

May 14, 2021

MEMORANDUM

To: Finance and Housing Committee
From: Karina Bull, Analyst
Subject: Council Bill 120069: Independent Contractor Protections Ordinance

On May 18, 2021, the Finance and Housing Committee (Committee) will discuss and may vote on [Council Bill \(CB\) 120069](#), legislation sponsored by Councilmember Herbold that would establish new requirements for businesses hiring independent contractors. This memo provides an overview of the legislation and identifies policy issues for the Councilmembers' consideration.

Background

In February 2019, the City Council (Council) passed [Resolution 31863](#) requesting the Office of Labor Standards (OLS) and the Labor Standards Advisory Commission (LSAC) to propose policy solutions for the problem of employers improperly misclassifying employees as independent contractors.

In May 2020, the LSAC recommended requiring hiring entities to provide all independent contractors (not just those who are at risk of being misclassified) with job and pay information. The LSAC described these recommendations as the first steps toward creating more transparency and access to information for workers hired as independent contractors.

On May 4, 2021, the Committee discussed draft legislation that incorporated and expanded LSAC's recommendations. See [Central Staff memo dated May 3, 2021](#) for an overview of the draft legislation and issue identification.

Introduced Legislation

The introduced legislation is largely the same as the draft legislation with a few key differences. The introduced legislation would require commercial hiring entities (*i.e.*, businesses) to provide independent contractors with pre-contract disclosures, timely payment, and payment disclosures for services valued at \$600 or more. These requirements would become effective on March 1, 2022 and would be implemented by the Office of Labor Standards (OLS). See Table 1 for an overview of policy developments in the introduced legislation.

Table 1: Introduced legislation

Issue	Description
A. Hiring Entity Coverage	The legislation would solely cover commercial hiring entities.
B. Value of services	<p>The legislation would establish a threshold value of services for coverage:</p> <ol style="list-style-type: none"> 1. proposed or actual compensation of \$600 or more, or 2. compensation reasonably expected to be \$600 either by itself and when aggregated for services between the same commercial hiring entity and independent contractor during the calendar year. <p>The threshold would be \$600 or more to align with Internal Revenue Service (IRS) requirements for businesses to submit an annual 1099-NEC form to report non-employee compensation of \$600 or more.</p>
C. TNC drivers	The legislation would require Transportation Network Companies (TNCs) to provide TNC drivers with timely payment but would not require pre-contract disclosures and payment disclosures. TNCs would need to comply with disclosure and minimum pay requirements under the TNC Minimum Compensation Ordinance, Seattle Municipal Code (SMC) 14.33 .
D. Presumptive contract	The legislation would create a presumptive contract when an independent contractor performed the agreed-upon work in the pre-contract disclosure. A hiring entity could rebut this presumption with clear and convincing evidence, such as a written contract.
E. Model notices	The legislation would require OLS to create and distribute model notices for the pre-contract disclosure, payment disclosure, and notice of rights by March 1, 2022. OLS would be required to create these notices in English, Spanish, and other languages.

Financial Impacts

The legislation could have financial impacts for independent contractors, commercial hiring entities, and the City.

For independent contractors, the legislation could improve the likelihood of receiving timely payment and would provide more resources for pursuing payment claims. Studies show that timely payment is an issue for independent contractors. A Gallup, Inc. survey reported that 39 percent of independent contractors reported problems with timely and accurate payment compared to 18 percent of employees reporting such problems in traditional employment. Hiring entities could be significantly motivated to engage in transparent business dealings and promptly pay independent contractors if failing to do so could result in presumptive contracts

that favor the independent contractor's payment claims or enforcement actions imposing liquidated damages (up to three times the amount owed), penalties, fines, and attorney fees.

Independent contractors with limited recourse for proving payment claims, such as those who typically engage in oral agreements or who might not notice a pay discrepancy without an itemized pay statement, could substantially benefit from pre-contract and payment disclosures. However, some independent contractors, including those who work in professional or highly compensated fields, may already provide customers with written cost estimates or require written contracts and therefore may not benefit as much from disclosures. Some independent contractors may also prefer engaging in oral agreements rather than receiving or exchanging written documents.

