



Req. #

ORDINANCE NO.

1 AN ORDINANCE relating to employment in Tacoma; amending Title ____ of the
2 Tacoma Municipal Code by adding a new Chapter ____, entitled "Paid
3 Leave," to establish minimum standards for the provision of paid leave time
for businesses located in the City of Tacoma.

4 WHEREAS ____; Now, Therefore,

5 BE IT ORDAINED BY THE CITY OF TACOMA:

6 Section 1. That Title ____ of the Tacoma Municipal Code is hereby amended
7 by adding a new Chapter ____, entitled "Paid Leave," to establish minimum
8 standards for the provision of paid leave time for businesses located in the City of
9 Tacoma, as set forth in the attached Exhibit "A."
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11
12 Passed _____

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14 _____
Mayor

15 Attest:

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17 _____
18 City Clerk

19 Approved as to form:

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21 _____
Deputy City Attorney
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EXHIBIT "A"

Chapter ____ PAID LEAVE

Sections:

- .010 Definitions.
- .020 Accrual of Paid Leave.
- .030 Use of Paid Leave.
- .040 Exercise of Rights Protected; Retaliation Prohibited.
- .050 Notice and Posting.
- .060 Employer Responsibilities.
- .070 Restrictions and Enforcement.
- .080 Effective Date
- .090 Waiver
- .100 Severability

.010 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

A. "Adverse action" means to discharge, suspend, discipline, transfer, demote, or deny promotion, or threaten to do any of the prior listed actions, by an employer of an employee for any reason prohibited by Section .040.

B. "Business" has the same meanings as in Tacoma Municipal Code ("TMC") 6A.30.030.

C. "City" means the City of Tacoma.

D. "Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director, when the Director files a charge.

E. "Dating relationship" means a social relationship of a romantic nature.

F. "Director" means the Finance Director, or his or her designee.

G. "Domestic violence" means:

1. Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;
2. Sexual assault of one family or household member by another; or
3. Stalking, defined as set forth in RCW 9A.46.110, of one family or household member by another family or household member.

H. "Eating and/or drinking establishment" means a place where food and/or beverages are prepared and sold at retail for immediate consumption, either on- or off-premise.

I. "Employee" means any individual employed by an employer, and shall include traditional employees, temporary workers, and part-time employees. Employees supplied by an employment or staffing agency shall be deemed an employee of the agency absent a contractual agreement otherwise. For purposes of this chapter, "employee" does not include persons performing services under a work study agreement.

J. "Employer" means any person who has one or more employees. For purposes of this chapter, "employer" does not include:

1. The United States government;



2. The state of Washington, including any office, department, agency, authority, institution, association, society, or other body of the state, including the legislature and the judiciary;

3. Any county or local government;

4. Any single-person business.

K. "Employment agency" or "staffing agency" means any person undertaking, with or without compensation, to procure opportunities to work or procure, recruit, refer, or place individuals with an employer or employment

L. "Family member" includes the following:

1. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is:

a. Under 18 years of age; or

b. Eighteen years of age or older and incapable of self-care due to a mental or physical disability.

2. "Grandparent" means a parent of a parent of an employee.

3. "Parent" means a biological or adoptive parent of an employee, or an individual who stood in loco parentis to an employee when the employee was a child.

4. "Spouse" means husband, wife, or domestic partner. For purposes of this chapter, the terms spouse, marriage, marital, husband, wife, and family shall be interpreted as applying equally to city or state registered domestic partnerships or individuals in city or state registered domestic partnerships, as well as to marital relationships and married persons. Where necessary to implement this chapter, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender-neutral and applicable to individuals in city or state registered domestic partnerships.

M. "Household member" means, spouses; domestic partners; former spouses; former domestic partners; persons who have a child in common, regardless of whether they have been married or have lived together at any time; adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship; persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship; and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

N. "Paid leave" means accrued hours of paid leave provided by an employer for use by an employee for an absence from work for any of the reasons specified in this chapter, for which time an employee shall be compensated by the employer at the same hourly rate and with the same benefits, including health care benefits, as the employee would have earned during the time the paid leave is used. For purposes of this chapter, "paid leave" does not include compensation for lost tips or commissions, and compensation shall only be required for hours that an employee is scheduled to have worked.

