



CITY OF TUKWILA Administrative Rule

2023-1

TUKWILA LABOR STANDARDS APPLICABLE TO TMC 5.63 MINIMUM WAGE AND ADDITIONAL HOURS FOR QUALIFIED PART-TIME EMPLOYEES

Effective Date: 5/24/23

Supercedes: N/A

Approved:


Allan Ekberg, Mayor

CHAPTER 1: PURPOSE AND CONSTRUCTION

TLS 01-010 – Purpose

The purpose of these Tukwila Labor Standards (“TLS”) is to provide rules and procedures to implement and ensure compliance with chapter 5.63 of the Tukwila Municipal Code and TMC 5.04.113 (collectively, “Ordinance” or “TMC Chapter 5.63”) and to ensure that the employees as specified in the Ordinance who work in the City of Tukwila (“City”) (1) receive at least a minimum wage comparable to employees in neighboring cities of SeaTac and Seattle (“Wage Requirement”); and 2) have fair access to additional hours of work (“Additional Hours Requirement”).

TLS 01-020 – Construction

These Tukwila Labor Standards do not cover every requirement of the Ordinance. If a matter arises in administering the Ordinance that is not specifically covered by these rules and procedures, the Finance Director, or designee, shall specify the practices to be followed. These rules and procedures shall be liberally construed to permit the City to accomplish its administrative duties in implementing the Ordinance, including providing technical assistance, determining if a violation has occurred, and proscribing penalties and remedies. These rules and procedures are declared to be separate and severable. If any chapter, clause, sentence, paragraph, subdivision, section, subsection, or portion of these rules and procedures or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of these rules and procedures, or the validity of the application of the rules and procedures to other persons or circumstances. The Ordinance shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater requirements; and nothing in the Ordinance or in these rules and procedures shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

CHAPTER 2: DEFINITIONS

TLS 02-010 – Intent

The intent of this Chapter is to implement and facilitate compliance with the Ordinance, which may also include questions and answers and examples. This Chapter does not include all the definitions that are set forth in the Ordinance. If a term that is defined in the Ordinance is not included in this Chapter, it is to be defined in accordance with the definition in the Ordinance and the common-law rules of statutory construction.

TLS 02-020 Covered Employer

A. Definition of “Covered Employer”

An employer is a “covered employer” if it either: 1) employs at least 15 employees regardless of where those employees are employed, or 2) has annual gross revenue over \$2 million generated within the city limits of the City of Tukwila. “Covered employer” includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, and it includes public and private employers and nonprofits. See TMC 5.63.020 and [RCW 49.46.010](#). Only employees who meet the definition of “employee” in TMC 5.63.020.D and [RCW 49.46.010](#) are included when counting the number of employees.

B. Questions and Answers regarding the Definition of “Covered Employer”

Question 1: *Is my company a covered employer if it has 15 employees worldwide, but only has 3 employees in Tukwila and it only generated \$1 million in gross revenue in Tukwila?*

Answer: Yes, because it meets the 15-employee threshold. An employer does not need to meet the gross revenue requirement to be covered if it meets the requirement for number of employees.

Question 2: *Is my company a covered employer if it has over \$2 million in gross revenue in Tukwila but only one employee?*

Answer: Yes. It does not need to meet the 15-employee threshold if it meets the gross revenue threshold.

Question 3: *Is my company a covered employer if we had 15 employees last year but only 12 employees this year? Our gross revenues have always been below the \$2 million threshold.*

Answer: Yes. Per TMC 5.63.060.B, employer classification for the current calendar year is based on the average number of employees during all weeks in the previous calendar year in which the employer had at least one employee. All employees will be counted, regardless of their location, and including employees who are full-time, part-time, temporary, jointly employed, or employed through a temporary services or staffing agency or similar entity.

Question 4: *Is my company a covered employer on July 1 if we started our business on January 1 and had an average of 15 employees from April 1 through June 30? Our gross revenues have not reached the \$2 million threshold.*

Answer: Yes. Per TMC 5.63.060.B, if an employer had no employees during the previous calendar year, the classification is based on the average number of employees during the most recent three

months of the current year. All employees will be counted, regardless of their location, and including employees who are full-time, part-time, temporary, jointly employed, or employed through a temporary services or staffing agency or similar entity.

Question 5: *Is my company a covered employer if we had over \$2 million of revenue in Tukwila last year, but we know our gross revenue in Tukwila this year will be less than \$2 million? We have never had more than 14 employees.*

Answer: Yes. Per TMC 5.63.060.C, employer classification for the current calendar year is calculated based on the gross revenue for the previous year.

Question 6: *Is my company a covered employer if we have annual gross revenue under \$2 million in Tukwila and 15 people who work for us worldwide, but 3 of the people who work for us are employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson?*

Answer: No. The people who are working in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson are not “employees” under TMC 5.63.060.D and [RCW 49.46.010](#), so your company does not meet the 15-person threshold for being a covered employer.

