



**TO:** Elizabeth Pauli, City Manager  
**FROM:** Andy Cherullo, Finance Department  
**COPY:** Government Performance Finance Committee  
**SUBJECT:** Employment Standards -- City & State laws related to Paid Sick Leave  
**DATE:** May 24, 2017

**SUMMARY:**

In November 2016, voters approved Washington State Initiative 1433, changing statewide employment standards by increasing state minimum wage and adding paid sick leave. Tacoma's local minimum wage will not be impacted until at least 2019; however, amendments to Tacoma Municipal Code (TMC) Title 18 will be needed this year to align City code with the State's paid sick leave law within a timeframe that will allow the City to educate businesses and workers on the changes that impact them before the new State laws take effect on January 1, 2018. Staff is seeking a recommendation on the proposed amendments.

**BACKGROUND:**

Since the passage of the Paid Leave Ordinance in January 2015, the City has built an employment standards program that focuses on public education, while providing a high level of support to businesses and protections for precariously-employed workers. Five key factors shaped the City's current employment standards practices: 1.) Emerging best practices; 2.) Academic research findings; 3.) Retaining the flexibility that allows the laws to be adapted to a variety of workplaces; 4.) A drive to provide outstanding service; and 5.) Effective enforcement of the laws that provide increased community health and economic stability for vulnerable workers. As a result of this work, the city has been recognized as a national model for paid sick leave implementation.

**ISSUE:**

The primary issue facing Tacoma's Employment Standards is the fact TMC 18.10 "Paid Leave" will not align with new state law as of January 1, 2018. The greatest differences between the City and State are: 1.) The enforcement models used by the two agencies; and 2.) The amount of sick leave provided under each law.

**Enforcement**

Across the country, agencies of all sizes have routinely adopted workplace-wide investigations that offer confidentiality for workers who fear losing their job. This model has emerged as a best practice both for incentivizing voluntary compliance and for restoring the rights of workers who may not feel secure enough in their employment to come forward with a complaint, a topic of heightened importance due to changes in immigration practices. Tacoma uses workplace-wide investigations when a complaint is received.

By contrast, Labor and Industries' (L&I) State Wage and Hour Division conducts individual investigations, seeking information on what is owed only to the individual worker that came forward to file a complaint. Individual investigations do not allow confidentiality for witnesses. The cost for an employer to remain in non-compliance is often less expensive than the cost of following the law under this model.

Data from actual cases demonstrate that the City's workplace-wide model of enforcement returned twenty-five (25) times the amount of wages/paid sick leave hours that would have been collected by the State if they had a similar caseload. Workplace-wide enforcement resulted in remedies being provided to twenty-five (25) times as many workers during the period analyzed. See Attachment 1 for details.



**Paid Sick Leave Provisions**

The differences between the City and State paid sick leave laws can be found in a detailed table in Attachment 2. In general, the law passed by state voters is more generous because there is no cap on the number of hours that can be accrued. However, there are some areas where the City paid leave law provides broader protections:

- ***Who's covered? – State paid sick leave does not cover exempt employees***

The State paid sick leave law has broad exemptions for workers “employed in a bona fide executive, administrative, or professional capacity” or classified as an “outside salesperson.” Because of this, exempt workers and some workers in sales have no right to paid sick leave under the State law.

- ***Reasons for Use – State paid sick leave has more limited uses***

Initiative 1433 did not include bereavement of a close family member. The leave provided by state law also cannot be used to care for a child when there is a school closure unless that school closure is for health reasons (e.g., it cannot be used to care for a child who is at home due to school closures related to facility failures, security issues, or inclement weather). State law does expand covered family members to include siblings and grandchildren.

While the State Rules are currently being finalized, initial feedback in that process indicates that stakeholders also appreciate the level of flexibility provided by the City’s law.

**ALTERNATIVES:**

The alternative to modifying Tacoma’s existing paid leave law is to repeal TMC 18.10 and rely on State laws and State enforcement to determine paid sick leave outcomes within the City. The alternative would not provide employers some of the flexibility currently offered in the TMC nor would it provide employees with the confidential, work-place wide enforcement model that the City currently applies to complaints received.

**FISCAL IMPACT:**

There is no fiscal impact to the 2017/2018 budget. The Employment Standards program is included in the current biennial budget and staff will continue to educate and enforce the City’s higher minimum wage requirement in 2018.

**RECOMMENDATION:**

Staff recommends amending TMC 18.10 to preserve Tacoma’s nationally-recognized outreach and enforcement models, the provision of paid sick leave to exempt employees, and the flexibility currently offered to employers wherever allowable under state law.

Draft code language would need to be ready for Council consideration by late summer in order to allow for a rules process as well as significant public education prior to January 1, 2018.

The City’s minimum wage, set by voter initiative, would require a vote of the public to enact any amendment prior to February 1, 2018 (two years following the initiative’s effective date). Staff recommends deferring action on Tacoma’s minimum wage law until the end of 2018.



