was unable to make direct contact with employees before closing cases, SOCR did not conduct follow-up with those employees to determine if their issues had been addressed satisfactorily or if new issues had arisen. Any communication between the complainant and SOCR after the case was closed was initiated by the employee.

Based on our employee interviews, we concluded that follow-up after case closure would be appropriate to ensure compliance with the PSST Ordinance. Of the five employees we interviewed, four stated that the issues they raised were not resolved with the first advisory letter sent to their employer. One employee reported that compliance, after the initial advisory letter was sent to the employer, lasted approximately four months, and that he had to call SOCR again to complain. After he complained a second time, a second advisory letter was sent to the employer. Another employee told us that their employer partially complied with some elements of the Ordinance after the initial advisory letter, but that he believed the employer remained noncompliant with other elements of the Ordinance. The third employee stated that no follow up was conducted even when he notified SOCR that he was prepared to file a charge. The fourth employee stated that only the noncompliance issue was addressed during the advisory letter process, but that the process did not resolve the issue of back pay for PSST the employee believed he was owed from the period before the employer complied with the Ordinance.

**Recommendation 3:** SOCR should conduct follow-up on closed advisory letter cases, particularly when SOCR made no direct contact with the employee before closing the case.

### The San Francisco Office of Labor Standards Enforcement (OLSE) Uses a Proactive Approach to Paid Sick Leave Enforcement

During our audit, we interviewed and obtained information from the three other jurisdictions that, as of December 31, 2013, had laws requiring employers to provide paid sick leave to employees (San Francisco, Washington D.C. and Connecticut). We found that San Francisco's Office of Labor Standards (OLSE) offers interesting lessons for Seattle because: 1) Seattle's and San Francisco's laws are more similar than the other two jurisdictions regarding who the law covers (see Appendix B for a jurisdictional comparison), 2) San Francisco's Paid Sick Leave Ordinance (PSLO) took effect in 2007, which is the earliest of the jurisdictions, 3) unlike the other jurisdictions (and similar to Seattle) San Francisco budgeted for the outreach and enforcement of their ordinance, and 4) Connecticut and Washington D.C. had significantly fewer paid sick leave complaints than Seattle and San Francisco. Because a significant percentage of employees in Washington D.C. work for the federal government, most receive paid sick leave benefits in excess of what that jurisdiction's law requires. According to a Washington D.C. official, they receive fewer than five paid sick leave complaints annually. Likewise, a Connecticut State official stated that in the two years its paid sick leave law has been in effect they have received fewer than two dozen complaints. Therefore, we found Washington D.C. and Connecticut less worthy of comparison with Seattle than San Francisco. This section provides information about the four agencies that have enforcement authority over the paid sick leave law and compares Seattle's and San Francisco's enforcement models, staffing, and enforcement results. While SOCR's non-adversarial approach may have been appropriate during the initial period after the PSST ordinance went into effect, we make several recommendations in this section that would result in SOCR adopting a more proactive enforcement approach.

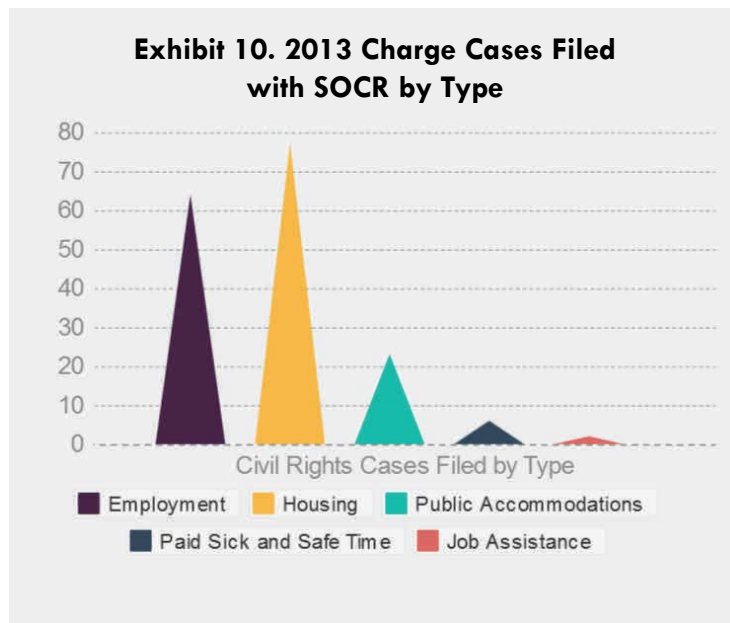
### Seattle Is Alone in Housing PSST Enforcement within Its Civil Rights Function

As of December 2013, Seattle was the only one of the four jurisdictions to house its enforcement of paid sick leave within its civil rights enforcement agency (the Enforcement Division of SOCR). Before SOCR started enforcing the PSST Ordinance in 2012, it was already enforcing antidiscrimination laws in housing, employment, public accommodations and contracting, and in 2013 it began enforcing Seattle's

Job Assistance Ordinance<sup>6</sup>. Although San Francisco, Washington D.C. and Connecticut also have civil rights enforcement agencies within their jurisdictions, they house the enforcement of paid sick leave with agencies that enforce their jurisdictions' minimum wage and other labor standards laws.

SOCR's Enforcement Division devotes most of its staffing resources to addressing civil rights discrimination charge cases, which usually involve lengthy investigations and prolonged negotiated settlements. For PSST Ordinance complaints, SOCR most often used the advisory letter process to resolve PSST complaints, and handled only a small number of PSST complaints through a charge process similar to the one used for its civil rights discrimination cases. According to SOCR, the charge process was used when a PSST complainant was willing to file a charge, or when the statute of limitations was imminent, or, in some cases, when an employee alleged retaliation by their employer. If a PSST charge is filed, SOCR follows the same process it uses for civil rights cases: charge, investigation, determination of cause or no cause, conciliation and settlement.

Exhibit 10 is a breakdown of all charge cases filed with SOCR by case type, which includes employment, housing, and public accommodation discrimination cases, as well as PSST. This demonstrates that SOCR's enforcement resources have been primarily focused on civil rights enforcement cases.



Source: 2013 SOCR Annual Report

### **SOCR Staffing Limits its Ability to Conduct Full Investigations**

In 2013, SOCR's Enforcement Division consisted of 8.6 full-time equivalent employees (FTEs). The equivalent of one FTE in SOCR worked on PSST enforcement for an estimated 519,000 Seattle workers who qualify for paid sick and safe time benefits. Because investigations are time consuming, it would be difficult for one FTE to conduct investigations for more than a handful of complainants while resolving over 100 complaints through the advisory letter process as it did in 2013.

San Francisco's OLSE also used the equivalent of one FTE for paid sick leave enforcement for approximately 559,000 workers in San Francisco; however, OLSE was able to conduct significantly more

<sup>6</sup> The Job Assistance Ordinance sets restrictions on how employers within Seattle can use conviction and arrest records for hiring decisions.

investigations than SOCR. The reason OLSE was able to conduct more investigations was because it had 6.2 positions that are investigating its paid sick leave ordinance while simultaneously investigating its minimum wage ordinance. Because OLSE uses the same enforcement strategy for minimum wage complaints and paid time off complaints, when employees complain about minimum wage violations, OLSE’s enforcement staff not only investigates those complaints while at the business, it also investigates the business’ compliance with the paid time off ordinance, and vice versa. This allows OLSE’s staff to identify, investigate, and resolve more paid sick leave non-compliance violations than could be done by one FTE who focusses solely on paid sick leave.

Exhibit 11 shows the scope of work performed by the Seattle and San Francisco agencies responsible for enforcing paid sick leave.

<b>Exhibit 11. SOCR and OLSE’s Scope of Work and Staffing of Paid Sick Leave</b>				
<b>Jurisdiction</b>	<b>Scope of Enforcement Work</b>	<b>Enforcement Staff FTEs</b>	<b>Investigations</b>	<b>Total City Employees Covered</b>
Seattle Office for Civil Rights	Paid Sick Leave	1	6	519,000
San Francisco Office of Labor Standards Enforcement	PSLO and Minimum Wage	6.2	55	559,000

If the City wants SOCR to conduct additional investigations in its enforcement of the PSST Ordinance, it may require additional staffing.

**San Francisco’s OLSE Moved to a More Proactive Enforcement Approach**

Like Seattle, the San Francisco Office of Labor Standards Enforcement (OLSE) used an advisory letter approach (Watch letter) for enforcement and compliance during the early implementation of its Paid Sick Leave Ordinance. According to an OLSE official, the Watch letter was used more when the law was new because OLSE did not believe it was appropriate to begin enforcing the new law using a punitive approach. Furthermore, many businesses in San Francisco were unaware of the law because the businesses were headquartered in another state and San Francisco was the only jurisdiction implementing a paid sick leave law at the time. The OLSE official also stated that using the Watch letter allowed the complainant to remain anonymous. However, the official mentioned several concerns with the Watch letter process that led OLSE to shift to a different enforcement approach for most complaints after the regulations had been in effect for about a year. Now they use the Watch only when the complainant is anonymous or wants to maintain confidentiality. The concerns that OLSE had with the Watch letter included:

- Often, OLSE didn’t know what happened after it sent the Watch letters to the businesses; they didn’t know if the letters were effective at ensuring that businesses complied with the law.

