

# City of Tacoma Paid Leave Ordinance & Draft Rules

June 25, 2015

# Overview

- › Paid Leave Ordinance passed on January 27, 2015
- › Ensures all persons working in Tacoma can earn paid leave when needed to take temporary time off from work
  - To care for their own or their family members' health
  - To take care of their own or their family members' safety needs resulting from domestic violence, sexual assault or stalking
- › Not able to change the Ordinance, but will note your suggestions
- › Draft Rules must be consistent with the Ordinance, but can be shaped by your feedback

# The Basics of the Ordinance

- › Begins February 1, 2016
- › All Employees who perform more than 80 hours of work in the City of Tacoma are covered by the Paid Leave Ordinance
- › Accrual: Employees earn 1 hour of leave for every 40 worked within the City, up to 24 hours within a Calendar Year
- › Employees may use Paid Leave 180 days after start of employment
- › Carry Over – Employees may carry forward up to 24 hours of unused Paid Leave into the next year
  - Use limited to maximum of 40 hours per year

# Employer Policy Considerations

- › The Ordinance purposely provides Employers with flexibility
- › Employers may consider:
  - › Donation of Paid Leave
  - › Front-loading / Loan of Paid Leave
  - › Noticing Requirement Options
  - › Shift Trading, Extra Shifts
  - › Minimum Use Policy - Increment of Use
    - 1 hour increments? Smaller? Larger?
  - › Premium Pay Program (with Finance Director approval)
  - › More Generous Policy

# Rule 1 – Working in the City

- › Clarifies who is covered under Tacoma's Paid Leave Ordinance
  - Applies to all Employees who perform more than 80 hours of work in the City of Tacoma. This includes Employees who:
    - Occasionally work in Tacoma who exceed the 80 hour annual threshold
    - Telecommute from within Tacoma for their job
    - Make deliveries or sales stops within Tacoma
  - Does not apply to workers who:
    - Do not work within Tacoma city limits
    - Do not perform more than 80 hours of work per year within Tacoma
    - Travel through Tacoma but do not make stops for work purposes (e.g. stopping for a meal, changing a tire, etc.)

# Rule 2 – Employer Attendance Policies

- › Employers can take reasonable measures to verify/document an Employee's use of Paid Leave.
  - If documentation will be required, the Employer will need a written policy that describes:
    - Type(s) of documentation required
    - Time period in which an Employee has to submit the documentation
    - Consequences resulting from a failure to submit proper documentation
  - Policies must allow a signed personal statement from an Employee stating that the use was for a qualifying absence.
  - Information that an Employer receives related to an Employee's health and/or safety must be kept confidential.
- › Use of Paid Leave cannot trigger demerits, corrective action, or other absence control policies.
- › Employers can take corrective action for abuse of paid leave.

# Rules 3, 4, & 5 - Incremental Use, Donation of Paid Leave, & Premium Pay

## › Rule 3 – Incremental Use

- Employees may use Paid Leave in one (1) hour increments unless the Employer establishes a written minimum use policy stating otherwise.

## › Rule 4 – Donation of Paid Leave

- Employers have the option of establishing a written policy that allows Employees to donate accrued and unused Paid Leave to other Employees. Use of Paid Leave (donated, accrued, carried forward, etc.) can remain capped at 40 hours within a calendar year.

## › Rule 5 – Premium Pay Program

- Employers may offer extra pay in lieu of providing Paid Leave. Premium Pay programs require the review and approval of the Finance Director.
- Rules provide guidance on what meets the conditions of the ordinance. In general, Premium Pay must match the value of the paid leave benefit and be readily available like wages for accrued paid hours would be.

# Rule 6 – Employer Record Requirements

- › Clarifies the documentation required to be kept by Employers.
- › For each Employee, the Employer needs to keep records that contain:
  - Name & start date
  - Hours worked in Tacoma
  - Amount of Paid Leave accrued
  - Amount, dates, and times of Paid Leave used
  - If an Employer chooses to enact a Premium Pay Program, they must maintain a record of the extra pay provided

# Rule 7 – Certification of Compliance

- › Clarifies that annual certification will occur on application for and renewal of a business license.
- › For those Employers that are not required to have a Tacoma business license, a certification form will be available.

# Rules 8 & 9 – Successor Employers, Breaks in Service

## › Rule 8 – Successor Employers

- If the Employer sells or transfers the business to another Employer, Employees shall retain their unused Paid Leave.

## › Rule 9 – Breaks in Service

- If an Employee is separated from work and then rehired by the same Employer within six (6) months of separation within the same calendar year, previously unused Paid Leave shall be reinstated.

# Rule 10 – Rate of Pay

## › Clarifies the rate of pay when using Paid Leave.

- Employees shall be compensated at the same rate of pay as they would have earned during the time Paid Leave was taken.
- Employees are not entitled to lost tips or gratuities.
- For Employees who work on commission, the hourly rate shall be that Employee's base rate of pay or the minimum wage, which ever is greater.
- For Employees who perform more than one job or whose rate of pay fluctuates, the rate of pay shall be that which they would have been paid during the time that Paid Leave was used.
- For salaried Employees, the rate of pay shall be determined by dividing the annual salary by 52, then dividing by the number of hours in that Employee's normal work week.

