

PAID LEAVE RULES

For Tacoma Municipal Code 18.10

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RULE 1.0

WORKING IN THE CITY

In General.

1.1 The Paid Leave Ordinance (“Ordinance” shall mean Chapter 18.10, “Paid Leave” 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. For example, Employees who live in or travel to the City and conduct their work are covered by the Ordinance; Employees who make pick-ups, deliveries or sales calls within the City are covered by the Ordinance for the hours that the Employees are physically in the City and performing work.

1.2 Once an Employee is covered by the Ordinance, they remain covered through the next Calendar Year even if they don’t meet the 80-hour threshold.

1.3 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. Once an Employee is covered by the Ordinance, an Employer shall provide the Employee with the amount of Paid Leave equal to what would have been accrued for the hours worked to date during the current Calendar Year.

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 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 or deliveries), is covered by the Ordinance for all hours worked in the City, including travel 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 Paid Leave accrual and use. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, employee logs, delivery addresses and estimated travel times, or historical averages.

Professional Development or Training in the City.

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

RULE 2.0**EMPLOYER ATTENDANCE POLICIES****In General.**

2.1 An Employer may take reasonable measures to verify or document that an Employee's use of Paid Leave is lawful.

Verification & Documentation Requirements.

2.2 If the Employer chooses to require written documentation or other verification for the use of all or a portion of an Employee's Paid Leave, the Employer must have a written policy regarding the requirement and said policy must be readily available to all Employees. Said policy must clearly describe: (i) the forms or types of documentation that the Employer may require and the circumstances for requiring each form or type of documentation; (ii) the timeframe in which the Employee is required to submit such documentation or verification (e.g., one week, one month, etc); and (iii) any consequences resulting from an Employee's failure or delay in providing such written documentation or other verification; provided that the policy must allow a personal statement signed by the Employee

* Capitalized words are defined in Tacoma Municipal Code (TMC) Chapter 18.10

that he or she is using Paid Leave for a qualifying absence as acceptable verification. An Employee's signed statement does not need to be in an affidavit format or notarized, but shall be legible and shall make clear the Employee's identity and the general purpose for which Paid Leave is being used, the date(s) and time(s) when paid leave hours are being used, and if applicable, the Employee's relationship to the family member for whom leave is needed. When providing documentation, an Employee is not required to provide private health information. For example, an Employee may notify his Employer that he needs to take Paid Leave to care for his sick child; the Employee does not need to indicate the nature of the child's illness.

2.3 If an Employer obtains any health information about an Employee or an Employee's family member, including when a doctor's note or other medical documentation for the use of Paid Leave is obtained by the Employer, the Employer shall treat that information in a confidential manner consistent with federal, state, and local medical privacy laws.

2.4 If an Employer obtains any records or information about an Employee or an Employee's family member related to domestic violence, harassment, sexual assault, stalking or other safety related issues, such records or information are confidential and may not be released without express written permission of the Employee, unless specifically required otherwise by law.

Absence Control Policies.

2.5 The Ordinance's protection for exercise of rights and prohibition against retaliation shall apply in situations where an absence control policy, in writing or in practice, counts Paid Leave covered under the Ordinance as an absence that may lead to or result in any adverse action taken against the Employee.

Instances / Patterns of Abuse.

2.6 The Ordinance's protections for exercise of rights and prohibition against retaliation do not prevent an Employer from taking reasonable action (e.g. discipline) when an Employee's use of Paid Leave is not in good faith, such as a clear instance or pattern of abuse. Disciplinary actions may not include deductions from an Employee's legitimately earned or donated Paid Leave hours.

Declaring the Benefit or Calendar Year.

2.7 The Ordinance allows Employers to declare their "Calendar Year" as either "the 12-month period beginning January 1; the 12-month period beginning on the date of hire; or the fiscal year." The Employer shall declare and consistently use one option to serve as their "Calendar Year" for all Employees. The definition may not be changed to avoid Employee accrual or use of Paid Leave.

**RULE 3.0
INCREMENTAL USE OF PAID LEAVE**

In General.

3.1 An Employee may use Paid Leave in one hour increments, unless the Employer establishes a written minimum use policy, subject to the Fair Labor Standards Act.

Minimum Use Policy.

