

Labor Standards Advisory Commission

Independent Contractor Transparency Recommendations

Labor Standards Advisory Commission

LSAC was designed to create a forum for community, labor, and business to come together “to achieve workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers.” SMC 3.15.010

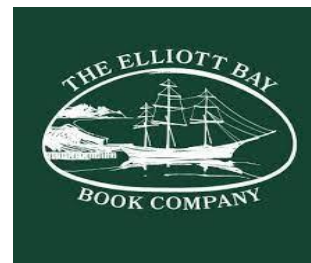
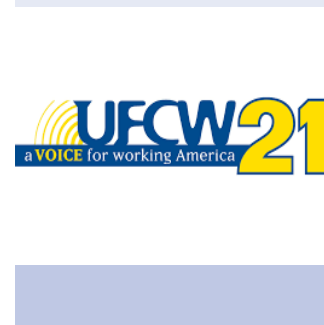
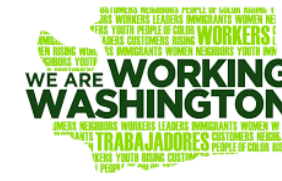
Our work takes the form of recommendations and advice: “[to] advise the Office of Labor Standards, Mayor, City Council, and other City departments with respect to matters affecting labor standards generally and wages, working conditions, safety, and health of workers specifically.” SMC 3.15.010

LSAC Composition

- 15 Members
- 7 Mayoral Appointments
- 7 Council Appointments
- 1 Commission Appointment



Who We Are



LSAC Independent Contractor Working Group

Mona Smith – Greater Seattle Business Association

Liz Ford – Seattle University

Artie Nosrati – Working Washington

Anthony Burnett – MDB Staffing

Gay Gilmore – Optimism Brewing

Liz Ford – Seattle University

Artie Nostrati – Working Washington

Joel Shapiro - Dumpling

April 2020 – Working Group completes first recommendation complete

May 2020- Commission approves recommendation.

June 2020 –recommendation sent to Council.

February 2021 - Invitation to this Committee

Our February 2019 Charge from the Council

- *Develop a work program identifying how LSAC will work with OLS on the issue of misclassification, particularly how LSAC can assist OLS by providing input on effective strategies based on their experience and [sic] existing worker and business associations.*

Patricia Lee (Eder)
LEG RES misclassification
D5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

CITY OF SEATTLE
RESOLUTION 31863

A RESOLUTION relating to misclassifications of workers as independent contractors when they should be designated as employees; requesting semi-annual updates to the Council starting at the end of the 3rd quarter of 2019 on the work the Office of Labor Standards and Labor Standards Advisory Commission is doing to investigate and correct misclassifications.

WHEREAS, beginning with the 1938 Fair Labor Standards Act (FLSA), 29 U.S.C. Section 201, *et seq.*, federal, state, and local governments have regulated the wages, benefits, and working conditions of many workers working in the private sector and government; and

WHEREAS, these labor laws have covered workers that have been defined as “employees” in various statutes, ordinances, and regulations; and

WHEREAS, coverage and protection under many labor laws have excluded workers who were not defined as “employees” either explicitly or because they did not meet the legal definition of “employee”; and

Washington Dept. of Commerce Study



Independent Contractor Study

What can research tell us about the needs of workers earning income as independent contractors, their sources of income, and access to benefits?

PRIMARY METHODS

1. Co-develop multi-pronged approach with Advisory Committee
2. Analyze existing federal data sources
3. Assess usefulness of state records
4. Conduct focus groups
5. Design and launch online survey