O. "Party" includes the person charging or upon whose behalf a charge is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter, and the Director.

P. "Person" means one or more individuals, partnerships, associations, organizations, trade or professional associations, labor unions, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, firms, institutions, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons.

Q. "Sexual assault" shall be defined as set forth in RCW 49.76.020, as now enacted or as hereafter amended.

.020 Accrual of Paid Leave.



A. Employers shall provide employees with a minimum of one hour of paid leave for every 40 hours worked, except as otherwise provided herein.

B. At the Employer's discretion, consistent with the Employer's established policy, employees may (1) earn a greater number of paid leave hours per 40 hours worked; (2) earn beyond the maximum of 24 hours of paid leave in any given calendar year; and (3) use more than the 24 hours of paid leave in any given calendar year.

C. In the case of employees who are exempt from overtime payment under Section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.) (hereinafter referred to as "FLSA-exempt" employees) and under the Washington State Minimum Wage Act, no employer shall be required to accrue leave for such employees for hours worked beyond a 40-hour work week. If an exempt employee's normal work in a work week is less than 40 hours, paid leave accrues based upon his or her normal work week.

D. Paid leave shall begin to accrue for existing Employees on the effective date of this ordinance, and for all new Employees, on the commencement of employment,

E. Employers are not required to allow an employee to carry over unused paid leave to the following calendar year; however, the employer may do so voluntarily.

F. An employer with a combined or universal paid leave policy, such as a paid time off ("PTO") policy, is not required to provide additional paid leave under this chapter, provided that:

1. Available paid leave may be used for the same purposes and under the same conditions as set forth in Section .030;

2. Paid leave is provided at the rate of at least one hour paid leave for every 40 hours worked.

3. Use of paid leave is limited to no less than 24 hours in a calendar year.

G. When there is a separation from employment and the employee is rehired within six months in the same calendar year of separation by the same employer, including different business locations of the employer, previously accrued unused paid leave shall be reinstated. Further, the employee shall be entitled to use any reinstated accrued paid leave and newly accrued paid leave immediately upon the recommencement of employment, provided that the employee had previously been eligible to use paid leave. If there is a separation of more than six months or reinstatement does not occur within the same calendar year, an employer shall not be required to reinstate accrued paid leave and, for the purposes of this chapter, the rehired employee shall be considered to have newly commenced employment.

H. Subject to the terms and conditions established by the employer, the employer may, but is not required to, loan paid leave time to the employee in advance of accrual by such employee. Such terms and conditions shall address what happens if the employee is discharged or terminates employment prior to accruing paid leave time equivalent to the amount of paid leave time advanced by the employer and used by the employee.

.030 Use of Paid Leave.

A. Employees shall be entitled to use accrued paid leave beginning on the 180th calendar day after the commencement of their employment.

B. Employees shall be entitled to use up to 24 hours of accrued paid leave in any given calendar year.

Employers are not required to allow an Employee to use more than 24 hours of paid leave in any given calendar year, even if the Employee has accrued in excess of 24 hours of paid leave in that calendar year.

C. Employees shall be entitled to use paid leave provided by the employer for the following reasons:

1. An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or preventive medical care;

2. To allow the employee to care for a family member with a mental or physical illness, injury, or health condition; care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care.



3. When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, or hazardous material.

4. To allow the employee to care for a child whose school or place of care has been closed by order of a public official.

5. To enable the employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family members, including, but not limited to, preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking.

6. To enable the employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking.

7. To enable the employee to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

8. To enable the employee to take leave for bereavement for the death a family member.

D. Paid leave shall be provided upon the request of an employee, and the request shall include the expected duration of the absence when possible. An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences and/or requesting leave, provided that such requirements do not interfere with the purposes for which the leave is needed.