3.2 An Employer may establish a reasonable, written policy on minimum use that requires an Employee

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to use a greater amount of Paid Leave than the Employee needs or requests, subject to the Fair Labor Standards Act. The policy must be readily available to Employees.

**RULE 4.0
DONATED PAID LEAVE**

In General.

4.1 An Employer may establish a written policy whereby an Employee may donate unused Paid Leave to another Employee.

Use of Paid Leave.

4.2 If donated leave is permitted by Employer policy, an Employer may, but is not required to, count donated leave as part of the 40 hours maximum of Paid Leave that an Employee may use in a Calendar Year.

**RULE 5.0
PREMIUM PAY PROGRAMS**

In General.

5.1 An Employer that offers extra pay in lieu of paid time off can be in compliance with the Ordinance if the program meets or exceeds the requirements of the Ordinance, subject to approval by the Director.

Application, Review, and Approval of Premium Pay Programs.

5.2 The Director shall review proposed Premium Pay Programs to make a determination of compliance with the Ordinance. Employers shall submit an outline of their proposed Premium Pay Program at least 90 days before the intended Premium Pay Program start date. Proposals should demonstrate how the Employer's Premium Pay Program meets or exceeds the minimum requirements and provide an overview of the program, including: (i) how Employee base pay is determined; (ii) how extra pay would be calculated; (iii) how other forms of compensation/benefits will be or have recently been changed (if applicable); (iv) the frequency and method for distributing extra pay to Employees; (v) information on which Employees would be receiving extra pay in lieu of benefits (e.g., Employees who opt-in, all Employees, customer service staff, etc); (vi) the specific types of records that will be maintained by the Employer to document the extra pay; (vii) how the Employer will address accrued but unused Paid Leave hours if they are transitioning from Paid Leave accrual to a Premium Pay Program; and (viii) the anticipated program start date. The Director may request additional information or documentation as needed to make a determination of compliance.

5.3 The Director will issue a written determination within 60 days of receiving the request for review of a Premium Pay Program stating whether the proposed Premium Pay Program is approved. If the Premium Pay Program is not approved, the determination will include reasons why the program does not meet the Ordinance requirements. If the Director requires additional information from the Employer after the initial request is received, the time to issue a determination may extend past 60 days. Notice of the extended date will be provided by the Director in writing.

5.4 If an Employer fails to submit sufficient information that explains how the Premium Pay Program meets or exceeds the requirements of the Ordinance, then the Director shall not approve the program.

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5.5 An Employer may request administrative review of the Director’s determination of compliance according to the process outlined in the Ordinance and Rule 15 “Request for Administrative Review.”

Premium Pay Program Criteria.

5.6 Premium Pay Programs will be evaluated based on how the proposed extra pay compares to the value of benefits outlined in the Paid Leave Ordinance, including the following criteria: (i) extra pay must meet or exceed the value of the Paid Leave benefit outlined in the Ordinance; (ii) extra pay must be readily available for expenditure, similar to wages, and not placed in a restricted account such as a retirement or flexible spending account unless mutually agreed upon by the Employee and Employer; (iii) extra pay cannot be provided in the form of goods/services; and (iv) extra pay is dispersed at reasonable intervals, not less than once per month, or “frontloaded.” Additional, reasonable criteria may be applied as deemed necessary by the Director to ensure that the Premium Pay Program meets or exceeds the minimum requirements of the Ordinance. If a Premium Pay Program is not approved, the specific criteria that resulted in such a determination will be disclosed to the Employer.

Records Requirements.

5.7 If an Employer enacts an approved Premium Pay Program, the Employer will be responsible for maintaining documentation of the extra pay provided, as well as Employee name, hire date, and all records outlined in an approved Premium Pay Program proposal, for a minimum of three years and shall allow Director access to such records according to the parameters outlined in TMC 18.10.060(B).

Written Policy.

5.8 If an Employer elects to enact an approved Premium Pay Program, then it must be documented in a written policy and made readily available to Employees.

Other Ordinance Requirements Remain in Effect.

5.9 Employers who enact an approved Premium Pay Program are not exempt from other requirements of the ordinance including, but not limited to, Noticing and Posting requirements and the “Employer Responsibilities” outlined in TMC 18.10.050.

