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## **Legal Update**

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### Fair Change Employment Ordinance

# SEATTLE TAKES STEPS TO AMP-UP EMPLOYEE PROTECTION LAWS

Starting in 2011, Mayor of Seattle, Ed Murray signed new ordinances which establish additional protections for Seattle employees, a city that proudly bears a rating of the 3<sup>rd</sup> most liberal city in the United States by The Economist. <http://www.economist.com/blogs/graphicdetail/2014/08/daily-chart-0>

In 2012, the **Paid Sick and Safe Time Leave Ordinance** was enacted which allows employees to take time off due to their own illness, injury or health condition, to take care of a family member with an illness, injury or medical appointment, when the employer's place of business has been closed by order of public official for health reasons or for reasons related to domestic violence, sexual assault or stalking. This ordinance applies to all employers with more than 4 full-time equivalent employees starting on September 1, 2012 and can be enjoyed by all employees who are full-time, part-time, and temporary. A majority of Seattle businesses support the paid sick leave requirement and report few costs or challenges according to a new audit from the Seattle Office of the City Auditor and the University of Washington.

Originally entitled the Job Assistance Act, the **Fair Change Employment Ordinance** ("FCE") was enacted in 2013. This ordinance limits how employers and businesses can use an applicant's conviction and arrest record in the hiring process and course of employment within the City's limits. The ordinance prohibits categorical

exclusions in job advertisements, limits criminal history questions on job applications and criminal background checks until after an employer has conducted an initial screening. It puts the burden on employers to have a legitimate business reason for denial of a job to an applicant based on a conviction record. This means that an employer should thoroughly document the interview process in order to prevent investigation from the enforcement body, Seattle's Office of Labor Standards ("OLS"). Furthermore, employers are required to give applicants an opportunity to explain or correct criminal history. There are limitations on the application of the ordinance, which does not apply to jobs involving unsupervised access to children under 16, individuals with developmental disabilities or vulnerable adults.

Examples of violations that have been found by the OLS include a national online food delivery company based in Seattle that had been excluding any job applicant with a criminal background. The OLS determined that this type of exclusionary advertisement was expressly illegal under the FCE. After the applicant filed a charge with the OLS, the company agreed in a settlement to fully comply with the law, and changed its application process and public information across the country. Another example involved a large auto dealership, which had first offered a job to a candidate, then revoked the job offer after running a criminal background check. The dealership did not let the applicant explain or correct the information. Under FCE, the OLS deemed this incident as the dealership's first violation, with no penalty assessed.

While enacted in 2015, the roots of the Wage Theft Prevention and Labor Standards Harmonization Ordinance go back to 2011 when Seattle first criminalized wage theft through Municipal Code Section 12A.08.060 entitled Stealing Wages from Another. The passing of the Ordinance was driven by research conducted by the City, which showed that wage theft is a significant problem around the country. One study cited by Seattle.gov showed that more than 2/3 of surveyed workers in low wage industries experienced at least one pay-related violation in the previous work week amounting to an average loss of 15% of weekly earnings. Seattle took its first step by criminalizing wage theft in 2011, but the City determined that employees were not filing complaints in the Seattle police department. The City reassessed its ability to protect what it deemed to be a population of people who were among the most vulnerable in the City and often lacked access to sufficient resources and time to appeal their unpaid wages. In an effort to create a level-playing field and to support businesses by rooting out unscrupulous actors that are able to undercut prices by avoiding paying their workers fair compensation, the City passed the ordinance which 1) Created an administrative private cause of action for violation of the ordinance (it does not replace the criminal complaint process for worker's complaining of wage theft); 2) Increases penalties for violations of labor laws in questions; 3) Decreases fines if employer pays promptly

(mitigation); 4) Provides fines of \$1,000 per employee for retaliation resulting from a complaint; 5) Allows employees to file anonymous complaints; 6) Allows the OLS to conduct proactive investigations; 7) Limits the city's right to do business with violating businesses and allows for license denial and revocation; 8) Permits the OLS to help worker's obtain U-Visas<sup>1</sup>; 9) Provides \$1 million in grants for education and technical assistance to inform workers of their rights and 10) Sets forth a three year statute of limitations for employees to bring charges. The remedies available to a claimant include the alleged amount of unpaid wages and tips, any additional lost compensation accrued after the filing of the charge and discretionary civil penalties for first-time violators of up to \$500 per aggrieved party. Furthermore, the ordinance avoids all loopholes in favor of the employer by imposing the liabilities upon successor employers in the event a business is sold or transferred.

The imposition of the minimum wage increase will occur in waves: For small businesses (with 499 employees or less), they must adhere to the following schedule:

- i. \$11/hour by 4/1/15
- ii. \$12/hour by 1/1/16
- iii. \$13/hour by 1/1/17
- iv. \$14/hour by 1/1/18
- v. \$15/hour by 1/1/19

For large businesses (with 500 employee or more) they must adhere to the following schedule:

- vi. \$15/hour by 1/1/17

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<sup>1</sup> The **U visa** is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity.