

## About the Series

Laws are often necessary but rarely sufficient for effective policy change. Implementation, the nuts and bolts of moving a law from paper to practice, can make or break a law's intent.

This series of briefs provides overviews of approaches to implementation taken in jurisdictions where **earned sick days** laws have already passed. Both government officials facing the task of implementation and advocates working with those officials can learn from the best practices established in these areas.

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## Learning from Seattle's Experience

By Liz Ben-Ishai

*Advocates in Seattle fought hard to build the support necessary to pass the city's Paid Sick and Safe Time (PSST) Ordinance. But the hard work did not end when the law passed in September 2011. Once the ink on Seattle's ordinance had dried, the process of implementing the law began. In Seattle, an agency's staff gets out of the office and into communities to make the PSST Ordinance reflect the voices of the city's workers and employers.*

The task of implementation in Seattle fell to the city's Office for Civil Rights (SOCR). SOCR's small but energetic staff has approached the complex job with a drive that not only reflects a commitment to ensuring that the law protects the rights of Seattle's workers, but also a desire to listen carefully to business concerns about the law. The city has launched a thoughtful and creative implementation and outreach strategy that has been attentive to business needs, spread the word about the law to diverse groups of Seattle workers and employers, and provided an unparalleled level of technical assistance to employers seeking to comply with the law.

This issue brief draws upon Seattle's experience to delineate best practices for implementing such laws. SOCR used an innovative approach to gather public input, engage in public outreach and education, and respond to stakeholder concerns. Perhaps most remarkable has been SOCR's work with employers to successfully implement the law. Elliott Bronstein, SOCR's Public Information Coordinator, explains, "The thing that I'm proudest of is our work with employers to answer their questions, to make this as intelligible to them as possible, and to listen closely

to their concerns during the rule drafting process.” By taking a constructive approach, Seattle has brought employers on board, helping to ensure that employees are receiving the paid sick and safe time they have earned.

Momentum for earned sick days laws is building around the country, with active campaigns in several cities and states.<sup>1</sup> As more sick days laws pass, more governments will face the challenging task of implementing these laws. Those facing this task have much to learn from Seattle’s implementation work.

### **The Seattle Paid Sick and Safe Time Ordinance**

Seattle’s PSST ordinance sets minimum requirements for the accrual, use, and carryover of paid sick and safe time for employees working within Seattle City limits. Sick time can be used for personal illness or preventative care, or to care for a family member’s illness or preventative care. Safe time is meant for survivors of domestic violence, sexual assault, or stalking. It can also be used in the event that an employee’s workplace or his or her child’s school or day care is closed by a public official to limit exposure to infectious agents, toxins, or hazardous materials. The ordinance applies to full-time, part-time, and temporary workers. It also covers workers who perform work in Seattle on an occasional basis (i.e. employees based outside of Seattle who work more than 240 hours in the City on an ad hoc, irregular basis), including those who both telecommute into Seattle and stop in Seattle as a purpose of their work. The law provides for employees to accrue sick and safe time at differing rates, depending on the size of their employer. Full-time workers at employers with more than 4 and fewer than 50 (small) or at least 50 and fewer than 250 (medium) full-time equivalent (FTE) employees accrue 1 hour of sick and safe time for every 40 hours worked. Employees at companies with 250 (large) or more FTE employees accrue one hour for every 30 hours worked. Employees at small employers can use up to 40 hours of sick or safe time per year, and can carry over the same amount of

unused time. For medium employers the use and carryover maximums are 56 hours, and for large employers, they are 72 hours. In each case, regardless of time carried over, employees cannot use more than 40, 56, or 72 hours of sick or safe time respectively per year. Employees who work for large employers that have a paid time off (PTO) system (a system that consolidates different types of leave, include sick days, vacation, personal time, etc.), can use and carry over up to 108 hours per year. The ordinance requires that employers notify employees of their PSST benefits and provide basic job protection for employees who make use of their PSST time.<sup>2</sup>

