



SEATTLE CITY COUNCIL
CENTRAL STAFF

Independent Contractor Protections Draft Legislation

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Independent Contractor Protections

- Requirements for pre-contract disclosures, timely payment, and payment disclosures
- Effective on March 1, 2022
- Enforced by the Office of Labor Standards (OLS)

Hiring Entity Coverage

1. **Commercial hiring entities** hiring an independent contractor for business services
2. **Any hiring entity** hiring an independent contractor for **domestic worker** services

Independent Contractor Coverage

- **Independent contractors working in whole or part in Seattle**
- **Exclusions for:**
 - Attorneys and licensed medical professionals working within the scope of their professions, and
 - Other independent contractors working in professions governed by a comparable code of ethics (pursuant to OLS rules)

Pre-contract Disclosure

1. Proposed Terms & Conditions of Work

- Written statement
- Due before the independent contractor starts work
- Provided in English and the independent contractor's primary language

**OLS would create model notices & templates in English and other languages*

Pre-contract Disclosure

1. Current Date
2. Independent Contractor & Hiring Entity
3. Contact Information
4. Description of Work
5. Location(s) of Work
6. Rate(s) of pay
7. Estimated Tips and/or Service Charge Distributions (if part of the offered payment)
8. Pay Basis (hour, day, week, monthly, fee per project, piece rate, commission)
9. Tips and/or service charge distribution policy
10. Typical expenses and reimbursements
11. Deductions, Fees, or Other Charges and Policies for Each Type of Charge
12. Payment Schedule
13. Other information required by OLS Director rules.

Timely Payment

- 1. Payment** of amount due in pre-contract disclosure (or related contract)
- 2. On specified date**
 - Payment due on or before the date in the pre-contract disclosure (or related contract)
 - If no specified date, then payment due no later than 30 days after the completion of the independent contractor's services

Payment Disclosure

- 1. Itemized pay statement**
- 2. Provided with each payment**

**OLS would create model notices & templates in English and other languages*

Payment Disclosure

1. Current Date
2. Independent Contractor & Hiring Entity
3. Description of Work
4. Location(s) of Work
5. Rate(s) of pay
6. Tip Compensation and/or Service Charge Distributions
7. Pay Basis with Accounting for Method of Determining Payment
8. Expenses Reimbursed
9. Gross Payment
10. Deductions, Fees, or Other Charges
11. Net Payment
12. Other information required by OLS Director rules.

Other Requirements

1. Notice of rights

- Information in English and the independent contractor's primary language
- Model notices in English and other languages created by OLS

2. Recordkeeping

- Retention of records for three years

3. Prohibited retaliation

Enforcement

1. Office of Labor Standards

- Investigations, complaint procedure, court navigation program

2. Private right of action

- Individual and class actions
- Court could award the independent contractor attorney fees plus costs

Remedies

1. Remedies for independent contractor

- Pre-contract and payment disclosures
- Unpaid compensation (up to three times the amount owed)

2. Penalties and fines

- Penalties/fines in varying amounts, including up to \$556.30 per type of violation
- OLS could lower penalties/fines depending on the circumstances of the violation

Rebuttable presumption for payment

- **Rebuttable presumption** - If there is no pre-contract disclosure **or** the payment does not match the pre-contract disclosure, there would be a legal presumption rebuttable by clear and convincing evidence (such as a written contract) that the independent contractor's claims for payment are true
- **Enforcement measure** - Both OLS and a court could use the rebuttable presumption to establish the payment due to an independent contractor

**“Clear and convincing evidence” means evidence that is highly and substantially more likely to be true than untrue*

Labor Standards for Platform Gig Workers

- **Non-codified section on labor standards for platform gig workers** (i.e., workers hired as independent contractors by companies providing work through an online-enabled application or platform)
- **Statement of council's intent** to develop legislation requiring minimum compensation, flexibility protections, and transparency information for platform gig workers, and to consider such legislation for a full Council vote before the start of the 2021 budget deliberations

Issue Identification

Written Contract

Options

- A. Require a written contract instead of a pre-contract disclosure
- B. Make no changes to the legislation

Enforcement – remedies, civil penalties, and fines

Options

- A. Specify that OLS could not impose penalties/fines for first violations by a small business (except for egregious violations). Small business could be defined as:
 - 1. Businesses with certain number of employees (e.g., less than 5, 10, 20 employees),
 - 2. Businesses exempt from City business license tax, or
 - 3. Businesses defined by Director rules
- B. Specify that OLS could not impose penalties/fines for first violations by any hiring entity hiring a domestic worker (except for egregious violations)
- C. Remove OLS's authority to impose penalties/fines on small businesses
- D. Remove OLS's authority to impose penalties/fines on hiring entities hiring domestic workers.
- E. Specify some combination of A, B, C, or D

Effective Date

Options

- A. Change effective date to provide one year to prepare for implementation (e.g., June 1, 2022, July 1, 2022)
- B. Make no changes to the legislation

Next Steps

1. May 17, 2021 – Introduction and Referral
2. May 18, 2021 – Finance and Housing Committee discussion (& possible vote)

Questions?