Seattle Office of Labor Standards

Secure Scheduling Ordinance

Questions and Answers

Seattle's Secure Scheduling Ordinance establishes scheduling protections for employees who work in Seattle at retail or food service employers with more than 500 employees.

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

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

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

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

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A. General Information

1. **When did the Seattle Secure Scheduling Ordinance take effect?**
   The Secure Scheduling Ordinance took effect on July 1, 2017.

2. **When did Seattle issue administrative rules for this law?**
   Seattle issued Seattle Human Rights Rules (SHRR) Chapter 120, the administrative rules for this law, on April 13, 2017. A copy of these rules can be found on the Office of Labor Standards website.

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

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

5. **What happens when employees 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.

6. **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.

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

8. **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.

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

B. Employees

1. **Which employees are covered by the ordinance?**
   The ordinance covers employees who meet three requirements:
   - Employees covered by Seattle's Minimum Wage Ordinance;
   - Work at a fixed, point of sale location of a covered employer; and
   - Perform work at a location within Seattle city limits at least 50% of the time.

   The ordinance does not apply to hours scheduled or worked outside of Seattle.

2. **Which employees are excepted from the law?**
   Employee coverage matches those employees covered under the Minimum Wage Ordinance. Both the Secure Scheduling and Minimum Wage Ordinances exclude a number of categories of employees which are listed in Seattle Municipal Code 12A.28.200.B.

3. **What is a "fixed, point of sale location"?**
   This refers to the business location where sales activity takes place. It is further defined to mean the location where the employee works or reports to work. The entire location is deemed a "fixed, point of sale location" even if some areas are not open to the public (e.g., a warehouse facility attached to a retail location).

4. **How can I determine if employees are working within Seattle city limits?**
   This interactive map can be used to determine whether a work location is within Seattle city limits.

5. **Are there any exceptions to coverage?**
   Yes. The Secure Scheduling administrative rules contain a coverage exemption, under SHRR 120-090(2), for employees who work in an administrative or professional position, but are nevertheless overtime-eligible (e.g., hourly human resources, payroll, and receptionist positions). For example, a typical receptionist may not be exempt from overtime because the duties do not involve the exercise of "discretion and independent judgment" required for the state and federal "administrative" exemption. *See* WAC 296-128-520(3); 29 CFR 541.200(a)(3). Under this law, a receptionist is typically exempt from coverage under SHRR 120-090(2) due to the administrative/professional nature of the employee's work. For more information see OLS's Wage Theft Ordinance Q & A document.

6. **What is the definition of an "administrative or professional position"?**
   To determine if an employee's position qualifies as an "administrative or professional position," under SHRR 120-090(2), employers should evaluate the following non-exclusive factors. No one factor is determinative and employers must examine the nature of the employee's duties based on

all the facts of the particular position. The factors in this assessment include, but are not limited to, whether:

- The employee's position involves duties that are administrative or professional in nature, such as payroll, human resources, recruiting, or other similar positions;
- The employee provides ancillary support services to the employer, but is not directly engaged in the employer's primary business function;
- The employee's activities generate only de minimis outside revenue;
- The employee does not engage in regular communication with customers or regularly respond to customer needs; and
- The employee does not directly support the sale of goods or services.

7. Does the ordinance apply to independent contractors?

No. The ordinance only applies to employees. Whether an individual is an employee or independent contractor is determined by the "Economic Realities Test" that is used by the Fair Labor Standards Act and the Washington State Minimum Wage Act. If there is a dispute regarding a worker's status, the employer is responsible for proving that the worker is an independent contractor rather than an employee (i.e., the law favors employee status and an employer must prove otherwise).

Under the Economic Realities Test, factors for distinguishing an employee from an independent contractor include:

a. **Is the work an integral part of the employer's business?** (If the answer is yes, this factor weighs in favor of employee status);
b. **Does the worker's managerial skill affect the worker's opportunity for profit or loss?** (If the answer is yes, this factor weighs in favor of independent contractor status);
c. **How does the worker's relative investment compare to the employer's investment?** (If the worker's investment is less than the employer's, this factor weighs in favor of employee status);
d. **Does the work performed require special skill and initiative?** (If the answer is yes, this factor weighs in favor of independent contractor status);
e. **Is the relationship between the worker and the employer permanent or indefinite?** (If the relationship is permanent or indefinite, this factor weighs in favor of employee status); and
f. **What is the nature and degree of the employer's control?** (If the employer exercises control over the way the work is performed, this factor weighs in favor of employee status).

For more information, see our Worker Classification Guide.

8. Does the ordinance cover the following positions?

a. **Delivery driver?**

It depends. A delivery driver who (1) reports to work at a fixed, point of sale location of a covered employer and (2) performs work at least 50% of the time in Seattle is covered by the ordinance. If the driver instead reports to work at a location that does not constitute a fixed, point of sale (e.g., distribution facility, manufacturing facility where no sales take place, etc.), the driver is not covered by the ordinance.

A delivery driver who reports to work at a non-covered location (i.e., outside of Seattle) does not satisfy the coverage requirement of working or reporting to work at a fixed, point of sale location of a covered employer.

b. **Installation employees (e.g., employees installing blinds, flooring, HVAC, etc. for a covered employer)?**
It depends. Similar to delivery drivers, if the installation employee (1) reports to work at a fixed, point of sale location of a covered employer and (2) performs work at least 50% of the time in Seattle, the employee is covered by the ordinance. If the employee instead reports to work at a location that does not constitute a fixed, point of sale (e.g., distribution facility, manufacturing facility where no sales take place, etc.), the installation employee is not covered by the ordinance. Note, some installers are independent contractors and would not be covered if they are accurately classified as such.

c. **Employee with no customer interaction (e.g., janitor, stocker, or warehouse employee) whose position is not "administrative or professional" (see questions 5 and 6, above)?**
Yes. If the employee works in the same footprint (i.e., contiguous physical location) as a fixed, point of sale location, they will be covered by this law. The lack of customer interaction does not negate coverage.

d. **Servers for a catering company when working in off-site locations?**
It depends. If the catering event occurs in a location that is separate from where the catering sales occurred (e.g., the catering sales or business office) and no sales occur at the event, the employee is not covered as they do not work at a fixed, point of sale location. But if the employee reports to work at the catering sales office and then works at the offsite location, that employee is covered. In addition, if there are sales at the catered event, such as a cash bar, the employees are also covered.

e. **Customer service representative who handles in-store returns?**
Yes. Although a customer service representative's duties may be administrative in nature, they do not meet the factors outlined in question 7 for several reasons. First, a customer service representative's duties are not comparable to those of a receptionist, HR professional, payroll employee or similar back office support role. Second, a customer service representative is engaged in the employer's primary function by helping employees with the purchase and return of merchandise. Third, a customer service representative will necessarily interface with customers. And fourth, a customer service representative supports the sale of goods or services.

f. **Receptionist in corporate office in the same footprint as a fixed, point of sale?**
No. A receptionist in a corporate office is not covered even if the corporate office is in the same footprint (i.e., contiguous physical location) as a fixed, point of sale location due to the administrative and professional exception. See question 5 and OLS's Wage Theft Ordinance Q & A document for more information.

g. **An employee who spends 70% of her time at a location outside of Seattle and 30% at the employer's Seattle location.**
No. The employee is not covered because they do not perform work at a location within Seattle city limits at least 50% of the time.

h. **An employee who is regularly scheduled at a Seattle location but is occasionally assigned to a location outside Seattle.**
Yes. This employee is covered because the employee works at a location within Seattle city limits at least 50% of the time. But the employee's shifts outside of Seattle are not subject to Secure Scheduling protections. Therefore, an employer could schedule a Seattle

employee to work in a non-Seattle location with less than 14 days' notice and not incur additional compensation for schedule changes (See section H for details on additional compensation obligations).

9. Are temporary staffing employees or contractors working at a covered employer covered by this law?

If the temporary staffing employee or contractor is jointly employed by a covered employer, the employee is covered by the Secure Scheduling Ordinance while working at the covered employer. For more information on joint employment, see Section C regarding employers.

Some provisions of this law apply in unique ways for joint employees.

- **Good Faith Estimate (GFE)**—joint employees must receive a GFE when they begin an assignment at a covered employer. Employers are free to contract with a temporary staffing provider to provide this estimate. Many staffing agencies already provide a "work ticket" that has employment information; a modified work ticket could satisfy the GFE requirements.

- **Advance Notice of Work Schedule**—New joint employees beginning a distinct assignment are considered new employees. Such employees can be immediately placed on the schedule without providing two weeks' advance notice of work schedule. For information about the advance notice of work schedule requirements please view that section of this Q&A. But if those employees are on an ongoing assignment, the employer must provide two weeks' advance notice of work schedule once new schedules are issued. Temporary staffing employers should not summarily designate such ongoing assignments as a series of unique assignments that begin and end each day. For example, if a temporary staffing employee is assigned to a covered employer every day for several months, the fact that the employment agreement with the temporary staffing company states that the assignment ends each day may not be determinative. OLS will look at the facts of the entire employment relationship to make that determination.

- **Compensation for Work Schedule Changes**—Once a joint employee is provided a schedule (e.g., on the day of work for a daily assignment or some time in advance for an ongoing assignment), a modification of that schedule will incur additional compensation for schedule changes.

  > ***Example***: On Wednesday morning a temporary staffing employer assigns the temporary employee to work at a covered employer for 6 hours starting at 9 AM, resulting in a schedule of 9 AM to 3 PM. If the covered employer or temporary staffing company sends the temporary staffing employee home at noon or asks the employee to stay late until 5 PM, the temporary employee is owed additional compensation (1.5 hours of pay for the early dismissal, or 1 hour for staying until 5 PM, in this example). For details about additional compensation for work schedule changes, please see the section of this Q&A with the title "Compensation for Work Schedule Changes."

- **Access to Hours**—Employers are not required to notify joint employees of additional hours under the Access to Hours provisions of the Secure Scheduling Ordinance. For example, if the covered employer intends to hire for an additional 20 hours, the employer must only notify the employees on the employer's own payroll.

10. That is a lot to track. Is there an easier way to think about employee coverage?

We recommend using the following steps to determine if an employee is covered.

STEP 1: Is Employee eligible for overtime?

- ☐ If no ➲ Employee is not covered.
- ☐ If yes ➲ Proceed to STEP 2.