1. If the paid leave is foreseeable, a written request shall be provided at least ten days, or as early as possible, in advance of the paid leave, unless the employer's normal notice policy requires less advance notice.

2. If the paid leave is unforeseeable, the employee must provide notice as soon as it is practicable and must generally comply with an employer's reasonable normal notification policies and/or call-in procedures.

E. Employers may require a minimum use of accrued paid leave time, subject to the FLSA. If the employer does not establish a minimum use policy for employees covered by the overtime requirements of the FLSA, accrued paid leave time may be used in hourly increments. For FLSA-exempt employees, the employer may make deductions of paid leave in accordance with the FLSA or in accordance with a pay system established by statute, ordinance, or regulation.

F. When the need for use of accrued time is foreseeable, the employee shall make a reasonable effort to schedule the use of paid leave in a manner that does not unduly disrupt the operations of the employer.

G. Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts during the same or next pay period without using available paid leave for the original missed hours or shifts. However, the employer may not require the employee to work such additional hours or shifts. Should the employee work additional shifts, the employer shall comply with any applicable federal, state, or local laws concerning overtime pay.

H. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange assigned hours or "trade shifts."

I. When paid leave is requested by an employee who works in an eating and/or drinking establishment, the employer may offer the employee substitute hours or shifts. If the employee accepts the offer and works these substitute hours or shifts, the amount of time worked during the substitute period or the amount of time requested for paid leave, whichever is smaller, may, at the discretion of the employer, be deducted from the employee's accrued leave time. However, no employer is required to offer such substitute hours or shifts, and no employee is required to accept such hours or shifts if they are offered.

J. Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused paid leave to another employee.



K. Each time wages are paid, employers shall provide, in writing, information stating an updated amount of paid leave available to each employee for use. Employers may choose any reasonable system for providing this notification, including, but not limited to, listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information.

L. Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment, for accrued paid leave that has not been used.

.040 Exercise of Rights Protected; Retaliation Prohibited.

A. It shall be a violation for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

B. It shall be a violation for an employer to take adverse action against an employee because the employee has exercised in good faith the rights protected under this chapter.

C. The protections afforded under this subsection shall apply to any person who mistakenly, but in good faith, alleges violations of this chapter.

.050 Notice and Posting.

A. Employers shall give notice that employees are entitled to paid leave; the amount of paid leave and the terms of its use guaranteed under this chapter; that adverse action against employees who exercise any right under this chapter is prohibited; and that each employee has the right to file a charge if the earning, use, or payment of paid leave, as required by this chapter, is denied by the employer or the employer takes an adverse action against an employee for requesting or using paid leave.

B. The Director shall create and make available to employers a model notice, hereinafter referred to as the "Notice," which contains the information required under paragraph A of this subsection for their use in complying with this subsection. The Notice shall be printed in English and Spanish and any other languages that the Director determines are needed to notify employees of their rights under this chapter.

C. Employers may comply with this section by posting the Notice in a conspicuous and accessible place in each establishment where employees are employed.

D. Employers may also comply with this section by including the Notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, or by distributing a copy of the Notice to each new employee upon hiring. In either case, distribution may be accomplished electronically.

.060 Employer Responsibilities.

A. Employers shall certify compliance with this chapter upon application for and renewal of their City of Tacoma business license.

B. Employers shall retain records documenting hours worked by employees in the City of Tacoma, accrued paid leave, and paid leave used by employees. Employers shall retain such records for a period of three years, and shall allow the Director access to such records, with at least five business days' notice and at a mutually agreeable time, to investigate potential violations and to audit compliance with the requirements of this chapter. Employers shall make copies of these records available to employees upon request and within a reasonable period of time.

Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for purposes of this chapter are required to be maintained as confidential medical records in separate files and/or records from the usual personnel files. If the Americans with Disabilities Act ("ADA") applies, then these records must comply with ADA confidentiality requirements.

.070 Enforcement.

A. Powers and duties of Director.



1. The Director is authorized to enforce this chapter, and may promulgate rules and regulations consistent with this chapter.