Notably, in some situations the creation of a presumptive contract (when an independent contractor begins work in a pre-contract disclosure) could work against the interest of an independent contractor who orally proposed and/or agreed to terms different than the pre-contract disclosure. It would be critical for the City's outreach campaign to inform parties of the importance of memorializing changes to the pre-contract disclosure in writing.

For commercial hiring entities, especially small businesses, the legislation could encourage more meaningful engagement with independent contractors during the hiring process and result in more intentional contracting practices. However, the legislation could also result in increased administrative costs, slower contracting processes, and increased liability for contract disputes. Businesses might need to take extra steps to determine whether service providers are operating as independent contractors and might choose to work with larger businesses that are not covered by this legislation. Consistent with any new labor standard, it would take time for business owners to become aware of the new requirements and some might only become aware in the context of an enforcement action.

Stakeholder engagement with both independent contractors and commercial hiring entities would help to identify a fuller range of financial and other impacts and could generate ideas for mitigating or avoiding unintended consequences.

For the City, the legislation could have a financial impact on OLS. Discussions are ongoing with OLS about the estimated costs of implementation. OLS has initially estimated \$684,000 (\$60,000 in one-time funds plus \$624,000 in ongoing annual costs) to hire three positions, cover administrative expenses, create the required model notices and court navigation documents, translate materials, conduct outreach, and engage in rulemaking.

OLS notes that this legislation would represent the first *new* local labor standard that would widely apply across business sectors since 2015 when the Minimum Wage and Wage Theft

Ordinances went into effect.¹ More recently-enacted labor standards, such as the Domestic Workers Ordinance and TNC Driver Ordinances apply to distinct subsets of workers and hiring entities and Council approved funds for implementation.² While Council did not approve funds for implementation of other recent labor standards, such as the Hotel Worker Ordinances and temporary gig worker ordinances, OLS notes that these ordinances had limited coverage and implementation resulted in OLS deferring or under-resourcing other projects. OLS also believes that hiring additional staff would require bigger office space and incur relocation costs. Central Staff will continue gathering and analyzing information to better understand OLS's estimate and the implications.

To address the financial impacts of implementing legislation for a wide swath of hiring entities and workers, the Council may want to consider one of the following options.

Options

- A. Add up to \$684,000 in new resources to support OLS during the 2021 supplemental budget process and/or the 2022 budget process. Central Staff would need to work with the City Budget Office to determine options for this additional appropriation, which could include reducing deliverables in other areas funded in the 2021 Adopted Budget, identifying new sources of revenues, or other approaches.
- B. Delay the effective date of the labor standards requirements to provide OLS with more time to prepare for implementation and balance the needs of their existing workload.
- C. Specify a combination of A and B.
- D. Take no action. OLS would prioritize their work using existing resources.

Racial equity impacts

This legislation would create rights to accountable hiring and payment practices for workers hired as independent contractors. Similar rights already exist for employees under the Wage Theft Ordinance, [SMC 14.20](#). However, a growing number of workers – including Black, Indigenous, and People of Color (BIPOC) workers who are overrepresented in industries prone to misclassification – are deprived of these employee rights when they are improperly treated as independent contractors rather than employees.³

¹ The Commuter Benefits Ordinance, effective January 2020, broadly applies to any employer with 20 more employees but has a more limited scope than this legislation. Revisions to the Paid Sick and Safe Time (PSST) Ordinance went into effect for all employers in January 2018, but such revisions reflected new statewide requirements for paid sick leave rather than a new labor standard. Revisions to the PSST Ordinance in March 2020 to expand the use of paid safe time were more limited in scope than this legislation.

² For the Domestic Workers Ordinance, Council approved \$275,991 in the 2019 Adopted Budget for two positions and \$35,000 for administration of the Domestic Workers Standards Board. For the TNC Minimum Compensation Ordinance, Council approved \$301,470 in the 2021 Adopted Budget for two positions and \$45,000 for outreach.

³ The National Employment Law Project analyzed 2020 Current Population Survey Annual Social and Economic Supplement microdata and found that Black, Latinx, Asian/Pacific Islander, and Native American workers are overrepresented in industries with high rates of misclassification such as construction, trucking, delivery, home

Misclassification of employees as independent contractors is an egregious practice with a disproportionate impact on BIPOC workers. This legislation would represent one step to reduce the impact of misclassification on BIPOC workers by establishing a baseline of workplace rights regardless of classification. BIPOC workers who are properly classified as independent contractors, misclassified as independent contractors, or properly classified as employees would all have rights to job information and timely payment.

The legislation would address the needs of independent contractors with limited English proficiency by requiring hiring entities to provide disclosures and notice of rights in English and in the worker's primary language. To better ensure compliance with these requirements, OLS would create and distribute translated model notices of these documents.

The legislation would seek to support the needs of vulnerable workers, who may fear retaliation by hiring entities and have limited access to private attorneys, by creating a variety of enforcement mechanisms. These mechanisms would include agency enforcement of claims, complaint-based and agency-initiated investigations, protocols to protect the identifying information of complainants and witnesses, a new complaint procedure, and a court navigation program to encourage greater reporting of violations and create more pathways to getting workers the money they are rightfully owed.

Notably, this legislation could also increase business costs and liability for BIPOC business owners. BIPOC-owned businesses comprise about 20 percent of all businesses in King County and 20 percent of businesses with employees in Seattle.

Stakeholder engagement with both BIPOC independent contractors and business owners would help to further identify the impacts of this legislation on business practices and economic livelihood.

Amendments

As of May 13, 2021, there are no amendments for Council's consideration. Any proposed amendments will be distributed as soon as they are available.

care, agricultural, personal care, ride-hail, and janitorial and building service sectors; they comprise 36 percent of the overall labor force, but between 55 and 86 percent of workers in home care, agricultural, personal care, and janitorial sectors. Black and Latinx workers comprise almost 42 percent of workers performing ride-hail and other types of platform gig work but comprise less than 29 percent of the overall labor force.

Issue Identification

1. Coverage of government entities

The legislation is silent on coverage of government hiring entities. Council may want to consider explicitly including or excluding the City of Seattle from hiring entity coverage, and/or preemptively excluding other government entities from coverage.

Coverage of the City could broadly include any independent contractor service provided to the City or could be restricted to services provided in the course of the City's business or commercial activity. More research and/or rulemaking could be required to determine whether the City (as a whole or limited to certain departments) could be regarded as engaging in business or commercial activity. However, the City's two utilities, Seattle City Light and Seattle Public Utilities, could potentially be covered since their activities could be considered commercial.

Options

- A. Include the City of Seattle in hiring entity coverage.
- B. Exclude the City of Seattle from hiring entity coverage.
- C. Exclude other government entities from hiring entity coverage, such as King County, the State of Washington, and the federal government.
- D. Specify a combination of either A or B together with C.
- E. Make no changes to the legislation.

2. Value of services

The legislation would cover independent contractor services with proposed, actual, or expected compensation of \$600 or more during the calendar year. The threshold is \$600 or more to align with IRS requirements for businesses to submit an annual 1099-NEC form to report non-employee compensation of \$600 or more.

Council may want to consider adding a requirement to adjust this amount over time. For example, the amount could be adjusted to reflect changes in IRS requirements for reporting non-employee compensation. Aligning the amount with evolving IRS requirements could help with outreach because businesses would be familiar with this amount and could mitigate the work of recordkeeping because businesses would already be required to keep records to comply with IRS reporting requirements.

An alternative approach could adjust the amount to reflect the rate of inflation. To facilitate easier outreach and enforcement, the amount could be rounded to the nearest dollar, rather than the nearest cent as required for inflation adjustments to penalty and fine

amounts. For either approach, Council may wish to require that OLS file the amounts with the City Clerk.

Options

- A. Add a requirement to adjust the threshold amount for covered services to reflect IRS reporting requirements for non-employee compensation.
- B. Add a requirement to adjust the threshold amount for covered services annually to reflect the rate of inflation, rounded to the nearest dollar.
- C. Make no changes to the legislation.

Next Steps

The Finance and Housing Committee will discuss and may vote on this legislation at its meeting on May 18, 2021.

Please contact me if you have questions.

cc: Dan Eder, Interim Director
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