STEP 2: **Does Employee work in Seattle 50% of the time?** See SMC 14.22.015.

- ☐ If no ➲ Employee is not covered.
- ☐ If yes ➲ Proceed to STEP 3.

STEP 3: **Does employee report to work at a fixed, point of sale location?** See SHRR 120-090(3).

- ☐ If no ➲ Proceed to STEP 4.
- ☐ If yes ➲ Employee is covered.

STEP 4: **Does employee work at a fixed, point of sale location at least 50% of the time?** See SHRR 120-090(4).

- ☐ If no ➲ Employee is not covered.
- ☐ If yes ➲ Employee is likely covered proceed to STEP 5.

STEP 5: **Does the employee work in an administrative or professional position?** See SHRR 120-090(2).

- ☐ If no ➲ Employee is covered.
- ☐ If yes ➲ Employee is not covered.

11. When are owners, partners, officers and shareholders considered employees?

Whether owners, partners, officers and shareholders are considered employees must be decided on a case-by-case basis. In the context of an investigation, OLS will make this determination using guidance from the EEOC's Compliance manual for investigation of discrimination claims.

EEOC guidance states that in most circumstances, individuals who are partners, officers, members of boards of directors, or major shareholders will not qualify as employees. However, the final determination is not made on the basis of a person's title and the following factors will be considered:

a. Whether the organization can hire or fire the individual or set rules and regulations of the individual's work
b. Whether and, if so, to what extent the organization supervises the individual's work;
c. Whether the individual reports to someone higher in the organization;
d. Whether and, if so, to what extent the individual is able to influence the organization;
e. Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts; and
f. Whether the individual shares in the profits, losses, and liabilities of the organization.

C. Employers

1. **Which employers are covered by the Secure Scheduling Ordinance?**
   The ordinance covers employers who meet the following conditions:
   - **a. Type of business**—the employer must be either a
     - **i.** Retail establishment; or
     - **ii.** Food service establishment.
       (a) If the business is a full-service restaurant, the businesses must also have 40 or more full-service restaurant locations worldwide.
   - **b. Size of business**—the employer must have
     - **i.** 500 or more employees worldwide, including all franchisees associated with a franchise or a network of franchises that together employ more than 500 employees in aggregate.

2. **Type of Business: What is the definition of "retail establishment" and "food service establishment"?**
   Both retail establishment and food service establishments are defined through a number called the North American Industry Classification System (NAICS) code. Employers can find their NAICS code by looking up their business license on the City of Seattle's business license search page. The ordinance covers the following NAICS codes:
   - Retail establishment: 2017 NAICS code within the range of 441 through 453998; and
   - Food service establishment: 2017 NAICS code beginning with 722.

   If the employer has a covered NAICS code, the "type of business" requirement for coverage is met.

3. **Type of Business: What is a NAICS code? Where can I find more information on NAICS codes?**
   The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. To review NAICS codes for different industries, click here.

4. **Type of Business: What if an employer's Seattle and Washington business licenses list different NAICS codes?**
   If either the Seattle or Washington business license lists a covered NAICS code, OLS will consider the employer to be covered by the Secure Scheduling Ordinance.

5. **Type of Business: What if an employer does not have a Seattle business license?**
   Employers are required to have a Seattle business license to operate a business in Seattle. If the employer does not have a Seattle business license, OLS will use the Washington State business license to determine coverage.

6. **Type of Business: What if the NAICS code on an employer's Seattle business license does not match the nature of the business operations?**
   In most instances, the NAICS code will determine whether an employer satisfies the type of business requirements for coverage under this law. However, in instances where there is evidence that the NAICS code is inaccurate, OLS will look to evidence of the nature of the business to determine ordinance coverage.

7. **<u>Type of Business</u>: Is a hotel restaurant covered by the Secure Scheduling Ordinance?**
   It depends. Many hotel restaurants are organized under the hotel business license and therefore have a NAICS code associated with a hotel, rather than food service. In that situation, the hotel restaurant is not covered by the Secure Scheduling Ordinance. If the restaurant has a business license with a food service NAICS code (i.e., a NAICS code beginning with 722), the restaurant is covered if it also satisfies the employee count and location requirements, if it is a full-service restaurant. For more information on NAICS codes, employee count, and location requirements for full-service restaurants, see the following questions.

8. **<u>Type of Business</u>: What is the definition of a "full-service restaurant"?**
   OLS will treat the business as a full-service restaurant if the business license lists a NAICS associated with full-service restaurant, unless there is evidence that the NAICS code is inaccurate. The full-service restaurant NAICS code is 722511.

9. **<u>Type of Business</u>: What if part of my restaurant is full-service and part is limited-service? Does the coverage requirement for 40 full-service restaurant locations apply?**
   As a general principle, OLS will start with the NAICS code. In instances where there is evidence that the NAICS code is inaccurate, OLS will look to evidence of the nature of the business to determine ordinance coverage. If the business operates multiple locations where some are full-service and some are limited-service, OLS will look at the operations of each location to determine coverage. If the business operates a single location with both full-service and limited-service, OLS will rely on the NAICS code (as examination of the business operations would reveal both full-service and limited-service operations). The full-service restaurant NAICS code is 722511.

10. **<u>Type of Business</u>: What if most of the employer's business is not related to food service or retail, but the business owns a single-location restaurant or retail outlet?**
    If the single food service or retail location has a business license with a covered NAICS code and the business has 500 or more employees, that location is covered by the Secure Scheduling Ordinance. The percentage of operations dedicated to food service or retail is not relevant to determining coverage.

11. **<u>Size of Business</u>: How do employers count employees to determine employer size?**
    An employer determines whether it has enough employees to qualify for coverage by calculating the average number of employees who worked for compensation each calendar week during the prior calendar year. An employer should include any week during which at least one employee worked. Employers should not include weeks where no employees worked. All employees worldwide are counted, including:
    - Full-time employees;
    - Part-time employees;
    - Temporary or seasonal employees, including employees of a staffing agency or similar entity;
    - Paid interns;
    - Work study employees;
    - All employees of a franchise or a network of franchises;
    - All employees of joint employers; and
    - All employees of an integrated enterprise.

    For more information on joint employment, see question 16.

12. **Size of Business: Do employers count employees working outside of Seattle when determining its size for ordinance coverage?**
    Yes. To determine ordinance coverage, employers must count all employees worldwide.

13. **Size of Business: Do employers count employees working in non-retail or food service locations (e.g., production or distribution facilities)?**
    Yes. An employer must count all employees worldwide regardless of the type of business location where they work or the employees' job duties.

14. **Size of Business: How do new employers count employees?**
    Employers that did not have any employees during the previous calendar year count the average number of employees employed per calendar week during the first 90 calendar days of the current year of business.

15. **Size of Business: Is a temporary worker counted as an employee of both the staffing agency and the contracting employer when determining employer size?**
    If the staffing agency and contracting employer are joint employers of the temporary workers, then both employers must count the temporary worker to determine employer size. The temporary worker is counted twice for this purpose.

16. **Size of Business: What are joint employers?**
    Separate business entities (with separate owners, managers and facilities) may be treated as joint employers under this ordinance. An individual may also be a joint employer.

    While a joint employment relationship generally exists when an employee performs work that benefits two or more employers, determination of a joint employment relationship depends on 13 nonexclusive factors that are part of an **"economic realities test,"** as outlined below:

    a. The nature and degree of control of the workers;
    b. The degree of supervision (direct or indirect) of the work;
    c. The power to determine the pay rates or the methods of payment of the workers;
    d. The right (directly or indirectly) to hire, fire or modify the employment conditions of the workers;
    e. Preparation of payroll and the payment of wages;
    f. Whether the work is a specialty job on the production line;
    g. Whether responsibility between a labor contractor and an employer passes from one labor contractor to another without material changes;
    h. Whether the premises and equipment of the employer are used for the work;
    i. Whether the employees have a business organization that shifts as a unit from one work site to another;
    j. Whether the work is piecework and not work that requires initiative, judgment or foresight (i.e., considering if the service rendered requires a special skill);
    k. Whether the employee has an opportunity for profit or loss depending upon the employee's managerial skill;
    l. Whether there is permanence in the working relationship; and
    m. Whether the service rendered is an integral part of the employer's business.

    For more information on joint employment, see the United States Department of Labor Administrator's Interpretation No. 2016-1. Although this document was withdrawn by the

Department of Labor on June 7, 2017, OLS continues to find its reasoning persuasive and consistent with caselaw.

17. **Size of Business: How do joint employers count employees to determine ordinance coverage?**
Employees who are jointly employed must be counted by all joint employers, regardless of whether the employee is maintained on only one of the employers' payrolls.

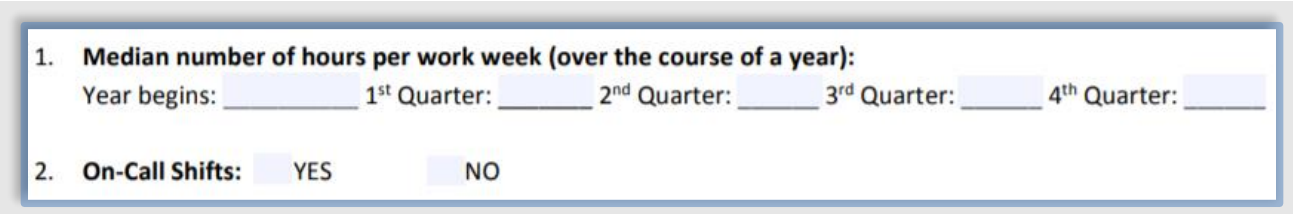
18. **Size of Business: Are both joint employers responsible for complying with the ordinance?**
Yes.

19. **Size of Business: What are integrated enterprises?**
An integrated enterprise is a business relationship in which one separate entity controls the operation of another entity. To determine employer size, separate entities that form an integrated enterprise are considered a single employer.

20. **Size of Business: How do employers determine if they are a part of an integrated enterprise?**
Factors to consider in making this assessment include (but are not limited to):
    a. Degree of interrelation between the operations of multiple entities;
    b. Degree to which the entities share common management;
    c. Centralized control of labor relations; and
    d. Degree of common ownership or financial control over the entities.