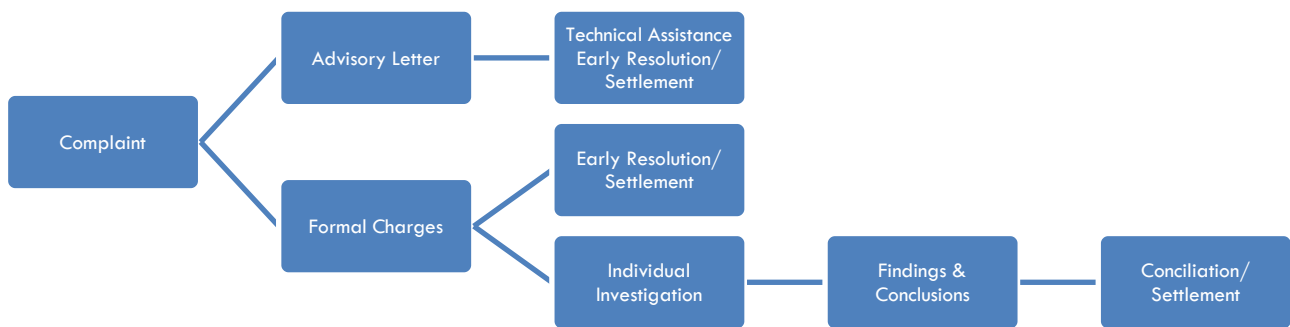
- After Watch letters were sent to a company, sometimes another complaint would come from the same company. OLSE didn't want to have to send a Watch letter to the same company more than once.

To address these concerns, and to provide for specific remedies to companywide employees denied sick leave over an extended period of time, OLSE instituted a new model to enforce its Paid Sick Leave law. The new model consists of 1) conducting unannounced visits to businesses alleged to be noncompliant, 2) interviewing employees during the visits, and 3) conducting companywide investigations to determine the validity and extent of noncompliance issues within the business.

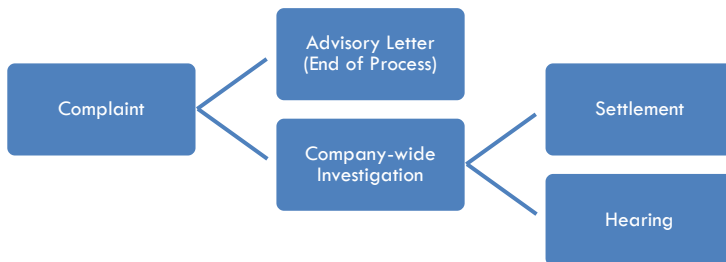
Exhibit 12 shows the steps of SOCR's and OLSE's enforcement processes.

**Exhibit 12. Comparison of SOCR's and OLSE's Paid Sick Leave Enforcement Processes**

**Seattle Office for Civil Rights (SOCR)  
Paid Sick and Safe Time Ordinance Enforcement Process**



**San Francisco Office of Labor Standards Enforcement (OLSE)  
Paid Sick Leave Ordinance Enforcement Process**



**OLSE's Enforcement Approach resulted in the Recovery of a Significant Amount of Back Pay and Penalties for Employees**

Although Seattle and San Francisco's ordinances are somewhat similar, the two agencies' enforcement efforts resulted in different results. OLSE had fewer complaints than SOCR, yet investigated more complaints, and participated in the formal settlement of more cases.

Exhibit 13 compares 2013 SOCR's enforcement efforts results with OLSE's.

<b>Exhibit 13. SOCR/OLSE Comparison of 2013 Enforcement Results</b>						
City	Total Complaints	Advisory/ Watch Letters Sent	Charges	Investigations	Hearings	# of Settlements
SOCR	109	103	6	6	NA	3
OLSE	69	14	NA	55	0	23

Both ordinances allow for the recovery of back wages, damages or penalties for workers, and civil fines or costs of investigations. On average, OLSE recovered substantially more fines and penalties per employee than SOCR.

The difference between Seattle’s and San Francisco’s enforcement outcomes stems from the differences in each office’s enforcement and compliance goals. OLSE’s goal is to recover the back wages and penalties owed employees and to correct employers’ future practices. SOCR’s goal up until 2014 was to achieve compliance. This goal allowed SOCR to resolve complaints without filing charges. While Seattle’s approach was a reasonable one, given the newness of the PSST Ordinance and the Ordinance’s direction for SOCR to settle and conciliate cases, the City now may want to consider a different approach since the ordinance has been in effect for over two years.

As part of the advisory letter process, SOCR did not routinely attempt to address or remedy an employer’s past practice of not providing PSST unless the complainant requested in the complaint a remedy such as back pay. For example, in one case, after SOCR sent the business an advisory letter, the business changed its practice to provide Personal Time Off that met the Ordinance’s requirements. However, we learned from an employee interview that SOCR did not take steps to restore the PSST owed employees from the time the ordinance was adopted until the company instituted the new Personal Time Off policy. While the advisory letter process may correct the business’ future practices it does not include a mechanism for consistently holding employers accountable for past practices.

As a result of our review of 32 SOCR files, we found that most of them did not contain an assessment of the potential or actual financial impact of the noncompliance on the complainant employee, or whether a settlement was reached. However, SOCR reported that from September 2012 through December 2013, the advisory letter process helped recover \$5,835 for 11 complainants. SOCR participated in three settlements and 8 were settled privately. SOCR believes this is a low estimate because not all employees reported their financial recovery and some employees settle informally (i.e., outside the SOCR process) and SOCR did not consistently ask for settlement information.

Exhibit 14 compares the settlement amounts recovered by SOCR and OLSE enforcement approaches in 2013.

Exhibit 14. SOCR/OLSE Comparison of 2013 Recovered Amounts in Paid Sick Leave Settlements					
City	Number of Settlements with Back Wages	Back Wages Recovered	Penalties Recovered for Workers	Civil Fines (SOCR)/Cost of Investigations Recovered (OLSE)	Average Amount Recovered Per Settlement
SOCR	Formal = 3 Informal = 8	\$5,835	0	0	\$530
OLSE	23	\$96,254	\$113,557	\$17,122	\$9867

OLSE’s companywide investigative approach, unlike Seattle’s, does not involve a charging process, and may be less intimidating and adversarial for businesses while simultaneously achieving companywide compliance and providing employees with an economic remedy for past practices acceptable to all parties, something not achieved by Seattle’s advisory letter process. While San Francisco’s Paid Sick Leave Ordinance provides San Francisco with a greater ability to collect for damages and penalties than Seattle’s, it was OLSE’s enforcement goal of recovering for back wages and penalties that resulted in significant settlements for complainants.

The issues of whether and when to change Seattle’s enforcement strategy from its advisory letter approach to an approach in which recovering back wages and penalties are routinely part of settlements, is a policy decisions as there would be staffing implications. Determining and negotiating settlements that involve recovering back wages and penalties would be a more time-consuming approach than the advisory letter approach. In addition, there may be issues raised by the business community that need to be considered. Likewise the issue of whether to negotiate some or the full range of remedies in settlements may be controversial as employees may push for more and employers may push for less. OLSE changed its enforcement strategy from a conciliatory approach to an approach where investigations and assessing fines and penalties was more routine a year after implementation.

**Recommendation 4:** The City should consider changing its PSST Ordinance enforcement strategy to include conducting investigations without charges and using other underutilized tools in the Ordinance (e.g., monitoring agreements, conducting fact finding conferences.) to help employees recover back wages and PSST owed, correct employers’ future practices, achieve companywide full compliance, and prevent reoccurrences of noncompliance at the same company. Such change should include clarifying language in the PSST Ordinance (SMC 14.16.080.A.) to allow the enforcement agency to investigate complaints without charges and settle such complaints through a settlements process (SMC 14.16.080. E.).

**OLSE’s Three-Day Standard Settlement is Efficient, Recovers Back Wages, and is Fair to Compliant Businesses**

According to an OLSE official, their investigations of paid sick leave are quick. The official said that when OLSE conducts a site visit, it can determine through interviews and requests of information whether the business complies with the law. According to the official, when OLSE finds that the business does not offer paid sick leave to any workers and the business understands its lack of compliance, the business typically wants to settle and is willing to accept OLSE’s standard remedy. In these cases, OLSE proposes that the company provide its employees the equivalent of three days of PSST in back wages per year for up to three years depending on an employee’s length of service with the business. OLSE uses a maximum three years because that’s how long businesses are required to keep records by San Francisco’s paid sick leave



ordinance. Because employers do not document when they deny sick leave, and few employees remember precisely how much sick leave time they requested and were denied, San Francisco adopted the companywide three-day remedy as a standard based on a study from the Institute for Women's Policy Research<sup>7</sup> that stated people take an average of three sick leave days per year.

According to an OLSE official, the three-day settlements have been successful in recovering complainants' back wages. The official stated that complainants, including those who may have been owed more than three days, have been satisfied with the three-day settlements. In addition the official said that OLSE has never had to have a hearing over paid sick leave and that since OLSE has implemented the three-day system, OLSE has used the Watch letter less frequently. The OLSE official stated that it is not that difficult to reach a settlement because employers recognize that when they don't have a sick leave policy they will not have a credible defense if they go to a hearing.

If a business is not paying sick leave and their competitor is, that may put the business providing paid sick leave at a competitive disadvantage. According to the OLSE official, the three-day remedy is fair to businesses that comply with the law. An enforcement process that only deals with an individual complainant and doesn't address the possibility that other employees aren't receiving paid sick leave potentially perpetuates the unfair competitive advantage of employers who don't provide leave. A business could decide that it is more profitable and cheaper not to pay sick leave and instead pay a fine, if it is caught being non-compliant. OLSE's officials believe their standard penalty is costly enough to remove this incentive.

The OLSE official said that their use of the three-day settlement allows them to more quickly resolve complaints. Once the employer admits they don't have a sick leave policy, no further employee interviews are required and the settlement becomes a mathematical exercise; it is determined using all the employees' payroll records. OLSE doesn't have to ask employees to remember how much time they took off for sick leave, to provide doctor's notes or hospital records of when they were sick, and OLSE doesn't have to reveal to the employer who initiated the complaint. All eligible employees get back pay and it creates the level playing field for the businesses' competitors who have been providing sick leave. According to OLSE, compared to when they were investigating individual cases, many more workers in San Francisco are getting back pay for previously-denied sick leave and OLSE is spending less time on each case.