TLS 02-030 –Covered Position

A. Definition of “Covered Position”

For purposes of the Additional Hours Requirement, a “covered position” is a position that a covered employer intends to fill by hiring an additional employee or subcontractor, including hiring through the use of temporary services or staffing agencies.

B. Questions and Answers regarding the Definition of “Covered Position”

Question 1: *Are exempt positions covered by the Ordinance’s Additional Hours Requirement?*

Answer: No. The Additional Hours Requirement only applies to employees who are covered by the minimum wage laws (sometimes referred to as “nonexempt employees”). For details, see TMC 5.63.020, TMC 5.63.030(2), and the definition of “employee” in [RCW 49.46.010](#). Because Tukwila’s definition of “employee” is based on the state definition in RCW 49.46.010, which has numerous exceptions, such as certain casual laborers, overtime-exempt “white collar” workers, volunteers, and others (all sometimes referred to as “exempt employees”), exempt employees do not have the protections of the Additional Hours Requirement.

Question 2: *If a covered employer creates a new position but only posts the position internally, is the new position a covered position?*

Answer: No. Because the employer is not hiring additional employees or subcontractors, the position would not be a covered position.

Question 3: *If one Maintenance Technician position was a covered position because the covered employer filled it with a new employee and the employer subsequently plans to fill a second*

Maintenance Technician position through an internal recruitment, is the second Maintenance Worker position also a covered position?

Answer: No. The internal recruitment will result in the second position being filled by an existing employee.

C. Examples regarding the Definition of “Covered Position”

EXAMPLE 1: The covered employer has 15 full-time employees who each work 40 hours per workweek and five part-time employees who were hired to work for six weeks. At the end of the six weeks, the employer plans to employ TJ, who is one of the temporary part-time employees, as a regular employee. The employer does not have to offer the hours that TJ will be working as a regular employee to any of the other temporary employees because TJ is not a new employee. The employer does not have to offer those hours to the permanent employees either, because they are working 40 hours per workweek, and the additional hours would cause them to earn overtime.

TLS 02-040 – Gross Revenue

A. Definition of “Gross Revenue”

For purposes of the Ordinance, “gross revenue” means revenue generated from sales made, services performed, and other business activities that occur within the Tukwila city limits.

B. Calculation of Gross Revenue

"Gross revenue" includes the consideration, whether money, credits, rights or property expressed in terms of money, proceeding or accruing by reason of the transaction of business and includes gross proceeds of sales, compensation for rendition of services, gains realized from interest, rents, royalties, fees, commissions, dividends and other emoluments, however designated, all without any deduction on account of cost of property sold, materials used, labor, interest, losses, discount and any other expense whatsoever.

C. Questions and Answers regarding the Definition of “Gross Revenue”

Question 1: My business has multiple locations within the City and outside the City, and our gross revenue within the City annually exceeds \$2 million. Does my business need to keep track of its gross revenue for purposes of the Ordinance if we are not going to claim we have gross income in the City that is \$2 million or less?

Answer: No. Employers who are not claiming to have \$2 million or less in annual gross revenue in the City do not need to provide proof of their gross revenue for purposes of determining whether their gross revenue is below the \$2 million threshold established by the Ordinance.

TLS 02-050 – Hour Worked within the City

A. Definition of “Hour Worked within the City”

“Hour worked within the City” is to be interpreted according to its ordinary meaning, including all hours worked within the geographic boundaries of the City of Tukwila, excluding time spent in the City solely for the purpose of travelling through the City from a point of origin outside the City to a destination outside the City, with no employment-related or commercial stops in the City except for refueling or the employee’s personal meals or errands.

B. Questions and Answers regarding the Definition of “Hour Worked within the City” for Employers who are Affected by the Minimum Wage Requirements of the Ordinance

Question 1: *If an employer’s place of business is outside the City of Tukwila but some of its employees work from home within the City for all or part of each workday, do the employee’s hours worked from home count as hours worked within the City?*

Answer: Yes.

Question 2: *If an employee lives in the City, do the hours they spend at home while on vacation or other paid leave count as hours worked within the City?*

Answer: No, because hours spent on paid leave are not hours worked for the purposes of the Ordinance.

Question 3: *If an employer’s place of business is outside the City of Tukwila but some of its employees occasionally work in the City on a short-term basis, such as on a construction project, do the hours they spend working on the construction project count as hours worked in the City?*

Answer: Yes.

Question 4: *If an employer’s place of business is outside the City of Tukwila but some of its employees occasionally work in the City on a short-term basis, can the employer pay them the City’s minimum wage for their hours worked within the City and the state minimum wage for hours worked in a location that does not have its own minimum wage?*

Answer: Yes, unless the employer has an agreement with the employee or an applicable collective bargaining agreement that requires the employer to pay the employees at a higher rate.