D. Good Faith Estimate

1. **What is a Good Faith Estimate (GFE)?**
The GFE is an estimate of (1) the median number of hours that an employer expects an employee to work each week and (2) whether the employee is required to work on-call shifts. The employer must provide written notice of this estimated number of hours upon hire. The estimate of median hours must be made on a quarterly basis. OLS has incorporated a GFE into the Notice of Employment Information (NOEI) form, which is available for download here. The NOEI is required under Seattle's Wage Theft Ordinance and employers can use the form to comply with the requirements of both the Wage Theft and Secure Scheduling Ordinances. A sample GFE is also excerpted below:


1. **Median number of hours per work week (over the course of a year):**
Year begins: _____ 1st Quarter: _____ 2nd Quarter: _____ 3rd Quarter: _____ 4th Quarter: _____

2. **On-Call Shifts:** YES NO

2. **Can an employer list the same estimated hours for the entire year in three-month increments?**
Yes, if an employer does not anticipate any seasonal fluctuation in hours, the employer can simply write the same estimated hours for each three-month increment (i.e., quarter).

3. **Does the GFE really require the median number of hours and not the average? How does an employer calculate the median number of hours?**
Yes, the ordinance is specific that the GFE must contain an estimate of the *median number* of hours an employee is expected to work each week. A median is the middle number in a sequence of odd

numbers or the average of the two middle numbers in a sequence of even numbers (e.g., 4 is the median of 1, 3, 4, 10, 20; and 6 s the median of 1, 3, 4, 8, 9, 10). There are a number of median calculators available online.

4. **Are employers required to re-issue the GFE to existing employees?**
   Yes, an employer must update and reissue the GFE at least once a year, calculated from the point of the last GFE for existing employees.

5. **What happens if an employer's estimate of hours is wrong?**
   If the GFE provides an incorrect estimate of hours, the employer is encouraged to update and reissue the GFE.

   Further, if an employee notifies the employer that there is a significant change, the employer must reissue the GFE and engage in an "interactive process" with the employee to discuss that change. The interactive process must conclude within three weeks from the date the employee notified the employer of the significant change. If there is a bona fide business reason for the significant change, the employer must provide a verbal or written, concise statement of facts describing the reason. For more details on the bona fide business reason, see Section E below regarding the "Right to Request Input into Work Schedule."

6. **What is a "significant change"?**
   A significant change occurs when there is a difference of at least 30% between the GFE and the median number of scheduled hours in the written work schedules over the course of one or more three-month periods.

E. Right to Request Input into Work Schedule

1. **What rights do employees have under the Right to Request provisions of the ordinance?**
   Employees can make schedule requests for the times (e.g., hours of the day, length of work shifts, etc.) and location of work prior to the employer's provision of a 14-day advance notice of schedule. Employers' responsibilities depend on the reason for the request:

   - If the request is based on major life event (this term is defined by the law and explained below)
     - Employers must engage in an interactive process with employees; and
     - Employers must grant a request unless the employer has a bona fide business reason to support denying the request.
   - Non-major life event request
     - Employers must engage in an interactive process with employees; and
     - Employers can grant or deny the request depending on business needs.

Right to request requirements are summarized in the table below:

Type of Request	Interactive Process?	Action	Documentation
Major Life Event (no bona fide business reason for denial)	Yes	Grant	Not required
Major Life Event (bona fide business reason for denial)	Yes	Grant or deny	Required if denial
Non-Major Life Event	Yes	Grant or deny	Not required

2. **What are the requirements for the interactive process?**
   Employers should begin the interactive process within one week of receiving the schedule request and must conclude it within three weeks. The process is concluded when the employer provides a written response regarding the request, if a written response is required.

3. **What is an "interactive process"? What is the employer required to discuss with the employee?**
   The interactive process is a problem-solving discussion between the employer and employee to facilitate a work schedule that attempts to meet the needs of both the employer and employee. The employer is encouraged to discuss issues relevant to the employee's schedule request including, but not limited to:
   - The employee's requested work schedule change, or work schedule preferences;
   - The impact of the employee's major life event;
   - Any employer request for verifying information regarding the major life event;
   - The potential work schedule changes to accommodate both employer and employee needs;
   - The employer's grant or denial of the employee's request; and
   - In the event of a denial, the potential next steps the employer may take to accommodate the employee's work schedule request.

4. **Can an employer require that a schedule request be made in writing?**
   Yes.

5. **What is a major life event?**
   A major life event is a major event related to the employee's access to the workplace based on any of the following reasons:
   - Changes in employee's transportation;
   - Changes in employee's housing;
   - Employee's own serious health condition;
   - Employee's responsibilities as a caregiver;
   - Employee's enrollment in a career-related educational or training program; or
   - Employee's other job or jobs.

   Example 1: Juanita asks to not work on Friday and Saturday nights because she regularly works at another job on those days. **Is this a major life event**?

   Yes. An employee's other job or jobs constitutes a major life event.

Example 2: Kim asks to work only morning and early afternoon shifts because that is when his children are in school. **Is this a major life event**?

> **Yes**. An employee's responsibilities as a caregiver constitute a major life event. Aligning a work schedule with a child's daycare or school falls under this definition.

Example 3: Souleymane asks not to work on August 5 because he is celebrating his 15th annual family reunion. **Is this a major life event**?

> **No**. A family reunion does not qualify as a major life event.

Example 4: David asks not to work on Thursday morning because he needs to take his partner to a doctor appointment on that day. **Is this a major life event**?

> **Yes**. An employee's responsibilities as a caregiver constitute a major life event. Caregiving includes the on-going care of a spouse (including a non-marital relationship that is the equivalent of a spouse) with a serious health condition.

Example 5: Durga asks to be scheduled for morning shifts for the next month because her car broke down. She'll need to start taking the bus and it is most reliable in the mornings. **Is this a major life event**?

> **Yes**. Major life events can include events related to employee transportation changes.

Example 6: Daphne asks to not work on a particular Sunday evening next month because there is a special concert happening that night. **Is this a major life event**?

> **No**. Attending a concert does not constitute a major life event.

Example 7: Tran asks to not work a scheduled shift on June 21 because she has a last minute, parent/teacher conference. **Is this a major life event**?

> **Yes**. A parent/teacher conference qualifies as a major life event. Major life events include events related to the employee's responsibilities as a caregiver, including the on-going care or responsibility for a child's education.

Example 8: Tom asks to not work on Thursdays and Fridays because he has an accounting class on Fridays and likes to prepare by doing homework on Thursdays. **Is this a major life event**?

> **Yes and no**. Tom's attendance at the Friday class is a major life event. Major life events include the employee's enrollment in a career-related educational or training program. But the employer is not required to grant Tom's request for studying (i.e., not to work on Thursdays) because studying is not a major life event.

6. Does this law allow an employee to leave a shift to go to another job?

No. Leaving a shift that an employee is currently working is not a protected activity under the Secure Scheduling Ordinance. The employee must submit the request before the schedule is posted (at least two weeks before the first workday listed on the schedule) to trigger the requirements of the right to request provisions. For requests made after the posted schedule, an employer is free to treat shift abandonment under its customary policies and practices.

7. **Is the employer required to ask if a schedule request is based on a major life event?**
   No. The burden is on the employee to notify the employer if the request is based on a major life event.

8. **Can an employer require the employee to provide supporting documentation that verifies the employee's claimed major life event?**
   Yes. The employer may request verifying information to document the employee's major life event. Employer requests for verifying information must be reasonable; respectful of the employee's privacy; should not incur employee expense; and should not deter employees from making a schedule change request. Employees can provide *any* of the following verification:
   - The employee's own **signed written statement** that identifies one or more of the six major life event categories as the reason for the schedule change request and briefly explains the circumstances of the major life event.
   - **Third-party documentation**, including but not limited to, a notice from a landlord, notice from a child's school, a class syllabus, and/or pay stub or other documentation of another job. The employer must inform the employee of the ability to redact or withhold information that the employee wishes to keep private.
   - **Documentation from a health care provider.** For employee requests that involve a serious health condition, the employee may provide a written statement, third-party documentation, or documentation signed by a health care professional stating that the employee or the employee's family member has a serious health condition. The employer cannot require the documentation to explain the nature of the serious health condition.

9. **Can employers require a specific form of verification?**
   No. Employees may provide any of the acceptable forms of verification listed in the question above.

10. **What is a bona fide business reason?**
    A bona fide business reason is a business-related reason that the law recognizes as allowing an employer to deny a schedule change request, even if it is based on a major life event. An employer must grant a schedule change request that is based on a major life event unless the employer has a bona fide business reason for denial. Bona fide business reasons include a schedule change request that would result in:
    - An action that would cause the employer to violate a law, statute, ordinance, code and/or governmental executive order;
    - A significant and identifiable burden of additional costs to the employer;
    - A requirement to pay additional compensation under a law or written policy (e.g., holiday pay, additional compensation for schedule changes);
    - Violating a collective bargaining agreement or a written seniority system;
    - Displacing another employee from an existing schedule;
    - A significant inability, despite best efforts, to reorganize work among existing employees;
    - A significant detrimental effect on business performance;
    - A significant inability to meet customer needs or demands; or
    - A significant lack of work when the employee wants to work.

    Example 1: Jo Jin asks to not work on Friday and Saturday nights because she has another job at that time. The employer would like to deny the request because weekend shifts are the busiest nights of the week– and there aren't other employees who are available to work on those evenings. **Is the employer required to grant the request?**

No. There likely is a bona fide business reason that justifies denying the employee's schedule request: the employer is extremely busy on Friday and Saturday and there are no other employees available to work. Granting the employee's schedule request would likely result in a "significant inability to meet customer needs or demands"—a bona fide business reason.

Example 2: Dave asks to work only morning shifts due to childcare needs, but those shifts are already covered by Omar and Esperanza who have seniority under the collective bargaining agreement. **Is the employer required to grant the request?**

No. There likely is a bona fide business reason that justifies denying the employee's schedule request: granting the request would cause the employer to violate a bona fide collective bargaining agreement—a recognized bona fide business reason.

***Example 3*:** Rikuko asks not to work on November 5 because she must attend a special presentation for a class, but the employer cannot provide a firm answer for a date so far in the future. **Is the employer required to grant the request?**

Yes. This scenario is *not* a bona fide business reason. The employer's inability to plan in the future is not recognized by the ordinance or the rules as a bona fide business reason. The employer must grant the request.

***Example 4**:* Jennifer asks to be scheduled for morning shifts only due to her serious health condition, but the employer thinks that it will cost too much to add another employee to the morning schedule. **Is the employer required to grant the request?**

Probably. This scenario likely does not qualify as a bona fide business reason. Additional cost is a bona fide business reason only if it constitutes a "material and measurably large burden of additional cost." *See* SHRR 120-060(5). The employer's speculation on the cost of adding a single employee to the morning shift likely does not meet this threshold. But if the employer determines that there is a significant lack of work when Jennifer wants to work, that would support a bona fide business reason.

Example 5: Emily asks to start working on Friday evenings as that day works better with her transportation needs, but the manager does not think that the Emily is qualified to work on a busy night. **Is the employer required to grant the request?**

Probably. This scenario would only qualify as a bona fide business reason if the employee's lack of qualification would create a "significant detrimental effect on business performance" or a "significant inability to meet customer needs or demands." But because Emily is otherwise qualified to work, it is unlikely that her inexperience working on a busy night rises to that threshold.

Example 6: Carlos asks to not work on a scheduled shift on June 21 due to car trouble, but the manager can't think of anyone who could work that shift. **Is the employer required to grant the request?**

Yes. This situation would only qualify as a bona fide business reason if the employer experiences a "significant inability…despite best efforts, to reorganize work among existing employees." But the employer's mere inability to think of another available employee does

not rise to the threshold of a "best effort" to reorganize work among existing employees. The employer must attempt to reorganize work among existing employees.

11. **Does the Right to Request include a right to request a different location for work?**
    Yes. The employee can request to work at a certain location. If the request is not related to a major life event, then the employer may grant or deny it. If the request is related to a major life event, then the employer must grant it unless there is a "bona fide business reason" for a denial.

12. **What about locations that are outside of Seattle?**
    The employee's right to request only applies to locations covered by the Secure Scheduling Ordinance. Therefore, the employee does not have a protected right to request to work in locations outside of Seattle.

13. **What about locations that are within Seattle, but not covered by the Secure Scheduling Ordinance (e.g., a warehouse facility with no sales)?**
    The employee's right to request only applies to locations covered by law.

14. **Does an employee have a right to request to work a certain number of hours or days?**
    No. The employee may request a particular schedule (e.g., days of the week and start and end times) as well as locations of work. The employee does not have a protected right to request a specific number of hours (e.g., "I would like to work 35 hours per week") or specific number of days a week (e.g., "I would like to reduce my schedule from 4 days to 3 days" or "I would like to work an additional day a week.")

F. Right to Rest – Ten-Hour Rest Period for "Clopening" Shifts

1. **What are the Right to Rest requirements under this law?**
   Employers cannot schedule, or require an employee to work, a closing and opening shift (i.e., "clopening") separated by less than 10 hours unless an employee requests or consents to work such hours. Regardless of request or consent, employers must always pay time and a half for hours worked that are separated by less than a 10-hour rest period.

2. **Do all shifts separated by less than a 10-hour rest period qualify for Right to Rest protections?**
   No. To qualify for the Right to Rest protections, the opening shift must occur either less than 10 hours after the end of (1) the previous day's shift; or (2) a shift that spanned two calendar days.

   Example 1: Beril works a shift ending at 10 PM and is scheduled to work a shift beginning at 6 AM the next day. **Does this schedule qualify for Right to Rest protections**?

   Yes. Beril's opening shift occurs eight hours after the previous day's shift and therefore qualifies for the Right to Rest protections. Beril would be owed time and a half pay for two hours of work.

   Example 2: Brittany ends her shift at 10 PM and opens the next day at 8 AM. **Does this schedule qualify for Right to Rest protections**?

   No. Brittany's opening shift occurs 10 hours after the previous day's shift and therefore does not qualify for Right to Rest protections.

Example 3: Arthur begins a shift on Monday night at 10 PM and ends the shift at 2 AM Tuesday. He works again on Tuesday starting at 8 AM. **Does this schedule qualify for Right to Rest protections**?

> **Yes**. Arnold's first shift spans two calendar days and is only separated by 6 hours from his second shift. Therefore, the opening shift on Tuesday qualifies for Right to Rest protections. Arnold would be owed time and a half pay for four hours.

Example 4: Dwayne begins his shift at 1 AM and ends the shift at 8 AM. He then works again at 5 PM. **Does this schedule qualify for Right to Rest protections**?

> **No**. Although Dwayne's two shifts are only separated by 9 hours, they occur within a single day and therefore do not qualify for Right to Rest protections.

3. **Are there any exceptions?**
   Yes. Split shifts do not qualify for Right to Rest protections even if they are separated by less than 10 hours. A split shift is a single shift separated by a non-working period of between one and four hours—for example, an employee scheduled from 10 PM to 10 AM with a non-working period between 2 AM and 6 AM.

4. **How is a day defined?**
   The 24-hour period starting at 12:00 AM until 11:59 PM.

5. **If an employee closes at 10 PM and comes to a one-hour staff meeting at 7 AM, are the Right to Rest protections implicated?**
   Yes. A mandatory staff meeting is considered hours worked and would therefore require additional compensation under the Right to Rest provisions if it occurred less than 10 hours after a closing shift that occurred the previous day or spanned two days.

6. **If an employer really needs an employee to work a closing and opening shift, what are the employer's options?**
   The employer can request that the employee work the closing and opening shift. If the employee agrees, the employer must compensate the employee for the hours worked that are separated by less than 10 hours at time and a half. If the employee declines, the employer may not require that the employee work the hours separated by less than 10 hours and may not discipline the employee or take any other adverse action for declining to work those hours.

7. **How is the time and a half pay calculated? What if the opening and closing shifts are compensated at different rates?**
   The employer must compensate the employee at time and a half the employee's scheduled rate of pay for the opening shift, even if the opening shift is compensated at a higher or lower rate than the closing shift.

   Example 1: Juan works a shift ending at 10 PM and a shift beginning at 6 AM the next day. Both shifts are compensated at $20 per hour. **What hours are compensated at the Right to Rest rate? What is the rate?**

   > Juan must be compensated at the Right to Rest rate for the two hours worked that are separated by less than 10 hours from the previous shift (i.e., 6 AM to 8 AM). Juan's Right to Rest rate is $30 per hour (time and a half his scheduled rate of $20 per hour).

Example 2: Darnell works a shift ending at 11 PM and a shift beginning at 5 AM the next day. Darnell is paid $17 per hour for the first shift, but $25 per hour for the second shift. **What hours are compensated at the Right to Rest rate? What is the rate?**

Darnell must be compensated at the Right to Rest rate for the hours worked that are separated by less than 10 hours (i.e., 5 AM to 9 AM). Darnell's Right to Rest rate is time and a half the scheduled rate of the opening shift for a pay rate of $37.50 ($25 x 1.5 = $37.50) Darnell will receive a total of $150 of pay for these "clopening shifts" separated by less than ten-hour rest period ($37.50 x 4 hours).

8. **How is the time and a half pay calculated? What if the employee is compensated at holiday or overtime pay?**

The employer must compensate the employee at 1.5 times the employee's scheduled rate of pay for the opening shift, even if the opening shift is compensated at a higher or lower rate than the closing shift. This rule applies even if the opening shift is compensated at a higher pay, like holiday pay, or overtime pay.

Example 1: Pelin works a shift ending at 10 PM the day before Thanksgiving and the Thanksgiving Day shift beginning at 6 AM the next day. Her normal pay rate is $20 per hour, and she receives time and a half for working on a holiday. **What hours are compensated at the Right to Rest rate? What is the rate?**

Pelin must be compensated at the Right to Rest rate for the hours separated by less than 10 hours (i.e., 6 AM to 8 AM). Because the schedule rate of the opening shift here is a holiday rate calculated at time and a half her normal hourly rate of $20, the employer should first calculate her holiday pay rate (1.5 x $20 per hour = $30 per hour) and then her Right to Rest rate (1.5 x $30 per hour = $45 per hour).

Example 2: On Thursday, Pam works a shift that ends at 10 PM. In addition, by the end of her Thursday shift, Pam has worked 40 hours in the workweek. She then works a morning shift at 6 AM on Friday morning. Her regular rate of pay is $20 per hour, and she receives time and a half for hours worked over 40 in a work week**. What hours are compensated at the higher Right to Rest rate? What is the rate?**

Pam must be compensated at time and a half her scheduled rate for the hours separated by less than 10 hours (i.e., 6 AM to 8 AM). Because the schedule rate here is an overtime rate calculated at time and a half her regular rate of pay of $20, the employer should first calculate her overtime rate (1.5 x $20 per hour = $30 per hour) and then her Right to Rest rate (1.5 x $30 per hour = $45 per hour).

9. **How does the additional compensation under the Right to Rest requirements affect overtime compensation?**

Additional compensation under the Right to Rest requirements is not included in the regular rate for calculation of the overtime rate. The Fair Labor Standards Act's implementing regulations are clear that analogous forms of compensation are not included in the regular rate calculation. *See* 29 CFR § 778.221-.222 (call back and other similar payments not included in regular rate calculation). Washington state follows the same approach. *See* Wash. Dep't of Labor and Indus. Admin. Policy ES.A.8.1 (2014) at 3. Because the forms of additional compensation regulated by 29 CFR 778.221-.222 serve similar functions as additional compensation under the Right to Rest provisions, OLS

interprets the law to not require employers to include that additional compensation in the regular rate calculation. OLS made this determination based on our interpretation of applicable law. This information does not constitute legal advice. Employers should contact competent wage and hour counsel for additional information or to obtain legal advice.

G. Advanced Notice of Work Schedule

1. **When do employers need to provide employees with a work schedule?**
   Employers must provide employees with a work schedule at least 14 days in advance of the first workday on the work schedule. For example, if an employer posts a schedule on Monday Nov. 5, 2023, the first workday on the schedule should be no earlier than Monday Nov. 19, 2023.