**Recommendation 5:** SOCR should routinely determine the extent to which back wages may be owed and include that as part of the settlements.

### **The City's Complaint Driven Enforcement Strategy Could be Enhanced by Random Testing**

We found that all four jurisdictions with paid sick leave laws use a complaint driven enforcement strategy to identify the businesses alleged to be noncompliant. All four enforcement agencies approach a business about noncompliance when an employee or reliable source brings the noncompliance issue to the enforcement agency's attention. When San Francisco's OLSE receives a complaint about a minimum wage issue, it will also investigate the businesses' compliance with its Sick Leave Law.

Another way to identify noncompliance with regulations is through random testing. The Office of the District of Columbia Auditor conducts random testing for compliance with their paid sick leave poster requirement, and SOCR conducts random testing for compliance with fair housing laws.

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<sup>7</sup> San Francisco's Sick Leave Ordinance: Outcomes for Employers and Employees, Institute for Women's Policy Research, page 8.

The universe of employees in Seattle not receiving PSST or not receiving the correct amount of PSST could be in the tens of thousands. A 2014 study conducted by the University of Washington of Seattle's PSST Ordinance found that approximately 40 percent of employers in its sample of 300 were not providing the adequate amount of PSST. According to the study, although most large employers (Tier 3, 250+ employees) provide some form of paid time off, fewer than half offer adequate paid sick and safe time to full-time workers and only 30 percent comply with the PSST Ordinance. With over 500,000 workers in Seattle eligible for PSST, the potential number of employees affected by noncompliant or partially-compliant businesses could be significant. Employees who work for noncompliant employers either don't understand their rights or may be reluctant to raise a complaint for fear of retaliation. In either case, random testing or unsolicited investigations would identify non-compliant employers. While SOCR is constrained by staffing resources, achieving complete compliance on a companywide scale through random testing or unsolicited investigations may be more efficient than dealing with issues on an individual complaint basis, especially if more than one employee from the same company must raise a complaint for all the issues to be resolved. Achieving complete compliance on a companywide scale through random testing and unsolicited complaints may be a long term goal for SOCR.

**Recommendation 6:** SOCR should augment its individual complaint based approach to addressing non-compliance with a proactive random testing program.

#### **Complainant's Identity Could Remain Confidential with Companywide Investigations**

A major difference between Seattle and San Francisco is San Francisco's ability and willingness to conduct companywide investigations without disclosing the identity of the complainant. In Seattle, SOCR will not conduct an investigation unless a charge is filed. Once a charge is filed, the complainant's identity is revealed to the employer because SOCR must obtain the employee's records to investigate the charge. Although a Director's charge would allow SOCR to conduct an investigation without revealing the complainant's identity, no Director's charges were filed during the period we audited (i.e., September 1, 2012 – December 31, 2013). However, according to SOCR, three Director's charges were filed in 2014. The PSST Ordinance also allows SOCR to conduct companywide investigations without filing a charge, but none were conducted during the period we audited.

One of the employees we interviewed stated that he did not file a charge against his employer in part because he didn't want his identity to be revealed. He suggested that SOCR conduct investigations without revealing the identities of the complainants.

According to an OLSE official, OLSE used to enforce its Sick Leave Ordinance by using a Watch letter that focused on an individual's complaint rather than companywide compliance. However, because the same OLSE staff member who investigates noncompliance with minimum wage laws also investigates noncompliance with the Sick Leave Ordinance, OLSE decided to use a similar enforcement approach for both paid sick leave and minimum wage laws. A key element in enforcing those laws is that the person filing the complaint remains anonymous because OLSE investigates the allegations on a companywide basis rather than confining its investigations to the complainant's circumstances.

According to an OLSE official, enforcing the Sick Leave Ordinance by conducting companywide investigations allows the identity of the person who filed the complaint to remain confidential. When OLSE gets a paid sick leave complaint, OLSE visits the business, conducts employee and employer interviews, and obtains all employees' payroll records and other documents to determine whether the business is in compliance. If the business is not in compliance, OLSE informs the business about the changes the business needs to make to comply and any back pay it owes its employees.

According to an OLSE official, in the vast majority of cases it investigates, the business is not providing sick leave to any of its employees, which is a companywide problem because it affects everyone working there. Occasionally, a supervisor does not provide sick leave to one employee because they thought the employee's particular situation was not covered by sick leave, but this type of situation has been rare.

When OLSE enforced paid sick leave on a non-companywide basis, it required the complainant to disclose their identity so OLSE could review the complainant's records to verify that sick leave was denied. As a result, retaliation was a big concern for people making the allegations. Many of the employees who file complaints with OLSE are undocumented immigrants, so they fear retaliation and possible immigration enforcement if their identity is revealed. These employees face risking their jobs over a few days of sick leave back pay. Companywide investigations made it easier for OLSE to protect the identity of complainants. When OLSE conducts companywide investigations it asks the business to provide proof that it is providing paid leave to all employees and not just the one filing the complaint.

According to a 2013 study published by the University of California, OLSE's companywide investigations help protect workers from retaliation, because in the initial stages of the investigation it is easier for the identity of the complainant to remain protected. OLSE officials confirmed that they make every effort to protect the individual's identity during the investigative process. If complainants don't want to run the risk of their identity being disclosed, OLSE has the option of using the Watch letter. The complainant decides which approach to use. By doing companywide investigations, OLSE minimizes the risk of disclosing the complainant's identity.

Unlike Seattle, San Francisco's ordinance has specific language about preserving complainant confidentiality that is designed to encourage the reporting of noncompliance:

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

The language that allows OLSE to conduct site visits and investigations is found in San Francisco's Sick Leave Law's section on Employer Records ([Sec. 12W.6. Employer Records](#)). According to the Seattle City Attorney's Office, Seattle's Paid Sick and Safe Time Ordinance (SMC 14.16.060) gives SOCR the authority to conduct investigations and does not limit such investigations to those involving charges that have been filed by a complainant. However, it would be helpful to SOCR to have clearer language in the ordinance allowing it to conduct investigations without filing charges.

**Recommendation 7:** The City Council should modify the PSST Ordinance to include language about maintaining complainant confidentiality and clarify that investigations can be conducted without charges. This would encourage reporting of potential noncompliance, minimize the risk of retaliation against employees, and help ensure companywide full compliance with the PSST Ordinance.

## **SOCR Did Not Collect Customer Satisfaction Feedback from Advisory Letter Process Participants**

During our audit, we found that SOCR was asking claimants who filed charges to complete a customer satisfaction survey, but not advisory letter complainants. Therefore, SOCR's files contained no information about complainant or respondent satisfaction with the advisory letter process. While interviews with employers revealed general satisfaction with the advisory letter process and SOCR staff, some of the employees we interviewed shared concerns about the lack of follow-up, responsiveness, and resolution from the advisory letter process.

**Recommendation 8:** SOCR should invite advisory letter process participants to complete a customer satisfaction survey.

## **Advisory Letter Closed Case Performance Goal Should be Relevant to PSST**



SOCR has a performance goal to close advisory letters within 180 days from when they are sent to employers. The 180 days is based on the number of days SOCR uses as a goal to close charge cases, which take substantially longer than advisory letter cases because charge cases usually involve investigations and lengthy settlement discussions. On average SOCR took 52 days to resolve advisory letters. The performance goal to close advisory letter cases should reflect SOCR's experience with advisory letter cases, and not charge cases. Having a performance goal that is around the average time it takes to resolve advisory letters would provide SOCR a more accurate measure of case progress than the current 180 day goal.

**Recommendation 9:** SOCR should develop and use a more relevant advisory case performance goal than its current 180 day goal that is based on the number of days to close charge cases.

## **Suggested Enforcement/Compliance Related Ordinance Changes**

We asked SOCR to tell us about suggestions they have received regarding changes to the PSST Ordinance or implementation practices they think the City should consider. They offered five suggestions.

Exhibit 15 provides a description of the suggestions and our assessment of whether the suggestion should be implemented, needs further study, or is not warranted.

Exhibit 15. SOCR Suggested Changes and Office of City Auditor Response		
Suggestion	Auditor Response:  Implement  Further Study	Comments
1. Consider changing the “calendar year” requirement to “12-month period” for accrual, use, carry-over etc. to align with differing business practices.	Implement	Requires a change in the PSST Ordinance.
2. Consider requiring employers to provide individual notice of PSST rights on a one-time or annual basis.	Further Study	Requires a PSST Ordinance change. Other jurisdictions do not require individual notice, but require the posting of the paid sick leave law or other notice. Needs vetting with stakeholders to understand the impact of this on businesses. If a written policy is required as suggested in #3 below, that policy should be provided to employees, which would eliminate the need for this suggestion.
3. Written policy requirement: Require employers to explain in writing how they incorporate PSST requirements into their leave policies.	Implement	A written policy would create greater accountability for employers and better-informed employees, and facilitate compliance and enforcement. A lack of policy or a noncompliant policy may indicate to SOCR that an investigation is warranted. This requires a PSST Ordinance change and SOCR would need to prepare itself to offer help to businesses such as providing sample policies.
4. Expand enforcement authority.	Implement	SOCR suggested expanding the complaint-based mode of enforcement to include proactive measures such as periodic audits of records and on-site checks for PSST posters (and/or a written policy if suggestion #3 above were implemented). Washington D.C. conducts random audits for the poster requirement. According to the City Attorney’s Office, Seattle Municipal Code 14.16.060 provides SOCR the authority to monitor compliance with the requirements of the law without a complainant filing a charge. However, clarifying language in the PSST Ordinance on this authority would help the City should challenges to the practice arise. This suggestion is consistent with our Recommendation 6.
5. Expand authority for remedies to recover investigation costs of reasonable cause cases.	Further Study	The Ordinance gives limited authority to impose a minimal civil penalty on violators of the notice and posting requirements, which SOCR had not enforced at the time of our audit. In addition, convicted violators may be punished by a civil fine or forfeiture not to exceed \$500, which would not recover the City’s costs of investigations and is difficult to impose because it requires going to criminal court for conviction. The authority to recover investigation costs would require a change to the PSST Ordinance. San Francisco’s law allows OLSE to order the violating employers to pay the City the administrative costs for conducting investigations of not more than \$50.00 for each day or portion thereof and for each employee or person against whom the violation occurred or continued to occur.