# Rule 11 – Additional Hours/Shifts “Shift Swapping”

- › Employers may allow additional hours or shift swapping if:
  1. The Employer has a written policy describing the process, and
  2. There is mutual consent between the Employer and the Employees involved.
  
- › An Employee may work additional hours or trade shifts with a coworker without using Paid Leave for missed hours if both Employer and Employee agree.
  
- › Eating/Drinking Establishments

An Employer may offer substitute shifts/hours to an Employee who has requested Paid Leave. If the Employee accepts the offer, the Employer may deduct the amount of time worked during the substitute shift or the amount of time requested for Paid Leave (whichever is less) from the Employee’s accrued leave time.

# Rule 12 – Use & Carry Over of Paid Leave

## › Concurrent Leave

Paid leave may be taken concurrently with other leave provided under state or federal law (Family Medical Leave, workplace injury, etc).

## › Use for On-call Shifts

Paid Leave use must be permitted for on-call shifts which are paid regardless of whether work is performed. Employers may choose whether to allow use of Paid Leave for on-call shifts where the employee is compensated only when work is performed.

## › Use for Overtime Hours

Paid Leave use must be permitted for overtime shifts scheduled in advance. Employers are not required to permit use of Paid Leave for overtime hours that are not scheduled in advance of the regular shift.

## › Disciplinary Leave

Employers are not required to allow use of Paid Leave hours when an Employee has been suspended or placed on leave for disciplinary reasons.

## › Carry Over of Paid Leave

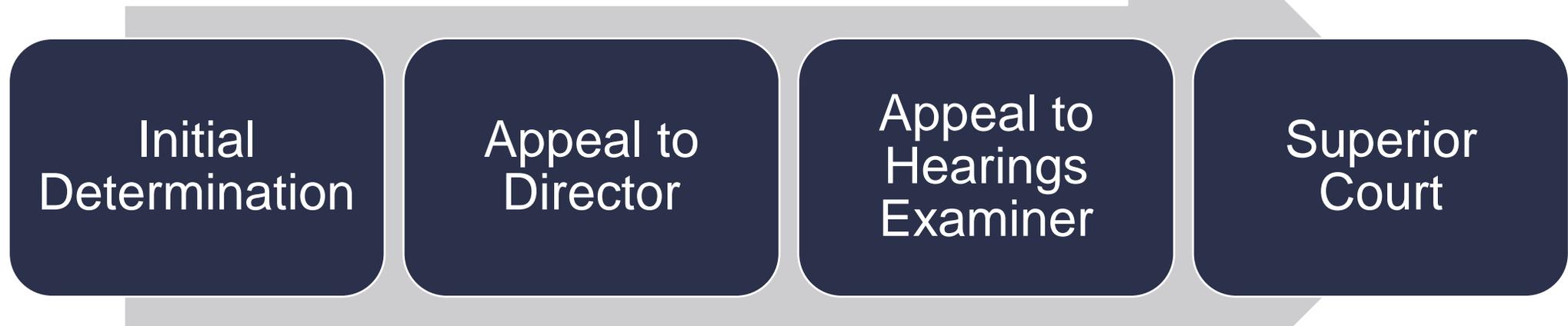
The Ordinance specifies that Employers must allow employees to carry over up to 24 hours of accrued but unused leave. Programs that provide employees the option of carrying over hours or receiving payout of the full cash value of accrued leave are permissible if the employer has a written policy.

## Rule 13 – Payment of Paid Leave

- › Clarifies that Paid Leave must be paid in the next regular payroll after Paid Leave was used
- › If the Employer has a written policy requiring documentation, then the Employee must provide the required documentation or verification before the Employer is required to pay the Paid Leave

# Rule 14 – Administrative Review

- › Clarifies the steps for administrative review and appeals for Citations, Notices of Assessment, or Determinations of Compliance
- › In general, appeals must be submitted within 10 days in writing
- › Appeals to Superior Court must be filed within 21 days



# Next Steps

## › Rules & Model Notice

- Seek feedback on the Draft Rules
  - Four Public Hearings, Email, & by Phone
- Accepting feedback through June 30<sup>th</sup>
- Finalize Rules & Notice – Mid-July

## › Outreach & Education – Summer/Fall

- Accepting your recommendations for outreach opportunities
- Premium Pay Application forms available this fall

## › Paid Leave begins – February 2016

# Questions, Thoughts, Suggestions, Concerns?

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**More information available at**

[www.cityoftacoma.org/paidleave](http://www.cityoftacoma.org/paidleave)

# FYI: Tax and Business License Amnesty Program

- › Tax and Business License Amnesty is a one-time, limited duration program.
- › Program runs through June 30, 2015.
- › Allows businesses with past due tax or license liabilities to apply for amnesty.
- › City will:
  - waive all late filing penalties and interest
  - Waive 50% of civil penalties due
  - Limit look-back period to 4 years (TMC allows up to 10 year look-back)
- › More info: [www.PayMyTacomaTax.org](http://www.PayMyTacomaTax.org)