

MINIMUM WAGE RULES

For Tacoma Municipal Code 18.20

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RULE 1.0

WORKING IN THE CITY

In General.

1.1 The Minimum Wage Ordinance (“Ordinance” shall mean Chapter 18.20, “Minimum Wage” of the Tacoma Municipal Code) applies to all Employees who work within the geographical boundaries of the City of Tacoma (the “City” or “Tacoma”) for more than 80 hours in a Calendar Year, regardless of whether their Employer is physically located in the City or not.

1.2 When there is a reasonable expectation that Employees will work 80 hours in a Calendar Year, Employees shall be immediately covered by the Ordinance. Employees who work either infrequently or irregularly shall become eligible as soon as there is a reasonable expectation that they will work 80 hours within Tacoma in a Calendar Year.

Calendar Year.

1.3 “Calendar Year” shall be defined consistently with TMC 18.10.010.C, as it exists or hereinafter amended. While TMC 18.10.010.C currently provides various options for the definition of a Calendar Year, the Employer shall declare and consistently use one option to serve as the Calendar Year for all Employees. The definition may not be changed to prevent one or more Employees from being covered by TMC 18.20.

Work outside the City.

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

Telecommuting.

1.5 An Employee who lives in the City and performs work for an Employer from home, including telecommuting, is covered by the Ordinance for all hours that they perform while physically located in the City, even if the Employer is physically located outside the City. However, the Ordinance and this rule apply only if the Employee has or will perform more than 80 hours of work in Tacoma within a Calendar Year.

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

Traveling Through the City.

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

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

1.9 An Employer may make a reasonable estimate of an Employee’s time spent working in the City for purposes of determining Employee eligibility and rate of pay according to the Minimum Wage Ordinance, provided that the Employer consistently uses one option to serve as the tracking mechanism for all Employees. The tracking method may not be utilized as a mechanism to prevent eligibility or reduce the number of hours that one or more Employees are covered by TMC 18.20. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, delivery addresses and estimated travel times, or historical averages. Employee logs may also be used if the Employer provides the training and tools necessary for employee-maintained logs. The Employer retains responsibility for ensuring that hours are accurately tracked.

Professional Development or Training Classes in the City.

1.10 An Employee in the City solely to attend a convention, conference, training class, educational class, or similar is not covered by the Ordinance.

**RULE 2.0
DETERMINING HOURLY WAGE**

Tips, Gratuities, & Travel Allowances.

2.1 Consistent with state law, tips, gratuities, vacation pay, holiday pay, and travel allowances are not considered when computing the Minimum Wage and may not be credited as part of the Minimum Wage. (RCW 49.46.160, WAC 296-126-022, as currently enacted or hereinafter amended)

Commissions & Service Charges.

2.2 Commissions will be credited to the minimum Wage in accordance with state law. See State of Washington Department of Labor & Industries Administrative Policy ES.A.3 as it exists or hereinafter amended: “For employees paid on commission or piecework basis, wholly or in part, other than those employed in bona fide outside sales positions, the commission or piecework earnings earned in each workweek are credited toward the total Wage for the pay period. The total Wage for that period is determined by dividing the total earnings by the total hours worked; the result must be at least the applicable minimum wage for each hour worked”

2.3 "Service Charge" means a separately designated, automatic amount collected by Employers from customers that is for services provided by Employees, or is described in such a way that customers might reasonably believe that the amounts are for such services. Service charges are not Tips.

2.4 Service Charges will be considered in a manner consistent with State of Washington Department of Labor & Industries Administrative Policy ES.A.10.1 (which states that service charges passed on to Employees may be considered commission), any successor or amended policy, or as otherwise provided by state law.

2.5 An Employer who imposes an automatic service charge related to food, beverages, entertainment, or portage provided to a customer must disclose to the customer the percentage of the automatic service charge that is paid or is payable directly to the Employee or Employees serving the customer in accordance with state law (RCW 49.46.160 as currently enacted or hereinafter amended) on "an itemized receipt and in any menu provided to the customer."

Outside Salesperson.

2.6 The Wages for "outside salesperson" as defined by Washington State Labor & Industries (WAC 296-128-540, as currently enacted or hereinafter amended) will be determined as outlined under state law.

Bonuses.