### SOCR’s PSST Ordinance Outreach Efforts

Informing the public about a new law is essential to its effective implementation and compliance with it. This section provides information about SOCR’s outreach efforts to Seattle’s employees and employers concerning the PSST Ordinance and compares its efforts with San Francisco’s.

SOCR's outreach efforts began in May 2012 and were carried out by existing staff and a temporary campaign staff. In July 2013, the person filling SOCR's new Business Liaison position, approved by the City Council, started providing employers and employees with technical assistance.

According to SOCR, after the PSST ordinance passed, SOCR developed a website containing basic information for the public including a short Frequently Asked Questions (FAQ) document, and designated staff to answer questions from the public about the ordinance. In addition, it created an e-mail list of more than 800 people who had contacted the City Council, and began to engage with the community about the rule-making process. In time, SOCR created a promotional video, online webinar and power point presentations, posters translated into 6 languages, brochures, templates for collective bargaining waiver agreements and employer notices to employees, and an extensive FAQ document.

SOCR conducted an extensive public engagement process during the rule-making process to gather input from advocates and businesses with questions and concerns, and from the public. In early 2012, according to SOCR, the office held three public forums to discuss rule topics and convened numerous stakeholder meetings with representatives of employer and employee groups to generate input on the proposed rules. The draft rules went through two public comment periods before being finalized about two months before implementation. The collaborative process for rule-making, which was lengthier than SOCR anticipated, helped SOCR craft regulations that reflected community feedback. According to SOCR, it would have been preferable to begin the rule-drafting process immediately after the ordinance passed to provide businesses with more time to incorporate the rules into their leave policies. After the ordinance took effect, SOCR reported that it conducted a wide-ranging outreach and engagement campaign to inform businesses of the new ordinance.

The Center for Legal and Social Policy (CLASP) issued two written briefings on Seattle and San Francisco's implementation of their sick leave laws. These briefings contain information about both jurisdictions' outreach efforts. In the briefings, CLASP identified several outreach "best practices" from Seattle and San Francisco. We suggest improvements to SOCR's outreach efforts based on our interviews with SOCR, OLSE and CLASP officials, Seattle employees and employers, and an evaluation of SOCR's planned and actual outreach activities.

Exhibit 16 shows SOCR's and OLSE's Sick Leave Law Outreach Practices and Efforts and their Implementation Status

<b>Exhibit 16. Paid Sick Leave Outreach Efforts</b> I=Implemented (Green), PI=Planned or Partially Implemented (Yellow), NI=Not Implemented (Red)		
Efforts	SOCR	OLSE
Issue clear guidance about the law with public input: when drafting administrative rules, engage in a broad and thorough public engagement process.	I	I
Develop rules and a frequently asked questions document.	I	I
Conduct early outreach to all sectors.	I	I
Budget for advertising and outreach.	I	I
Employ mass mailings and e-mailings. Send a postcard to every licensed business and use a listserv to communicate with interested parties.	I	I
Send annual mail-outs with business license renewal forms.	PI	I
Use the traditional news media (i.e., newspapers, radio, and television) to get out information about the ordinance.	I	I
Respond to queries from the public, no matter how voluminous.	I	I
Work with the local public health departments, school districts and other external stakeholders.	PI	I
Partner with community groups.	I	I
Contract with community-based organizations to direct outreach efforts to reach out to low-wage and immigrant workers.	NI	I
Conduct post implementation studies.	I	I

**SOCR's PSST Outreach Plan and Efforts Lack Specificity about the Intended Outcomes**

We reviewed SOCR's PSST outreach plan and outreach efforts. We found that SOCR's outreach plan could be more specific about its intended outcomes, and that SOCR could work more with organizations that have greater access to difficult-to-reach populations. For example, San Francisco has targeted its outreach efforts to low-wage and immigrant workers by working with the Health Department and local school districts, and contracting with community based organizations to reach difficult-to-reach populations.

**Recommendation 10:** SOCR should link its planned outreach activities to specific outcomes or goals and consider working with organizations with greater access to difficult-to-reach populations, such as community-based organizations.

### **SOCR Should Collect Participant Information for RSJI and Outreach Purposes**

In our review of 32 SOCR files we found that they contained no information on the complainant's racial or ethnic background and did not consistently provide other information such as the employee's position title or length of service with a company. The City's Race and Social Justice (RSJI) toolkit for departments recommends that City departments collect such information whenever possible. In addition, SOCR did not routinely collect information about the businesses such as tier size, industry, businesses age, etc. that could be helpful in its outreach efforts.

During our file review and data analysis of 141 advisory letter cases, we documented information about employees and employers to create profiles of advisory letter participants, which is found in Appendix C.

We found that SOCR did not routinely ask participants about how they learned about the PSST Ordinance. Although SOCR sent information in 2012 to all Seattle business license holders about the PSST Ordinance, none of the employers we interviewed recalled learning about or receiving notice about the PSST Ordinance directly from SOCR.

Gathering information about participant characteristics and about how participants learned about the PSST Ordinance could help SOCR target its outreach efforts by informing SOCR about which outreach efforts are working. We conducted interviews with five complainants and five respondents from 10 different businesses to determine how they learned about the PSST Ordinance.

**Recommendation 11:** To improve the targeting of its outreach efforts, SOCR should collect and track demographic information from participants at outreach events and from the complainants and respondents involved in the advisory letter process. The information collected should include:

- For complainants: gender, race, years of employment, title, how they learned about the ordinance, union membership status, potential impact and duration of noncompliance, and settlement information.
- For respondents: owner demographics, tier size, industry, business age, whether they are headquartered in/outside of Seattle.
- Asking all participants how they learned about the PSST ordinance.

### **More Work Can Be Done to Inform Businesses about Compliance**

In reviewing SOCR's outreach efforts to businesses, we found SOCR could work more closely with the City's Department of Financial and Administrative Services (FAS) and the Office of Economic Development (OED) to ensure employer compliance. Specifically, we found no direct web links on FAS's website about doing business in Seattle to inform businesses about PSST Ordinance requirements or how to achieve compliance. There was also no information about the PSST Ordinance in OED's document, "10 Essential Steps to Start a Business in Seattle." Even though the PSST Ordinance exempts new employers from complying with the Ordinance for two years<sup>8</sup>, new employers should be informed about what will be expected of them after the two year exemption period.

Even though SOCR conducted extensive outreach to Seattle businesses regarding the PSST Ordinance, two employers we interviewed that had been respondents in the advisory letter process did not understand PSST Ordinance requirements they needed to comply with.

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<sup>8</sup> Section 14.16.090 of the PSST Ordinance exempts new employers from complying with the Ordinance's provisions for two years from when the employer hires its first employee.



**Recommendation 12:** SOCR should work with other City departments, such as Finance and Administrative Services FAS and the Office of Economic Development, to better inform businesses about how to comply with the law by such means as sending annual emails to employers with business license renewals, and establishing links to PSST compliance information on all relevant City web sites.

### Future Auditing of the PSST Ordinance

The PSST Ordinance does not give the Office of City Auditor the authority to conduct audits of employer records. Such authority exists in other City documents that require compliance with City laws. For example, language in agreements between the City and Multifamily Tax Exemption Program owners (MFTE) allowed our office to obtain records from property managers as part of our independent audit of their compliance with the City's requirements in 2011-2012. This audit resulted in findings of noncompliance and several recommendations for improvement. Washington D.C.'s audit<sup>9</sup> of its Paid Sick Leave Act recommended that its City Auditor have access to such records.

**Recommendation 13:** If the City Council anticipates requesting future compliance audits of the PSST Ordinance or other labor laws that require City enforcement, it should consider whether it wishes to include explicit language in the ordinance(s) allowing the Office of City Auditor to conduct such audits of employer records to facilitate the auditing of private businesses.

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<sup>9</sup> Office of the District of Columbia Auditor, "Audit of the Accrued Sick and Safe Leave Act of 2008," June 19, 2013.

## APPENDIX A

### Sample Advisory Letter

[Date]

[Business Owner]  
[Business Name]  
[Business Address]

RE: Advisory letter for Seattle Paid Sick/Safe Time Ordinance

Dear [Business Owner]:

It recently came to our attention that you may not be in compliance with under the Seattle Paid Sick and Safe Time Ordinance (SMC 14.16). The Seattle Office for Civil Rights (SOCR) enforces this Ordinance. We would like to work with you to ensure compliance with the ordinance without the necessity of our filing a charge and conducting an investigation.

Effective September 1, 2012, the Paid Sick and Safe Time Ordinance requires employers to provide paid sick/safe time to employees who work within Seattle city limits. The Ordinance covers full-time, part-time and temporary employees who work in Seattle, as well as employees who work in Seattle on an occasional basis (more than 240 hours per calendar year).

Our office was informed that [insert general information without providing specific details that might disclosing the person who is making the allegations].

We hope we can resolve this issue as quickly and easily as possible. We offer a range of resources, including technical assistance, brochures, posters and model notices for employees so that you may be in full compliance with this ordinance. Much of this information also is available at [www.seattle.gov/psst](http://www.seattle.gov/psst).

Please contact me directly at [phone number and email] to resolve this issue. Be aware that 30 days from the date of this letter, the SOCR director or the employee may file a formal charge to investigate this matter if the issues have not been resolved.

Thank you for your immediate attention to this matter.

Sincerely,

[Investigator]

[Title]

## Sample Letter to Complainant

[date]

[Charging Party ]

[Address]

Dear [[CP]:

You recently contacted our office and told us that your employer is violating your rights under Seattle's Paid Sick and Safe Time Ordinance (SMC 14.16).

After we spoke about your concerns, I created a record of your complaint. I also notified your employer that there may be a violation of the Paid Sick and Safe Time Ordinance, and requested that they contact me on how to comply with the Ordinance.

**If your employer has not complied with the Ordinance by [date] and you wish to pursue a formal charge, please call me at 206-684-4543.** I will need to write up the formal complaint and send it to you.

If you file a complaint, you will need to sign and return the complaint to our office within 180 days (about 6 months) from the date of the alleged violation. Otherwise our office will be unable to investigate the charge. You also should take care to preserve any evidence that may pertain to our inquiry.

Please note that it is illegal to retaliate against you or any other person in connection with the Paid Sick and Safe Time Ordinance.

If you have any questions about this process, please feel free to call me at 206-684-4543.

Sincerely,

[Investigator]

[Title]

APPENDIX B

Jurisdiction Comparison of Paid Sick Leave Laws As of December 31, 2014

Jurisdiction	Enforcement Office	Who Is Covered/Excluded	Accrual	Enforcement Authority	Relief and Penalties	Complainant Confidentiality
<p><b>Seattle, WA</b></p> <p>Effective September 1, 2012</p>	<p>Seattle Office for Civil Rights</p>	<p>Workers employed by a business with more than four employees, performing more than 240 hours of work in Seattle within a calendar year; temporary, part-time, and occasional workers are covered. Exclusions include: New employers, for two years, unions who choose to waive PSST through collective bargaining, businesses with 4 or fewer employees, employees working less than 240 hours per year.</p>	<p>Employees of Tier 1 (&gt;4-&lt;50) and Tier 2 (50-&lt;250 employees) employers get one hour of paid time for every 40 hours worked. Employees of Tier 3 (250+) employers get one hour for every 30 hours worked.</p>	<p>SMC 14.16.060 A: Requires employers to maintain records for two years and to allow SOCR access to such records, "with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter."</p> <p>SMC 14.16.080.A.1: Directs SOCR to receive, investigate, and pass upon charges alleging violations, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting from a subsequent hearing.</p> <p>SMC 14.16.080. E. The director shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.</p>	<p>Allows for reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, and admittance or restoration to membership in a labor organization. Allows damages ordered by a court, including damages for humiliation and mental suffering up to \$10,000. Willful violators may be fined up to \$500. Liability may accrue and an aggrieved person may obtain relief, including two years' worth of back pay as long as there are violations in regard to sick time or safe time during that time. Willful violators of the notice and posting requirements can be subject to a \$125 civil fine for the first violation and \$250 for subsequent violations.</p>	<p>NA</p>

Seattle's Paid Sick and Safe Time Ordinance Enforcement Audit

Jurisdiction	Enforcement Office	Who Is Covered/Excluded	Accrual	Enforcement Authority	Relief and Penalties	Complainant Confidentiality
<p><b>San Francisco, CA</b></p> <p>Effective February 5, 2007</p>	<p>Office of Labor Standards Enforcement</p>	<p>Workers employed within city limits, including part-time and temporary workers.</p>	<p>Small businesses of fewer than 10 employees receive 40 hours per year. Large businesses of 10 and more employees get 72 hours per year.</p>	<p>SEC.12W.8. Implementation and Enforcement: The Agency may investigate any possible violations of this Chapter by an employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.</p>	<p>Allows for: reinstatement, back pay, the payment of sick leave unlawfully withheld, and an additional sum as an administrative penalty to each employee. The administrative fee shall include the dollar amount of paid sick leave withheld from the employee multiplied by three, or \$250.00, whichever amount is greater. If a violation resulted in other harm or retaliation the administrative penalty shall also include \$50.00 to each employee for each day the violation occurred. Where prompt compliance is not forthcoming, the Agency may revoke or suspend any registration certificates, permits or licenses held or requested by the employer or person until the violation is remedied. The City's investigation costs may be recovered at \$50.00 per each day per employee.</p>	<p>An employee or other person may report to the agency any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.</p>

Seattle's Paid Sick and Safe Time Ordinance Enforcement Audit

Jurisdiction	Enforcement Office	Who Is Covered/Excluded	Accrual	Enforcement Authority	Relief and Penalties	Complainant Confidentiality
<p><b>Washington D.C.</b> Effective May 13, 2008</p>	<p>Washington D.C. Department of Employment Services (DOES) - Wage and Hour Compliance Section</p>	<p>Workers who have been employed by the same employer for 1 year and have worked at least 1,000 hours during the past 12 months. Exempted workers include: independent contractors, full-time students who work less than 25 hours per week, health care workers in a premium pay program. In December 2013, the City Council amended the law to grant sick leave to tipped workers, who were previously left out of the law.</p>	<p>For an employer with 100 or more employees, each employee gets one hour of paid leave for every 37 hours worked not to exceed 7 days per calendar year. An employer with at least 25 to 99 employees shall provide one hour for every 43 hours worked not to exceed 5 days per year, and an employer with 24 or fewer employees must provide one hour for every 87 hours worked not to exceed three days per calendar year.</p>	<p>Accrued Sick and Safe Leave Final Rules: Compliance, 3216.1. Allows a person to file a complaint with the Department of Employment Services within sixty (60) days after the event on which the complaint is based; provided that no sixty (60) day period shall commence until the employer has posted the notice. The Director shall review all complaints and shall investigate those complaints which the Director determines require investigation.</p> <p>3216.3 Complaints shall be investigated and resolved in an expeditious manner consistent with the nature of the complaint.</p> <p>The Director shall make all reasonable efforts to resolve all complaints within 45 business days of their filing and shall notify all parties if that time period cannot be met and shall make a good faith estimate of the expected</p>	<p>Sec. 13. Penalties. Except as provided in section 10(b), an employer who willfully violates the requirements of this act shall be subject to a civil penalty of \$500 for the 1st offense, \$750 for the 2nd offense, and \$1000 for the 3rd and each subsequent offense.</p>	<p>NA</p>

Seattle's Paid Sick and Safe Time Ordinance Enforcement Audit

Jurisdiction	Enforcement Office	Who Is Covered/Excluded	Accrual	Enforcement Authority	Relief and Penalties	Complainant Confidentiality
<p><b>Connecticut</b></p> <p>Effective January 1, 2012</p>	<p>Connecticut Department of Labor - Division of Wage and Workplace Standards; Labor Commission</p>	<p>Hourly workers in certain enumerated service occupations, in businesses with 50 or more employees. Certain manufacturers, non-profit organizations, temporary and day laborers are exempted.</p>	<p>Qualified workers earn one hour for each 40 hours worked up to 40 hours per year.</p>	<p>resolution date.</p> <p>Statute 31-57 through 31-57w. No employer shall take retaliatory personnel action or discriminate against an employee because the employee requests or uses paid sick leave or files a complaint with the Labor Commissioner alleging the employer's violation. The Labor Commissioner shall advise any employee who is covered by a collective bargaining agreement that provides for paid sick days, and files a complaint of his or her right to pursue a grievance with his or her collective bargaining agent. Any employee aggrieved by a violation of the provisions of sections 31-57s to 31-57w, inclusive, may file a complaint with the Labor Commissioner.</p>	<p>Violators are liable for a civil penalty of \$500 for each violation. Any employer who is found to have violated the provisions of sections 31-57s to 31-57u, inclusive, or section 31-57w shall be liable to the Labor Department for a civil penalty of up to \$100 for each violation. The Labor Commissioner may award the employee payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subject to such retaliatory action or discriminated against. Any party aggrieved by the decision of the commissioner may appeal the decision to the Superior Court in accordance with the provisions of chapter 54.</p>	<p>NA</p>

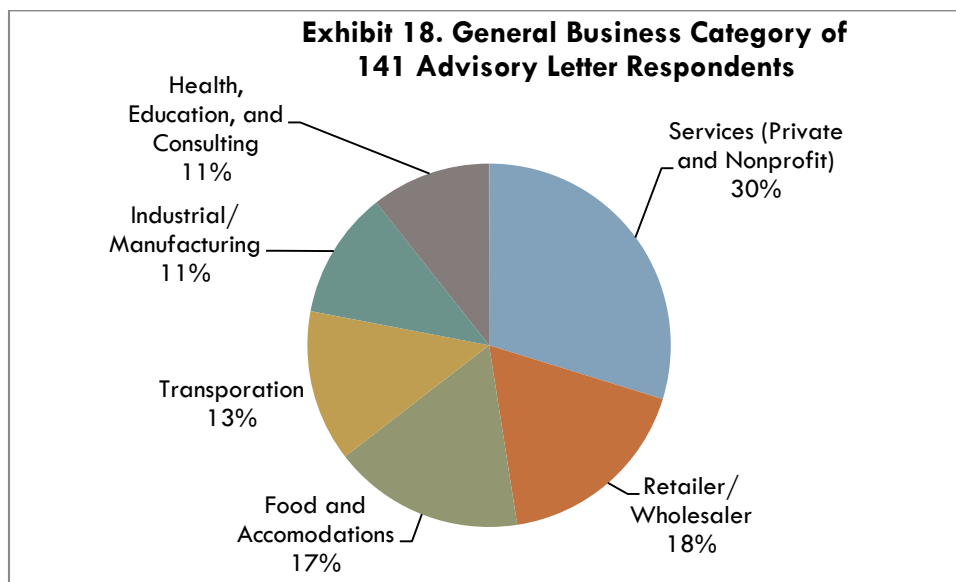
## APPENDIX C

### Complainants and Respondents Profiles

From September 1, 2012 to December 31, 2013, SOCR did not consistently collect and compile information about employees and employers who participated in the advisory letter process. Although the PSST Ordinance does not require SOCR to collect this information, it would be a good management practice to do so as SOCR could use the information to target its outreach.

SOCR did not consistently obtain information from companies responding to advisory letters about their tier size and did not request information about the type of business, although it researched and provided us a list of business codes of businesses who received an advisory letter. Using those businesses codes, we created general business categories to determine the industries represented in the advisory letter process from September 2012 to December 2013. The chart below shows that the businesses with the largest percentage of complaints were in the service industry. Service industry businesses included private and nonprofit businesses providing a service to the general public or a segment of the public, such as fitness trainers, janitorial or security services. These businesses represented about a third of the total businesses that received advisory letters.

Exhibit 18 shows the general business categories of the 141 businesses that received advisory letters.



From our file review of 32 SOCR cases we compiled information about the businesses responding to advisory letters, the employees filing them, and whether the allegation was specific to the employee or could apply companywide. Four of the complainants submitted their allegations anonymously; therefore, the information about these complainants was limited. What follows is a summary of our file review:

**Tier Size and Location of Headquarters:** Each of the three business tier sizes, which are based on the number of employees, were represented in our sample. The tier size with the most complaints in our sample was Tier 3—businesses with over 250 employees — with 28 percent (9) of the complaints. Following closely was Tier 1 with eight complaints (25 percent). There were three complaints (9 percent) from Tier 2. Over three-quarters of the businesses in our sample were businesses headquartered within the Seattle city limits.



Exhibit 19 provides information about the tier size of businesses represented in our file review sample.

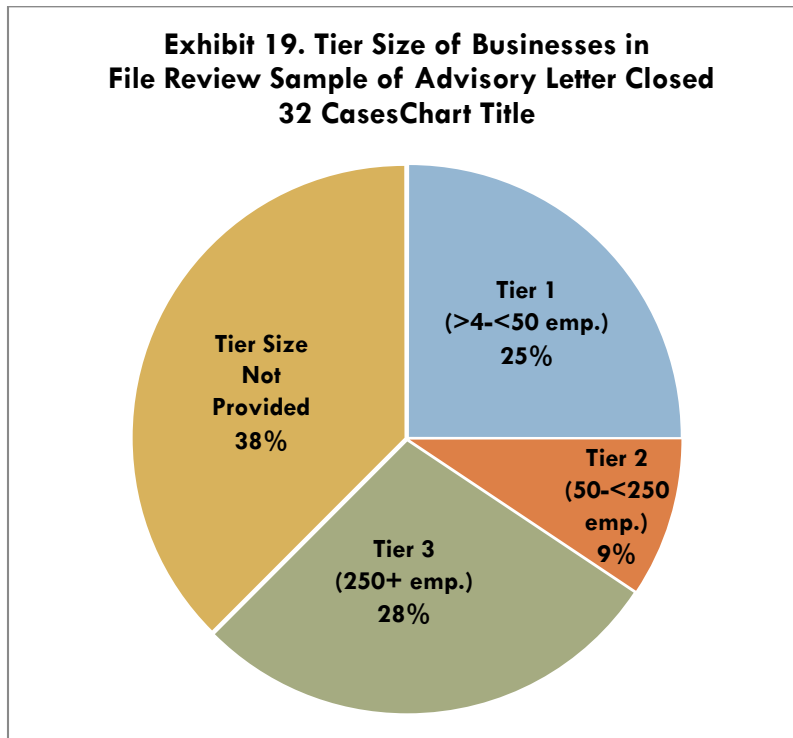
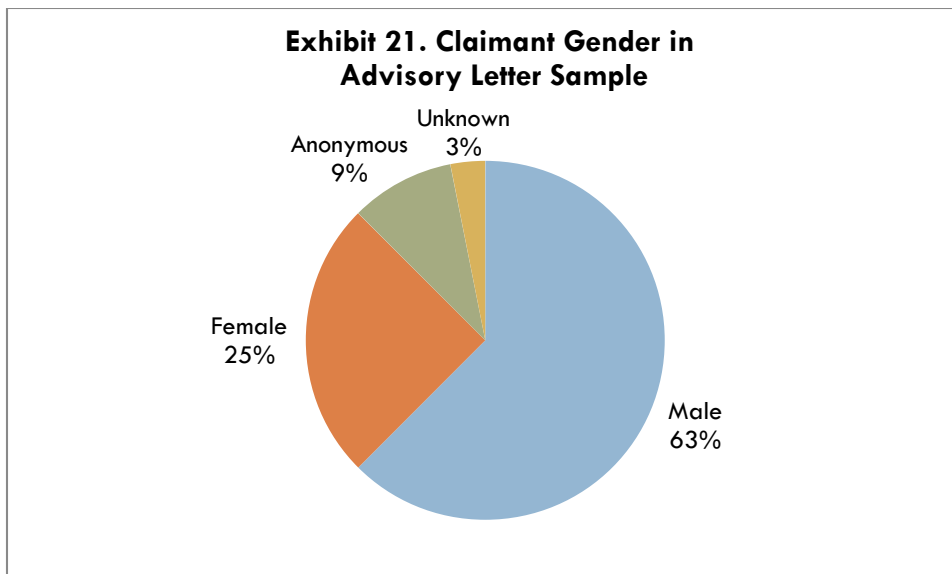


Exhibit 20 shows the number and percentage of businesses headquartered inside and outside of Seattle from our file review sample.

<b>Exhibit 20. Location of Business Headquarter</b>			
Inside Seattle		Outside Seattle	
25	78%	7	22%

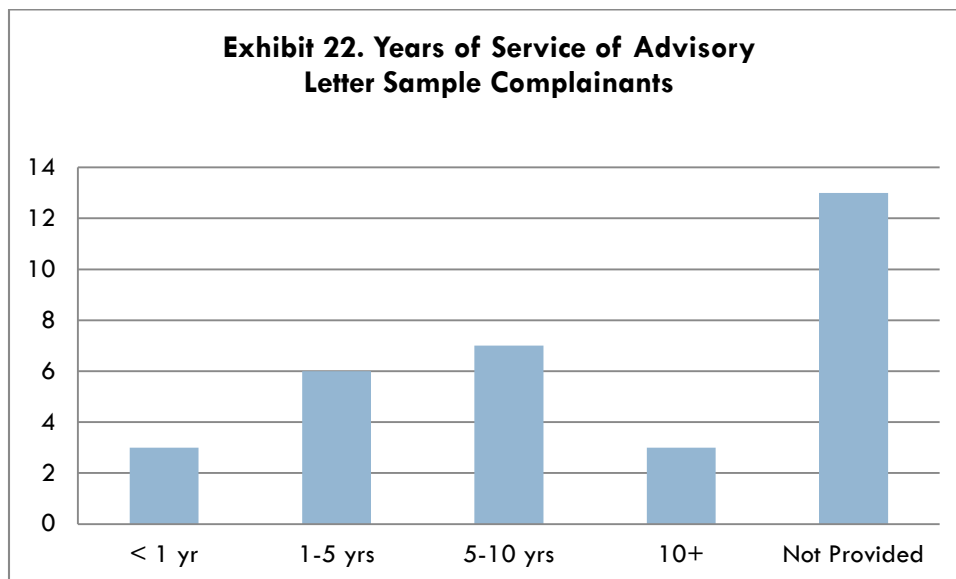
**Complainant Characteristics:** As a result of our review of closed advisory letter case files, we found that many files did not contain information about the complainant’s duration of employment with the employer/respondent, position title, or union membership. In addition, there was minimal information on the four cases filed anonymously. Of the information we obtained from the files, we found that two-thirds of the complainants in our sample were male and a quarter of the complainants were female.

Exhibit 21 shows the gender of complainants in our file advisory letter file review sample.



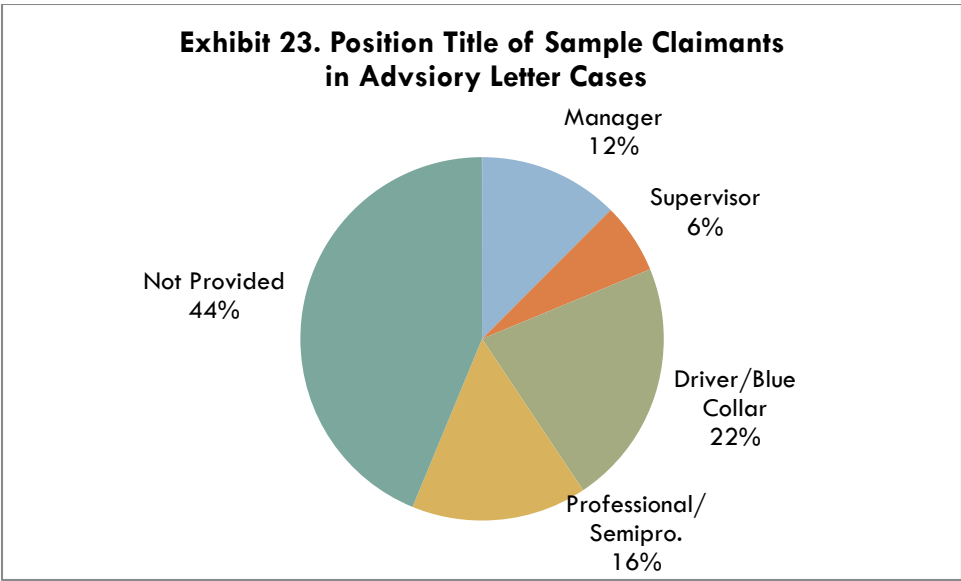
We also found more complainants (8) who had been with the employer between 5-10 years than other lengths of service categories. However, 13 of the 32 files did not contain information about years of service.

