Seattle Office of Labor Standards

Hotel Employees Job Retention Ordinance

Questions and Answers

Seattle's Hotel Employees Job Retention Ordinance, Seattle Municipal Code (SMC 14.29) addresses job insecurity in the hospitality industry by ensuring covered employees have information about ownership changes and by requiring new employers to retain covered employees for a 90 day-transition period.

The **Seattle Office of Labor Standards (OLS)** is responsible for administering this law. OLS provides outreach, compliance assistance, and enforcement services.

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

- Employees with questions and complaints – submit an online inquiry form.
- Employers with requests for technical assistance – submit an on-line inquiry form.

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

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General Information

1. **What does this law do?**
   This law requires covered employers to provide advanced notice to covered employees of changes in ownership and requires the covered incoming employer to retain covered employees for a certain time after the change in ownership.

2. **Where can I access a copy of the law and the rules that apply to this law?**
   The language of the law can be viewed by clicking here. To view the rules, visit the Office of Labor Standards Hotel Employee Protection webpage and download a copy of the Seattle Human Rights Rules, Chapter 190.

3. **When does this law go into effect?**
   This law goes into effect for most covered employers on July 1, 2020. *Ancillary hotel businesses* that have 50 to 250 employees worldwide must comply with this law starting on July 1, 2025. For more information about covered employers, including *ancillary hotel businesses*, please see the Employer Section of this document.

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

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

6. **What happens when employees call OLS?**
   Employees may call OLS with questions or complaints. When employees call OLS, they will be directed to an intake investigator who will provide information about the law or gather information about issues at the workplace. If employees wish to make a complaint, OLS may collect information from additional witnesses and/or request documents from employees. After reviewing information provided by employees, OLS will decide if and how it can help, which may take a variety of forms, including simply providing information to the employer, trying to informally resolve the issue without a full investigation, or conducting a formal investigation. If OLS decides to investigate, and if OLS cannot investigate the employer immediately, it may place the case on a waitlist.

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

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

9. **What happens when an employer calls OLS with a question?**
   OLS encourages employers to call or email their questions to our office. Our goal is to help employers attain full

compliance with Seattle's labor standards and we will answer many types of labor standards questions. OLS has staff dedicated to business engagement who respond to inquiries and who are not members of the enforcement team. Phone conversations and email exchanges with the business engagement staff are kept separate from the investigation process.

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

Employees

11. Which employees are protected by this law?
    This law applies to hourly employees who have worked for a covered employer for at least 30 days prior to the execution of a transfer document, a document that effects a change in control of a covered business.

    Hourly employees are those employees who are entitled to Seattle's Minimum Wage, Seattle Municipal Code 14.19. For more information about employees who are entitled to Seattle's Minimum Wage, visit the Office of Labor Standard's Seattle Minimum Wage webpage.

    This law does not apply to managers, supervisors, or employees who help to create or effect management policies about labor relations (who are also known as "confidential employees").

Employers

12. Which employers are *covered employers* and must follow this law?
    Two types of employers may be covered employers:
    - A hotel employer, an employer that owns, controls, or operates a Seattle hotel or motel with 60 or more guest rooms, or
    - An ancillary hotel business with 50 or more employees worldwide.

    These two types of employers become covered employers when there is a change of ownership. Covered employers are limited to those who are party to a transfer document that effects a change in control of a covered business.

    Both outgoing employers (those selling a business) and incoming employers (those buying the business) have obligations under this law.

    Note: In this document, the term "hotel" is used to described covered hotels and motels.

13. What is an *ancillary hotel business*?
    An ancillary hotel business is a business that has one or more of the following relationships with a covered hotel:
    - Routinely contracts with a hotel to provide services in conjunction with the hotel's purpose
    - Leases or subleases space at the site of the hotel to provide services in conjunction with the hotel's purpose
    - Provides food and beverages to hotel guests and to the public and has an entrance within the hotel.

14. *Ancillary Hotel Businesses – Routine contract:* What does it mean to *routinely contract* with a hotel?
    A routine contracting relationship contemplates a business relationship that is sustained and longer in nature. A business that has an isolated and/or short-term business relationship will not be considered to routinely contract with a hotel. A business relationship that is in existence for less than one year is not a routine contract.