Premium Pay Program Example:

A full-time (2,000 hours/year) Employee is paid wages at a rate of \$15/ hr. In order for the Employer to establish a Premium Pay Program that meets the requirements of the Ordinance, they must pay the Employee at least \$.18 more per hour to equal the value of the required 24 hours of Paid Leave:

| | | |
|-------------------|-------------------------|----------|
| Current wage: | 2,000 hours x \$15 = | \$30,000 |
| Paid Leave value: | 24 hours x \$15 = | \$360 |
| Required wage: | 2,000 hours x \$15.18 = | \$30,360 |

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RULE 6.0
EMPLOYER RECORDS REQUIREMENTS

In General.

6.1 An Employer shall retain records for a period of three years that document:

1. Employee hours worked in Tacoma;
2. Amount of Paid Leave accrued by each Employee; and
3. Amount of Paid Leave used by each Employee

Other Records.

6.2 Records shall also contain at a minimum:

1. Name of each Employee;
2. The hire date of employment of each Employee;
3. Date Employee was eligible to use Paid Leave; and
4. The dates and time each Employee used Paid Leave

Universal Paid Time Off Programs.

6.3 Employers who provide a universal paid time off program that meets the requirements of the Ordinance must track leave accrued and used; however, they are not required to track the specific reasons for the use of leave.

Premium Pay Program Records.

6.4 Employers who enact an approved Premium Pay Program are subject only to the records requirements outlined in Rule 5.

RULE 7.0
CERTIFICATION OF COMPLIANCE & NOTICING

Certification of Compliance.

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

7.2 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.

7.3 Employers are required to provide notice as outlined in TMC 18.10.050 to Employees in the Employee’s 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 8.0
SUCCESSOR EMPLOYERS

In General.

8.1 Unused Paid Leave shall be retained by the Employee if the Employer sells, transfers, or otherwise assigns the business to another Employer and the Employee continues to work in the City.

RULE 9.0
BREAKS IN SERVICE

In General.

9.1 When an Employee is separated from employment and rehired by the same Employer within six (6) months of separation within the same Calendar Year, previously unused Paid Leave shall be reinstated. The previous period of employment shall be counted for purposes of determining the Employee's eligibility to use Paid Leave. For example, the hours worked and length of employment during the previous period of employment shall count towards the 80 hour requirement and 180 day requirement for eligibility.

Pay out of Accrued Leave upon Separation.

9.2 An Employer may, but is not required to, allow Employees the option to either leave their bank of accrued hours intact to potentially be reinstated upon rehire or receive a payout for the cash value of accrued Paid Leave. If an Employer chooses to allow payouts of accrued leave, the Employer must have an established written policy readily available to the Employees and the amount of the payout must be equal to or greater than the value of the accrued Paid Leave balance. The Employer is not responsible for reinstating any cashed out leave if the Employee is rehired within six months of separation within the same calendar year.

RULE 10.0
RATE OF PAY

In General.

10.1 When using Paid Leave, an Employee shall be compensated at the same hourly rate of pay as the Employee would have earned during the time Paid Leave was taken.

Tips, Gratuities, & Travel Allowances.

10.2 An Employee is not entitled to compensation for lost tips, gratuities, or travel allowances and shall only be compensated at the hourly rate that would have been earned during the time the Paid Leave is taken.

Commissions.

10.3 For an Employee who is paid on a commission (whether base wage plus commission or commission only), the hourly rate of pay shall be the base wage or minimum wage, whichever is greater, except for an Employee considered to be an "outside salesperson" as defined by Washington State Labor & Industries (WAC 296-128-540). The hourly rate of pay for an "outside salesperson" is computed as the amount of commission earned divided by the number of hours worked in the same pay period.

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Fluctuating Pay.

10.4 If an Employee performs more than one job for the same Employer or an Employee's rate of pay fluctuates for a single job, the rate of pay shall be that which the Employee would have been paid during the time the Employee used the Paid Leave.

Annual Salary.

10.5 The hourly rate of pay for an Employee who is paid an annual salary and is exempt from overtime laws provided under the Fair Labor Standards Act and/or state wage and hour laws shall be determined by dividing the annual salary by 52 to get the weekly salary and dividing the weekly salary by 40 hours, or, if they typically work less than 40 hours per week, the number of hours of the Employee's normal work week.

Shifts of Indeterminate Length.

