

SURCHARGE GUIDELINES



The cities of Seattle and SeaTac recently increased the hourly minimum wage above the state's hourly minimum wage. As businesses consider adding surcharges to customers' bills in response to these changes, the Attorney General's Office offers the following guidance to avoid potential violations of the state's consumer protection and labor laws. It is important businesses know the law and conduct themselves accordingly.

In general, state law allows businesses, such as restaurants, to add a surcharge, **PROVIDED THAT** it is not done in an unfair or deceptive manner. ([RCW 19.86.020](#))

For businesses adopting a surcharge, here are some guidelines to help stay compliant with state law:

- **Conspicuous Disclosure:** Any surcharge must be conspicuously disclosed to consumers in advance in a manner that makes it meaningful to consumers. Consider making written or posted disclosure in a font that is legible to the ordinary reader and prominently placing it online and at the point of purchase.

A surcharge for services provided by employees related to food, beverage, entertainment, or portage must be disclosed in an itemized receipt and on any menu provided to the customer. ([RCW 49.46.160](#))

- **Clear Disclosure:** The disclosure of any surcharge must be clear and unambiguous. Consider writing the disclosure in terms commonly understood by the public so consumers can easily understand the amount of the surcharge and how it will be applied.
- **No Mischaracterization:** Any surcharge applied at the discretion of the business may not be characterized as a "tax" or in any other way that implies it is a direct government mandate.
- **No Misappropriation:** If a surcharge description is provided to consumers, then revenue generated from that surcharge must be used as described. For example, if it is communicated to consumers that a surcharge funds employee health coverage or wages, those funds should not be used for another purpose.

The disclosure for a surcharge for services provided by employees related to food, beverages, entertainment, or portage must show the percentage of the charge that is paid or payable directly to the employee or employees serving the customer. ([RCW 49.46.160](#))

- **Taxable Proceeds:** A surcharge is subject to Washington's business and occupation (B&O) and/or retail sales taxes. According to the Washington State Department of Revenue:

Washington's business and occupation (B&O) and retail sales taxes apply to "gross proceeds of sales" without any deductions for costs of property sold, costs of materials used, labor costs, delivery costs, any expenses paid, etc. ([RCW 82.04.070](#))

In cases where the surcharge is added to an invoice to recover other costs incurred by the seller, the surcharge is subject to the same tax that applies to the billing.

For example, if a surcharge (including a "Living Wage" surcharge to offset the cost of paying workers a higher minimum wage) is placed on a restaurant bill, it is subject to retail sales tax and retailing B&O tax.

CONSUMER PROTECTION DIVISION



The Attorney General's Consumer Protection Division works to secure a marketplace free from deceptive and unfair practices, which it does by enforcing the law and providing information and education to consumers and businesses.

For Businesses: The Washington State Attorney General's Office provides a number of resources for businesses, such as advertising guidelines for auto dealers, and information on identity theft prevention and liability. For more information, visit www.atg.wa.gov/business-resources.

The Washington State Department of Revenue is available to help businesses understand their rights and responsibilities. For more information, visit www.dor.wa.gov.

For Consumers: The Washington State Attorney General's Office offers an informal resolution service to consumers who have a dispute with a business, or who feel they were subjected to unfair or deceptive practices. For more information or to file a complaint online, visit www.atg.wa.gov/file-complaint.

For Employees: The Washington State Department of Labor and Industries has authority to enforce the state's wage laws. For more information about workplace rights or to file a wage complaint, visit www.lni.wa.gov/workplacerrights.

The City of Seattle's Office of Labor Standards enforces Seattle's ordinances and labor standards, including the city's minimum wage and paid sick and safe time ordinances. For more information, visit www.seattle.gov/civilrights/labor-standards.