Question 5: *What if the employer does not know that its employees are working some of their hours within the City? For example, if an employee is working remotely from a café in Tukwila even though they don’t live there, or if the employer does not realize that a construction project is within the City limits.*

Answer: It is the employer’s responsibility to keep track of the number of hours worked in the City, so employers who are affected by the minimum wage requirements of the Ordinance need to establish procedures to accurately record when their employees are working in the City.

TLS 02-060 – Large Employer

A. Definition of “Large Employer”

“Large employer” means all employers that employ more than 500 employees, regardless of where those employees are employed, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate.

B. Questions and Answers regarding the Definition of “Large Employer”

Question 1: *Does a franchisee have to employ more than 500 employees in order to be a large employer?*

Answer: It depends. The definition of “large employer” in TMC 5.63.020 includes “... all employers that employ more than 500 employees, regardless of where those employees are employed, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate.”

Question 2: *If a franchisee with over \$2 million in annual gross revenue within the City of Tukwila that employs 15 people worldwide is associated with a franchisor or with a network of franchisees that employs more than 500 employees in the aggregate, is the franchisee a large employer?*

Answer: Yes.

TLS 02-070 – Midsize Employer

A. Definition of “Midsize Employer”

A “midsize employer” is a covered employer that does not fit within the definition of a large employer. In the Ordinance, midsize employers are also referred to as “other covered employers.”

B. Questions and Answers regarding the Definition of “Midsize Employer”

Question 1: *Is a franchisee with 5 employees and over \$2 million in annual gross revenue generated within the City of Tukwila a midsize employer?*

Answer: It depends. If the franchisee is associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate, then it would not be a midsize employer; it would be a large employer.

TLS 02-080 – Qualified Part-Time Employee

A. Definition of “Qualified Part-Time Employee”

Covered employers are only required to offer additional hours to existing qualified part-time employees. An employee is a “part-time employee” for the purposes of the Additional Hours Requirement if, at the time the employer seeks to hire an additional employee for a covered

position, the employee is an existing employee who usually works fewer than thirty-five (35) hours per week.

A “qualified part-time employee” for the purposes of the Additional Hours Requirement is an existing part-time employee who, in the covered employer's good faith and reasonable judgment, has the skills and experience to perform the work.

B. Questions and Answers regarding the Definition of “Qualified Part-Time Employee”

Question 1: *How does a covered employer determine whether an existing part-time employee is “qualified” for additional hours of work?*

Answer: Covered employers must use their good faith and reasonable judgment to determine whether an existing part-time employee has the skills and experience to perform the work.

Question 2: *Are covered employers required to conduct employee reviews of part-time employees to determine if they are qualified for additional hours of work?*

Answer: No. However, covered employers do need to establish a process for determining which existing part-time employees have the skills and experience to perform the work, and covered employers need to document how they decided which part-time employees were qualified and would be offered additional hours before hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies.

TLS 02-090 – Service Charge

A. Definition of “Service Charge”

“Service charge” means an automatic charge added to a customer’s bill for services related to food, beverages, entertainment, or portorage (e.g., handling luggage). An automatic charge is a service charge when it is a separately designated amount collected from customers that is described in such a way that the customer might reasonably believe that the charge is for the service provided by an employee. Types of service charges may include charges identified as “service charge,” “mandatory gratuity,” “delivery charge,” or “portorage charge.” A mandatory gratuity that is automatically added to a bill, such as a restaurant charge for service for a party of more than a certain number, is a service charge.

Service charges paid to an employee are in addition to, and may not count towards, the employee’s hourly minimum wage.

B. Questions and Answers regarding Service Charges

Question 1: *Do employers have to pay service charges to employees?*

Answer: Employers must pay employees all service charges as defined under RCW 49.46.160 except those that, pursuant to RCW 49.46.160, are itemized as not being payable to the employee or employees servicing the customer.

Question 2: *If the percentage of the service charge that is paid to the employee is not disclosed in an itemized receipt and in any menu provided to the customer, how much of the service charge must be distributed by the employer to the employee?*

Answer: If any portion of a service charge is not clearly designated as being retained by the employer, it is due to the employee or employees serving the customer. See Washington State Employment Security Administrative Policy ES.A.12, <https://lni.wa.gov/workers-rights/docs/esa12.pdf>.

Question 3: *Do service charges paid to an employee count towards the employee's hourly minimum wage?*

Answer: No. Service charges paid to an employee are in addition to, and may not count towards, the employee's hourly minimum wage.

TLS 02-100 – Small Employer

A. Definition of “Small Employer”

“Small employer” means an employer that meets both of the following criteria: 1) employs fewer than 15 employees regardless of where they are employed; and 2) has annual gross revenue of \$2 million or less in the City of Tukwila.

B. Questions and Answers Regarding the Definition of “Small Employer”

Question 1: *Are exempt employees counted to determine if an employer is a small employer?*

Answer: No, because Tukwila's definition of “employee” is based on the state definition in RCW 49.46.010, which has numerous exceptions, such as certain casual laborers, overtime-exempt “white collar” workers, volunteers, and others (all sometimes referred to as “exempt employees”), and exempt employees are not included in the employee count for determining whether an employer is a small employer. For details, see TMC 5.63.020.F and the definition of “employee” in [RCW 49.46.010](#).

TLS 02-110 – Tips

A. Definition of “Tips”

“Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip. Where the employer has established a mandatory tip pool or where the employer has agreed to administer a tip pool arrangement that was established by employees amongst themselves to share tips with other employees, only the portion of the tip pool that is allocated to a particular employee is considered to be a tip presented to that employee. Tip pools must comply with state and federal law.

B. Questions and Answers regarding the Definition of “Tips”

Question 1: *Do employers have to pay tips to employees?*

Answer: Employers must pay all tips and gratuities to their employees. Tips may be paid using a tip pool if the tip pool complies with state and federal law.

Question 2: *Do tips paid to an employee count towards the employee's hourly minimum wage?*

Answer: No. Tips paid to an employee are in addition to, and may not count towards, the employee's hourly minimum wage.

CHAPTER 3: RULES AND PROCEDURES SPECIFIC TO THE MINIMUM WAGE REQUIREMENT

TLS 03-010 – Intent

This Chapter provides rules and procedures explaining the minimum wage rate requirements.

TLS 03-020 –Minimum Wage Rates

A. Minimum Wage for Large Employers

Effective July 1, 2023, every large employer must pay an hourly wage at least equal to the 2022 living wage in the City of SeaTac, adjusted for inflation.

On January 1, 2024, and on each January 1 thereafter, the minimum hourly wage will be adjusted for inflation defined as 100% of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the 12-month period ending in August.

B. Minimum Wage for Midsize Employers

Effective July 1, 2023, the minimum hourly wage applicable to midsize employers is \$2 per hour less than that of large employers.

From January 1, 2024, through June 30, 2024, the minimum hourly wage for midsize employers will be \$2 per hour less than the inflation-adjusted rate applicable to large employers for 2024.

Effective July 1, 2024, through December 31, 2024, the minimum wage hourly wage for midsize employers will be \$1 per hour less than the inflation-adjusted rate applicable to large employers for 2024.

From January 1, 2025, through June 30, 2025, the minimum hourly wage for midsize employers will be \$1 per hour less than the inflation-adjusted rate applicable to large employers for 2025.

Effective July 1, 2025, the minimum wage hourly wage for midsize employers will be the same rate applicable to large employers.

C. Other Minimum Wage Requirements

Nothing in the Ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law, so employers who are not affected by Tukwila's minimum wage requirements must still follow the state and federal minimum wage laws.

D. Questions and Answers regarding Minimum Wage Rates

Question 1: *How can employers find out what the minimum wage will be for 2024 and subsequent years?*

Answer: The City's Finance Department will establish and publish the applicable hourly minimum wage rate for the following year by October 15 of each year. The City has posted the minimum wage for 2023 on its website at www.TukwilaWa.gov/MinimumWage. The City anticipates using its website to post the minimum wage in the future. If the link above is broken, or if you would like a copy of the applicable wage rate, contact the City by email at MinimumWage@TukwilaWa.gov.

Question 2: *Do midsize employers need to adjust their minimum wages on January 1, 2024, and on January 1, 2025, in addition to adjusting them on July 1 of each of those years?*

Answer: Yes, because midsize employers are required by the Ordinance to pay an hourly wage that is tied to the hourly minimum wage paid by large employers. As a result, when the minimum wage for large employers is adjusted for inflation on January 1, 2024, and on January 1, 2025, the minimum hourly wage for midsize employers needs to be adjusted for inflation too.

Question 3: *Is the index used by the City of Tukwila to calculate the Tukwila minimum wage different from the index that is used to calculate the state minimum wage?*

Answer: Yes. The state uses the [Consumer Price Index for Urban Wage Earners and Clerical Workers \(CPI-W\)](#), which is the average for U.S. cities, and the City of Tukwila uses the CPI-W for the Seattle-Tacoma-Bellevue Area.

CHAPTER 4: RULES AND PROCEDURES SPECIFIC TO THE ADDITIONAL HOURS REQUIREMENT

TLS 04-010 – Intent

This Chapter is intended to provide rules and procedures to assist employers in implementing the Additional Hours Requirement. in each of the following areas: 1) developing a process for distributing the additional hours of work; 2) the effect of a collective bargaining agreement; and 3) the limitations on when employers need to offer additional hours of work to existing part-time employees.

TLS 04-020 – Process for Distributing Additional Hours of Work to Existing Qualified Part-Time Employees

A. Description of Process

Covered employers must use a reasonable, transparent, and nondiscriminatory process to distribute the hours of work among their qualified part-time employees before hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies.

