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

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 ("Ordinance" or "TMC Chapter 5.63") and to ensure that: 1) the covered employees in the City of Tukwila ("City") receive a minimum wage comparable to employees in neighboring cities of SeaTac and Seattle ("Wage Requirement"); 2) covered employers offer additional hours of work to qualified part-time employees before hiring new employees to fill those hours ("Additional Hours Requirement"); and 3) adopting recordkeeping and enforcement requirements that apply to the Ordinance.

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.

A. CHAPTER 2: DEFINITIONS

TLS 02-010 – Intent

The intent of this Chapter is to further define some of the terms that are used in 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, as some of the defined terms do not appear to require further definition at this time. 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"

This definition of "covered employer" applies to both the Wage Requirement and to the Additional Hours Requirement. 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. The Ordinance only applies to employers who are covered employers.

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 $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, the 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 had no gross revenue last year and $2 million of gross revenue in the first quarter of this year, but only $1 million of gross revenue in the most recent three months of the current year? We have never had more than 14 employees.***

Answer: No. Per TMC 5.63.060.C, for employers that did not have gross revenue during the previous calendar year, annual gross revenue will be calculated from the gross revenue during the most recent three months of the current year.

Question 7: ***Is my company a covered employer if we have annual gross revenue under $2 million in Tukwila and fewer than 15 employees worldwide, but we are a franchisee associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate?***

Answer: No. The definition of "covered employer" does not take into consideration your company's association with a franchisor or network of franchisees.

Question 8: ***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. However, a position is not a "covered position" for purposes of the Additional Hours Requirement if it will be filled by a person who is not included in the definition of "employee" under TMC 5.63.020.D and RCW 49.46.010, which is the state minimum wage law. For example, but not by way of limitation, a covered employer is not required to offer additional hours to qualified part-time employees when the covered employer plans to hire additional employees or subcontractors in a bona fide executive, administrative, or professional capacity or in the capacity of an outside salesperson or as casual laborers as those terms are defined in RCW 49.46.010(3) because those positions are not "covered positions" for the purposes of the Additional Hours Requirement.

B. Questions and Answers regarding the Definition of "Covered Position"

Question 1: Which positions are covered by the Ordinance's Additional Hours Requirement?

Answer: Since the Additional Hours Requirement only applies to employees who are covered by the minimum wage laws (sometimes referred to as "nonexempt employees"), any positions that would be filled by new employees who are nonexempt employees are covered by the Additional Hours Requirement. For details, see TMC 5.63.020, TMC 5.63.030(2), and the definition of "employee" in RCW 49.46.010.

Question 2: Which positions are not covered by the Ordinance's Additional Hours Requirement?

Answer: 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"). As a result, any positions that would be filled by an exempt employee are not covered by Additional Hours Requirement.

Question 3: ***If a covered employer hires someone who recently worked for the covered employer, is that person considered to be a "additional employee?"***

Answer: It depends on how recently the person worked for the covered employer. A covered employer is not considered to have hired an "additional employee or subcontractor" if the person who is hired: a) is on the covered employer's payroll and has been in paid status or on unpaid leave at any time in any location within the previous 12 months; or b) has subcontracted with or performed services for the covered employer, including through a temporary service or staffing agency, at any time in any location in the previous 12 months. Employees who fit the criteria in (a) or (b) of this Answer are considered "existing employees." People hired as an "additional employee or subcontractor" are also sometimes referred to in these Tukwila Labor Standards as "new employees."

Question 4: ***If a covered employer creates a new position but only posts the position internally, does the employer have to offer the position's hours to qualified part-time employees?***

Answer: No. The requirement to first offer additional hours of work to qualified part-time employees only applies if the employer hires new employees, and any internal candidates would not be new employees.

Question 5: ***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. A position is a covered position only when the covered employer plans to fill it with a new employee.

C. Examples regarding the Definition of "Covered Position"

EXAMPLE 1: The covered employer has 15 full-time employees and five part-time workers who were hired through a temp agency 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 workers, 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 workers because TJ is not a new employee.

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 less than $2 million?***

Answer: No. Employers who are not claiming to have less than $2 million 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, 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"

Question 1: ***Does an employer need to calculate hours worked within the City, even if the employer has no physical presence in the City other than one employee who works from home within the City doing administrative work?***

Answer: No. The City's minimum wage requirement only applies to covered employers, so an employer that does not have more than $2 million annual gross revenue in the City and at least 15 employees worldwide would not be a covered employer and therefore would not need to calculate hours worked within the City.

Question 2: ***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, if the employer meets the criteria for being a covered employer and the employee meets the criteria for being a covered employee.

Question 3: ***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 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, 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 5: ***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 6: ***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 a covered employer's responsibility to keep track of the number of hours worked in the City, so covered employers 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 need to be a covered employer in order to be a large employer?***

Answer: Yes. Employers are only covered by the Ordinance if they are "covered employers," so in order to be a "large employer" the franchisee must either: (1) employ at least 15 employees regardless of where those employees are employed; or (2) have annual gross revenue over $2 million within the City of Tukwila.

Question 2: ***If a franchisee 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 worldwide, but fewer than 500 of those aggregated employees work within the City, is the franchisee a large employer?***

Answer: Yes.

Question 3: ***If a franchisee with $2 million in annual gross revenue within the City of Tukwila that employs 10 people worldwide is associated with a franchisor or with a network of franchisees that employs more than 500 employees in the aggregate worldwide, is the franchisee a large employer?***

Answer: Yes.

TLS 02-070 – Midsize Employer

A. Definition of "Midsize Employer"

"Midsize employer" means all employers that employ at least 15 but fewer than 500 employees, regardless of where those employees are employed. "Midsize employer" also means all employers that have over $2 million in gross revenue generated from sales made, services performed, and other business that occur in the City of Tukwila who do 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 $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 (worldwide), 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 an existing 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 currently working for the employer as an employee or as a subcontractor or through joint employment within the City of Tukwila and one or more of the following apply: 1) they worked fewer than an average of thirty (30) hours per week for the employer (or, if employed for less than 12 months, during the period of their employment); or 2) they are working in a position that is classified by the employer as a part-time position.

A "qualified part-time employee" for the purposes of the Additional Hours Requirement, is an existing part-time employee who: 1) is satisfactorily performing all the job duties required for the covered position; 2) has expressed an interest, in writing, in working additional hours; 3) is available to work the schedule that the employer has established for the covered position; and 4) responds to the notice of availability for additional hours of work within the time period established by the covered employer.

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

Question 1: ***If an employee is on leave, does that affect their status as a part-time employee for the purposes of the Additional Hours Requirement?***

Answer: All hours where the employee is in paid status or is receiving Washington Paid Family Leave benefits, regardless of where the employee's work is located, are considered to be hours worked. Any weeks in which the employee was not employed by the employer, or takes an unpaid leave of absence, are not included when calculating the average number of hours worked per week.

Question 2: ***If an employee is working part time for medical reasons, does that affect the employee's status as a part-time employee for the purposes of the Additional Hours Requirement?***

Employers are not required to offer additional hours to employees who are working part-time because they are on an intermittent work schedule or reduced hours schedule under the Washington State Paid Family and Medical Leave Act ("PFMLA") or the federal Family and Medical Leave Act ("FMLA"), or who are working part-time as an accommodation under the Americans with Disabilities Act, or who are working part-time because their health care provider has

requested that they be placed on a light duty assignment with reduced work hours while they recover from an illness or injury.

