

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to independent contractors in Seattle; establishing labor standards requirements for independent contractors working in Seattle; amending Sections 3.02.125, 3.15.000, and 6.208.020 of the Seattle Municipal Code; and adding a new Chapter 14.34 to the Seattle Municipal Code.

..body

WHEREAS, independent contract work is a growing source of income for workers across the country; and

WHEREAS, in 2018, the United States Bureau of Labor Statistics (BLS) reported that 6.9 percent of workers (10.6 million individuals) gain their primary source of income as an independent contractor; and

WHEREAS, a 2019 Washington State Department of Commerce study found that independent contracting is on the rise in Washington state, increasing by 15 percent from 2008 to 2016; and

WHEREAS, independent contractors have the opportunity for increased flexibility and control over their work, but they also face challenges, such as working without employee protections, non-payment or late payment, lack of information about the terms and conditions of their work, and misclassification; and

WHEREAS, ~~in 2018, studies show that timely payment is an issue for independent contractors, including~~ a Gallup, Inc. survey reported ~~ed~~ that 39 percent of independent contractors reported problems with timely and accurate payment as compared to 18 percent of employees in traditional employment; and

WHEREAS, under current law, an independent contractor's primary legal recourse for non-payment or late payment is a legal action for breach of contract in small claims court or

1 civil court, and the time and expense of going to court and/or hiring an attorney prevents
2 many independent contractors from pursuing payment claims; and

3 ~~WHEREAS, the Washington State Department of Commerce found that independent contractors~~
4 ~~reported experiencing a weaker sense of economic security than in traditional jobs and~~
5 ~~shared their interest in a more centralized contract enforcement mechanism; and~~

6 WHEREAS, in Seattle, Transportation Network Companies (TNCs) and food delivery network
7 companies must provide platform gig workers hired as independent contractors with
8 certain information about their jobs and pay, but there are not comprehensive
9 transparency requirements for all independent contractors working in Seattle; and

10 WHEREAS, a lack of transparency about job information and pay can lead to confusion or
11 disagreement about the terms and conditions of work and mask deceptive payment
12 practices; and

13 WHEREAS, large delivery businesses that make extensive use of workers hired as independent
14 contractors have come under scrutiny for improperly paying delivery drivers, including
15 failure to pay drivers all tips earned from customers or using tips to subsidize promised
16 wages, and proving wage theft is difficult when hiring entities are not required to provide
17 an itemized accounting of earnings; and

18 ~~WHEREAS, in 2017, Instacart agreed to pay \$4.6 million and make changes to how it explains~~
19 ~~its fees to customers to settle a class action lawsuit filed by shoppers and drivers over~~
20 ~~allegations of improper tip pooling, failure to reimburse workers for business expenses,~~
21 ~~and imposing a service fee reported to look like a tip; and~~

22 ~~WHEREAS, in 2020, Door Dash agreed to pay \$2.5 million dollars in a settlement, including~~
23 ~~\$1.5 million dollars paid directly to eligible delivery drivers, with the Office of Attorney~~

1 ~~General of the District of Columbia over allegations that the company had misrepresented~~
2 ~~what tip amounts meant for worker pay and took tips from workers to lower the~~
3 ~~company's labor costs; and~~

4 ~~WHEREAS, in 2019, the Los Angeles Times reported that Amazon delivery drivers suspected~~
5 ~~that Amazon was using their tips to subsidize promised wages but did not have~~
6 ~~breakdowns of their compensation as proof of this practice, and two drivers tested their~~
7 ~~suspicious by delivering items to their homes through Amazon and by tipping themselves~~
8 ~~amounts that Amazon ultimately did not include in their compensation for the deliveries;~~
9 ~~and~~

10 ~~WHEREAS, in February 2021, Amazon agreed to pay \$61.7 million in a settlement with the~~
11 ~~Federal Trade Commission (FTC) over allegations of withholding the full amount of~~
12 ~~customer tips from AmazonFlex drivers, and the FTC alleged that Amazon withheld this~~
13 ~~amount from workers by using the worker's tips to subsidize the company's guaranteed~~
14 ~~minimum base pay to drivers for each order. As part of the settlement agreement,~~
15 ~~Amazon was prohibited from misrepresenting any driver's income or rate of pay, the~~
16 ~~amount of tips paid to workers, the amount of tips paid by customers, and making~~
17 ~~changes to how tips are used as compensation without first obtaining the worker's~~
18 ~~express informed consent; and~~

19 ~~WHEREAS, the definitions of "employee" and "employer" in local, state, and federal laws are~~
20 ~~broad, but~~ large delivery businesses and other platform businesses also rely on business
21 models that hire platform gig workers as independent contractors, thereby creating
22 barriers for gig workers to access employee protections; and

1 ~~WHEREAS, Black and Latinx workers comprise almost 42 percent of platform gig workers for~~
2 ~~large delivery businesses and other platform businesses although they comprise less than~~
3 ~~29 percent of the overall labor force; and~~

4 ~~WHEREAS, misclassification is the practice of improperly classifying employees as independent~~
5 ~~contractors; and~~

6 WHEREAS, in 2019 the Harvard Law School Labor and Worklife Program reported that 19
7 percent of employers in the Seattle-Bellevue-Tukwila area engage in misclassification –
8 ~~the practice of improperly classifying employees as independent contractors higher than~~
9 ~~the statewide misclassification average of 13 percent~~ – and that the prevalence of
10 misclassification in Washington increased from 5 percent in 2008 to 14 percent in 2017,
11 and averaged 16 percent over the past five years; and

12 WHEREAS, misclassification occurs in many growth industries such as home care, janitorial,
13 trucking, delivery, construction, personal services, hospitality and restaurants, and
14 platform gig work; and

15 WHEREAS, in 2021, the National Equity Atlas, a research partnership between PolicyLink and
16 the University of Southern California Equity Research Institute, reported that Black,
17 Latinx, and immigrant workers are overrepresented in these industries, compared to their
18 overall share of the labor force; and

19 ~~WHEREAS, Black and Latinx workers specifically comprise almost 42 percent of platform gig~~
20 ~~workers although they comprise less than 29 percent of the overall labor force; and~~

21 WHEREAS, in 2020, the National Employment Law Project reported that it is increasingly clear
22 that misclassification is an issue of racial justice as many poor workers of color and
23 immigrant workers, deprived of the core rights and protections of employees, are stuck in

1 a separate and unequal economy where they are underpaid, put in harm's way on the job,
2 and left to fend for themselves; and

3 WHEREAS, in February 2019, the City Council (Council) passed Resolution 31863 to address
4 the problem of misclassifying employees as independent contractors; and

5 WHEREAS, Resolution 31863 requested the Office of Labor Standards (OLS) and the Labor
6 Standards Advisory Commission (LSAC) to work on policy, outreach and enforcement
7 proposals to address the problem of misclassification; and

8 WHEREAS, in May 2020, the LSAC issued policy recommendations to create more
9 transparency and access to information for workers hired as independent contractors,
10 including recommendations for (1) pre-contract disclosures to provide independent
11 contractors with basic job information and (2) payment disclosures to provide a
12 description of the work performed and pay information; and

13 WHEREAS, requiring hiring entities to provide independent contractors with pre-contract and
14 payment disclosures, along with requiring timely payment, aligns with the transparency
15 and pay requirements for employees in the Wage Theft Ordinance, Seattle Municipal
16 Code (SMC) 14.20; and

17 WHEREAS, establishing rights to pre-contract and payment disclosures and timely payment
18 helps all workers hired as independent contractors, and especially those who are
19 misclassified and therefore deprived of the right to receive this information as employees;
20 and

21 WHEREAS, in 2021, the Economic Policy Institute reported that workers of color predominate
22 in the low-paying jobs where misclassification is common and all workers who are
23 misclassified suffer from lack of workplace protections but women, people of color, and

1 immigrants face unique barriers to economic insecurity and disproportionately must
2 accept low-wage, unsafe, and insecure working conditions; and

3 WHEREAS, The City of Seattle (City) is committed to ending racial disparities and achieving
4 racial equity in Seattle; and

5 WHEREAS, it is the City’s intent for correctly classified independent contractors, misclassified
6 employees, and correctly classified employees to have equal baseline rights; and

7 WHEREAS, establishing efficient enforcement mechanisms for independent contractors to
8 enforce such rights prevents theft of earned income, promotes the dignity of these vital
9 workers, and increases their economic security and ability to care for themselves and
10 their families; and

11 WHEREAS, preventing theft of an independent contractor’s earned income also promotes
12 business and economic development within the City by reducing the unfair competition
13 caused by unscrupulous hiring entities that do not pay or underpay independent
14 contractors; and

15 WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers’
16 lives, support economic security, and contribute to a fair, healthy, and vibrant economy;
17 and

18 WHEREAS, establishing new labor standards for independent contractors ~~such as requirements~~
19 ~~for pre-contract disclosures, timely payment, and payment disclosures,~~ requires
20 appropriate action by the Council; NOW, THEREFORE,

21 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

22 Section 1. A new Chapter 14.34 is added to the Seattle Municipal Code as follows:

23 **Chapter 14.34 INDEPENDENT CONTRACTOR PROTECTIONS**

1 **14.34.010 Short title**

2 This Chapter 14.34 shall constitute the “Independent Contractor Protections Ordinance” and may
3 be cited as such.

4 **14.34.020 Definitions**

5 For purposes of this Chapter 14.34:

6 “Adverse action” means reducing compensation, garnishing tips or gratuities, temporarily
7 or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable
8 work, terminating, deactivating, threatening, penalizing, retaliating, engaging in unfair
9 immigration-related practices, filing a false report with a government agency, or otherwise
10 discriminating against any person for any reason prohibited by Section 14.34.120. “Adverse
11 action” for an independent contractor may involve any aspect of the contractor’s work, including
12 compensation, work hours, responsibilities, or other material change in the terms and conditions
13 in the ability of the independent contractor to perform services for or through the hiring entity.

