April 23, 2018

Office of Labor Standards
810 3rd Avenue, Suite 375
Seattle, WA 98104-1627

Re: Proposed rules for the Seattle Hotel Employees Health and Safety Ordinance

Legal Voice
Women's rights. Nothing less.

907 Pine Street
Suite 500
Seattle, WA 98101

T 206-682-9552
F 206-682-9556

LegalVoice.org

Dear Office of Labor Standards,

I write to provide comment on the proposed rules for the Seattle Hotel Employees Health and Safety Ordinance issued by the Office of Labor Standards (OLS) for notice and comment on April 9, 2018.

Overall, Legal Voice commends OLS as the rules are thoughtfully drafted to support the ordinance's strong mandate from the people of Seattle—who approved the ordinance by initiative—to protect hotel workers' health and safety. However, we are suggesting a number of relatively smaller revisions to some of the proposed rules that reflect either greater consistency of language throughout the rules, stronger accord with the initiative's language and goals, or other considerations. These include the following revisions to the specific rules indicated, grouped by their heading in the rules. We indicate suggested text to delete by strikethrough and suggested new text to add in red text. Where appropriate to clarify or amplify the revisions we have included comments in italics following the changes.

PROTECTIONS FOR EMPLOYEES PERFORMING HOUSEKEEPING SERVICES

SHRR 150-120 Housekeeping Services
2. Excluded Activities.
b. Housekeeping services does not include tasks associated with preparing already-made beds for sleep (turndown), maintaining mini-bar or toiletry inventory, or inspecting housekeeping services performed in a guest room. Making unmade beds, regardless of whether or not a change of linen is required, is not an excluded activity.

COMMENT: Since the preparation of already-made beds is specified, this begs specifying that making an unmade bed—a core task of housekeeping services--under any circumstances is not an excluded activity.

SHRR 150-130 To Clean
An employee has cleaned a guest room if the employee has performed housekeeping services in the guest room. If an employee has performed housekeeping services in a guest room, the entire square footage of that guest room shall be applied to the employee's total square footage cleaned that day.

SHRR 150-170 Low-wage employee
To determine whether an employee is a low-wage employee, the large hotel

employer must look at the total gross, monthly compensation paid by the employer to the employee, excluding any additional compensation that was paid by the employer to the employee during that month under SMC 14.25.120, for the month for which the additional compensation is being calculated.

COMMENT: These additions help make the rule language more consistent with the definition of low wage employee in the ordinance at SMC 14.25.160.

ADDITIONAL COMPENSATION RELATED TO HEATLH INSURANCE COSTS

SHRR 150-210 Requirement to pay additional compensation to low-wage employees

2. Exceptions to requirement

a. An employer is not required to pay additional compensation under SMC 14.25.120(A), if: (i) the employee has enrolled in an employer-offered gold-level policy that meets the definitions in SHRR 150-200, SHRR 150-210.3, and SMC 14.25.160; (ii) in compliance with SMC 14.25.160(B), the employee pays no more than 5% of their monthly gross taxable earnings towards payment for the policy, including the cost of coverage for any enrolled spouse or dependent children; and (iii) the employer is making payments towards the employee's policy. This exception applies during ~~the~~ an employee's waiting period for medical coverage after hire, as long as the employer is making payments towards the employee's policy during the waiting period.

COMMENT: The exception to the requirement to provide additional compensation should be presented in one section to make it less confusing. This is why we suggest folding the "Cost to the employee" section into this rule. Likewise, the relevant sections that define what a compliant policy is should be referred to: e.g. how "at least equal to gold level" is defined; how "policy" as defined means covering employees spouse and dependent children if any, etc.

b. An employer is not required to pay the additional compensation required by SMC 14.25.120(A) when the employer is paying towards an employee's gold-level policy that meets the definitions in SHRR 150-200 SHRR 150-210.3 and SMC 14.25.160 under a multi-employer health and welfare benefit plan established under section 302(C)(5) of the Labor Management Relations Act of 1947, 29 U.S.C §401-531 (i.e. Taft-Hartley Act).

3. At least equal to a Washington Health Benefit Exchange gold-level policy. A policy that is "at least equal to a gold-level policy on the Washington Health Benefit Exchange" is one that is designed to provide benefits that are actuarially equivalent to at least 80 percent of the full actuarial value of the benefits provided under the plan.

~~**4. Cost to the employee.** For an employer to qualify for an exception to pay the additional compensation required by SMC 14.25.120(B), the employee cannot pay more than 5% of their monthly gross taxable earnings toward payment for the policy, including the cost of coverage for any enrolled spouse or dependent children.~~

COMMENT: We suggest combining this provision with SHRR 150-210.2(a) (see above)

RETALIATION

SHRR 150-240 Adverse employment action
The terms "adverse employment action" and "adverse action" mean denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of employment, threatening, penalizing, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against any person for any reason prohibited by Seattle Municipal Code (SMC 14.25.030, SMC 14.25.150) and/or the Washington Law Against Discrimination. An "adverse employment action" or an "adverse action" for an employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and condition of employment.

COMMENT: The Washington State Law Against Discrimination (WLAD) should be added here, since the WLAD will cover many Seattle employees and particularly because the WLAD case law is more robust compared to City discrimination law and therefore is most likely to address nuances and updates as to the meaning of adverse action in Washington. (See e.g., Zhu v. North Central Educational Service District—ESD 171, 189 Wn.2d 607 (2017).)

NOTICE, POSTING, RECORD KEEPING REQUIREMENTS

SHRR 150-250 Individual notification of rights
The notification referenced in Seattle Municipal Code (SMC) 14.25.150(B)(1) shall, at minimum, give notice of the following rights under SMC 14.25. For hotel employers that are not large hotel employers, sections 3 and 4 below do not apply.

1. Rights related to protection from violent assault and sexual harassment

b. The right to report guest violence, including assault, sexual assault, and sexual harassment to hotel employers, who have the following obligations under the law after such employee reports are made:

- A hotel employer must record the name of the guest (or identifying information if name cannot be determined) and must keep a list of all guests so accused and retain this list for up to 5 years from the date of the most recent accusations of the guest.
- If an accusation of guest violence by an employee is supported by a statement (such as from an employee or witness) or other evidence, a hotel employer must decline to allow the guest to return to the hotel for at least 3 years after the date of the incident.

COMMENT: With regard to reporting violence by guest experienced by employees, a hotel employee already ostensibly had the right to report to the employer or law enforcement prior to the initiative—what is new and different is that hotel employers have specified obligations related to such reports that are intended to help employees. That is what is important and needs to be emphasized in a notice for employees as the above revision attempts to do. Some level of detail is necessary to capture these important new rights and obligations under the initiative.

c. The right to request reassignment after reporting guest violence and the right, after making such a request, to be reassigned to a different floor or a different work area away from the guest for the entire duration of the guest's stay at the hotel.

COMMENT: The statement about the rule needs to capture the "second right" here—if it does not do so it is neglecting to inform workers of the crux of this rule that addresses safety and trauma associated with the violence: that not only can you request assignment but you have the right--after making such request—to work in another work area away from the violent/harassing guest.

d. (MOVE UP FROM e.) The right to be informed and warned about a guest who is on the hotel employer's list of guests ~~has been~~ accused of an act of violence against hotel employees, if assigned to work in the guest's room alone.

COMMENT: This language accords better with the initiative and adds helpful detail.

3. Rights related to protections for employees who perform housekeeping services

a. The right not to be required to clean more than 5,000 square feet of guest rooms in a workday.

4. Rights related to improving access to medical care for low wage hotel employees of a large hotel employer

a. The right to either:

- additional compensation to cover the costs of gold-level affordable family health insurance ~~unless the employee pays 5% or less of their monthly wages towards~~
  or
- to an employer-offered gold-level family insurance policy that costs no more than 5% of the employee's monthly wages from that employer.

COMMENT: This formatting approach facilitates the clarity provided by SRR 150-210, that an employee must be provided one or the other of either additional compensation to pay for health insurance (that covers employee and family) or enrollment in an employer-offered policy that costs no more than 5% of the employee's monthly wages (that covers employee and family).

6. Rights against retaliation and right to ~~bring a civil action~~ file a lawsuit

b. The right to file a complaint with the City of Seattle Office of Labor Standards for violation of the requirements of SMC 14.25

c. The right to ~~bring a civil action~~ file a lawsuit in court for violation of the requirements of SMC 14.25.

COMMENT RELATED TO BOTH b. and c ABOVE: The right to file a complaint is contained in the initiative, given OLS can investigate charges. This should be plainly stated for workers to know since an administrative process can provide great access to justice compared to court/lawsuit, especially for low-income persons. Likewise, the right to file a civil lawsuit could be more plainly stated in non-legalese for workers' benefit.

Additional issues

- **Panic Buttons**

We have learned from UNITE HERE Local 8—which reported this to OLS as well--that since the initiative took effect many hotels have provided devices that do not meet the initiative's definition of a panic button. This continues to leave hotel employees in danger and is out of step with the clear intention of the ordinance to help protect hotel employees from guest violence including assault, sexual assault and sexual harassment. (See SMC 14.25.020.) To truly serve as panic buttons under a common-sense understanding applied to hotel employment the devices must:

1. Be one touch activated (as opposed to swipe devices, for example)
2. Contact designated personnel directly (as opposed to whistles, for example)
3. Relay information about the worker's location that remains accessible whether or not the device is actively in use (again as opposed to whistles or similar noisemaking devices for example, that are dependent for their effectiveness on someone—who is unlikely to be a designated individual--being close by for the short period of time they are in use)

OLS left this critical issue unaddressed in the rules. To ensure employers comply with the initiative in accordance with the intention of the Seattle public and protect the safety of hotel employees, we urge OLS to state in the FAQ very clear examples of devices that meet these three criteria. The FAQ accompanying these examples should indicate how these three criteria are met for each example in very clear terms to help facilitate compliance.

- **Federal regulations on I-9 review in the case of employer change in ownership**

Under the City's Welcoming Cities Resolution passed by the City Council in January 2017, the City stated its goal to resist the anti-immigrant policies and practices of the Trump Administration, "…by welcoming and supporting immigrants and refugees from all nationalities, religions, and backgrounds with policies and programs that foster inclusion for all" and by "…seek[ing] to maintain, refine or develop City policies that advocate for and provide support for all immigrants, refugees, Muslims, LGBTQ people, women, and anyone else who may face severe adverse effects of newly adopted federal laws or policies."[1] Consistent with this resolution we urge OLS to issue an FAQ that simply states and explains the federal rules regarding hotel employers' obligations to comply with I-9 requirements in the case of a sale or merger. These regulations state that employees who continue to work for a successor employer after a sale or merger by a previous employer are not deemed to be "hired."[2] Therefore, a new I-9 examination/review of documents is <u>not required</u> and the new employer's maintenance of

[1] Resolution 31730, January 30, 2017, http://murray.seattle.gov/wp-content/uploads/2017/01/2017_013017_reso_welcoming_city.pdf

[2] 8 CFR 274a.2(b)(1)(viii)(A)(7).

the initial I-9 documents completed by the prior employer complies with federal law.[3] I-9 collection can be misused by employers to intimidate immigrant workers, such as by insisting on workers meeting overly burdensome identification requirements. Historically, unscrupulous employers have used this as a pretext against outspoken immigrant workers to harass and dismiss them. OLS should act in accordance with the Welcoming Cities resolution by issuing such an FAQ.

Finally, Legal Voice commends OLS staff, and in particular Jenee Jahn and facilitator Sasha Philip, for their diligence and thoughtfulness during the stakeholder process as there were many voices to listen to and it was not an easy process to synthesize these rules from the numerous decisions. Thank you for your consideration of these comments.

Sincerely,

/Andrew Kashyap/

Andrew Kashyap
Senior Attorney

[3] Id.