**ATTACHMENTS**

1. City & State Enforcement Models
2. TABLE: Side-by-Side Comparison of Paid Sick Leave Laws
3. Employment Standards Case Information
4. Education, Outreach, & Community Partnerships
5. Additional Resources



**ATTACHMENT 1: CITY & STATE ENFORCEMENT MODELS**

Data from actual cases demonstrated that utilizing the City’s workplace-wide model of enforcement returned twenty-five (25) times the amount of wages/paid sick leave hours that would have been collected by the state if they had a similar caseload. Workplace-wide enforcement also provided remedies to twenty-five (25) times as many workers during the period analyzed.

**Comparison of City & State Enforcement Outcomes**

*Figures based on actual Tacoma case data from February 2016 – February 2017*

	# of Workers receiving owed wages or leave	Value of wages/leave returned to workers
<b>City Enforcement</b>	257	\$33,144
<b>State Model</b>	11	\$1,444

*Investigations restoring the rights of the complainant only (State Model) resulted in just 4% of the impact of workplace-wide investigations.*

***As striking as these figures are, the actual variance between State- and City-led enforcement may be even greater.*** The figures used in the analysis assume that the state would have received the same volume of complaints received by the City. Historically, that has not been the case. In an email, L&I indicated that they received just two (2) minimum wage complaints within all Tacoma zip codes in the 2015 fiscal year. For comparison, the City of Tacoma received 46 complaints from February 2016 – February 2017; roughly half of these complaints (49%) included an alleged minimum wage violation.

***Academic papers indicate that trust is an essential piece of effective enforcement,*** particularly in a complaint-based system like Tacoma’s. Complaint-based investigations rely on a witness being willing to come forward and report violations. We have worked strategically to build this kind of trust with workers. In addition to conducting workplace-wide investigations and offering confidentiality to witnesses, we work with local community partners to reach those who are most likely to be working in lower wage, non-benefitted positions. We seek one-on-one contacts in the community to build relationships with workers.

***In 2017, federal statements related to immigration have created additional barriers to trust*** at all levels of government. The City’s paid leave and minimum wage rules explicitly indicate that questions will not be asked about a witness’s documentation or right to work, providing a level of comfort and security for groups known nationally to be at higher risk for workplace wage and hour violations. Currently, we have a bilingual staff member that allows the City to conduct direct Employment Standards outreach to Spanish-speaking workers and business owners as well. Academic findings indicate that this work to build trust will lead to an increasing willingness for workers to come forward and report violations when they take place.

***An Issue of Equity.*** Complaint-based systems of enforcement can reflect inequities and result in decreased protections for the most vulnerable workers. Initiating a workplace wide investigation when a complaint is received can restore the rights of precariously-employed workers who may not otherwise come forward.



**ATTACHMENT 2: SIDE-BY-SIDE COMPARISON OF PAID SICK LEAVE LAWS**

There are considerable differences between City and State paid sick leave laws. An overview is captured in the following table.

<b>Provision</b>	<b>City of Tacoma</b>	<b>Statewide Initiative 1433</b>
<b>Effective Date</b>	February 2, 1015	January 1, 2018
<b>Accrual rate</b>	Minimum of 1 hour for every 40 worked	Minimum of 1 hour for every 40 worked
<b>Accrual annual limit</b>	24 hours per year	Law sets no limit on accrual.
<b>Carry over annual limit</b>	24 hours	40 hours
<b>Annual limit on use</b>	40 hours	Law sets no limit on use.
<b>When does employee become eligible to use accrued time?</b>	180 <sup>th</sup> day after hire	90 <sup>th</sup> calendar day after hire
<b>Reasons for use</b>	Various reasons related to health, safety, and some kinds of family care.	Differences: <ul style="list-style-type: none"> <li>• I-1433 does not include bereavement</li> <li>• School closures by public official are not covered by I-1433 unless for health reasons</li> <li>• I-1433 does include siblings and grandchildren as covered family members.</li> </ul>
<b>Rehires &amp; leave balances</b>	Must reinstate paid leave benefits when rehired within six months and within the same benefit year.	Must reinstate when rehired within 12 months.
<b>Payout of unused leave</b>	Not required, but employer can choose to offer it.	Not required. Details to be determined by state rules process.
<b>Can employers require employees to provide documentation when using leave?</b>	Yes, but must currently accept a personal statement.	For absences exceeding three days, “if not an unreasonable burden” – Details of the test that will be used to be set by State rules process.