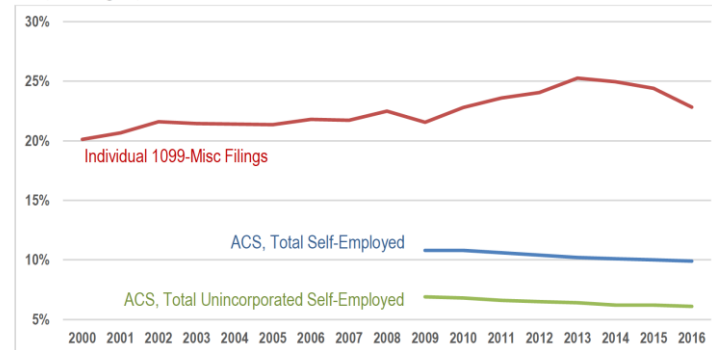
USES AND LIMITATIONS

- Improve data systems to measure non-traditional work
- Understand economic

EXPECTED OUTCOMES

The final report will estimate the general size of the independent contractor workforce, describe the geographic distribution of self-employment across the state, and provide economic information about non-traditional work for the below topics. To the greatest extent possible, the analysis will include location, industry, and demographic breakdowns.

Figure 6: Percentage of Self-Employment Based on 1099-Misc Form and American Community Survey Data, Washington, 2000-2016



Source: Department of Commerce calculations of "American Community Survey 5-Year Estimates," occupation by class of worker for the civilian employed population 16 years and older. Accessed through American Fact Finder. Calculations are from raw counts of taxpayer identification numbers (TINs) that include 1099-Misc reported income to the IRS. IRS counts were provided by the Federal Reserve Board of Governors with permission from the IRS.

WHEREAS, in 2018, the Washington Legislature charged the Department of Commerce with delivering a study by June 1, 2019 on independent contractor employment which must include information on the needs of workers earning income as independent contractors including sources of income, the amount of their income derived from independent work, and a discussion of the benefits provided to such workers; and

Notice of Employment

Time of Hire:



Employer Name



Address, telephone,
email



Rates of pay &
eligibility for overtime



Tip Policy



Pay Basis



Pay Day

Paycheck:



Hours worked



Rate of Pay



Gross Pay



Tip Compensation



Pay Basis



Deductions

LSAC's Recommendation

LSAC recommends a policy requiring hiring entities to provide independent contractor workers with the information necessary to understand (1) the terms of the relationship between an independent contractor and a hiring entity and (2) what work is covered in each payment received. More simply, independent contractors should be able to understand the terms of their engagement and determine whether those terms have been satisfied.

This recommendation represents a first step on which there is support from business, community, and worker advocates on the Commission.

Independent Contractor Disclosures

Pre-Contract



Hiring entity contact information



Rate or Rate of Pay



Typical expenses



Pay basis



Tip Policy



Payment Schedule

Time of Payment



Description of work



Rate or Rates of Pay



Pay basis;



Tip or service charges;



Gross earnings



Deductions, fees, or other charges

Transparency Leads to Proper Classification

- Sunlight is the best medicine: To protect the most vulnerable workers, standardize disclosure
- A consequence of lack of proper disclosure is an assumed employer relationship
- We suggest OLS provide a website that walks workers and employers through a flow chart of steps to help them determine what relationship they are in and what disclosures are needed.
- We want to be careful not to sweep up certain groups unnecessarily

Coverage Limitations

- *ensure that a private party hiring an individual contractor on an isolated basis is not required to provide the disclosures described above (e.g. an individual hiring a plumber or an independent contractor hair stylist).*
- *ensures that hiring entities that have an exclusively independent contractor workforce must still provide transparency disclosures.*
- Should apply to hiring entities who:
 - retain both employees and independent contractors or
 - retain five or more independent contractors on a consistent basis, but do not retain any employees.

Coverage Limitations

- Should cover anyone retaining 5 or more ICs on a consistent basis, e.g TNCs, temp agencies, online platform hiring agencies, not the smallest businesses, etc.
- Should not apply to short-term contracting (e.g. individuals hiring a plumber or a hair stylist)
- Should exclude high wage ICs (lawyers, accountants, freelance designers, etc.), e.g. anyone making over \$75,000/yr is not a vulnerable worker
- Goal is to provide all workers information of their rights

Other Considerations

Enforcement:

- Unlike other labor standards, this recommendation would require only notice.
- Accordingly, unique enforcement models should be considered.

Outreach and Education:

- Legislation would cover both workers and hiring entities who are not accustomed to labor standards rights and obligations.
- Council should consider appropriate outreach methods and resources necessary to make any legislation successful.

Questions.