2.7 Discretionary bonus payments are in addition to hourly, salary, commission, or piece rate payments. For example, a discretionary bonus can be given by a business to workers for excellent work, outstanding production, or a holiday bonus. It is typically a reward for good work, but there is no agreement between the Employer and workers that they will receive a bonus. Consistent with state law, this type of bonus is not considered to be part of the worker's Wages.

2.8 Non-discretionary bonus payments are paid consistently under an agreement between the Employer and workers. These bonuses are typically paid to the workers every pay day, every quarter, semi-yearly, or yearly; in accordance with an agreement for bonus payments; or if the business led them to believe they would receive a bonus. These types of bonus payments are considered part of the worker's Wages under state law and the Minimum Wage Ordinance.

**RULE 3.0
EXEMPTIONS**

In General.

3.1 Employers that apply for and receive special certificates under state law (RCW 49.46.060) are only required to pay the rate specified on the state certificate for applicable positions such as disabled workers, learners, student learners, apprentices, student workers, and minors. Wages for Employees under 16 years of age must comply with state law.

**RULE 4.0
INDEPENDENT CONTRACTORS**

In General.

4.1 Bona fide independent contractors are exempt from the Ordinance. However, an Employer cannot avoid compliance with the Ordinance by referring to a worker as an "independent contractor" when an

Employee/Employer relationship exists in actuality. For investigations related to TMC Title 18, the Economic Realities Factors (or Economic Realities Test) as defined by the US Department of Labor (US Department of Labor Administrator’s Interpretation No. 2015-1), or successor classification tool, will be utilized.

**RULE 5.0
EMPLOYER RECORDS REQUIREMENTS**

In General.

5.1 In addition to records documenting hours worked by Employees within the City of Tacoma and the Wages paid to such Employees (TMC 18.20.110.B), Employers shall maintain the payroll records required by state law, including but not limited to:

- Employee Name
- Hours worked on a daily and weekly basis
- Rate or rates of pay
- Total Wages earned, deductions, and net pay for the pay period

**RULE 6.0
CERTIFICATION OF COMPLIANCE & NOTICING**

Certification of Compliance.

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

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

Noticing.

6.3 Employers are required to provide notice as outlined in TMC 18.20.100 to Employees in the Employees’ primary language when the City of Tacoma has created a notice in that language and made it available to Employers electronically or in print.

**RULE 7.0
ADMINISTRATION**

In General.

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

Recourse is Time Limited.

7.2 The Director may not investigate any alleged violation of a Wage payment requirement that occurred more than three years before the date that the Employee filed the Wage complaint. Violations are considered to have occurred on the date the Wages are due, not earned.

Amending a Charge.

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

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

Withdrawing a Charge.

7.4 A Charging Party may request, in writing, that their charges be withdrawn at any time prior to the issuance of a determination by written notice. Upon receipt of the withdrawal notice, the City may make inquiries to ascertain whether the Charging Party gave the notice voluntarily and with an understanding of the consequences. Unless the City determines that the request to withdrawal is the result of coercion or misinformation, the City will terminate its action on the charge and notify the Charging Party and the respondent that the charge has been withdrawn. A Charging Party that withdraws a charge with benefits, or upon receipt of desired benefits from the respondent, may not file another charge that alleges the same facts and violation as the withdrawn charge. A Charging Party who withdraws the charge without benefits may file another charge that alleges the same facts and violation as the withdrawn charge, within the timeframe provided in these rules.

Access to Records.

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

7.6 Records and information provided by one Party may be disclosed to the other Party if, in the judgement of the Director, such disclosure would promote the effective enforcement of the Ordinance unless prohibited by law.

Worker Documentation.

7.7 When investigating a complaint, the City will not seek information on whether or not a worker has provided documentation showing that they are qualified to work in the United States.

Fact Finding & Settlement Conferences.

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

Findings of Fact/Standard of Proof.

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

Cases Under Investigation by Other Authorities.

7.10 The City may, in its discretion, choose not to investigate complaints which have been filed with and/or investigated by Washington State Labor & Industries or which are a part of any active litigation.

RULE 8.0
REQUEST FOR ADMINISTRATIVE REVIEW

In General.

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

Request for Administrative Review.

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

Decision of Director.

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

Appeals of Director's Decision.

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

RULE 9.0
STATE ENFORCEMENT

In General.

9.1 In the case of enforcement by Washington State Labor & Industries, investigations will be conducted as violations of state law (RCW 49.48.083, RCW 49.52.050(2)) and state enforcement practices, penalties, administrative review, and appeal processes will apply.