15. *Ancillary Hotel Businesses – Entrance within hotel:* What does it mean to have an entrance within the hotel premises? Does an entrance that is primarily used to gain access to a restroom that is located within the hotel count as an *entrance within the hotel*?

An ancillary hotel business has an entrance within the hotel premises when the entrance is promoted and used by the business's guests as an access point into the business.

A passage that is promoted as and used by the business's customers to access a restroom facility located within the hotel is not considered an entrance within the hotel premises. A sign identifying the business for purposes of navigation to and from the restroom facility is not promotion of the business.

16. *Ancillary Hotel Businesses - Services:* What is meant by providing *services*?

For the purposes of the ancillary hotel business definition, services provide a direct, specific benefit to the guest. The *services* contemplated in this definition excluded anything that provides an indirect benefit that benefits the general welfare of guests.

For example:

- Direct benefit: A business that provides the hotel with an employee who helps guests navigate the elevator (e.g. directs guests to different floors). This business provides a direct benefit to a guest and provides services for the purpose of determine whether the business is an ancillary hotel business.
- Benefits the general welfare: A business that has a contract with the hotel to maintain and repair the guest elevators. This business provides an indirect benefit serving the general welfare of guests who are able to use working elevators. This business does not provide services for the purpose of determine whether the business is an ancillary hotel business.

The sale of goods is not a "service."

17. *Ancillary Hotel Businesses – Hotel's Purpose:* What does it mean to provide services in conjunction with the *hotel's purpose?*

A hotel's purpose is defined as services that further the hotel's provision of short-term lodging, which includes food or beverage services, recreational services, conference rooms, convention services, laundry services, and parking.

18. *Ancillary Hotel Businesses – Multiple locations:* When a business has multiple locations, but where only one location has a relationship described in the ancillary hotel business definition, which locations are covered?

The portion of the business enterprise that provides services to guests or at the site of the hotel is covered. For example, where a restaurant has many locations, but where only one location has an entrance within a covered hotel, only the location that has an entrance within the hotel is covered.

19. What is a *change in control*?

In simple terms, a change in control is a change in ownership of all or a discrete portion of the business. In more technical terms, it is the sale, assignment, transfer, contribution, or other disposition of:

- all or substantially all of the assets used in the operation of the business (either hotel or ancillary hotel business),
- a discrete portion of that business that continues in operation as a business of the same type, or
- a controlling interest of the outgoing employer or a person who controls the outgoing employer.

20. What is a transfer document?

A transfer document is a document (like a purchase agreement) that creates an agreement to effect a change in control of a business covered by this law.

21. What is an *outgoing employer*?
    An outgoing employer is the employer that owns, controls, or operates a covered hotel or ancillary hotel business prior to a change in control.

22. What is an *incoming employer*?
    An incoming employer is the employer that owns, controls, or operates a covered hotel or ancillary hotel business after a change of control.

Notice of Ownership Changes

23. What information does an outgoing employer have to provide to covered employees about a change in ownership?
    Outgoing employers must provide written notice that the business is changing ownership. The notice must include:
    - The name and contact information of the outgoing employer,
    - The name and contact information of the incoming employer, and
    - The effective date of the change in ownership.

24. When and how must an *outgoing employe*r provide this notice?
    Within five business days after the execution of a transfer document, an outgoing employer must post the notice in a place that can be readily viewed by employees and job applicants. Display must be continuous, but can be electronic or physical.

25. How long must the notice be posted?
    The incoming employer must keep the notice posted for at least 180 calendar days after the business opens to the public under its control.

Job Retention

26. What information does an outgoing employer need to provide the incoming employer?
    The outgoing employer must provide the incoming employer with a preferential hiring list.

    A preferential hiring list is a list of names, addresses, dates of hire, and job classifications of all covered employees. Covered employees are those that worked in the City for the outgoing employer for at least 30 calendar days prior to the execution of the transfer document. For more details about covered employees, please see Employee Section.

27. *Preferential Hiring* List: What must the incoming employer do with the preferential hiring list?
    The incoming employer must hire from the preferential hiring list before hiring anyone not on the list for 180 calendar days after the business is open to the public under the incoming employer. The incoming employer must hire in order of seniority within each job classification to the extent that comparable job classifications exist.

28. *Preferential Hiring List:* How does an employer decide seniority?
    Seniority is determined by the employee's seniority within their most recent classification. If that information is unavailable to the incoming employer, the employee's seniority is determined by their hire date as indicated on the preferential hiring list.