Question 3: ***How does a covered employer determine whether an existing part-time employee is "qualified" for additional hours of work?***

Answer: Either of the following methods for determining that an existing part-time employee has the skills and experience to perform the work are presumed to be in good faith and reasonable judgment: a) satisfactory performance in the prior six months of all the job duties for the position where the additional hours are available, documented in writing by the employee's supervisor or manager (e.g., supervisor's notes or a performance review); or b) written documentation of satisfactory performance in an interview or other evaluation process conducted within the prior six months, using written criteria established in advance that focus on the skills and experience needed to perform the work. Employers may also use other methods to determine whether an employee has the skills and experience to perform the work, in which case the employer has the burden of establishing that it exercised good faith and reasonable judgment.

Question 4: ***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 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 porterage (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 "porterage 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 less than $2 million in the City of Tukwila.

B. Questions and Answers Regarding the Definition of "Small Employer"

Question 1: ***Are small employers covered by the City's minimum wage?***

Answer: No, because they are not covered employers.

Question 2: ***Do small employers have to pay a minimum wage to their employees?***

Answer: If a small employer fits the definition of "employer" in RCW 49.46.010, and its employees fit the definition of "employee" in RCW 49.46.010, then the employer must pay those employees the state minimum wage.

Question 3: ***Do small employers have to offer additional hours to qualified part-time employees before hiring new employees to fill those hours?***

Answer: No, because small employers are not covered employers for the purposes of the Ordinance.

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.

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 (other than tips allocated to other employees though a tip pool).

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 in each of the following areas: 1) explaining the minimum wage rate requirements for small, midsize and large employers; and 2) providing a table illustrating how minimum wage rates will change over time.

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, 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.

Effective July 1, 2025, the minimum wage hourly wage for midsize employers is the same as the inflation-adjusted rate applicable to large employers, and it will continue to adjust annually for inflation annually using the same formula that is applied to large employers.

C. 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 to provide rules and procedures to assist employers in implementing the Wage 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 establish a reasonable, transparent, and nondiscriminatory process to distribute the hours of work among their qualified part-time employees before hiring new employees to fill those hours. Covered employers may offer all additional hours to one qualified part-time employee or offer to distribute the hours among several, qualified part-time employees. The covered employer may limit distribution of hours to full work shifts rather than dividing hours among employees.

The process for distributing the additional hours of work must include the following elements: 1) a procedure for qualified part-time employees to express their interest, in writing, in working additional hours and indicate what days and hours they are available to perform additional work; 2) a procedure for the covered employer to give notice of the availability of additional hours to qualified, part-time employees who have expressed an interest in working extra hours; 3) a procedure for qualified part-time employees to apply for the additional hours after receiving the notice of availability of additional hours; 4) the criteria the employer will apply to fill the extra hours if more than one qualified part-time employee applies for them; and 5) documentation showing that the process adopted by the covered employer is reasonable, transparent, and nondiscriminatory.

The process for distributing additional hours of work to existing qualified part-time employees only applies before a covered employer hires new employees to fill those hours. If a covered employer gives 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.

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

Question 1: ***Is the covered employer's process for distributing additional hours reasonable if it only has one covered position available and it gives all the additional hours to one qualified part-time employee even though two qualified part-time employees applied for the extra hours?***

Answer: Employers are not required to split the extra hours among multiple qualified employees if the notice of available extra hours specifies that the covered position requires a single employee to work the schedule set forth for the covered position. If the notice of available extra hours states that the extra hours may be assigned to a single employee or split among multiple qualified employees, then the employer would have the option to assign all the extra hours to one employee or split them among qualified part-time employees. If there are multiple qualified part-time employees who apply, the employer must use a selection method that is reasonable, transparent, and nondiscriminatory.

Question 2: ***If the new position is a full-time position, is the covered employer required to offer the extra hours to existing qualified part-time employees?***

Answer: The covered employer would not be required to offer the extra hours to an existing qualified part-time employee if the covered employer would be required to compensate the employee at time-and-a-half or other premium rate under any law or collective bargaining agreement. *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 Ordinance only requires that qualified part-time employees be offered the opportunity to work extra hours before ***new*** employees are hired, so an employer can offer additional work hours or offer a new or vacant position to any existing employee without needing to follow the process described in TLS 04-020. For examples, *see* TLS 04-040.B.