Exhibit 22 shows the complainant's years of service at the place of employment for which they filed the complaint.



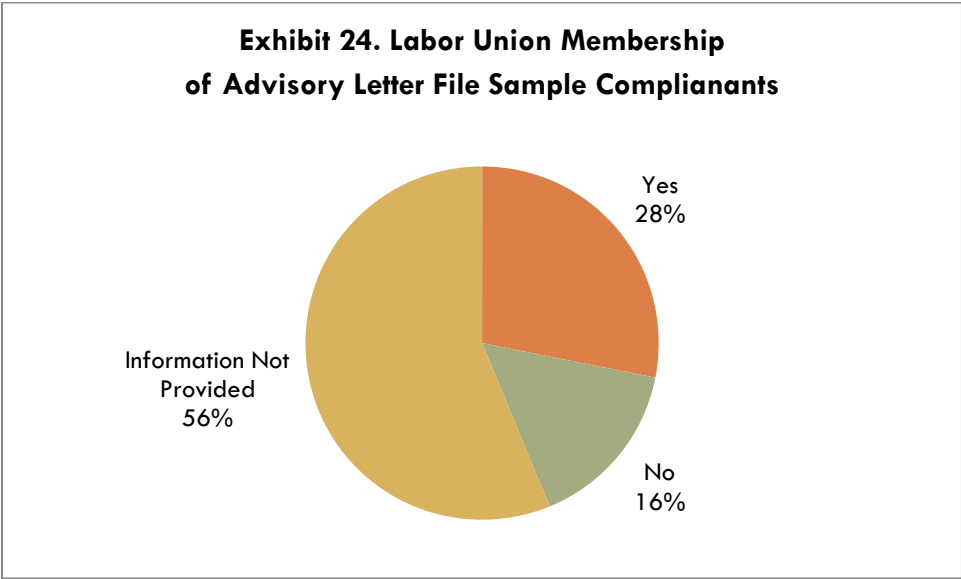
Although many files did not contain information about position title, those files that did include the complainant's position title were mostly drivers or blue collar workers. A blue collar worker is a person who performs skilled or unskilled manual or physical work as opposed to a white-collar worker who performs work in an office environment or work on a computer.

Exhibit 23 provides a breakdown of the position titles represented in our sample.



Fifty six percent of the files (18 of 32 files) did not contain information about union membership. Four were not provided because the complaints were submitted anonymously. For the other complainants, it is unclear whether they were asked about union membership. Of the files that contained information about union membership, over a quarter stated that that they were a member of a union.

Exhibit 24 shows the percentage of complainants represented by a union in the sample of closed advisory letter cases we reviewed.



## APPENDIX D

### List of Recommendations

**Recommendation 1:** SOCR should develop a policy that explains when an advisory letter should be sent, and when an investigation or other enforcement tools should be used in addressing allegations. The policy should consider whether the allegations apply to multiple employees at one company, the duration of the noncompliance, whether there are issues of confidentiality, whether back wages could be owed, whether there has been a previous advisory letter sent to the employer, and whether retaliation is an issue.

**Recommendation 2:** When addressing employee complaints with an advisory letter, SOCR should request documentary evidence from the employer to prove that the employer took the necessary action(s) to achieve compliance with the PSST Ordinance.

**Recommendation 3:** SOCR should conduct follow-up on closed advisory letter cases, particularly when SOCR made no direct contact with the employee before closing the case.

**Recommendation 4:** The City should consider changing its PSST Ordinance enforcement strategy to include conducting investigations without charges and using other underutilized tools in the Ordinance (e.g., monitoring agreements, conducting fact finding conferences.) to help employees recover back wages and PSST owed, correct employers' future practices, achieve companywide full compliance, and prevent reoccurrences of noncompliance at the same company. Such change should include clarifying language in the PSST Ordinance (SMC 14.16.080.A.) to allow the enforcement agency to investigate complaints without charges and settle such complaints through a settlements process (SMC 14.16.080. E.).

**Recommendation 5:** SOCR should routinely determine the extent to which back wages may be owed and include that as part of the settlements.

**Recommendation 6:** SOCR should augment its individual complaint based approach to addressing non-compliance with a proactive random testing program.

**Recommendation 7:** The City Council should modify the PSST Ordinance to include language about maintaining complainant confidentiality and clarify that investigations can be conducted without charges. This would encourage reporting of potential noncompliance, minimize the risk of retaliation against employees, and help ensure companywide full compliance with the PSST Ordinance.

**Recommendation 8:** SOCR should invite advisory letter process participants to complete a customer satisfaction survey.

**Recommendation 9:** SOCR should develop and use a more relevant advisory case performance goal than its current 180 day goal that is based on the number of days to close charge cases.

**Recommendation 10:** SOCR should link its planned outreach activities to specific outcomes or goals and consider working with organizations with greater access to difficult-to-reach populations, such as community-based organizations.

**Recommendation 11:** To improve the targeting of its outreach efforts, SOCR should collect and track demographic information from participants at outreach events and from the complainants and respondents involved in the advisory letter process. The information collected should include:

- For complainants: gender, race, years of employment, title, how they learned about the ordinance, union membership status, potential impact and duration of noncompliance, and settlement information.
- For respondents: owner demographics, tier size, industry, business age, whether they are headquartered in/outside of Seattle.
- Asking all participants how they learned about the PSST ordinance.

**Recommendation 12:** SOCR should work with other City departments, such as Finance and Administrative Services FAS and the Office of Economic Development, to better inform businesses about how to comply with law, by such means as sending annual emails to employers with business license renewals, and establishing links to PSST compliance information on all relevant City web sites.

**Recommendation 13:** If the City Council anticipates requesting future compliance audits of the PSST Ordinance or other labor laws that require City enforcement, it should consider whether it wishes to include explicit language in the ordinance(s) allowing the Office of City Auditor to conduct such audits of employer records to facilitate the auditing of private businesses.

## APPENDIX E

### Seattle Office for Civil Rights Audit Response



## City of Seattle

Ed Murray, Mayor

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### Seattle Office for Civil Rights

Patricia Lally, Director

Date: September 12, 2014

To: David G. Jones, City Auditor  
Virginia Garcia, Auditor-In-Charge  
Mary Denzel, Supervising Auditor

From: Patricia Lally, SOCR Director

Subject: Enforcement Audit for Seattle's Paid Sick and Safe Time (PSST) Ordinance

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Thank you for providing us the opportunity to review your final draft report: *Paid Sick and Safe Time Ordinance Enforcement Audit*. I appreciate your detailed evaluation of PSST enforcement and outreach for the first 16 months of implementation (September 2012 through December 2013) and the thirteen recommendations that address your findings.

The Seattle Office for Civil Rights (SOCR) agrees with these findings, except one instance noted that we believe requires further study. Many of these recommendations have already been implemented or are in the process of being implemented. SOCR also agrees that greater specificity in planning and information gathering will benefit the office's outreach and public engagement.

Below I have included more detailed responses to all thirteen recommendations. However, my staff and I want to take this opportunity to expand on the audit's mention of the factors we considered when planning and implementing SOCR's enforcement and outreach/engagement efforts for PSST.

It is important to acknowledge a number of considerations:

- The political climate and run-up to implementation of PSST.
- Business and community stakeholders' input during City Council's debate and passage of PSST, as well as the extensive public engagement process that SOCR conducted once the PSST ordinance was signed into law.
- Our continued public engagement process during the initial implementation phase, during which we discussed our plans for PSST enforcement with employers, community members, Council, the Mayor's Office and other stakeholders.
- Resource constraints: SOCR received only 1 full-time Civil Rights Analyst for PSST enforcement and a half-time Business Liaison position for outreach and engagement.

Without noting this context, many (if not most) of the strategic choices taken by SOCR – such as our decision to establish an Advisory Letter process for initial enforcement – can appear arbitrary.

The implementation process reflected direction from Seattle City Council, the Mayor and stakeholders on all sides of the debate. During the public discussion concerning the PSST ordinance, public officials were very sensitive to employers' concerns that this new law would have profoundly negative impacts on Seattle businesses at a time when Seattle's economic recovery was regarded as extremely fragile. After enactment, SOCR felt that Mayor McGinn, Council and PSST stakeholders wanted a focus on achieving compliance rather than punishing individual employers for non-compliance. SOCR heard the same message from both business representatives and community advocates, as well as from employers and the general public in the many workshops and listening sessions that SOCR convened.

PSST was a new law, both locally and nationally. At the time of Seattle's initial consideration, only two other cities and one state had implemented some form of paid sick time law. Public opinion was divided on the wisdom and efficacy of such a measure; but locally, there was strong agreement on an initial process that would focus on achieving compliance without employing a heavy hand. For this reason, SOCR developed our advisory letter process (based on San Francisco's watch letter model) to bring employers into compliance quickly and with a minimum of bureaucratic red tape. The advisory letter process was collaborative rather than adversarial. It was a deliberate strategy that responded to stakeholders' concerns, and that allowed SOCR to influence many more businesses than a traditional enforcement model would have allowed, given resource constraints.

SOCR adjusted our enforcement practices and procedures over time. For example, just after the audit period under consideration, SOCR adopted new intake procedures that gave greater emphasis to filing formal charges, in keeping with our stated intention to take stronger enforcement steps after the initial implementation period. We have issued Director Charges in cases where there was reason to believe there were systemic or patterns of practices of PSST violations. These procedures have been in place since January 2014, and strongly align with the Audit's recommendations.

## Recommendations and responses

**Recommendation 1:** SOCR should develop a policy that explains when an advisory letter should be sent, and when an investigation or other enforcement tools, such as filing a charge and conducting an investigation, should be used in addressing allegations. The policy should consider whether the allegations apply to multiple employees at one company, the duration of the noncompliance, whether there are issues of confidentiality, whether back wages could be owed, whether there has been a previous advisory letter sent to the employer, and whether retaliation is an issue.

**SOCR response: AGREE** – We have revised our intake practices to provide the charging party the option to file a formal complaint or to send an advisory letter. To date we have filed 36 PSST charges, including 3 Director's Charges. We also are in the process of drafting a formal policy to explain when an advisory letter should be sent, and when filing a charge (or Director's Charge) should be used to address allegations.

**Recommendation 2:** When addressing employee complaints with an advisory letter, SOCR should request documentary evidence from the employer to prove that the employer took the necessary action(s) to achieve compliance with the PSST Ordinance.

**SOCR response: AGREE** – Currently during the advisory letter process, SOCR is requesting more documentary evidence to show compliance with PSST. In cases when the employer chooses not to provide this information during the advisory letter process, we have filed a formal charge, including a mandatory request for

information. We are in the process of drafting a formal policy to request documentary evidence from employers to prove that they took the necessary action(s) to achieve compliance with the PSST Ordinance.

**Recommendation 3:** SOCR should conduct follow-up on closed advisory letter cases, particularly when SOCR made no direct contact with the employee before closing the case.

**SOCR response: AGREE** – We are in the process of drafting a policy to conduct follow-up on closed advisory letter cases.

**Recommendation 4:** The City should consider changing its PSST Ordinance enforcement strategy to include conducting investigations without charges and using other underutilized tools in the Ordinance (e.g., monitoring agreements, conducting fact finding conferences.) to help employees recover back wages and PSST owed, correct employers' future practices, achieve companywide full compliance, and prevent reoccurrences of noncompliance at the same company. Such change should include clarifying language in the PSST Ordinance (SMC 14.16.080.A.) to allow the enforcement agency to investigate complaints without charges and settle such complaints through a settlements process (SMC 14.16.080. E.).

**SOCR response: AGREE**

**Comment:** Further study will be necessary to fully implement this recommendation. It may require Council action. The audit in this section relies heavily on a comparison with San Francisco's Office of Labor Standards Enforcement (OLSE). Direct comparisons with OLSE can be misleading, since San Francisco's paid sick time law was passed in 2007 and its enforcement procedures have evolved over a much longer time frame. In addition, San Francisco's ordinance specifically allows for greater penalties than Seattle's – for example:

- Three times back wages or \$250, whichever is greater.
- Temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing (if the agency has reason to believe that a violation has occurred).
- \$50 to each employee or person whose rights were violated for each day or portion thereof that the violation occurred or continued.
- Revocation or suspension of registration certificates, permits or licenses held or requested by the employer or person until such time as the violation is remedied.
- Civic penalty to the agency to offset cost of enforcement not to exceed \$50 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued.
- Interest on all amounts due and unpaid at the rate of interest specified in Section 3289(b) of the California Civil Code.

**Recommendation 5:** SOCR should routinely determine the extent to which back wages may be owed and include that as part of the settlements.

**SOCR response: AGREE** – Our pre-determination settlement agreements now provide for back wages owed under PSST and the majority of these agreements reflect this. We also are in the process of drafting a formal policy to determine remedies for long-term noncompliance.

**Recommendation 6:** SOCR should augment its individual complaint based approach to addressing non-compliance with a proactive random testing program.

**SOCR response: AGREE**

**Comment:** SOCR has conducted extensive research on the use of directed investigations in federal wage and hour enforcement. With direction from the Mayor, City Council and the City's Labor Standards Advisory Group, SOCR is prepared to develop a proposal for use of this enforcement mechanism.



**Recommendation 7:** The City Council should modify the PSST Ordinance to include language about maintaining complainant confidentiality and clarify that investigations can be conducted without charges. This would encourage reporting of potential noncompliance, minimize the risk of retaliation against employees, and help ensure companywide full compliance with the PSST Ordinance.

**SOCR response: AGREE**

**Comment:** Four paid sick leave jurisdictions have a confidentiality provision in their ordinance (Jersey City, New York City, Newark and San Francisco), as well as four local minimum wage jurisdictions (Baltimore, San Francisco, San Jose and Washington D.C.). In addition to changing the Ordinance, we can consider modifying Chapter 40 Practices and Procedures in Discrimination Cases Rules of Policy and Procedure to add confidentiality requirements. We also agree that it would be helpful to have clearer language in the ordinance regarding authority to conduct investigations without filing a charge.

**Recommendation 8:** SOCR should invite advisory letter process participants to complete a customer satisfaction survey.

**SOCR response: AGREE –** We will retroactively send customer satisfaction surveys to 2014 advisory letter parties to analyze how we can improve our customer service effectiveness and compliance with PSST; we also will send customer satisfaction surveys to all participants in the future.

**Recommendation 9:** SOCR should develop and use a more relevant advisory case performance goal than its current 180 day goal that is based on the number of days to close charge cases.

**SOCR response: AGREE –** The purpose of the advisory letter process is to inform the respondent that SOCR has been notified of a potential PSST violation and to contact our office to resolve this dispute and to seek technical assistance before a formal investigation is initiated. The current advisory letter policy is to resolve the advisory letter inquiry within 30 days. For case investigations, we are in the process of looking at ways to shorten the investigative procedures and timeline for PSST cases. We will draft a policy to set and meet more relevant advisory case performance goals, so long as that ensures sufficient time to incorporate other recommendations proposed by the audit.

**Recommendation 10:** SOCR should link its planned outreach activities to specific outcomes or goals and consider working with organizations with greater access to difficult-to-reach populations, such as community-based organizations.

**SOCR response: AGREE –** We are in the process of developing an outreach plan that incorporates this recommendation. In our initial campaign, SOCR targeted at least 30% of outreach to the immigrant and refugee community and strategically chose media that would reach low income communities and communities of color (e.g. bus ads on routes in downtown and South Seattle, radio ads on Spanish radio stations). SOCR also trained social service providers to publicize PSST in low wage communities.

**Recommendation 11:** To improve the targeting of its outreach efforts, SOCR should collect and track demographic information from participants at outreach events and from the complainants and respondents involved in the advisory letter process. The information collected should include:

- For complainants: gender, race, years of employment, title, how they learned about the ordinance, union membership status, potential impact and duration of noncompliance, and settlement information.
- For respondents: owner demographics, tier size, industry, business age, whether they are headquartered in/outside of Seattle.
- Asking all participants how they learned about the PSST ordinance.

**SOCR response: AGREE**

**Comment:** We are in the process of standardizing collection of this information in our intake process, technical assistance services and SOCR's Martin database. Changes to the database will be included in a comprehensive update to the program that is planned for 2015. As we move forward with implementation of this recommendation, it will be critical to balance the City's need for demographic information with the public's legitimate privacy interests and concerns.

**Recommendation 12:** SOCR should work with other City departments, such as Finance and Administrative Services (FAS) and the Office of Economic Development, to better inform businesses about how to comply with law, by such means as sending annual emails to employers with business license, renewals, and establishing links to PSST compliance information on all relevant City web sites.

**SOCR response: AGREE**

**Comment:** We have already begun working with FAS to implement a business license check box. SOCR is in the process of becoming a member of the Citywide Business Advocacy Team, an interdepartmental team to help Seattle businesses navigate government services.

**Recommendation 13:** If the City Council anticipates requesting future compliance audits of the PSST Ordinance or other labor laws that require City enforcement, it should consider whether it wishes to include explicit language in the ordinance(s) allowing the Office of City Auditor to conduct such audits of employer records to facilitate the auditing of private businesses.

**SOCR response: FURTHER STUDY**

**Comment:** The ability of the City Auditor to audit employers' records would strengthen the City's overall enforcement authority, though Council will need to consider the potential for confusion on the part of employers who could be faced with the perception of multiple City agencies' enforcing the same local ordinance.

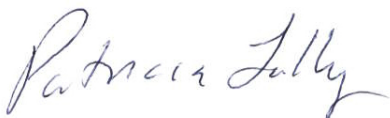
**Correction for the record**

On page 10, the Audit states, "In one case, the complainant was prepared to file a charge, but reported that SOCR did not follow through on an appointment and the employee was not given the opportunity to file the charge."

According to our Martin database records, two different SOCR staff attempted to contact the complainant on different occasions. The complainant's phone had been disconnected and neither staff member was able to leave a message.

I thank you again for this opportunity to provide feedback on your draft of the Enforcement Audit for Seattle's Paid Sick and Safe Time (PSST) Ordinance. I look forward to working closely with you in the future.

Sincerely,



## APPENDIX F

### Office of City Auditor Mission Statement

#### **Our Mission:**

To help the City of Seattle achieve honest, efficient management and full accountability throughout City government. We serve the public interest by providing the City Council, Mayor and City department heads with accurate information, unbiased analysis, and objective recommendations on how best to use public resources to support the well-being of Seattle residents.

#### **Background:**

Seattle voters established our office by a 1991 amendment to the City Charter. The office is an independent department within the legislative branch of City government. The City Auditor reports to the City Council and an audit committee, and has a four-year term to ensure her/his independence in deciding what work the office should perform and reporting the results of this work. The Office of City Auditor conducts performance audits and non-audit projects covering City of Seattle programs, departments, grantees, and contracts. The City Auditor's goal is to ensure that the City of Seattle is run effectively and efficiently and is in compliance with applicable laws and regulations.

#### **How We Ensure Quality:**

The office's work is performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. These standards provide guidelines for audit planning, fieldwork, quality control systems, staff training, and reporting of results. In addition, the standards require that external auditors periodically review our office's policies, procedures, and activities to ensure we adhere to these professional standards.