29. What is required of *incoming employers* making a job offer to an employee on the *preferential hiring list?*
    The job offer must be in writing and be held open for at least ten business days.

30. If an employee from the *preferential hiring* list accepts a job with the *incoming* employer, how long must the *incoming employer* keep the employee on staff?
    The incoming employer must retain the employee for 90 calendar days, counting from the day the employee starts working for the incoming employer. This period is called the 90-day transition period.

31. *90-Day transition period:* Can an employer fire an employee during the *90-day transition period*?
    The incoming employer may only fire an employee during this period if the employer has just cause to do so.

32. *90-Day transition period:* What is *just cause*?
    An incoming employer has just cause to fire someone if:
    a. a fair and objective investigation produced evidence that the employee violated a reasonable and consistently applied workplace standard,
    b. the employee knew or reasonably should have known of this workplace standard, and
    c. termination was reasonably related to the seriousness of the employee's conduct and was the consistently applied punishment for a violation of that workplace standard.

33. *90-Day transition period:* Can an *incoming employer* lay off employees during the 90-day transition period?
    An incoming employer may lay off an employee only if it requires fewer employees than did the outgoing employer. The incoming employer must retain employees by seniority within each job classification, to the extent comparable job classifications exist.

34. *90-Day transition period:* What actions must an *incoming employer* take at the end of the 90-day transition period?
    The incoming employer is required to provide a written performance evaluation to each employee and, if the employee's performance was satisfactory, consider retaining the employee.

Notice, Posting, and Recordkeeping Requirements

35. What is the notice and posting requirement of this law?
    Employers must display one of two notice of rights posters that OLS will make available for electronic download on its website. One of the posters is for employees of hotels (Notice of Rights for Hotel Employees) and one is for employees of ancillary hotel businesses (Notice of Rights for Employees of Ancillary Hotel Businesses). These posters contain the information that employers must post to comply with the notice and posting requirements of all four hotel employee protection laws (Seattle Municipal Codes 14.26-14.29).

    Employers must display the poster at any workplace or job site their employees work, in a visible and accessible location. Employers must display the poster in English and in the primary languages of employees at that workplace. Employers must make a good-faith effort to determine the primary languages of employees to post posters in the correct languages.

36. Where can employers get these posters?
    These posters are available electronically on the OLS website. OLS creates and updates these posters and will make them available for electronic downloading in English and other languages. Currently, OLS is unable to make printed versions available.

37. What if OLS does not have the poster(s) in a specific language?
    To assist with employer compliance with the language requirements of the ordinance, OLS intends to translate posters in several languages. Employers are not required to provide these notices in languages other than English

until OLS makes the necessary translation available. Employers are encouraged to notify OLS of the need for additional translations.

38. What records must an employer keep?

Employers must keep records that show compliance with the ordinance. These records must be kept for three years. At a minimum, these include:

- A written copy of the preferential hiring list given to the incoming employer,
- Written verification of offers extended to employees on the preferential hiring list, including the employee's name, address, date of hire, and employee occupation classification, and
- Written records of performance evaluation given to covered employees.

Prohibition on Retaliation

39. Does the law prohibit retaliation?

Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action against employees who assert or exercise their rights in good faith.

These rights include (but are not limited to):

- Asking questions about the law or the rights given by the law,
- Informing someone about potential or actual violations of the law,
- Filing a complaint with the Office of Labor Standards or participating in an investigation about potential or actual violations of the law,
- Talking to the Office of Labor Standards or coworkers about the rights granted by this law, and
- Informing other employees about their rights.

An employee is still protected from retaliation even if they are mistaken about the right afforded.

40. What is considered an *adverse action*?

An *adverse action* is some action that negatively impacts any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms or condition of employment.

Some examples of adverse actions include: denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, engaging in unfair immigration-related practice, filing of a false report with a government agency, changing employment status, or unlawfully discriminating against an employee.

Waivers

41. Can an individual employee waive their rights to the protections of this law?

No. Individual employees cannot waive their rights under this law.

42. Can employees who are a party to a collective bargaining agreement waive the protections of this law?

Employees covered by a bona fide collective bargaining agreement may waive the protections of this law if the waiver is express, clear, and unambiguous and if the ratified agreement contains alternative safeguards that meet the goals of this law.