2. The Director shall attempt to conciliate and settle by agreement, any alleged violation or failures to comply with the provisions of this chapter.

B. Charge filing.

1. A charge alleging a violation of this chapter shall be in writing, on a form or in a format determined by the Director and signed by or on behalf of a charging party, and shall describe the violation complained of and shall include a statement of the dates, places, and circumstances and the persons responsible for the alleged violation.

2. A charge alleging a violation of this chapter may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation of this chapter.

C. Citations and Notices of Assessment, Determinations of Compliance and Civil Penalties.

1. The Director shall issue either (a) a citation and notice of assessment or (b) a determination of compliance no later than 60 calendar days after receipt of the charge, unless the Director extends the response date. Notice of the extended date will be provided by the Director to the parties in writing.

2. The citation and notice of assessment or determination of compliance shall be delivered in writing to all parties by personal delivery or first-class mail.

3. If the Director determines that a violation has occurred and issues a citation and notice of assessment, the assessment shall include a determination of all paid leave amounts that need to be credited, or, in the event paid leave was denied, the amount of paid leave that shall be paid, plus interest of 1 percent per month. The assessment may not include any amounts owed more than three years before the date the charge was filed.

4. If the Director finds any violation of this chapter, the Director may issue a civil penalty in the amount of \$250, provided the Director may waive or reduce the civil penalty if the employer comes into compliance within 10 calendar days of the notice or shows that its failure to comply was due to reasonable cause and not willful neglect.

If the Director finds a willful violation of this chapter which results in a citation and notice of assessment, the Director may issue a civil penalty that shall not be less than \$250 or an amount equal to two times the total value of unpaid leave the employer failed to credit or pay the employee, whichever is greater, provided the Director may waive or reduce the civil penalty if the employer has not previously been found by the Director to have willfully violated this chapter, and the employer provides payment to the employee of all amounts of unpaid leave and interest due in the event paid leave was denied or not paid, or credits the employee for paid leave if credit was denied, all as determined in the citation and notice of assessment, within ten business days of receipt of the citation and notice of assessment.

5. Payment, or credit, by the employer, and acceptance by the employee of all paid leave and interest or credit assessed by the department in a citation and notice of assessment, shall constitute a full and complete satisfaction by the employer of all payment requirements in the citation and notice of assessment.

6. Nothing in this chapter shall be construed as creating a private cause of action for employees to file suit against an employer.

D. Administrative Review by Director

1. General.

A person, to whom a Citation and Notice of Assessment (hereinafter Citation) or a Determination of Compliance (hereinafter Determination), or civil penalty (hereinafter Penalty) is assessed, may request an administrative review of the Citation, Determination, or Penalty.

2. How to request administrative review.



A person may request an administrative review of the Citation, Determination, or Penalty 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. Failure to state the basis for the review in writing shall be cause for dismissal of the review.

Upon receipt of the request for administrative review, the Director shall review the information provided.

3. Decision of Director.

After considering all of the information provided, the Director shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Citation, Determination, or Penalty.

The Director's decision shall be delivered in writing to all parties by first-class mail.

D. Appeals to the Hearing Examiner of Directors Decision.

Appeal of the Director's decision shall be made within 10 calendar days from the date of the Director's decision by filing a written notice of appeal, clearly stating the grounds that the appeal is based on, with the Hearing Examiner which appeal shall be governed by TMC 1.23. The Hearing Examiner shall notify all parties by mail, of the time and place of hearing.

.080 Effective Date.

This ordinance shall take effect on January 1, 2016, provided that for any persons subject to a collective bargaining agreement, and subject to the waiver provision provided for herein, the ordinance shall take effect following the expiration of any collective bargaining agreement in place as of January 1, 2016.

.090 Waiver.

The provisions of this chapter shall not apply to any employees covered by a bona fide collective bargaining agreement to the extent that the requirements of this ordinance are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

.100 Severability.

If any provision or section of this chapter shall be held to be void or unconstitutional, all other parts, provisions, and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect.