



Legislation Text

File #: Res 31863, Version: 2

CITY OF SEATTLE

RESOLUTION _____

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

WHEREAS, for example, the FLSA establishes federal minimum wage, overtime pay, recordkeeping and child labor standards for workers in the private sector and in Federal, State and local governments but applies only to workers classified as employees rather than independent contractors; and

WHEREAS, similarly RCW 49.46, *et seq.*, the State of Washington Minimum Wage Act (MWA) and SMC 14.19, *et seq.* the City of Seattle Minimum Wage Ordinance applies only to workers who are “employees” as defined by the applicable ordinance; and

WHEREAS, labor laws such as the FLSA and MWA provide exemptions of who is not covered but do not provide clear guidance on whether a worker is an employee or independent contractor; and

WHEREAS, the courts have provided guidance through cases such as *Anfinson v. FedEx Ground Package*

System, Inc., 174 Wn.2d 851 (2012); and

WHEREAS, the Washington State Workforce Training and Education Coordinating Board is exploring and developing policies to “future proof” Washington’s workers and businesses; and

WHEREAS, in 2018, the Washington Legislature created and funded the Future of Work project; and

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

WHEREAS, employers may create ownership and employment structures where it might not be clear who the employing entity is and whether the workers are employees; and

WHEREAS, technological changes have assisted the creation of many new and innovative employment situations, which may create uncertainty as to the employment relationship; and

WHEREAS, if an employer misclassifies an employee as an independent contractor, the employee may not receive benefits and protections to which they are entitled under federal, state, and local labor laws; and

WHEREAS, contracts with employees and independent contractors may contain a provision providing for individual mandatory arbitration proceedings to resolve any labor disputes between the parties; and

WHEREAS, these provisions requiring individual arbitration as the only legal recourse have been upheld recently in *Epic Systems Corp. v. Lewis*, 137 S. Ct. 809 (2017); and

WHEREAS, in addition to limiting the legal remedies available to workers, adjudication by arbitration means that the individual arbitration decisions, unlike court cases, do not provide a body of law that can be easily accessed and relied on in future labor disagreements; and

WHEREAS, The City of Seattle (City) recognizes that the Office of Labor Standards (OLS) has received inquiries on appropriate employment classification and undertaken several investigations on this issue; and

WHEREAS, since 2012 the City has established seven local labor laws regarding paid sick and safe time, fair chance employment, minimum wage, wage theft, secure scheduling, hotel employees' health and safety, and labor standards for domestic workers; and

WHEREAS, in 2014, Ordinance 124643 established a 15-member Labor Standards Advisory Commission (LSAC) composed of employers, employees, and community members with a demonstrated concern and background in labor standards to advise the OLS Director on labor standards generally and specifically on the implementation of the City's labor laws; and

WHEREAS, the City has consistently expressed its intent to cover all workers entitled to coverage under existing labor laws; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE THAT:

Section 1. The City Council (Council) requests that the Office of Labor Standards (OLS) and the Labor Standards Advisory Commission (LSAC) address the potential problem of misclassification of workers as independent contractors when they should be classified as employees.

A. OLS is requested to:

1. Propose policy solutions to the Council to help address this issue of misclassification, work with the Office of Intergovernmental Relations on those issues most appropriately addressed by the State, and incorporate them into the City's 2020 State Legislative Agenda;

2. Develop enforcement strategies and subject matter expertise to resolve misclassification inquiries and complaints;

3. Coordinate with LSAC to develop the outreach and education strategies that OLS will use to inform workers and employers about proposed policy solutions; and

4. Develop potential strategies that the City should consider based on the analysis, findings, and recommendations in a study that the Washington Legislature charged the State's Department of Commerce with delivering by June 1, 2019. The Department of Commerce study is expected to address independent contractor

employment and will consider 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.

B. LSAC is requested to 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 existing worker and business associations. LSAC should consider how it can assist OLS in engaging parties affected by the issue of misclassification through stakeholder groups and public hearings.

Section 2. The City Council requests that OLS submit written semi-annual reports and presentations identifying the work that OLS and LSAC is doing to address the potential problem of misclassification of workers as independent contractors when they should be classified as employees. The written reports should include OLS's progress in accomplishing the requests identified in Section 1 of this resolution.

Adopted by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its adoption this _____ day of _____, 2019.

President _____ of the City Council

The Mayor concurred the _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)