B. Questions and Answers regarding the Process for Distributing Additional Hours of Work to Qualified Part-Time Employees

Question 1: *Can a covered employer give all the additional hours of work to one qualified part-time employee even though two qualified part-time employees both want to work the additional hours?*

Answer: It depends on the process used by the employer to distribute the additional hours of work. The process used to distribute the hours among multiple qualified part-time employees must be reasonable, transparent, and nondiscriminatory.

Question 2: *Do covered employers have to offer an employee additional work hours if the employer would be required to compensate the employee at time -and -a -half or other premium rate under any law or collective bargaining agreement?*

Answer: No. See TMC 5.63.070.B.

Question 3: *Can an employer offer additional hours or a new position to an existing employee without going through the process in TLS 04-020?*

Answer: Yes. The process for distributing additional hours of work to existing qualified part-time employees only applies before a covered employer hires additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies to fill those hours. If a covered employer distributes additional hours to an existing employee or places an existing employee in a vacant or new position, then the Additional Hours Requirement does not apply.

Question 4: *Can a covered employer post a notice at the worksite or on an intranet to give notice to qualified part-time employees that extra hours are available, or must the employer give notice individually to each qualified employee?*

Answer: If this method of giving notice is part of a reasonable, transparent, and nondiscriminatory process to distribute the hours of work, then it would be an acceptable way to provide notice.

Question 5: *What steps are necessary to fulfill the requirement that the process for distributing additional hours is transparent?*

Answer: The distribution process must be in writing and available for review by existing part-time employees prior to the employer's decision to hire one or more additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies to fill the additional hours of work. The employer must also keep documentation of the process used to distribute the hours of work among existing qualified part-time employees.

Question 6: *What steps are necessary to fulfill the requirement that the process for distributing additional hours is nondiscriminatory?*

Answer: The distribution process must not violate any federal, state, or local laws that protect employees from discrimination.

Question 7: *How often does a covered employer need to give a notice of availability to qualified existing part-time employees if the covered employer is continually seeking to fill a covered position, such as due to employee turnover?*

Answer: Covered employers must offer additional hours of work to qualified existing part-time employees before hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies.

TLS 04-030 – Applicability to Collective Bargaining Agreements

The Ordinance shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater wages or compensation; and nothing in the Ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. See TMC 5.63.100. Collective bargaining agreements are governed by federal and state laws and regulations, so the Additional Hours Requirements must be interpreted and applied so as to not be in conflict with such laws.

TLS 04-040 – Limitations on Requirement to Offer Additional Hours of Work to Existing Part-Time Employees

A. When Offers of Additional Hours are Not Required

Covered employers are not required to offer additional hours of work to existing part-time employees under the following circumstances: 1) the position the employer seeks to fill is not a covered position; 2) the employer fills an open position with an existing employee; 3) the employer distributes additional work hours to existing employees; 4) none of the existing part-time employees meet the criteria for being a “qualified part-time employee;” 5) the additional hours are for work that is outside the City; 6) the employer rehires an employee after a seasonal interruption of work; and/or 7) offering the additional hours of work to an existing qualified part-time employee would conflict with federal or state law.

The circumstances under which covered employers are not required to offer additional hours of work to existing part-time employees set forth in this Subsection A are illustrative and not exclusive, as there may be other circumstances where the Hours Requirement does not apply.

B. [Reserved]

CHAPTER 5: ENFORCEMENT

TLS 05-010 – Intent

This Chapter is to provide rules and procedures to assist in understanding: 1) who can bring a civil action to enforce the Ordinance; 2) who can be sued for a violation of the Ordinance; 3) what remedies are available to a person or a class of persons that suffers financial injury as a result of a violation of the

Ordinance; 4) the process for submitting a complaint to the City Attorney; and 5) administrative actions the City may pursue for violations of the Ordinance.

TLS 05-020 – Civil Actions for Violation of the Ordinance

A. Criteria for a Civil Action

Any person or class of persons that suffers financial injury as a result of a violation of TMC Chapter 5.63 or is the subject of prohibited retaliation under TMC 5.63, or any other individual or entity acting on their behalf, may bring a civil action in a court of competent jurisdiction against the employer or other person violating TMC Chapter 5.63. A civil action must be filed within five years of the date of the violation of TMC Chapter 5.63.

B. Questions and Answers regarding Criteria for a Civil Action

Question 1: *Who can bring a civil action in court on behalf of a person who suffers financial injury as a result of a violation of this Ordinance or is the subject of prohibited retaliation?*

Answer: An individual or entity acting on behalf of a person or a class of persons that suffers financial injury as a result of a violation of TMC Chapter 5.63 or is the subject of prohibited retaliation under TMC Chapter 5.63.

The City Attorney also may, if the City Attorney deems appropriate, initiate legal or other action to remedy any violation of TMC Chapter 5.63. Additionally, the City may, in the exercise of its authority and performance of its functions and services, agree by contract or otherwise to participate jointly or in cooperation with Washington State, King County, or any city, town, or other incorporated place, or subdivision thereof, or engage outside counsel, to enforce TMC Chapter 5.63.