#### **Who’s in Charge? Choosing an Agency or Department to Implement Earned Sick Days Laws**

In Seattle, the Office of for Civil Rights (SOCR) is responsible for administering the paid sick and safe time ordinance. But during the legislative process, other city departments were also considered. Lawmakers considered delegating the task to the Facilities Administration Services (FAS), which manages business licensing, or the Office of Economic Development, which had an established relationship with businesses. While there were clearly valid reasons to select FAS or OED, SOCR ultimately became the home of PSST. Many people see PSST as an initiative to promote equity; people of color and women were among those most affected by the absence of sick and safe time prior to the passage of the legislation. This equity focus fit well with SOCR’s existing work. While the issue of sick days technically falls outside of the protected classes that the Office typically addresses, the law covers economic issues, which intersect with race, gender, and other categories under the purview of SOCR. According to Mike Chin, the Office’s enforcement manager, through its community engagement work, SOCR quickly saw that the people who would benefit most from the law – who were most likely to have low-wage jobs that lacked reasonable benefits – were people of color and women.

### **Best Practice: When Drafting Administrative Rules, Engage In a Broad and Thorough Public Engagement Process**

SOCR conducted an extensive public engagement process between the time the ordinance passed in September 2011 and when the rules were finalized in July 2012. Bronstein describes the process as crucial for “coming up with a common-sense playing field that folks can work with.”

As soon as the ordinance passed, SOCR went to work constructing a website, which was up by the following month. At that point, the website included basic information and FAQs. The Office also created a listserv, initially consisting primarily of people who had contacted council members during the legislative process.

In January 2012, SOCR held meetings with key employers and employer advocacy groups. They then did the same with the employee advocacy groups that had been instrumental in bringing the sick days issue to City Council’s attention. These meetings typically had minimalist agendas. They provided a platform for groups and individuals to express their primary concerns, given that the law had now passed. Following the initial meetings, once the Office felt that it had a sense of “the lay of the land” from all sides, staff sat down to begin drafting the rules. This process took five months. Karina Bull, the senior investigator at SOCR who was responsible for writing the rules, said the process was one of “constant motion and evolution.” The office constantly solicited feedback, making changes as it proceeded. Even as the rules were being written, SOCR held further public meetings all over the city to encourage people to give feedback and pose questions. Meetings included a PowerPoint presentation reviewing the basics of the law, followed by time for attendees to voice concerns and ask questions. These meetings primarily yielded feedback from employers. The Office also engaged

in communication with stakeholders via phone and email.

The rules went through multiple revisions. SOCR issued a draft set in April and invited comment. Staff members say they received a tremendous amount of good feedback. SOCR then issued a second draft, received further feedback, and eventually finalized the rules in late June. The final rules included several significant changes. In the first version, employees were prohibited from “cashing out” their sick days. But in later versions, SOCR heeded feedback from both employers and employee advocates, who were in favor of allowing employees to make this choice. In addition, later versions included the guidance that employers could use existing vacation benefits to cover sick days (so long as employees were permitted to use them under the conditions established by law), a revision that SOCR felt was a reasonable way to reduce the burden employers might face in implementing the law.

### **Best Practice: Use the Public Engagement Process as an Opportunity to Build Community, Trust, and Consensus**

SOCR viewed the public engagement process during rulemaking as an opportunity to “build consensus on the value and workability of the law,” says Bronstein, the Office’s Public Information Coordinator. Staff recognized that they were not going to change opinions informed by deep philosophical differences. However, Bronstein emphasized, “We wanted to build a community.” Prior to the implementation of the PSST Ordinance, SOCR did not have regular opportunities to engage with employers in Seattle. So, it was important for SOCR to build trust in their interactions with this constituency.

The mood at public meetings, which typically lasted between one and a half and two hours, varied. While some meetings were more staid, occasionally the

temperature rose to reveal frustration and anger on the part of employers. However, SOCR staff emphasize that they maintained their composure. Bull, the senior investigator, credits staff members' "unflappable diplomacy." She acknowledged, "I'm not going to be able to change these people's minds, but I can be polite and kind and offer some empathetic listening and offer information. Our office was unfailingly open to hearing concerns from employers." **SOCR wanted to establish a framework early on that made clear that the meetings were not about the pros and cons of the legislation, but rather were about getting the project of implementation, including rulemaking, done. This was crucial for successfully managing the process.**

The process was also a learning experience for SOCR, insofar as it had to deal with employer issues that it had never faced before. The human resources, accounting, and personnel issues that arose in relation to the Ordinance were not arenas where the Office had a significant amount of internal expertise. As a result, SOCR counted on employers to inform them of certain issues. The legwork that staff had done at the outset in terms of building relationships with the business community ultimately helped to make their job easier.

Throughout the process, SOCR staff worked to better understand and attend to realistic employer concerns. While the ordinance itself was dictated by legislation, consultations with employers were intended to ensure that rules made sense in the context of business practices. Writing the rules with a fuller understanding of the challenge businesses faced was important in averting potential problems down the road. Further, by "brainstorming" with business owners, Bronstein said, "We were able to show them ways that they could implement [the PSST Ordinance] without causing too much of a hassle."

SOCR placed a high value on having an inclusive consultation process with the public. When staff realized that employers attending their meetings were largely white, they conducted additional outreach to try to attract a more diverse group of stakeholders. To do this, staff reached out to immigrant and refugee employer associations and other community and employer groups that had a greater number of people of color among their membership. Starting this outreach process to diverse groups sooner might have yielded a more diverse set of stakeholders at meetings, say staff.<sup>3</sup>

#### **Writing the Rules: Tips and Tricks**

The process of writing the administrative rules for Seattle's PSST Ordinance was challenging, says Karina Bull, SOCR's Senior Investigator, who was charged with the bulk of the task. Bull suggests that other city or state officials facing a similar task consider the following:

- Set aside enough time. Bull describes the process as much more time consuming than expected.
- Get a mentor. Seeking out officials from other cities or states who have already been through a sick days rulemaking process (or at least a rulemaking process for a similar law), could help ease the task immensely, says Bull.
- Use other existing rules as guides for style and substance.
- Write the rules in such a way that they are understandable to a lay person. The rules must use as few words as possible to accomplish as much meaning as possible.
- Stakeholders appreciate detail. Although the Seattle rules are quite lengthy, Bull says that the level of detail in the rules is helpful as SOCR continues to field inquiries from employers and employees and repeatedly turns to the rules to respond to them.

### Best Practice: Use a Variety of Strategies to Inform the Public About the New Law

Once the rules were finalized and the ordinance was being implemented, SOCR engaged in a wide variety of strategies to inform the public about the provisions of the new law. Some of its strategies included:

- Employing mass mailings and e-mailings. SOCR sent a postcard to every business licensed in Seattle and used a listserv that had been created before the law passed to communicate with interested parties.
- Using the traditional news media (i.e., newspapers, along with radio and television stations) to get out information about the ordinance
- Attending community events and hosting information tables
- Giving training presentations at different locations in the city
  - SOCR did several of these per month throughout the summer and into the fall of 2012. They were located throughout the city, in an attempt to reach people (primarily employers) where they work and live.
- Purchasing bus advertisements
- Providing tailored presentations upon request
  - Examples include events for a trucking association, pay roll association, temporary staffing agencies, restaurants, etc.
- Working with law firms that were engaged with the issue.
  - Once the administrative rules were final, law firms would call with requests to make presentations. SOCR never refused these requests, viewing them as further opportunities to reach stakeholders.
  - In one case, a law firm allowed SOCR to post their joint webinar on the city government's website.

SOCR recognized that informing “the public” meant different things depending on the constituency it was dealing with. Employees did not need a great deal of detail about how the law worked – rather, they needed basic information about the benefit that they would now be entitled to. On the other hand, employers and HR professions would need more in-depth information and were more likely to ask detailed questions. Presentations and informational materials needed to be tailored for particular groups.

