



Employment Law Note

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Seattle Leads in Protecting Gig Workers



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On May 1, 2023, Seattle became the first city in the nation to permanently require companies to provide paid sick and safe time (“PSST”) leave to gig workers—also known as app-based workers. The Seattle City Council voted 9-0 to pass the App-Based Workers Paid Sick and Safe Time Ordinance on March 28, 2023. Mayor Bruce Harrell signed it into law a day later. The new ordinance makes permanent many of the rules originally required by a temporary ordinance passed during the Covid-19 pandemic.

Background

On July 13, 2020, Seattle passed the Gig Worker Paid Sick and Safe Time Ordinance. The ordinance stated gig workers at companies that hired more than 250 gig workers worldwide were entitled to accrue paid sick and safe time. The intent was to promote positive health outcomes for gig workers during the pandemic, while reducing financial hardship and associated negative outcomes from missing work due to illness or quarantine.

Under the ordinance, gig workers accrued one day of PSST for every thirty days worked at least partially in Seattle. The gig worker was entitled to “average daily compensation” for each PSST day used. The ordinance required covered entities to retroactively provide gig workers PSST days accrued for days worked since October 1, 2019. The Gig Worker Paid Sick and Safe Time Ordinance was set to expire on April 30, 2023.

Compensation for Gig Workers

The new ordinance effectively makes permanent many of the provisions under the temporary ordinance passed during the Covid-19 pandemic. Gig workers will continue to accrue one PSST day for every thirty days worked where at least one work-related stop occurs in Seattle. For example, an app-based food delivery driver who delivers food to customers throughout King County will accrue one day for every thirty days worked *if* at least one work-related stop is in Seattle each day. Even if all other deliveries occur outside Seattle, the delivery driver will be entitled to one PSST day under the ordinance.

For each PSST day used, the gig worker is entitled to receive the “average daily compensation.” The average daily compensation equals the average daily earnings for work performed inside *and* outside Seattle in the prior 12-month period. This figure will be recalculated each month. All PSST days accrued while the previous temporary ordinance was in effect remain valid and available for use.

Using PSST Days

An app-based worker may use a PSST day if they worked in Seattle at least once in the past 90 calendar days. Each PSST day covers a 24-hour period. Workers may use PSST days for several health or safety-related reasons:

- To care for themselves or family members with a physical or mental health condition.
- When a family member’s school or place of care has been closed.

- To care for themselves or a family member for reasons relating to domestic violence, sexual assault, or stalking.

An app-based worker may also use a PSST day if the company ceases or reduces operations for a health or safety-related reason.

Which App-Based Workers Benefit?

The new law does not benefit all gig workers—at least not yet. As of May 1, 2023, food delivery network companies that employ more than 250 workers fall under the ordinance’s purview. On January 13, 2024, the ordinance’s reach will extend to all network companies that employ more than 250 workers. A “network company” under the ordinance is an entity that uses an online-enabled application or platform to connect customers with app-based workers, presents offers to those workers through a platform, and facilitates the provision of those services.

Gig workers that work for marketplace network companies do not fall under the ordinance’s umbrella and thus cannot accrue PSST days. A “marketplace network company” consists of companies for which app-based workers set their own rates.

Drivers for app-based rideshare companies such as Uber and Lyft do not benefit from the same law as they are already entitled to sick leave after Governor Jay Inslee signed the Expand Fairness Act into law in 2022. That bill preempts action at the local level.

What Employers Need to Know

Paid sick and safe time is here to stay in Seattle. Covered entities exceeding 250 gig workers are likely

already set up well to handle the new ordinance as they have had to provide PSST days for nearly the last three years. Employers that employ gig workers who fall under the ordinance’s umbrella are required to provide the following:

1. A written PSST policy.
2. Monthly notification of the app-based worker’s average daily compensation.
3. One PSST day for each 30 calendar days worked.

Employers do have some options to prevent abuse. If any app-based employee uses more than three consecutive PSST days, an employer may request verification, except when there is a civil emergency.

The App-Based Workers Paid Sick and Safe Time Ordinance will likely not be the last word on gig workers in Seattle and across the U.S. The Seattle City Council has vowed to examine possibilities where gig workers at marketplace network companies could be eligible for PSST days or a similar leave policy. At the federal level, the Department of Labor has proposed a rule that could reclassify millions of gig workers as “employees,” thus entitling them to federal or state minimum wages and other benefits. In the meantime, the Seattle Office of Labor Standards states it will provide more guidance in the coming months and will exercise its rule-making authority on the issue of PSST days.

Employers with questions about the new PSST ordinance are encouraged to call Matt Coughlan at 425-460-2292 or email him at mcoughlan@sbj.law.

For more information about this month’s Employment Law Note
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