

Wage Theft Ordinance Fact Sheet

Service Charges

Seattle's Wage Theft Ordinance protects against wage theft by creating requirements for payment of wage and tips within Seattle city limits. The law applies to employers that have one or more employees that perform work in Seattle. This law became effective on April 1, 2015.

The law requires employers to pay employees "all compensation owed" by reason of employment. This broad requirement means that an employer's failure to follow Washington State service charge law in Seattle can be enforced through private litigation under this law and enforced by the Seattle Office of Labor Standards (OLS). This also could result in liability for violations of the Washington State Minimum Wage Act.

What is a Service Charge?

Service charges are automatic, separately designated amounts added to a customer's bill that appear to be for services provided by employees. Service charges include automatic charges that appear on receipts as a "service charge," "automatic gratuity," "mandatory gratuity," "delivery charge," or "portage charge."

It is not a service charge if it is not described in a way that a customer might reasonably believe it was for services provided by an employee (for example: a late fee, cancellation fee, or parking fee).

What must an employer share with the customer about service charges?

Employers who include service charges must disclose the percentage of the service charge that is paid directly to the employee(s) serving the customer. The disclosure must appear on itemized receipts and on any menus provided to the customer.

Who gets the service charge?

Employers must pay employees the percentage of a service charge that is disclosed on the menu or receipt as payable to the employee(s). If any portion of a service charge is not clearly noted as being retained by the employer, employers must pay this to the employee or employees serving the customer.

Do service charges count towards an employer's obligations under Seattle's Minimum Wage Ordinance?

Employers can count service charges paid to the employee as commissions but only for the employee's earnings above the Washington State minimum wage. Employers can also count service charges paid to the employee toward Seattle's minimum wage and minimum compensation requirements but only for the employee's earnings above the Washington State minimum wage.

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If an employer discloses a service charge on a menu or receipt to the customer as not payable to the employee (“payable to the house”), the employer is not bound by these restrictions. In other words, when an employer informs customers that service charges are not payable to the employee, then service charges are simply revenue in the same way that a customer’s payments for food would be. The employer is free to decide how to use this revenue.

Under Seattle’s Minimum Wage Ordinance, small employers of 500 or fewer employees worldwide can count tips towards a certain portion of their obligation to pay an employee minimum compensation. Service charges are not tips and cannot be counted towards this part of their obligation. For more information about tips and their relationship to the Minimum Wage Ordinance, please see the Minimum Wage Ordinance Question and Answers on the OLS website.

Resources

The Office of Labor Standards has made several templates and required notices for employers available on its website (some in multiple languages) at <http://www.seattle.gov/laborstandards>:

- Wage Theft Ordinance
- Wage Theft Fact Sheet
- Minimum Wage Ordinance Question and Answer Document
- Annual Labor Standards Poster
- Notice of Employment Information Template

Resources for Washington State law on service charges can be found on the Washington State Labor & Industries webpage at <https://lni.wa.gov/>:

- Washington State Labor & Industries, Administrative Policy ES.A.12
- Revised Code of Washington 49.46
- Washington Administrative Code 296-128