November 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5 Schedule is posted	6	7	8	9	10	11
12	13	14	15	16	17	18
19 First day on Schedule	20	21	22	23	24	25
26	27	28	29	30		

2. **Are there exceptions to the requirement to provide 14 days' advance notice of schedule?**
   Yes. The ordinance exempts the following categories of employees from this requirement:
   - **Employees with a work schedule change** under the Right to Request provisions of the law;
   - **New employees** at time of hire;
   - **Existing employees** at the time of a transfer, promotion, or new job classification;
   - **Existing employees** returning from a leave of absence; and
   - **Employees who are jointly employed**, such as temporary staffing employees, contractor, subcontractor, etc.

   These employees may be immediately placed on the work schedule and begin work. Once such employees begin employment, they must be provided 14 days' advance notice of their work schedules like all existing employees.

3. **What is considered a leave of absence?**
   A leave of absence may be defined by law, the employer's usual and customer policy, or a collective bargaining agreement. A leave of absence includes an absence from work that is mutually agreed upon by the employee and the employer or a collective bargaining agreement; leave to which an employee is entitled by law; and leave imposed by the employer for a bona fide disciplinary action.

4. **What information must the work schedule include?**
   The work schedule must include the hours, days, and times for all regular and on-call shifts for the work period. The schedule must include the specific start and end time for each shift.
5. **Is the 14-day advance notice requirement based on business days or calendar days?**
   The requirement is based on calendar days.

6. **How long a period should the work schedule cover?**
   The ordinance does not regulate the length of the work schedule. Employers may decide the length of the work schedule. Whatever the duration of the work schedule, employees must receive 14-days advance notice of that work schedule.

7. **Where must the schedule be posted?**
   The schedule must be posted in a conspicuous and accessible location, in English and the primary language(s) of the employees at that worksite.

8. **May an employer distribute the work schedule electronically?**
   Yes, but if an employer chooses to distribute schedules solely by electronic delivery, there must be a computer at the job site for employees to view the schedule. Alternatively, employers can post a physical schedule at the job site and also distribute schedules electronically.

H. Compensation for Work Schedule Changes

1. **What are an employer's obligations if it changes an employee's schedule after it is posted?**
   If an employer changes an employee's schedule with **less than 14 days** before the start of the shift, the employer must pay each worker additional compensation as shown in the table below.

   Employees have a protected right to **decline** additional shifts. An employer may not discipline or otherwise penalize an employee for declining additional work hours. If the employee agrees to work the additional hours, the employer may be obligated to pay additional compensation.

   Employees do not have a right to decline a reduction in hours.

Type of Schedule Change	Compensation Owed	Example
Addition of hours (any amount)	1 hour of pay at scheduled rate (But see question 3 below regarding pro-rating.)	**Original shift** = 12-4 PM **New shift** = 12-8 PM (4-hour addition) Pay for change: 1 hour extra
Change of start/end time or day with no loss of hours	1 hour of pay at scheduled rate	**Original Shift** = 6-10 AM **New Shift** = 10 AM-2 PM Pay for change: 1 hour extra
Subtraction of hours	Half of the hours not worked at the scheduled rate of pay.	**Original Shift** = 12-8 PM **New shift** = 12-4 PM Pay for change: 2 hours extra (1/2 the

		4 hours not worked)
On-call hours & employee is not called in	Half of the hours not worked at the scheduled rate of pay.	**On-call shift** = 12-6 PM Pay for change: 3 hours extra (1/2 the 6 hours not worked)

Example - Mahmoud: *In all examples below, presume* Mahmoud is scheduled to work Monday, Wednesday, and Friday from 12-6 PM.

Addition of hours: On Monday morning, the manager calls Mahmoud and asks him to come in two hours early at 10 AM. Mahmoud agrees to come in early. **How much additional compensation must Mahmoud's employer pay him?**

> In addition to pay for the hours worked, Mahmoud is owed one hour of additional compensation at his scheduled rate of pay for the addition of two hours to his scheduled Monday shift.

Change to start and end time of shift: Mahmoud is scheduled to work on Wednesday from 12-6 PM. On Tuesday, Mahmoud's supervisor asks him to work on Saturday, 1 PM-7 PM, instead. **How much additional compensation must Mahmoud's employer pay him?**

> While Mahmoud has not experienced an addition or subtraction of hours, his employer has changed both the date and the start and end times of his shift. In addition to payment for the hours worked, his employer must compensate him with one additional hour of compensation at his scheduled rate of pay.

Subtraction of hours**:** During Mahmoud's shift on Friday (12-6 PM), his manager tells him that business is slow and he should leave at 4 PM. **How much additional compensation must Mahmoud's employer pay him?**

> During his Friday shift, Mahmoud is sent home two hours early, thus "subtracting" two hours from his scheduled shift. In addition to pay for the hours worked, Mahmoud's employer must compensate him for one-half of the hours not worked (i.e., one hour) at his scheduled rate of pay.

On-Call hours: Mahmoud is scheduled to be on-call on Sunday between 12 PM and 4 PM, but his manager did not call him into work. **How much additional compensation must Mahmoud's employer pay him?**

> Mahmoud's employer must compensate Mahmoud for half of the hours that he was on-call but did not work—two hours.

2. What about minor changes of just a few minutes? Is there a grace period?

Yes, there is a grace period for minor changes to a work schedule. Changes of less than 15 minutes (either additions or subtractions of hours) fall within a **grace period** and do not require additional compensation. If the employer's timeclock system rounds the clock in/clock out time, the grace period applies after the rounding has occurred.

3. **Can employers pro-rate the amount of additional compensation for schedule changes that are longer than the grace period, but less than one hour?**
   Yes. Additions of less than one hour do not require a full hour of additional compensation. Rather, the employer may pro-rate the additional compensation owed. For example, if an employee works 30 minutes past her scheduled end time, the employer should pay an additional 30 minutes of compensation at the scheduled rate, in addition to any payment for hours worked.

Example 1: David is scheduled to work from 10 AM to 4 PM for $20 per hour on Friday. On Wednesday, David's employer requests that he work late to finish a special project. David agrees and clocks out at 4:40 PM. **How much additional compensation must David employer pay him?**

> This example counts as a work schedule change of adding hours (i.e., 40 minutes). In addition to compensating David for the additional time worked (i.e., 40 minutes = $13.33), the employer must compensate the employee for 40 minutes at the employee's scheduled rate of pay for the work schedule change ($13.33), for a total of $26.66.

Example 2: Carlos is scheduled to work on Tuesday from 10:00 AM to 4:00 PM for $20 per hour. During the work shift, the employer requests that Carlos clock out after counting the till, even if it results in Carlos working after the scheduled end of shift. Carlos agrees and clocks out at 4:10 PM. Since the employer's timeclock system rounds to the nearest quarter hour, Carlos' clock-out time rounds to 4:15 PM. **How much additional compensation must David employer pay him?**

> None. This example does not count as a work schedule change of adding hours because it is within the 15-minute grace period. The employer must still compensate Carlos for the time worked (i.e., 15 minutes = $5.00), but does not owe additional compensation for the work schedule change.

4. **How is the amount of additional compensation calculated when an employer makes more than one change to a single shift?**
   When an employer makes multiple changes to a single shift, the employer must "net" all changes to the employee's shift and determine whether the net change is an addition or subtraction of hours, and then pay the appropriate additional compensation based on the net change.

   - **Net addition**—If the net change is an addition of hours, the employer must pay one hour of additional compensation (for changes of less than one hour, the employer may pro-rate the amount of additional compensation owed)

   - **Net subtraction**—If the net change is a subtraction of hours, the employer must pay one-half times the employee's scheduled rate for the hours subtracted; and

   - **Grace periods**—If the employer makes two or more schedule changes that net to more than the grace period, the employer must pay additional compensation based on the net change – regardless of whether the individual changes fell within the grace period (and would therefore not require additional compensation).

Example – Maria: *In all examples below, presume Maria earns $20/hour and is scheduled to work from 10:00 AM to 4:00 PM.*

> ***Net addition.*** Employer asks Maria to start work 30 minutes early at 9:30 AM and stay 60

minutes late until 5:00 PM. The net change is an addition of 90 minutes; the employer owes additional compensation of one hour of pay at the scheduled rate plus payment to Maria for the additional time worked. The employer owes Maria $20 in additional compensation (1 hour of additional compensation at an hourly rate of $20 equates to $20 in additional compensation).

Net subtraction. Employer asks Maria to start work 30 minutes early at 9:30 AM and leave work two hours early at 2:00 PM. The net change is a subtraction of 90 minutes; the employer owes additional compensation of 45 minutes (1/2 x 90 minutes = 45 minutes) at the scheduled rate. The employer owes Maria $15 in additional compensation (45 minutes of additional compensation at an hourly rate of $20 is $15.)

Net addition (Grace Period). Employer asks Maria to start work 15 minutes early at 9:45 AM and stay 10 minutes late until 4:10 PM. The net change is an addition of 25 minutes; the employer owes additional compensation for 25 minutes in addition to paying Maria for the additional time worked. The employer owes Maria $8.34 in additional compensation (25 minutes of additional compensation at an hourly rate of $20 equates to $8.34 in additional compensation).

5. **Does a change in work location constitute a schedule change that requires additional compensation?**
   No, a change in location does not constitute a schedule change that requires additional compensation.

6. **Should additional compensation owed for a schedule change be included in the regular rate for purposes of calculating the overtime rate?**
   No. The Fair Labor Standards Act's implementing regulations are clear that analogous forms of additional compensation are not included in the regular rate calculation. *See* 29 CFR § 778.220 (reporting time pay not included in regular rate calculation); 778.221-.222 (call back and other similar payments not included in regular rate calculation). Washington state follows the same approach. *See* Wash. Dep't of Labor and Indus. Admin. Policy ES.A.8.1 (2014) at 3. Because the forms of additional compensation regulated by 29 CFR 778.220-.222 serve similar functions as additional compensation for subtractions, additions, and Right to Rest pay, OLS interprets the law to not require employers to include Secure Scheduling additional compensation in the regular rate calculation. OLS made this determination based on our interpretation of applicable law. This information does not constitute legal advice. Employers should contact competent wage and hour counsel for additional information or to obtain legal advice.

I. Compensation for Work Schedule Changes - Exceptions

1. **Are there any exceptions to the requirement to pay an employee additional compensation for schedule changes?**
   Yes. The law recognizes seven exceptions where an employer does not have to pay additional compensation for schedule changes:
   - When an employee requests the change and documents the request in writing (e.g., when an employee requests to leave work early to attend a concert);
   - When employees agree to swap shifts or coverage;
   - If an employee voluntarily accepts a schedule change in response to an employer's "mass communication" about additional hours that are available because another employee cannot work those scheduled hours;

- If an employee voluntarily accepts a schedule change in response to an employer's "in-person group communication" with two or more currently working employees about additional hours caused by unanticipated customer needs;
- When an employee accepts an offer of hours under the Access to Hours requirements;
- When an employer reduces an employee's hours due to discipline that is documented in writing; and
- When an employer is unable to begin or continue operations due to (1) threats to employees or property; (2) recommendation of public official; (3) public utilities failure; (4) natural disaster; (5) weather event; or (6) an event that would cause the employer to violate a law.

2. **<u>Employee-Requested Change Exception:</u> What constitutes an employee-requested change?** Employee-requested changes take a wide variety of forms. Put simply, an employee-requested change is a change initiated by the employee and which primarily benefits the employee.

   Some examples include, but are not limited to:
   - Requests due to emergencies (e.g., flat tire);
   - Major life events (e.g., childcare is unavailable);
   - Tardy arrivals;
   - Food service employee requests to stay past the scheduled work shift to close out a customer's bill and collect the tip;
   - Commissioned retail employee requests to stay past the scheduled work shift to close out a sale and collect a commission;
   - Requests to stay past the scheduled work shift or leave early; and
   - Requests to leave early for a reason covered by the Paid Sick and Safe Time Ordinance or other law that guarantees protected leave.

   An employee's agreement to an employer's request to work additional hours does not constitute an employee-requested change. Such a request is initiated by the employer and is primarily for the employer's benefit. Likewise, instances where an employee stays past the scheduled work shift to close up a restaurant because there is no one else there, it is primarily for the employer's benefit and is not an employee-requested change.

   Example 1. Jorge asks his manager if he can pick up some extra hours. His employer responds "Sure, someone just called out—can you stay another three hours past your shift tonight?" Jorge agrees. **Is additional compensation owed?**

   No. Jorge has initiated this request for his own benefit. This is an employee-requested change.

Example 2. An employee calls out sick. The manager calls all employees to find replacement coverage for a Wednesday shift from 8 AM to 2 PM. When she reaches Joaquin, she tells him "I'm reaching out to see if you want to work the Wednesday afternoon shift. It's up to you. Do you think you'd like to volunteer?" Joaquin tells her "Sure, I'll volunteer." **Is additional compensation owed?**

Yes. Even though Joaquin "volunteered" to take the shift, the request was initiated by the employer. It is therefore an employer-requested change requiring additional compensation. The employer should pay Joaquin one hour of additional pay in addition to the six hours the employee actually works on Wednesday.

Example 3. Bob works at a restaurant near the stadiums in SODO. When the Sounders make the playoffs, his manager asks him to pick up two extra shifts. Bob agrees. **Is additional compensation owed?**

> **Yes**. The employer is requesting an employee to work additional shifts. Because the employer initiated the interaction, it qualifies as an employer-requested change requiring additional compensation.

Example 4. Dreshna works at a hardware store and is scheduled to end her shift at 4:00 PM. At 3:55, a customer approaches her with a long list of questions about appliances. Dreshna helps her with her issues and eventually clocks out at 4:20 PM. **Is additional compensation owed?**

> **It Depends**. If the employer has a written, well-publicized policy that employees are not supposed to stay past the end of the shift without manager approval, then Dreshna's action constitutes an employee-requested change, and no additional compensation is owed. In the absence of such policy, however, working past the scheduled end-time to help a customer is an activity which primarily benefits the employer and thus is an employer-requested change.

3. **Employee-Requested Change Exception: If an employee cannot work the original schedule due to an injury or disability, is the employer required to pay additional compensation?**
   No. Such a schedule change is properly viewed as an employee-requested change, and therefore no additional compensation is owed.

4. **Employee-Requested Change Exception: Does an employer practice of informing employees (e.g., through a policy or posted notice) to contact managers if they want to work additional hours trigger additional compensation requirements?**
   It depends on the policy specifics. Employers must ensure that employees understand their Secure Scheduling rights. The policy should inform employees of the following:
   - Scheduling changes/requests that incur additional compensation (e.g., employer requests);
   - Scheduling changes/requests that do not incur additional compensation (e.g., employee requests); and
   - The existence of a 15-minute grace period before additional compensation is owed.

   In short, employees must be able to make informed decisions about whether to work their scheduled shift or stay later and whether or not they will receive additional compensation for staying late.

   Employers may use such lists as a starting point when asking employees to alter their schedule but must pay additional compensation if the schedule change request is employer-initiated and no other exceptions apply.

5. **Employee-Requested Change Exception: Are employers required to retain records of employee-requested changes?**
   Yes. Employers must retain records of employee-requested schedule changes. Such records can take a variety of forms and OLS does not mandate a particular template. For example, a written request from an employee, an employer-required signed form for employee-requested changes, a written notation on a printed schedule, or a software solution that tracks employee requests on a digital schedule.

6. **<u>Employee-Requested Change Exception</u>: If an employee works past the scheduled end of a closing shift without permission and as a result has less than 10 hours between her closing and opening shifts, must the employer pay Right to Rest pay?**
   Yes. Employers must pay time and a half for closing and opening shifts separated by less than a ten-hour rest period regardless of the reason for the short rest period. The Right to Rest requirement is a health and safety regulation.

7. **<u>Shift-Swaps Exception:</u> Are employers required to allow employees to swap shifts?**
   No. Employers may have a policy that all shift swaps must be pre-approved by a manager.

8. **<u>Shift-Swaps Exception:</u> Can employers facilitate shift swaps?**
   Yes. Employers are permitted to assist employees in identifying other employees for shift swaps.

9. **<u>Shift-Swaps Exception:</u> Do shift-swaps need to be for an identical number of hours to qualify for the exception to additional compensation requirements?**
   No. If shift-swaps are not for an identical number of hours, the additional hours can simply be viewed as an employee-requested change.

   Example: Mary swaps her two-hour shift for Moira's four-hour shift. Mary is now working two more hours than originally scheduled and Moira is working two fewer hours than originally scheduled. This additional/subtraction of hours falls under the exception for employee-requested changes and the rest of the change falls under exception for shift-swaps.

10. **<u>Mass Communication Exception</u>: When can employers use a mass communication to avoid the requirement to pay additional compensation for schedule changes?**
    The exception applies where several conditions are met:
    - An employer needs additional staffing when an employee is unable to work a scheduled shift (e.g., absence due to PSST, childcare issues, etc.).;
    - The employer sends a written communication (e.g., email, text, app-based message, etc.) to two or more employees; and
    - The employer asks if anyone wants to cover the shift and work additional hours.

    If an employee volunteers, the employer is not required to pay additional compensation for the addition of hours.

11. **<u>Mass Communication Exception:</u> What does the mass communication need to say?**
    The mass communication must convey three things:
    - Describe the message as "a mass communication";
    - Accepting the additional hours is voluntary and the employee has the right to decline such hours; and
    - Accepting the hours does not require the employer to pay additional compensation.

    Example 1: After an employee calls out sick, the manager calls all employees to find replacement coverage. Maria picks-up the shift. **Is additional compensation owed?**

    Yes. Because the manager contacted the employees individually, the employer must pay one hour of additional compensation for adding hours. If the manager had sent a mass communication (with the required information in question 11 above) to all employees and Maria took the shift, additional compensation would not have applied.

Example 2: Antoine calls the manager to tell her that she has a plumbing leak and needs to miss her shift that day. The manager sends a message to all employees asking if anyone would like to pick up the shift, following the requirements in question 11 above. Ahsa agrees and picks up the shift. **Is additional compensation owed?**

> **No.** This example contains two schedule changes—Antoine's subtraction of hours and Ahsa's addition—but neither require additional compensation. Antoine's request falls under the employee-requested change exception and Ahsa's change is covered by the mass communication exception.

12. **<u>Mass Communication Exception:</u> Does the exception apply if an employer wants to fill an "open shift" on the schedule?**
    No. The mass communication exception only applies where an employee is not able to work a scheduled shift. Because an open shift by definition has no scheduled employee, the mass communication exception cannot be used to avoid the additional compensation requirements.

Example 1. The manager adds an "open shift" on the posted schedule and asks employees to sign-up if they are interested. One employee agrees to work the additional shift. **Is additional compensation owed?**

> **Yes**. The employer is requesting that employees work additional shifts. Because the employer initiated the interaction, it qualifies as an employer-requested change requiring additional compensation. Additionally, the mass communication exception does not apply as the "open shift" did not result from another employee's inability to work scheduled hours.

13. **<u>Mass Communication Exception:</u> Are employers required to use a specific template?**
    No. There is no OLS-authorized or approved mass communication template. Employers are free to design a mass communication template that meets the needs of the particular business. Below is one example of a compliant mass communication:

Mass Communication
Additional shift is available on Tue, 12-6 PM. Contact your manager if you are interested.
Accepting hours is voluntary; you have the right to decline.
Accepting hours will not earn additional compensation for schedule changes.

14. **<u>Mass Communication Exception:</u> Are employers required to send the mass communication to all employees who work at the affected job site?**
    No. Employers may limit the recipients to those who are qualified to perform the job; would not qualify for overtime if they accept the additional hours; or who meet the requirements of the employer's customary policy for assigning additional shifts.

15. **<u>Mass Communication Exception:</u> If an employer cannot find replacement coverage for the actual hours that a scheduled employee was not able to work, can the employer fill a later or earlier shift through the mass communication exception?**
    No. The mass communication exception can only be used for the actual hours that a scheduled employee was not able to work.

16. **<u>Mass Communication Exception:</u> Do employers need to retain records of mass communications?**
    Yes. Employers must document and retain records of mass communications.

17. **<u>Mass Communications Exception:</u> Are there technology solutions that can manage mass communications?**
    Yes. Several software companies make solutions that allow for mass communications, including tracking and retaining messages. However, OLS is not an expert in the technology solutions available and cannot recommend specific technology solutions.
18. **<u>Mass Communications Exception:</u> Does the mass communication exception apply when an employer needs to send an employee home early?**
    No. The exception applies only when an employer needs to add additional hours.

19. **<u>In-person Group Communication Exception:</u> When does the in-person group communication exception apply?**
    The exception applies where several conditions are met:
    - An employer needs additional staffing due to unanticipated customer needs;
    - The employer asks two or more *currently working* employees to accept an additional shift; and
    - The additional hours are consecutive to the employees' current work shifts.

20. **<u>In-person Group Communication Exception:</u> What does "unanticipated customer needs" mean?**
    Unanticipated customer needs can encompass several situations. Examples include: an increase in customer traffic that requires additional staffing or a large party making a late reservation at a restaurant.

21. **<u>In-person Group Communication Exception:</u> Are there any requirements for what the employer must say during the in-person group communication?**
    Yes. Similar to the mass communication, the employer must convey the following two things:
    1. Accepting the additional hours is voluntary and the employee has the right to decline; and
    2. Accepting the hours does not require the employer to pay additional compensation under the Secure Scheduling Ordinance.

22. **<u>In-person Group Communication Exception:</u> Does the in-person group communication exception apply when an employer is filling a shift for a scheduled employee that cannot work?**
    No. The exception can only be used for unanticipated customer needs, not for a failure of an employee to appear at their scheduled shift. But an employer could send a mass communication to try to fill the shift.

23. **<u>In-person Group Communication Exception:</u> Does the in-person group communication exception apply when an employer is filling an open shift?**
    No. The exception can only be used for unanticipated customer needs. An open shift does not satisfy this requirement as the employer anticipated the need ahead of time by establishing the need to fill the shift.

24. **<u>In-person Group Communications Exception:</u> Does the in-person group communication exception apply when an employer needs to send an employee home early?**
    No. The exception applies only when an employer needs to add additional hours.

25. **<u>In-Person Group Communications Exception:</u> How many employees are required to have a "group"?**
    A "group" is two or more people.

26. **<u>In-person Group Communications Exception:</u> If an employer walks down a line of cashiers and asks each one if they wish to stay late, does the in-person group communication exception apply?**
    No. The exception seeks to create a vehicle for employers to extend shifts while preventing potentially coercive requests to stay late that are inherent in a one-on-one manager-employee conversation. Accordingly, the exception applies only to group conversations; because the employer is speaking one-on-one with employees, the exception does not apply.

27. **<u>In-person Group Communications Exception:</u> Do employers need to retain records of in-person group communications?**
    No. The ordinance does not require retention of records of in-person group communications. However, employers may wish to track notes on use of this exception for internal record-keeping purposes.

28. **<u>Access to Hours Exception:</u> If an employer offers hours of work to an employee under Access to Hours requirements with less than 14 days' notice, is the employer required to pay additional compensation for a schedule change?**
    No. If an employee accepts additional hours of work under Access to Hours requirements, the employer is not required to pay additional compensation for the schedule change.

29. **<u>Discipline Exception:</u> If an employer reduces an employee's hours due to disciplinary reasons with less than 14 days' notice, is the employer required to pay additional compensation for a schedule change?**
    No. Employers are not required to pay additional compensation when a schedule change is for disciplinary reasons. Employers must document that the reason for the schedule change is due to disciplinary reasons.

30. **<u>Discipline Exception:</u> If an employer terminates an employee for disciplinary reasons is the employer required to pay additional compensation for a schedule change?**
    No. Employers are not required to pay additional compensation when a schedule change is for disciplinary reasons. Termination for disciplinary reasons falls under this same exception to the additional compensation requirements. Employers must document that the reason for the schedule change is due to disciplinary reasons.

31. **<u>Operations Cannot Begin or Continue Exception:</u> When does the "operations cannot begin or continue" exception apply?**
    An employer is not required to pay additional compensation for a schedule change where the employer cannot open the worksite or must close the worksite early due to any of the following reasons:
    - Threats to employees or property;
    - The recommendation of a public official;

- Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system;
- Natural disaster;
- Weather events; or
- Events that would cause the employer to violate a legal requirement.

32. <u>Operations Cannot Begin or Continue Exception:</u> What does "operations cannot begin or continue" mean?

It is impossible or dangerous to open or continue operations.

33. <u>Operations Cannot Begin or Continue Exception:</u> What is a public official?

A public official is a government employee that is granted the authority to close a place of business or school. This can include local, state, or federal authorities and public health officials (e.g., Seattle – King County Public Health, the Center for Disease Control, or the State Department of Health, Governor of Washington, or the Mayor of Seattle).

34. <u>Operations Cannot Begin or Continue Exception:</u> What is a recommendation that operations not begin or continue?

There is not a hard and fast definition, but in general the recommendation must be specific to business operations or so closely linked to the nature of the business that it entails a recommendation for the business not to begin operations or to cease operations.

35. <u>Operations Cannot Begin or Continue Exception:</u> If an employer closes the customer-facing part of the business, but keeps other functions open (e.g., deliveries, stocking, etc.), does the "operations cannot begin or continue" exception apply?

No. The exception applies when it is impossible or dangerous to open or continue operations. If the employer can keep some parts of the business open, that is a strong indication that operations can, in fact, begin or continue.

36. <u>Operations Cannot Begin or Continue Exception:</u> If an employer needs to close some locations in Seattle, but can keep others open, does the "operations cannot begin or continue" exception apply for the locations the employer needs to close?

Yes. The exception applies on a location-by-location basis. If a single location cannot open or continue operations, the employer is not required to pay additional compensation for schedule changes to employees at that location.

37. <u>Operations Cannot Begin or Continue Exception:</u> If an employer closes the business due to fire damage or other severe property damage, does the "operations cannot begin or continue" exception apply?

Yes. Severe damage poses a threat to employees or property and any resultant scheduling change does not require payment of additional compensation.

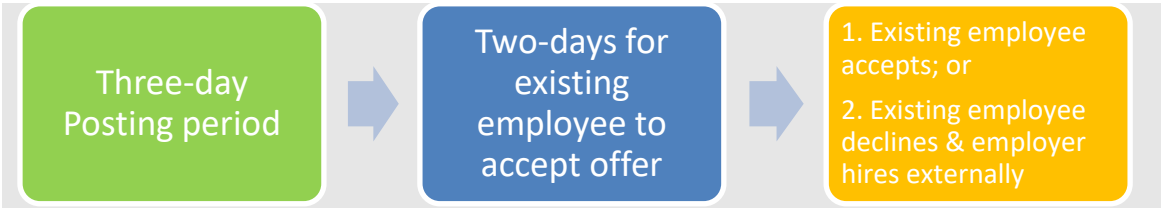
38. <u>Operations Cannot Begin or Continue Exception:</u> If a business is dependent on sporting-event schedules (e.g., concession stand in a stadium) and a game is cancelled, does the "operations cannot begin or continue" exception apply?

No. The exception only applies for the specific circumstances listed above. The permitted reasons all involve external forces making it extremely difficult or impossible to operate the business (e.g., threats, orders of public officials, failure of utilities, natural disasters and weather). The cancellation of a game is not analogous to any of the identified exceptions.

J. Access to Hours for Existing Employees

1. **<u>Basic Requirements:</u> What are the basic "Access to Hours" requirements of the ordinance?**
   Before hiring employees from an external applicant pool, including subcontractors and employees from a temporary staffing provider, the employer must first offer the additional hours to internal employees.

2. **<u>Basic Requirements:</u> What are the requirements regarding offering additional hours to existing employees?**
   Employers must post notice of the additional hours for three days. The employer must offer the hours to any existing, qualified employee who responds to the notice. The employee has two days to decide whether to accept the hours. The process is illustrated below:



3. **<u>Basic Requirements:</u> What if no employee voices an interest in the offer of additional hours or declines the offer of additional hours?**
   If no employee states an interest in the notice of additional hours at the end of the three-day notice period, an employer may proceed with external hiring. Similarly, if an employee does voice an interest, but then declines the offer during the two-day acceptance window, the employer may proceed with external hiring.

4. **<u>Basic Requirements:</u> When an employee quits, can the employer temporarily staff the vacated hours through schedule changes (with payment of required additional compensation for schedule changes) until the position is permanently filled (either through external or internal candidates)?**
   Yes. Access to Hours requirements only apply when an employer hires externally. Employers are always free to staff vacated shifts through rearranging of existing employee schedules. Employers should ensure that employees are provided additional compensation for schedule changes made with less than 14 days' advance notice.

5 **<u>Notice Requirements:</u> What information must be included in the notice of additional hours?**
   The notice of additional hours must include the following information:
   - **a.** Description and title of the position;
   - **b.** Required qualifications for the position;
   - **c.** Total hours of work being offered;
   - **d.** Schedule of available work shifts;
   - **e.** Whether the available work shifts will occur at the same time each week; and
   - **f.** Length of time the employer anticipates requiring coverage of the additional hours.

   Employers are not required to provide specific information about items (c)-(d). For example, employers may state, "Hours and schedule dependent upon the employee's availability."

6. **<u>Notice Requirements:</u> Are employers required to use an OLS Access to Hours notice template?**
   No. There is no OLS-mandated Access to Hours notice template. Employers are free to design an

Access to Hours notice template that meets the needs of the particular business. OLS does provide an optional Access to Hours template on the OLS Resource Webpages.

7. **Notice Requirements: Do employers have to wait until the end of the three-day notice period to post the job externally? What about reviewing resumes and conducting interviews?**
   No. The access to hours requirements do not restrict pre-hire recruitment activities. An employer is free to post notice of positions on external job boards; collect and review resumes or job applications; and conduct interviews. The employer must wait until after the three-day notice period (or an additional two days if an internal candidate voices an interest) to *hire* an external candidate.

8. **Notice Requirements: Are there any situations where an employer is *not* required to post notice of additional hours?**
   Yes. An employer is permitted to forego posting notice of the additional hours of work in the following circumstances:
   - All employees currently work 40 hours a week and accepting the additional hours would therefore put the employees into overtime; and
   - All employees are already scheduled to work during the hours the employer seeks to fill.

9. **Notice Requirements: Are employers required to provide notice of additional hours of work to workers who are employed by a temporary staffing agency?**
   No. If the workers are on the payroll of the temporary staffing agency and not the covered employer, the covered employer is not required to include the temporary staffing employees in the Access to Hours notice.