Question 4: ***Is posting a notice at the worksite or on an intranet a reasonable way 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: The covered employer may fulfill the notice requirement by either giving written notice to each qualified part-time employee individually in person or electronically at least three calendar days before their application is due, or by posting a written notice of the available extra hours of work for at least three consecutive calendar days at the worksite or on an intranet that contains the following information: a) Description and title of the position; b) Required qualifications for the position; c) Total hours of work being offered; d) Schedule of available work shifts; e) Whether the available work shifts will occur at the same time each week; f) Length of time the employer anticipates requiring coverage of the additional hours; and g) the date by which their application for the additional hours is due.

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 new employees to fill the additional hours of work. A distribution process is available for review if it is: a) posted on the employer's website or intranet site; or b) distributed to part-time employees electronically or in hard copy; or c) included in the covered employer's personnel policies; or d) included in a written agreement or memorandum of understanding between the covered employer and the employee. However, failure to comply with the distribution requirements set forth in this Chapter prior to the adoption of the Tukwila Labor Standards is not considered a violation of the Ordinance.

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 have a disparate impact on part-time employees, and employers must not engage in disparate treatment of part-time employees in its application of the distribution process because of their age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification. However, the prohibition against discrimination because of disability shall not apply if the particular disability prevents the proper performance of the particular worker involved, and the Additional Hours Requirement shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation. For the definitions of these terms, *see* RCW 49.60.040.

C. Examples of Acceptable Processes for Distributing Additional Hours

EXAMPLE 1: The covered employer currently employs ten part-time servers (four for the lunch shift and six for the dinner shift) and plans to hire two additional part-time servers to work Monday-Friday from 4:30 pm-8:30 pm to cover the dinner shift. Before hiring additional employees, the employer provides notice to all ten part-time servers of: 1) the schedule that applies to the covered position; 2) that only employees who are not already scheduled to work the dinner shift are eligible for the extra hours; 3) employees who apply for the extra hours must

be consistently available to work the whole 4-hour dinner shift without incurring overtime or premium pay; 4) the deadline for applying for the extra hours; 5) if more than two eligible employees apply for the extra hours, the two employees with the most seniority will be selected; and 6) if the extra hours from the two new dinner shift positions are not filled through this process, the employer anticipates hiring a new employee to fill them.

EXAMPLE 2: This example is the same as Example 1 except that the distribution process provides that if more than two eligible employees apply for the extra hours, the two employees with the best performance as demonstrated on their last performance review will be selected.

EXAMPLE 3: This example is the same as Example 1, except the distribution process provides that if more than two eligible employees apply for the extra hours, the two employees with the fewest hours in paid status during the preceding four workweeks will be selected.

EXAMPLE 4: This example is the same as Example 1, except the distribution process provides that if more than two eligible employees apply for the extra hours, the employer will draw straws to determine who will be selected.

The above examples are not exclusive but are intended to illustrate processes that meet the criteria for being reasonable, transparent, and nondiscriminatory.

TLS 04-030 – Applicability to Collective Bargaining Agreements

The Additional Hours Requirements shall not apply to any employees covered by a bona fide collective bargaining agreement or to bargaining unit work to the extent that such requirements are expressly waived in the collective bargaining agreement, or in an addendum to an existing agreement including an agreement that is open for negotiation, in clear and unambiguous terms and the employees have ratified an alternative structure for offering additional hours to existing qualified part-time employees that meets the public policy goals of the Ordinance. The labor contract terms that expressly waive Ordinance requirements shall reference the Ordinance by citation (Chapter 5.63 TMC) and shall reference the employee ratification of an alternative structure for distribution of additional hours to existing qualified part-time employees that meets the public policy goals of the Ordinance. Employer and employee impasse during negotiation of a collective bargaining agreement does not constitute a waiver of the Ordinance. Any waiver by an individual employee of any provisions of the Ordinance shall be deemed contrary to public policy and shall be void and unenforceable.