Question 2: *Who can be sued for a violation of the Ordinance?*

Answer: A civil action for violation of TMC Chapter 5.63 can be brought against the employer or other person violating TMC Chapter 5.63. “Employer” is defined as set forth in RCW 49.46.010 and TMC 5.63.020.

Question 3: *What remedies are available in a civil action?*

Answer: Upon prevailing in a civil action, any person or class of persons that suffers financial injury as a result of a violation of the Ordinance or is the subject of prohibited retaliation under this Ordinance, or any other individual or entity acting on their behalf, shall be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any unpaid wages plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid wages; compensatory damages; and a penalty payable to any aggrieved party of up to \$5,000 if the aggrieved party was subject to prohibited retaliation. For the purposes of the Ordinance, Interest shall accrue from the date the unpaid wages were first due at the higher of twelve percent per annum or the maximum rate permitted under RCW 19.52.020.

Question 4: *Who is an “aggrieved party” for the purposes of the Ordinance?*

Answer: An “aggrieved party” means an employee or other person who suffers tangible or intangible harm due to an employer or other person’s violation of TMC Chapter 5.63.

TLS 05-020 – Complaints to the City Attorney for Violation of the Ordinance

A. Criteria for a Complaint to the City Attorney

Complaints that any provision of the Ordinance has been violated may also be presented to the City Attorney, who is hereby authorized to investigate and, if they deem appropriate, initiate legal or other action to remedy any violation of the Ordinance. Filing a complaint with the City Attorney is not a prerequisite for filing a civil action.

B. Questions and Answers regarding Criteria for a Civil Action

Question 1: What is the process for submitting a complaint to the City Attorney?

Answer: Complaints that the Ordinance has been violated may be presented to the City Attorney by any person who suffers financial injury as a result of a violation of the Ordinance or is the subject of prohibited retaliation under the Ordinance. Complaints presented to the City Attorney must be made in writing on a Complaint Form that will be posted on the City’s website (currently www.TukwilaWa.gov/MinimumWage). Complaint Forms may be submitted to the City Attorney by U.S. Mail addressed to “Office of the Tukwila City Attorney” at the address on the Complaint Form, or as an attachment to an email addressed to MinimumWage@TukwilaWA.gov. After the City Attorney receives the Complaint Form, the City Attorney, or designee, is authorized but not required to investigate and, if the City Attorney deems appropriate, to initiate legal or other action to remedy any violation of the Ordinance. The scope of the investigation, if any, shall be determined by the City Attorney. The City Attorney is also authorized but not required to designate representatives, including city contractors and representatives of unions or worker advocacy organizations, to access the worksite and review relevant records to investigate complaints of noncompliance.

If the City Attorney designates representatives as provided in this section, the designation will be made in writing and, upon request, the designee shall immediately provide a copy of such designation to any employer whose worksite the designee is accessing and the owner or lessor of such worksite. Activities undertaken by any such designee shall be specified in a written agreement executed by the City and the designee.

Question 2: Under what circumstances would the City deny, suspend, or revoke a license for violation of the Ordinance?

Answer: The Finance Director may deny, suspend, or revoke any license issued under Chapter 5.04 TMC for violation of the Ordinance, and the Finance Director must deny, suspend, or revoke any license issued under Chapter 5.04 TMC for repeated intentional violations of this Ordinance. See TMC 5.04.113. The process for denial, suspension, or revocation is set forth in TMC 5.04.110.C and TMC 5.04.110.D, and the process for appeal of a Notice of Denial, Suspension, or Revocation is set forth in TMC 5.04.112. The hearing on appeal will be heard by the City’s Hearing Examiner or other hearing body appointed by the Mayor, City Council, or City Attorney.

Question 3: *What administrative actions can the City take for violations of the Ordinance?*

Answer: Per TMC 5.63.090.F, the City has the authority to issue administrative citations and to order injunctive relief including reinstatement, restitution, payment of back wages, or other forms of relief. Additionally, under TMC 5.60.090H, the remedies and penalties provided under the Ordinance are cumulative and are not intended to be exclusive of any other available remedies or penalties, including existing remedies for enforcement of Tukwila Municipal Code chapters.

Question 4: *Can the City take action against an employer if no aggrieved person makes a complaint?*

Answer: Yes. The City has the authority to issue administrative citations and to order injunctive relief including reinstatement, restitution, payment of back wages, or other forms of relief. The City may agree by contract or otherwise to participate jointly or in cooperation with Washington State, King County, or any city, town, or other incorporated place, or subdivision thereof, or engage outside counsel, to enforce the Ordinance. Also, the remedies and penalties provided under TMC Chapter 5.63 are cumulative and are not intended to be exclusive of any other available remedies or penalties, including existing remedies for enforcement of Tukwila Municipal Code chapters. Any violations of TMC Chapter 5.04 or failure to comply with TMC Chapter 5.04 (which includes TMC 5.04.113 Violations of Minimum Wage and Fair Access to Additional Hours Regulations), shall be subject to enforcement and penalties as prescribed in TMC Chapter 8.45 and the issuance of a Notice of Violation in accordance with TMC 8.45.070.