<p><b>Employees exempted</b></p>	<p>City ordinance exempts government employers, employees covered by work study agreements.</p>	<p>Salaried workers and outside salespersons are exempted: The law uses the state’s minimum wage definition of employee, which has broad exemptions for workers “employed in a bona fide executive, administrative, or professional capacity” (e.g., Overtime-exempt/salaried employees) or classified as an “outside salesperson.” Specifically does apply to “individual providers” (defined by RCW 74.39A.240(s)) paid by the state.</p>
<p><b>Enforcement</b></p>	<p><b>Workplace-wide investigations.</b> Workplace-wide investigations are conducted in all cases except instances of individual retaliation. Non-disclosure of witness identity offered when complainant fears lost job or wages. Remedies include restoration of hours/wages owed to all employees at the worksite + possible civil penalty. Have the authority to revoke business license in egregious situations. No right to private action.</p>	<p><b>Individual Investigations.</b> L&amp;I plans to maintain their current practice: Individual investigations into amounts owed to complainants only. Non-disclosure is not offered to witnesses who fear retaliation. Private action and/or workplace wide investigations are available options, but they are very rarely used.</p>
<p><b>CBA Waiver</b></p>	<p>City code allows employees to explicitly waive their right to paid leave in a Collective Bargaining Agreement.</p>	<p>I-1433 does not include mention of a CBA waiver. While the State is currently developing their rules, CBA waivers are unlikely to be included as the law does not permit “any agreement between such employee and the employer allowing the employee to receive less than what is due” under state law. This same language could limit the City’s ability to retain 100% of its flexible policy options.</p>

State rules currently under development may clarify additional differences between the two laws.



**ATTACHMENT 3: EMPLOYMENT STANDARDS CASE INFORMATION**

**EMPLOYMENT STANDARDS OVERVIEW**

*Enforcement totals through April 2017*

Total Employees Impacted*	Employees receiving owed Leave/ Wages	Total Value of Recovered Leave/ Wages	Paid Leave Hours Recovered	Value of Recovered Paid Leave Hours	Back pay recovered for Minimum Wage
4856	287	\$38,469	2204	\$36,114	\$2,356

*NOTE: Does not include impacts resulting from voluntary compliance.*

*\*= Total number of employees at companies that are the subject of a complaint. Remedies can include notice of available leave balances, notice of right to leave/minimum wage, policy changes, etc. Data quality is limited due to this being a new field in SAP as well as it being a field that changes over time with the reported size of the employer.*

**Employment Standards Case Snapshot**

	Notifications Received	Closed: No Jurisdiction	Resolved: Courtesy Letter	Resolved: Withdrawn	Resolved: No Violation	Resolved: Settlement Agreement
<b>Total</b>	<b>53</b>	4	7	6	5	20
<b>Total Resolved</b>	<b>42</b>					
<b>Total In Process</b>	<b>11</b>					

*Of the 49 notifications, roughly 51% were PL only, 26% were PL&MW, and 23% were MW only.*

**Impacts on the rise**

As of the end of April 2017, City of Tacoma employment standards investigations had resulted in more than \$38,000 worth of owed wages/leave being returned to 287 workers. Increases in the number of violations being reported and the amounts being paid back to workers are predicted to increase for two reasons:

1. **The first reason is purely mathematical.** Many employers found in violation of the law have been failing to follow the law since February 1, 2016. As the number of months in violation increases, the amount of back pay or leave owed to workers will also increase.
2. **Trust is an essential piece of effective enforcement.** As mentioned in Attachment 1, Complaint-based investigations rely on a witness being willing to come forward and report violations. City staff are working with community partners to strategically to build this kind of trust with workers.



**ATTACHMENT 4: EDUCATION, OUTREACH, & COMMUNITY PARTNERSHIPS**

**EDUCATION & SUPPORT:**  
*Employer & Worker Inquiries through April 2017*

Paid Leave	Minimum Wage	Total
918	116	1034

NOTE: Only includes contacts received by phone, email, TF311. Does not capture outreach/education efforts.

**COMMUNITY PRESENTATIONS & OUTREACH EVENTS**  
*2015 - Present*

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**WE HAVE NOT DONE THIS WORK ALONE**

Community Partnerships have been essential to outreach, education, and trust building efforts. In the course of this work, we have relied deeply on local collaboration. In addition to utilizing a number of advertising outlets, we partnered with more than 164 community organizations and local businesses on public education. Tacoma’s innovative, community-based approach to outreach and trust building is a key part of what led to Tacoma becoming a national model for paid sick leave implementation.

The threat of civil penalties or the possibility of job loss can make it difficult for businesses with questions to come forward. By working with trade organizations and business leaders, staff have been building a positive reputation within the business community and sharing the word that Tacoma’s employment standards hotline offers one-on-one support for employers.







**ATTACHMENT 5: ADDITIONAL RESOURCES**

- “Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division.” David Weil, Boston University. May 2010.  
<https://www.dol.gov/whd/resources/strategicEnforcement.pdf>
- “How Cities Are Ending Unintentional Racial Discrimination.” (Complaint-based Streetlight Replacement in Seattle) J.B. Wogan, Governing Magazine. August 2016.  
<http://www.governing.com/topics/mgmt/gov-racial-equity-center-social-inclusion.html>
- “Learning from Predecessors but Breaking New Ground: Lessons from Tacoma’s Paid Sick and Safe Time Outreach and Enforcement.” Zoe Ziliak Michel, Center for Law and Social Policy. November 2016. <http://www.clasp.org/issues/work-life-and-job-quality/in-focus/tacoma-serves-as-model-for-paid-sick-time-implementation>