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 additional work is seasonal, and the covered employer gives it to an employee (full-time or part-time) who was on the covered employer's payroll at any time in any location in the previous 12 months; 7) the additional work is seasonal,

and the covered employer gives it to a subcontractor or other individual who performed services for the covered employer, including through a temporary service or staffing agency, at any time in any location in the previous 12 months; 8) there is a collective bargaining agreement that meets the criteria in TLS 04-030; and/or 9) the employer is hiring new employees as part of a merger, acquisition, or purchase of a business and the new employees that the employer is hiring were employed by the entity that the covered employer is acquiring, purchasing, or merging with at the time of the acquisition, purchase, or merger. For purposes of the TLS, employees are considered "seasonal" if the expected duration of their employment is six months or fewer, and the job typically starts and ends at approximately the same time each year.

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 is illustrative and not exclusive, as there may be other circumstances where the Hours Requirement does not apply. Covered employers seeking guidance can submit questions via email to MinimumWage@TukwilaWa.gov. The City's ability to respond to individual questions is limited, but the City may in its discretion provide additional guidance where questions raise issues that are of general applicability.

B. Examples of Situations Where a Covered Employer Would Not be Required to Offer Additional Hours to Existing Part-Time Employees

EXAMPLE 1: The covered employer currently employs two part-time sales clerks in Tukwila who work together during peak hours. The employer plans to hire one additional part-time clerk who will work on-call if one of the two existing part-time sales clerks is not available. The employer does not have to offer the extra hours to the two existing employees because the extra hours must be worked when the existing employees are already working or are not available.

EXAMPLE 2: The covered employer currently employs a part-time records clerk in the IT Department and a part-time records clerk in the Billing Department in Tukwila. The two positions are in different bargaining units, but the skills and experience needed to perform the work are the same. The employer plans to add a second part-time records clerk in the Billing Department. The employer does not have to offer the additional hours in the Billing Department to the employee in the IT Department because the work is in a different bargaining unit, and it would violate the state and/or federal laws applicable to collective bargaining if the employee held both positions at the same time.

EXAMPLE 3: The covered employer employs a part-time cook in Tukwila whose hours regularly fluctuate between 20 and 25 hours per week. The employer plans to add a second part-time cook whose hours would fluctuate between 20 and 25 hours per week. The employer does not have to offer the existing cook the extra hours before hiring a new employee because the employer would be required to compensate the existing cook at time and a half for the hours in excess of 40 hours per week.

EXAMPLE 4: All of the covered employer's part-time positions are 20 hours per week, and all the employer's full-time positions are 40 hours per week. The employer has two existing part-time drivers in Tukwila. The employer plans to add a third part-time driver, but first offers the extra 20 hours to the two existing part-time drivers. One of the existing part-time drivers would like to work an additional 10 hours, and the other existing part-time driver does not want any additional hours. The employer does not have to give ten additional hours to the existing part-time

employee because the employer would then have 10 hours of extra work that would require the employer to compensate a full-time employee at time and a half or to create a new, part-time 10-hour-per week position to perform the additional 10 hours of work.

EXAMPLE 5: The covered employer's part-time employees work two 8-hour shifts and three 4-hour shifts per week. The covered employer plans to hire a new employee to work two 8-hour shifts per week, but first offers the extra shifts to the existing part-time employees. Two of the existing part-time employees have requested to work half of each 8-hour shift as extra hours. The covered employer does not have to give the additional hours to the existing qualified part-time employees because the covered employer would have to split the 8-hour shifts into 4-hour shifts.

EXAMPLE 6: The employer has four locations, three of which are outside the City of Tukwila. Its employees work an average of 35 hours per week, but only ten of their hours worked per week are in the City of Tukwila. The employer does not have to offer the existing employees any additional hours before hiring a new employee.