10.6 When an Employee uses Paid Leave for a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the Employer may base hours of Paid Leave used and payment on the hours worked by a replacement Employee in the same shift or a similarly situated Employee who worked that same or similar shift in the past.

RULE 11.0

ADDITIONAL HOURS/SHIFTS, SUBSTITUTE HOURS/SHIFTS, & SHIFT SWAPPING

Written Policy.

11.1 If an Employer allows substitute hours/shifts and/or swapping shifts in conjunction with or in lieu of using Paid Leave, then the Employer must have a written policy, readily available to all Employees, that clearly describes the process.

Additional Hours & Shift Swapping.

11.2 Upon mutual consent by the Employee and Employer, an Employee may work additional hours or shifts without using available Paid Leave for the original missed hours or shifts qualifying for Paid Leave usage. Upon mutual consent by the Employer and Employees involved, an Employee may trade shifts with another Employee without using available Paid Leave for the original missed hours or shifts qualifying for Paid Leave, except as provided below.

Eating and/or Drinking Establishments.

11.3 An Employer of an eating and/or drinking establishment may offer substitute hours or shifts to an Employee who has requested to use Paid Leave. The Employee is not required to accept such hours or shifts if they are offered. If the Employee accepts and works the substitute hours or shifts, the Employer may deduct the amount of time worked during the substitute shift or the amount of time requested for Paid Leave, whichever is smaller, from the Employee's accrued leave time. No deduction of accrued leave without pay for substitute hours/shifts may occur unless the conditions outlined in this rule are met.

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RULE 12.0
USE & CARRY OVER OF PAID LEAVE

Concurrent Leave.

12.1 An Employee's use of Paid Leave may also qualify for concurrent leave under other federal, state, or local laws (e.g., family medical leave, workplace injury, etc.).

Use for On-Call Shifts.

12.2 For Employees who are scheduled for on-call shifts and are compensated for their scheduled time regardless of whether work is performed, Employers must permit use of Paid Leave. Employers may, but are not required to, permit use of Paid Leave for on-call shifts when Employees are compensated only when work is performed.

Use for Overtime Hours.

12.3 Employers are required to permit use of Paid Leave for mandatory overtime and/or overtime hours that an Employee was scheduled to work in advance.

Disciplinary Leave.

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

Multiple Work Locations.

12.5 If an Employee works in multiple cities, the Employer may require that accrued Paid Leave be used for shifts only within the City of Tacoma.

Carry Over of Paid Leave.

12.6 The Ordinance requires that an Employer shall allow Employees to carry over up to 24 accrued but unused hours of Paid Leave time. An Employer policy may allow Employees the option to either carry over or receive the cash value of accrued Paid Leave. If an Employer chooses to allow payouts of accrued leave, the Employer must have an established written policy readily available to the Employees and the amount of the payout must be equal to or greater than the value of the accrued Paid Leave balance.

RULE 13.0
PAYMENT OF PAID LEAVE BENEFITS

In General.

13.1 Paid Leave must be paid no later than the next regular payroll period beginning after the Paid Leave was used by the Employee, except as provided below.

Written Documentation.

13.2 If an Employer has a written policy subject to the requirements outlined in Rule 2.0 and has asked for written documentation of use of Paid Leave pursuant to these rules, then the Employer is not obligated to pay the Paid Leave until the Employee has provided written documentation or other verification that the absence was for a qualifying reason.

RULE 14.0
ADMINISTRATION

In General.

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

Amending a Charge.

14.2 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.

14.3 A Charging Party may request, in writing, that their charges be withdrawn at any time prior to the issuance of a determination. A Charging Party that withdraws a charge may not file another charge that alleges the same facts and violation as the withdrawn charge.

Access to Records.

14.4 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)."

14.5 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.

Worker Documentation.

14.6 Investigations 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.

14.7 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 attempt to settle the charge by agreement.

Findings of Fact/Standard of Proof.

14.8 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.

Payment of Assessments.

14.9 Failure to pay assessments or comply with agreed upon terms of conciliation may constitute a willful violation of the Ordinance.

RULE 15.0**REQUEST FOR ADMINISTRATIVE REVIEW****In General.**

15.1 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.

15.2 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.

15.3 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.

15.4 An Employee or Employer may appeal the Director's decision within 10 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.