CHAPTER 6: EMPLOYER NOTICES, RECORDKEEPING, AND COMPLIANCE CERTIFICATION

TLS 06-010 – Intent

This Chapter is to provide rules and procedures that explain what notices must be given by covered employers, what records must be maintained for purposes of compliance and enforcement of TMC Chapter 5.63, and the steps covered employers must take to certify compliance with TMC Chapter 5.63.

TLS 06-020 – Required Notices

A. Written Tukwila Labor Standards Notice to Employees

Employers affected by this Ordinance must provide a copy of the “Tukwila Labor Standards Notice to Employees” to all of their employees who work within the City of Tukwila and to all individuals who work for the affected employer through joint employment (“joint employees”) within the City of Tukwila no later than June 30, 2023, and at least 30 days prior to any changes in the hourly minimum wage. Additionally, any employees and joint employees who begin working for the affected employer within the City of Tukwila after June 30, 2023 must be given a copy of the “Tukwila Labor Standards Notice to Employees” then in effect on or before their first day of work within the City of Tukwila. The City will prepare the Tukwila Labor Standards Notice to Employees and post it on the City’s website (currently www.TukwilaWa.gov/MinimumWage) so that it is available for affected employers to download and distribute prior to the date it is due. Any updates or revisions to the notice will also be published on the website. Affected employers must use the most recent version of the notice that is published on the City’s website.

Distribution of the Tukwila Labor Standards Notice to Employees shall be by one or more of the following methods: 1) sending the notice via email if the individual has a work email address that they are required to check regularly or a personal email address that they have provided for the purpose of receiving work-related notices; 2) sending the notice via U.S. Mail, postage paid; 3) including the notice with the individual's pay stub; or 4) physically handing the notice to the individual. Affected employers must maintain documentation of the notice method and date the notice was provided to each individual.

In response to any request made by or on behalf of an employee or joint employee, affected employers are responsible, at the employer's expense, for accurately translating the Tukwila Labor Standards Notice to Employees into a language other than English if necessary to effectively communicate the contents of the notice to the employee(s) and joint employee(s), and for providing it in an alternative format for employees and joint employees who have a disability that affects their ability to read or understand the Tukwila Labor Standards Notice to Employees.

B. "Tukwila Labor Standards" Poster

Affected employers must post a current "Tukwila Labor Standards" poster in each workplace within the City of Tukwila (unless such workplace is an employee's or joint employee's place of residence). This poster must be displayed in a noticeable area at the workplace, in English and in any other language(s) necessary to effectively communicate with affected employees. The City of Tukwila will prepare the poster and post it on the City's website (currently www.TukwilaWa.gov/MinimumWage) so that it is available for affected employers to download and post prior to the date of any changes to the minimum wage. When posted, the poster must be at least 8.5" x 11." If the City of Tukwila has not developed a poster in a language that is used by an employer to effectively communicate with its employees, the affected employer must provide, at its expense, accurate translations, interpretations, and accommodations for people with disabilities.

C. Questions and Answers regarding the Notice Requirements

Question 1: *Do I have to give the written "Tukwila Labor Standards Notice to Employees" to my employees if the Ordinance does not apply to any of my employees?*

Answer: No.

Question 2: *Do I have to give the written "Tukwila Labor Standards Notice to Employees" to all my employees if I am an affected employer?*

Answer: Affected employers need to give the notice to all employees (as defined in RCW 49.46.010) who are working or are scheduled to work within the City of Tukwila. However, if the covered employer prefers to give the notice to a broader group of employees, it is acceptable to do so.

Question 3: *I am a covered employer with my headquarters in Seattle, and some of my employees occasionally do construction jobs within the City of Tukwila. Where should I post my posters?*

Answer: Affected employers who do not have a fixed worksite within the City of Tukwila can post their poster in a location where their employees who work within the City of Tukwila will see it, such as a breakroom or an area where they pick up tools and equipment before going into the

City to do their work, or on location such as in a job trailer, food truck, or rest area. Additionally, posters can be posted outdoors in a work area if they are waterproofed (e.g., laminated or placed in a see-through protective covering).