EXAMPLE 7: The covered employer engages in an asset purchase where one of the terms of the asset purchase agreement is that the employer will offer employment in the same or substantially similar position to employees of the company whose assets are being purchased.

CHAPTER 5: ENFORCEMENT

TLS 05-010 – Intent

This Chapter is to provide rules and procedures to assist employers 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 constitutes "unpaid wages" for the purposes of the Ordinance; 4) when liquidated damages are awardable in a civil action brought under the Ordinance; 5) the process for submitting a complaint to the City Attorney; and 6) corrective actions, penalties, and fines for violation 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 their 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 means an individual or entity who has received written consent to represent a person or persons, signed by the person or persons on whose behalf they

are acting. Consent to act on behalf of a person or persons can be withdrawn at any time by providing a written notice of withdrawal of consent to the individual or entity acting on their behalf, to the defendant(s) in the civil action and any representatives who have appeared in the civil action on the defendant(s)' behalf, and to the court in which the civil action is pending.

The City Attorney also may, if they deem 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. "Other person violating TMC Chapter 5.63" means an officer, vice principal, or agent of the employer who was authorized by the employer to make the decision to hire new employees instead of offering additional hours to existing qualified part-time employees.

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

Answer: 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 who was injured as a result of the violation and liquidated damages in an additional amount of up to twice the unpaid wages; compensatory damages. If any aggrieved party was subjected to prohibited retaliation, the aggrieved party may be awarded a penalty of up to $5,000. For the purposes of the Ordinance, 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. 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: ***What are "unpaid wages" for the purposes of the Ordinance?***

Answer: "Unpaid wages" for purposes of the Ordinance means the number of hours multiplied by the regular rate of pay that a qualified part-time employee would have earned from working extra hours that were not offered to the employee in violation of this Chapter. To establish unpaid wages, the qualified part-time employee must have been available to work during the periods in which the extra hours were worked by another employee in violation of this Chapter.

Question 5: ***When are liquidated damages awardable in a civil action brought under the Ordinance?***

Answer: Liquidated damages may be awarded under TMC 5.63.090 when the employer or other person violating the Ordinance willfully and with intent to deprive the employee of any part of his or her wages, pays the employee a lower wage than the wage such employer is obligated to pay such employee under the Ordinance; provided, however, that liquidated damages are not available to any employee who has knowingly submitted to such violations.

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 and received by the City Attorney within 180 days of the date of the alleged violation on a Complaint Form that is available upon request from the Office of the City Attorney for the City of Tukwila. 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 by 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 the 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 contract executed by the City and the designee, which will include standard terms and conditions established by the City, such as but not limited to the standard terms and conditions contained in consulting agreements executed by the City.

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. "Violation of the Ordinance" means that the City has issued an administrative citation to an employer that includes a finding that the employer has violated Chapter 5.63 TMC, or a court of competent jurisdiction has entered a judgment against an employer stating that the employer has violated Chapter 5.63 TMC and a copy of the judgment has been provided to the City Attorney's Office with a request by an aggrieved party to have the employer's license denied, suspended, or revoked.

"Repeated intentional violations of the Ordinance" means that the City has issued at least two separate administrative citations to an employer within a 12-month period that includes a finding that the employer has intentionally violated Chapter 5.63 TMC, or a court of competent jurisdiction has entered at least two separate judgments against an employer within a 12-month period stating that the employer has intentionally violated Chapter 5.63 TMC and copies of the judgments have been provided to the City Attorney's office with a request by an aggrieved party to have the employer's license denied, suspended, or revoked.