10. **Notice Requirements: Is an employer required to provide notice of additional hours of work when hiring for a manager position?**
    It depends. Employers are only required to post notice of additional hours of work when hiring for a position that is covered by the Secure Scheduling Ordinance. Some types of employees are excepted from the definition of "employee" under the law. Please see Seattle Municipal Code 12A.28.200.B for a list of currently excepted positions. If the manager position falls into one of these exceptions, the employer is not required to post notice of additional hours.

11. **Notice Requirements – Exceptions**: When can an employer provide less than three days' notice?
    An employer may provide less than three days' notice in several situations:
    - If all employees at the work site state in writing that they are not interested in taking the additional hours;
    - If all employees on an "Access to Hours list" state in writing that they are not interested in taking additional hours; and
    - If the employer uses an approved "diversity hiring program" to hire employees.

12. **Notice Requirements – Exceptions: What is an "Access to Hours list"?**
    An "Access to Hours list" is a list of employees who must be provided notice of additional hours of work; employees may opt-out and opt-in to the list. Employers may limit the provision of three-day notice of additional hours to the employees on the list rather than providing notice to the entire workforce. In essence, the list is an optional program that employers may use to facilitate compliance with the Access to Hours requirements.

    Employers may establish different Access to Hours lists for different positions (e.g., a list for

cashiers, stockers, and customer service representatives). Upon hire, employers must place employees on every Access to Hours list, but employees may subsequently opt-out of lists in which the employee is not interested.

When providing notice of additional hours of work for a particular position, the employer is only required to provide notice to the employees on the applicable list.

Once the employer receives notice declining additional hours of work from all employees on a particular list, the employer may immediately proceed with external hiring. Effectively, the Access to Hours list is a tool for managers at large worksites to efficiently obtain written statements from current employees stating that they are not interested in taking additional hours of work.

> ***Example*:** Jamal begins working as a stocker at Acme Home Improvement, a large retail employer. Acme has Access to Hours lists for cashiers, stockers, and warehouse employees. Acme places Jamal on all of the Access to Hours lists. But since Jamal is only interested in picking up additional hours as a stocker, he opts out of the cashier and warehouse lists.
>
> Acme posts notice of additional hours of work for warehouse employees. Within two days of the notice, all 15 employees on the warehouse Access to Hours list state in writing that they are not interested in taking the additional hours. At that point, Acme can proceed to hire an external candidate.

13. **Notice Requirements – Exceptions: Can an employer explain the different lists to an employee upon hire? What about asking the employee whether they want to remain on a particular list?**
Yes. Employers may explain how the different lists function and even encourage employees to opt-out of lists they are not interested in, so long as the employer does not unduly pressure the employees. Similarly, employers may ask employees whether they wish to remain on particular lists so long as there is no undue pressure.

14. **Notice Requirements – Exceptions: What is a "diversity hiring program"?**
A "diversity hiring program" is an *optional* program that employers may use to facilitate compliance with the Access to Hours provisions. Employers may partner with approved governmental entities or non-profit organizations that promote diversity, supported employment, or young adult hiring programs. Hiring through such entities (up to 15% of covered employees per year) is not subject to the Access to Hours notice requirements. Government and non-profit partners must complete an application process with the Labor Standards Advisory Commission. Employers must file notice of any hiring program with OLS. For more information contact OLS.

15. **Offering Hours of Work: Is an employer required to offer the additional hours to any employee who is interested?**
No. An employer is permitted to decline to offer the hours to employees in several circumstances:
    - If working the additional hours would put the employee into overtime;
    - If accepting the additional hours would require the employer to pay additional compensation under the Right to Rest provision;
    - If the employee is not "qualified with the skills and experience to perform the work;" and
    - If the employee is not available to work the hours the employer seeks to fill (e.g., employee is already scheduled to work during such hours).

16. **<u>Offering Hours of Work:</u> If an employer has classified some employees as "part-time," is the employer still required to offer part-time employees additional hours of work?**
Yes. As long as the employee is qualified and available, and that accepting the hours will not put the employee into overtime, the employer must offer the employee the additional hours of work. There is no exception to Access to Hours based on the employer's desire to maintain employees in a part time status.

17. **<u>Offering Hours of Work:</u> Can employers require that employees accept all hours being offered?**
No. Employers may require that employees accept entire shifts, but not multiple shifts. For example, assume that an employer offers three additional shifts from 8 AM to 4 PM on Mondays, Wednesdays, and Fridays. The employer may require that any employee accepting the offer of additional hours take an entire shift (e.g., Monday, Wednesday or Friday), but may not require that the employee take all three shifts.

18. **<u>Offering Hours of Work:</u> Is an employer required to offer a job to employees in other positions?**
Yes. As long as the employee is qualified to perform the work, the employer must offer additional hours to an employee who works in a different position.

K. Notice and Posting

1. **What are the notice and posting requirements of the ordinance?**
Employers must display an 8.5" x 11" **OLS Secure Scheduling Poster** in a conspicuous and accessible location where any of their employees work. Employers must display the poster in English and in the primary language(s) of the employees at the particular workplace.

   OLS is responsible for creating the poster and translating it into different languages.

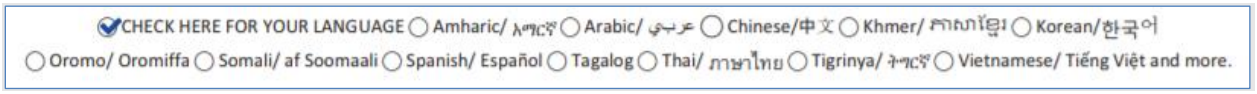
2. **How do employers comply with the workplace poster requirement if employees telecommute or work off-site with no central work location?**
If display of the poster is not feasible, including situations when the employee works remotely or does not have a regular workplace, employers may provide the poster on an individual basis in an employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.

3. **Where can employers get the workplace poster?**
The Secure Scheduling poster can be downloaded in English and other languages on our Resources and Language Access Webpage. Currently, the following languages are available: Arabic, Simplified Chinese, French, Khmer, Korean, Oromo, Somali, Spanish, Tagalog, Thai, Tigrigna, and Vietnamese. OLS is actively working to translate the poster and other materials into additional languages.

4. **What other notices must be provided in employees' primary language?**
Employers must provide the following notices in any language that the employer knows or has reason to know is the primary language of any employee at the workplace:
   - Good Faith Estimate;
   - Advance Notice of Work Schedule;
   - Notice for Access to Hours;
   - Secure Scheduling Poster; and
   - Notice of investigation (when an investigation is initiated).

5. **What if the Secure Scheduling Poster or other notice is not available in the language I need?**
   Employers are not required to provide notices in languages other than English until OLS has created and posted the necessary translation on the OLS website. Employers are encouraged to notify OLS of the need for additional translations.

6. **I am an employer and I don't know the primary languages of my employees. What should I do?**
   The Secure Scheduling Poster contains a check box that employees can mark to request materials in their primary language. Employers can coach employees to review the poster and mark the appropriate language. Below is an image of the check box portion of the Secure Scheduling Poster.



L. Employer Recordkeeping Requirements

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

2. **What information are employers required to retain?**
   Employers must retain the following records:
   - **a.** Good faith estimates;
   - **b.** Right to request–Documentation of employer's bona fide reason for denying an employee's request for schedule preferences related to major life event;
   - **c.** Work schedules;
   - **d.** Additional compensation for work schedule changes—Payroll records showing additional pay provided to each employee;
   - **e.** Exceptions to pay for work schedule changes, including:
     - Copies of mass communications;
     - Documentation of employee-requested changes; and
     - Documentation of employee discipline;
   - **f.** Access to hours—Notices for additional hours of work.
   - **g.** Exceptions to access to hours, including:
     - Written confirmation from employees—Confirmation from all employees, or employees on the access to hours list, that they are not interested in accepting additional hours of work; and
     - Access to hours list(s)–Records of employees who have opted out of receiving written notice of additional hours of work.

3. **What form must records of employee-requested changes take? Are manager notes sufficient?**
   Records of employee-requested changes can take a variety of forms and OLS does not mandate a particular template. For example, employers could require a signed form for employee-requested changes, a written notation on a printed schedule, a software solution that tracks employee requests on a digital schedule, or a manager's notes.

4. **How should Right to Rest pay and additional compensation for schedule changes be listed on an employee's wage statement? Must they be itemized or can they be included as part of regular wages or overtime?**
   The Wage Theft Ordinance, Seattle Municipal Code 14.20, requires employers to separately itemize an employee's rate or rates of pay as well as the pay basis. Employers should therefore separately list Right to Rest pay and additional compensation for schedule changes.

M. Retaliation Prohibited

1. **Does the ordinance prohibit retaliation?**
   Yes. Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against employees who assert their rights to Secure Scheduling in good faith. These rights include but are not limited to:
   - Inquiring about benefits or rights protected by the Secure Scheduling Ordinance (e.g., Informing employer about deviation from GFE, requesting a schedule change, requesting to work hours posted under Access to Hours provisions);
   - Declining to work a shift not scheduled with 14 days' advance notice;
   - Informing an employer, union or legal counsel about alleged Secure Scheduling violations;
   - Filing a complaint about alleged Secure Scheduling violations with OLS;
   - Participating in an investigation of alleged Secure Scheduling violations; and
   - Informing other employees of their Secure Scheduling rights.

2. **Can an employer discipline an employee for declining to work a shift not scheduled with 14 days' advance notice?**
   No, employees have a protected right not to work shifts that are not included on the posted schedule with at least 14 days' advance notice. Therefore, any employer discipline or other adverse action tied to an employee declining to work such a shift would be prohibited retaliation. In the event that the employer has not posted a schedule at all, the employee likewise has a right not to work shifts that are added with less than 14 days' notice.

   Employers *are* permitted to discipline employees for declining to work a shift that is scheduled more than 14 days in advance.

3. **Can an employer discipline an employee for leaving a shift early to go to work at another job?**
   Yes. Although scheduling requests based on other jobs qualify as major life events under the Right to Request provisions of the ordinance, such requests are only protected if made prior to the posting of the work schedule. If an employee leaves a shift with no advance notice to work at another job, that act is not protected under the ordinance. The employer is free to impose appropriate discipline for shift abandonment.

N. Waiver

1. **Can individuals waive their Secure Scheduling rights?**
   No. Individual employees cannot waive their rights under this law.

2. May unions waive Secure Scheduling requirements?

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 an alternative structure for secure scheduling that meets the public policy goals of the Secure Scheduling Ordinance.