TLS 06-030 – Records Retention Requirements

A. Types of Records that Must be Maintained

Affected employers must maintain the following records for five years or until any litigation or enforcement action brought to enforce the Ordinance has been completed, whichever is longer:

1. The “Tukwila Labor Standards Notice to Employees” distributed to individuals (including a copy of the notice and the date and method of distribution for each notice to each person) and the “Tukwila Labor Standards” posters (including copies of the posters and the date posted and location for each poster).
2. Any collective bargaining agreements and any written employee policies and procedures related to requirements under this Ordinance such as, but not limited to, an employee handbook or manual and their effective dates.
3. List of current and former employees who work or have worked in the City of Tukwila during the prior five years, including their position, phone number, physical address, and personal email (if any).
4. Records of any employee discipline, warnings, performance improvement plans, demotions, reassignments, and pay rate or salary changes.
5. Records of any adverse action as that term is used in TMC 5.63.080.
6. Statement of the number of employees employed per year worldwide for each of the previous five calendar years.
7. For each employee who works or has worked within the City of Tukwila in the last five years, all records listed in RCW 49.46.070 and WAC 296-128-010.
8. For all employees that perform any work in the City, records of tips, and service charges, and documentation of any tip pools.
9. All records and other materials received, used, and/or considered in making employment decisions relating to covered positions.
10. All hiring policies that apply to covered positions.
11. All job postings and job applications for covered positions.
12. Mass communications to qualified part-time employees regarding the availability of additional hours of work.
13. Notices of additional hours of work made to qualified part-time employees pursuant to TMC Chapter 5.63.
14. Documentation of requests from qualified part-time employees for additional hours of work.
15. Documentation showing that a qualified part-time employee declined an offer of additional hours of work.
16. Documentation establishing that the process used to distribute additional hours of work among existing qualified part-time employees is reasonable, transparent, and nondiscriminatory.
17. All records used by the employer to calculate the number of employers for employee classification purposes.

18. All records used by the employer to determine if separate entities will be considered a single employer for the purposes of employer classification.
19. For employers who are franchisees, records that establish whether or not the franchisee is associated with a franchisor or network of franchisees with franchisees that employ more than 500 employees in the aggregate.
20. All records used by the employer to calculate gross revenue.
21. Any records not listed above that the employer is required to maintain under any other Washington state or federal law related to labor and employment.

B. Questions and Answers regarding Recordkeeping

Question 1: *Do I have to keep the records described in TLS 06-030.A if I am not an affected employer?*

Answer: Each affected employer shall retain records as required by RCW 49.46.070, as well as such information as the City may require, which includes all of the information in TLS 06-030.A. See TMC 5.63.090.C.

Question 2: *What are the consequences if a covered employer does not keep all of the records described above?*

Answer: As noted in TMC 5.63.090.C, “If an employer fails to retain such records, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this chapter for the periods and for each employee for whom records were not retained.”

Question 3: *Do covered employers have to keep any records that are not listed above?*

Answer: Employers may have additional obligations to preserve records that are not listed above, such as to respond to discovery requests in litigation. Any such recordkeeping requirements are beyond the scope of this Rule.

TLS 06-040 – Certification Requirements

A. Annual Certification

TMC 5.63.110 requires employers to annually certify their compliance with TMC Chapter 5.63. The annual certification shall be made using a form provided or approved by the City, which shall be available on the City’s website (currently www.TukwilaWa.gov/MinimumWage). Certifications shall be in the form of an unsworn declaration as defined in RCW 5.50.010 and shall include information that the City of Tukwila Finance Director in consultation with the City Attorney determines in their discretion to be appropriate for purposes of certifying compliance with TMC Chapter 5.63. The form of certification may be revised or updated by the City of Tukwila Finance Director in consultation with the City Attorney at any time by posting the updated or revised form on the City’s website. Certifications must be received by the City of Tukwila Finance Department no later than January 31 for the previous calendar year. Affected employers who do not timely file their annual certification form are subject to the enforcement provisions set forth in TMC 5.63.090.

B. Certification upon Request

Upon request made by the City of Tukwila Finance Director, the City Attorney, or their authorized representative, any employer who is requested to do so shall furnish to the City of Tukwila Finance

Director, to the City Attorney, or to their authorized representative a certification of compliance upon forms prescribed or approved by the City of Tukwila Finance Director or the City Attorney. Such certifications are part of the information the City may require to confirm and/or monitor compliance with TMC Chapter 5.63. See TMC 5.63.090.C and TMC 5.63.090.D.

C. Questions and Answers regarding Certification

Question 1: *Is there an electronic certification option?*

Answer: The current version of the Certificate of Compliance requires the original to be mailed to the City of Tukwila Finance Department. The Finance Director is exploring whether filing electronically will be permitted in the future. Any changes regarding how to file the Certificate of Compliance form will be listed on the form and will be available on the City's website (currently www.TukwilaWa.gov/MinimumWage).

Question 2: *Can you provide examples of some circumstances where the Finance Director, City Attorney, or their authorized representative might make a specific request for certification?*

Answer: For example, a specific request for certification may be made if there is a concern that an annual Certificate of Compliance on file with the City is not accurate or complete, or if there is a concern that an employer may have inaccurately self-determined that it is not an affected employer. There may also be other situations as well; these are just some illustrative examples.