### Best Practice: Respond to Queries from the Public, No Matter How Voluminous

SOCR bent over backwards to answer all the queries it received, by email and telephone. The volume of these calls reached a high water mark in August and September, right before the ordinance went into effect. At this point, the Office was receiving upwards of *100 calls or emails per day*. Despite the high volume, everyone who emails or calls receives a personal response within one or two business days. Common questions from employer-connected groups included those about:

- Who the law applies to and basic tenets of the law
- Carryover of sick days
- Employees’ ability to “cash-out” remaining sick days
- Accrual processes
- PTO plans and their relationship to the law
- Is it possible to “frontload” (give employees all hours at the start of the year so no accrual process is necessary)?
- Absence control policies
- Fraud
- Notification requirements (to provide employees with a written statement of available leave during every pay period)
- “Occasional basis employees” who are based outside Seattle and work in the City on an ad hoc, irregular basis/

### Seattle's Paid Sick and Safe Time Website: A Comprehensive Website

Once Seattle's PSST Ordinance passed, Seattle's Office for Civil Rights (SOCR) went to work creating a [comprehensive website](#) with resources for employers and employees. The website offers a wide variety of resources, including:

- [The Ordinance](#)
- [A general summary of the provisions of the Ordinance](#)
- [A fact sheet specifically for employers](#)
- [A "frequently asked questions" \(FAQ\) page](#) – SOCR officials stressed the importance of a **comprehensive FAQ page**. They were in the process of preparing an updated version for their website in February, 2013.
- [Administrative Rules](#)
- Link to a [taped webinar](#), arranged by a law firm and featuring SOCR's enforcement manager.
- [PSST posters](#) in 7 different languages.
- PSST brochure in [English](#) and [Spanish](#)
- Sample [memorandum of understanding](#) (MOU) for collective bargaining agreements
- [Model notice](#) to help employers create a letter to inform employees about PSST
- [A PowerPoint presentation on the PSST Ordinance](#)
- [Map](#) showing Seattle city boundaries
- [Information about the required evaluation](#) of the ordinance's implementation and effects.
- [A short video](#) discussing the community benefits of the ordinance.

Once the ordinance became effective in September 2012, the Office began to receive more employee calls, while employer calls decreased, somewhat. Employees who had seen SOCR's advertisements were among those who called. Having seen the ads, they were awaiting notification from employers, who sometimes did not fulfill the notification requirements, prompting confusion.

Five months after the law went into effect, though the number of inquiries SOCR receives is lower, there is still considerable volume. Bull, who answers all telephone inquiries, estimates that she spends two hours a day responding to calls, and sometimes up to four hours. Bronstein spends 1-2 hours a day responding to email inquiries.

### Best Practice: Adopt an Initial Enforcement Approach That Puts Achieving Compliance Ahead of Punishment

SOCR had experience conducting investigations regarding civil rights violations. The Office uses the basic enforcement model it already has in place to implement its enforcement obligations for the PSST Ordinance, making some changes as necessary. As with enforcement for other issues, SOCR uses an intake investigator to determine whether a complainant's description of the issue s/he is facing meets the *prima facie* requirements of the law. If it does, the next step is to send out an advisory letter. This differs from the standard approach on other civil rights matters, in which SOCR would immediately file charges. Since the law is new, the Office is focused on trying to achieve compliance. Employers have 30 days to resolve the complaint after receiving an advisory letter. SOCR offers the employer technical assistance as it attempts to resolve the complaint.

If the employer resolves the complaint within 30 days, the file is closed. If it does not, the complainant is then asked if s/he would like to file a charge. Alternatively, the Office has the power to file a "Director's Charge" if the original alleging party does not want to attach his or her name to the document. If a charge is filed, the process moving forward resembles that of charges filed with SOCR related to other issues.

### Resources for Successful Implementation: Funding and Staffing

The SOCR Office is small, and the implementation process was and continues to be a big job. Luckily, the Seattle PSST Ordinance included a provision specifying the amount of funding that would be provided for implementation. In the Fiscal Note accompanying the Bill, Council set aside \$105,000 for outreach efforts.<sup>4</sup> In addition Council budgeted for extra personnel (one Civil Rights Analyst) required for the rule-making process and for on-going enforcement. This additional staffing costs \$84,000 on an annual basis.<sup>5</sup> A comprehensive evaluation of the effects of the legislation is also required by the law, with \$200,000 set aside for the process.<sup>6</sup>

SOCR has about 24 employees in total. The team that worked on the implementation of the PSST Ordinance included people in the following roles:

- Public information coordinator
- Enforcement manager
- Senior investigator
- Outreach and engagement manager
- Temporary communications person (6 months, part-time)
- SOCR's policy director
- SOCR's director

None of these staff members work on PSST full-time. There were a total of 1.5 FTE hires for the process, with 1 FTE being permanent. SOCR has a team of seven investigators. All are now in the process of being trained to work on PSST enforcement, in addition to enforcement of other rules for which SOCR is responsible.

As of February 2013, SOCR has not yet filed a charge. However it has worked through dozens of complaints. In the fourth quarter of 2012 (October 1 to December 31), SOCR sent 34 advisory letters. 24

of the cases associated with those advisory letters were closed by December 31<sup>st</sup>. The remaining ones were still pending at the time of writing.

After the law passed, City Council members told SOCR staff that employers were very concerned about the time and money they might need to spend responding to potential charges – attorneys would need to be hired and liability assumed. SOCR's more conciliatory approach, as opposed to a punitive approach that immediately fines employers helps to avoid those expenses and burdens. Bronstein sees the approach as one that will "build public will" for the Ordinance by being less punitive. Indeed, staff members say that employers are very appreciative of this approach and the technical assistance they are able to access through it. The technical assistance is crucial; most employers that staff members have contact with have misunderstood at least one feature of the law. Such technical assistance will continue to be provided, even beyond the initial implementation period, say SOCR staff.

### Best Practice: Partner with Community Groups to Get the Message Out

SOCR worked with many groups in Seattle throughout the implementation process. These groups were instrumental in getting the city's messages out. They made use of their networks to send out press releases and informational materials, and to encourage participation in outreach events. In fact, community group involvement with SOCR began even before the ordinance was passed. Advocates met with leadership and staff at SOCR to get their input early on, while also building agency buy-in. Having established this relationship, they were able to work together easily through the implementation process.

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## Notes

<sup>1</sup> Two other cities – San Francisco and Washington, D.C. – and one state – Connecticut – have implemented earned sick days laws. Campaigns are active around the country. See [http://www.nationalpartnership.org/site/DocServer/NP\\_PSD\\_Tracking\\_Doc.pdf?docID=1922](http://www.nationalpartnership.org/site/DocServer/NP_PSD_Tracking_Doc.pdf?docID=1922)

<sup>2</sup> See the City of Seattle's overview of the PSST ordinance for a fuller account of its provisions:

<http://www.seattle.gov/civilrights/documents/PSSTgeneralsummary.pdf>. Or, see the full ordinance:

<http://www.seattle.gov/civilrights/documents/SeattlePaidSickSafeTimeOrdinancefulltext.pdf>.

<sup>3</sup> The city of Seattle has created a Racial Equity Toolkit as a part of its Race and Social Justice Initiative. Included in the toolkit is the Initiative's "Inclusive Outreach and Public Engagement Guide." See

<http://www.seattle.gov/rsji/docs/IOPE%20guide%2001-11-12.pdf>. For the entire toolkit, see

<http://www.seattle.gov/rsji/resources.htm#toolkit>.

<sup>4</sup> <http://clerk.seattle.gov/~public/fnote/117216.htm>

<sup>5</sup> <http://clerk.seattle.gov/~public/fnote/117230.htm>

<sup>6</sup> See note 4.