



# SEATTLE CITY COUNCIL

## Legislative Summary

Res 31863

Record No.: Res 31863

Type: Resolution (Res)

Status: Adopted

Version: 2

Ord. no:

In Control: Housing, Health, Energy, and Workers' Rights Committee

File Created: 07/31/2018

Final Action: 02/19/2019

**Title:** 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.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Herbold

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: patrick.wigren@seattle.gov

Filing Requirements/Dept Action:

### History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	01/31/2019	sent for review	Council President's Office			
	<b>Action Text:</b>	The Resolution (Res) was sent for review. to the Council President's Office					
	<b>Notes:</b>						
1	Council President's Office	01/31/2019	sent for review	Housing, Health, Energy, and Workers' Rights Committee			
	<b>Action Text:</b>	The Resolution (Res) was sent for review. to the Housing, Health, Energy, and Workers' Rights Committee					
	<b>Notes:</b>						

Legislative Summary Continued (Res 31863)

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- 1 City Council 02/04/2019 referred Housing, Health, Energy, and Workers' Rights Committee
- 1 Housing, Health, Energy, and Workers' Rights Committee 02/07/2019 adopt as amended 02/11/2019 Pass
- Action Text:** The Committee recommends that City Council adopt as amended the Resolution (Res).  
        In Favor: 4 Chair Mosqueda, Vice Chair Juarez, Member Bagshaw, Alternate Herbold  
        Opposed: 0
- 2 City Council 02/19/2019 adopted Pass
- Action Text:** The Resolution (Res) was adopted by the following vote, and the President signed the Resolution:  
    **Notes:**  
        In Favor: 8 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember Mosqueda, Councilmember Sawant  
        Opposed: 0
- 2 City Clerk 02/19/2019 attested by City Clerk
- Action Text:** The Resolution (Res) was attested by City Clerk.  
    **Notes:**
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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

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

1 WHEREAS, the courts have provided guidance through cases such as *Anfinson v. FedEx Ground*  
2 *Package System, Inc.*, 174 Wn.2d 851 (2012); and

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

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

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

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

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

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

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

1 WHEREAS, these provisions requiring individual arbitration as the only legal recourse have  
2 been upheld recently in *Epic Systems Corp. v. Lewis*, 137 S. Ct. 809 (2017); and  
3 WHEREAS, in addition to limiting the legal remedies available to workers, adjudication by  
4 arbitration means that the individual arbitration decisions, unlike court cases, do not  
5 provide a body of law that can be easily accessed and relied on in future labor  
6 disagreements; and

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

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

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

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

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

21 Section 1. The City Council (Council) requests that the Office of Labor Standards (OLS)  
22 and the Labor Standards Advisory Commission (LSAC) address the potential problem of

1 misclassification of workers as independent contractors when they should be classified as  
2 employees.

3 A. OLS is requested to:

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

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

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

12 4. Develop potential strategies that the City should consider based on the analysis,  
13 findings, and recommendations in a study that the Washington Legislature charged the State's  
14 Department of Commerce with delivering by June 1, 2019. The Department of Commerce study is  
15 expected to address independent contractor employment and will consider the needs of workers  
16 earning income as independent contractors including sources of income, the amount of their income  
17 derived from independent work, and a discussion of the benefits provided to such workers.

18 B. LSAC is requested to develop a work program identifying how LSAC will work with  
19 OLS on the issue of misclassification, particularly how LSAC can assist OLS by providing input  
20 on effective strategies based on their experience and existing worker and business associations.  
21 LSAC should consider how it can assist OLS in engaging parties affected by the issue of  
22 misclassification through stakeholder groups and public hearings.

23 Section 2. The City Council requests that OLS submit written semi-annual reports and  
24 presentations identifying the work that OLS and LSAC is doing to address the potential problem

1 of misclassification of workers as independent contractors when they should be classified as  
2 employees. The written reports should include OLS's progress in accomplishing the requests  
3 identified in Section 1 of this resolution.

4  
5 Adopted by the City Council the 19<sup>th</sup> day of February, 2019,  
6 and signed by me in open session in authentication of its adoption this 19<sup>th</sup> day of  
7 February, 2019.

8 

9 President \_\_\_\_\_ of the City Council

10 The Mayor concurred the \_\_\_\_\_ day of \_\_\_\_\_, 2019. <sup>ms</sup>

*Filed by me this 19<sup>th</sup> day of February, 2019. ms*

11 

12 Monica Martinez Simmons, City Clerk

13 (Seal)