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: ***Can the City impose fines for violations of the Ordinance?***

Answer: Yes. 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, which would include fines. 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 Notice of Tukwila Labor Standards

Covered employers must give a written "Notice of Tukwila Labor Standards" to all of their employees who work within the City of Tukwila and to all individuals who work for the covered employer as a subcontractor or through joint employment within the City of Tukwila no later than June 1, 2023, and at least 30 days prior to any changes in the hourly minimum wage. Additionally, any employees, subcontractors, and individuals who work for the covered employer through joint employment who begin working for the covered employer within the City of Tukwila after June 1, 2023 must be given a copy of the written "Notice of Tukwila Labor Standards" then in effect on or before their first day of work within the City of Tukwila. The City will prepare the Notice of Tukwila Labor Standards and post it on the City's website (currently www.TukwilaWa.gov/MinimumWage) so that it is available for covered 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. Covered employers must use the most recent version of the notice that is published on the City's website.

Distribution of the Notice of Tukwila Labor Standards 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. Covered 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, joint employee, or subcontractor, covered employers are responsible, at the covered employer's expense, for accurately translating the Notice of Tukwila Labor Standards into the language that they speak, and for providing it in an alternative format for employees, joint employees, or subcontractors who have a disability that affects their ability to read or understand the Notice of Labor Standards.

B. "Notice of Tukwila Labor Standards" Poster

Covered employers must post a current "Notice of Tukwila Labor Standards" poster in each workplace within the City of Tukwila (unless such workplace is an employee's or subcontractor's place of residence). This poster must be displayed in a noticeable area at the workplace, in English and the language(s) spoken by 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 covered 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" x 10." If the City of Tukwila has not developed a poster in the language spoken by the covered employer's employees, the covered 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 "Notice of Tukwila Labor Standards" to my employees if I am not a covered employer?***

Answer: No.

Question 2: ***Do I have to give the written "Notice of Tukwila Labor Standards" to all my employees if I am a covered employer?***

Answer: Covered 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 and to all subcontractors and individuals working as joint employees 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 because some of my employees do construction work within the City of Tukwila. Where should I post my posters?***

Answer: Covered employers who do not have a fixed worksite within the City of Tukwila can post their posters 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

Employers must maintain the following records for five years or until any litigation or enforcement action brought under Chapter 5.63 TMC has been completed, whichever is longer:

1. The "Notice of Tukwila Labor Standards" distributed to individuals (including a copy of the notice and the date and method of distribution for each notice to each person) and the "Notice of 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 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 each worker who works for the employer as a subcontractor or through joint employment, the covered employer must obtain the records listed in WAC 296-128-010 from the entity responsible for the recordkeeping;
9. Records of tips, and service charges, and documentation of any tip pools;
10. All materials received, used, considered, and sent in employment decisions relating to covered positions;
11. All hiring policies that apply to covered positions;
12. All job postings and job applications for covered positions;
13. Mass communications to qualified part-time employees regarding the availability of additional hours of work;
14. Notices of additional hours of work made to qualified part-time employees pursuant to TMC Chapter 5.63;
15. Any written declination of additional hours of work from qualified part-time employees;
16. All records used by the employer to calculate the number of employers for employee classification purposes;
17. All records used by the employer to determine if separate entities will be considered a single employer for the purposes of employer classification;
18. All records used by the employer to calculate gross revenue; and
19. 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 above if I am not a covered employer?***

Answer: Employers who are not covered employers do not need to keep records of the distribution of the Notice of Labor Standards or the Notice of Labor Standards poster because those notices are only required for covered employers. Employers who are not covered employers also are not required to keep records relating to covered positions and additional hours of work because they do not have any covered positions. Employers who are not covered employers are required to keep the other listed records because the records may be used to determine if the employer is properly classified and/or because the records are required by other applicable state or federal laws.

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

All covered employers must annually certify their compliance with TMC Chapter 5.63 using a form provided or approved by the City of Tukwila Finance Department, 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 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 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. Covered 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 or their authorized representative, any employer who is requested to do so shall furnish to the City of Tukwila Finance Director or to their authorized representative a certification of compliance upon forms prescribed or approved by the City of Tukwila Finance Director.

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 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 a covered employer. There may also be other situations as well; these are just some illustrative examples.