14 “Adverse action” also includes any action by the hiring entity or a person acting on the hiring
15 entity’s behalf that would dissuade a reasonable person from exercising any right afforded by
16 this Chapter 14.34.

17 “Agency” means the Office of Labor Standards and any division therein.

18 “Aggrieved party” means an independent contractor or other person who suffers tangible
19 or intangible harm due to a hiring entity or other person's violation of this Chapter 14.34.

20 “Application dispatch” means technology that allows customers to directly request
21 dispatch of independent contractors for provision of services and/or allows independent
22 contractors or hiring entities to accept requests for services and payments for services via the
23 internet using mobile interfaces such as, but not limited to, smartphone and tablet applications.

1 “City” means The City of Seattle.

2 “Commercial hiring entity” means a hiring entity regularly engaged in business or
3 commercial activity. A hiring entity is regularly engaged in business or commercial activity if
4 the hiring entity owns or operates any trade, occupation, or business, including a not for profit
5 business, or holds itself out as engaging in any trade, occupation, or business. “Commercial
6 hiring entity” does not include third parties purchasing services from hiring entities that hire
7 platform gig workers to provide prearranged services.

8 “Compensation” means the payment owed to an independent contractor by reason of
9 working for the hiring entity, including but not limited to hiring entity payments for providing
10 services, bonuses, and commissions, as well as tips and service charge distributions.

11 “Director” means the Director of the Office of Labor Standards or the Director's
12 designee.

13 “Director rules” means: (1) rules the Director or Agency may promulgate pursuant to
14 ~~subsection 14.34.130.B or 14.34.130.C~~ Section 14.34.125; or (2) other rules that the Director
15 identifies, by means of an Agency Q&A, previously promulgated pursuant to authority in this
16 Title 14. Rules the Director identifies by means of an Agency Q&A shall have the force and
17 effect of law and may be relied on by hiring entities, independent contractors, and other parties to
18 determine their rights and responsibilities under this Chapter 14.34.

19 “Employ” means to suffer or permit to work.

20 “Employee” means any individual employed by an employer, including but not limited
21 to full-time employees, part-time employees, and temporary workers. An employer bears the
22 burden of proof that the individual is, as a matter of economic reality, in business for oneself
23 rather than dependent upon the alleged employer.

1 “Employer” means any individual, partnership, association, corporation, business trust,
2 or any entity, person or group of persons, or a successor thereof, that employs another person
3 and includes any such entity or person acting directly or indirectly in the interest of an
4 employer in relation to an employee. More than one entity may be the “employer” if
5 employment by one employer is not completely disassociated from employment by the other
6 employer.

7 “Hiring entity” means any individual, partnership, association, corporation, business
8 trust, or any entity, person or group of persons, or a successor thereof, that hires an independent
9 contractor to provide any service to the hiring entity or a third party.

10 “Hiring entity payment” means the amount owed to an independent contractor by
11 reason of working for the hiring entity, including but not limited to payment for providing
12 services, bonuses, and commissions.

13 “Independent contractor” means a person or entity composed of no more than one person,
14 regardless of corporate form or method of organizing the person’s business, that is hired by a
15 hiring entity as a self-employed person or entity to provide services in exchange for
16 compensation. “Independent contractor” includes a platform gig worker. “Independent
17 contractor” does not include:

18 1. Any person duly authorized to practice law and who is engaged in the practice
19 of law for the services at issue;

20 2. Any person who is a licensed medical professional acting within the scope of
21 that license for the services at issue; and

1 43. Pursuant to rules that the Director may issue, any person working in a
2 profession that is governed by a comparable code of ethics and who is working within the scope
3 of that profession for the services at issue.

4 “Online order” or “online order for work” means an order for services placed through
5 an online-enabled application or platform, including but not limited to an application dispatch
6 system, provided by a hiring entity.

7 “Platform gig worker” means an independent contractor hired by a hiring entity to
8 provide prearranged services for compensation using an online-enabled application or platform
9 to connect third parties (e.g., customers) with workers.

10 “Primary language” means the language in which the independent contractor feels
11 most comfortable communicating.

12 “Rate of inflation” means 100 percent of the annual average growth rate of the bi-
13 monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and
14 Clerical Workers, termed CPI-W, for the 12-month period ending in August, provided that the
15 percentage increase shall not be less than zero.

16 “Respondent” means a hiring entity or any person who is alleged or found to have
17 committed a violation of this ordinance.

18 “Successor” means any person to whom a hiring entity quitting, selling out, exchanging,
19 or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
20 hiring entity’s business, a major part of the property, whether real or personal, tangible or
21 intangible, of the hiring entity’s business. For purposes of this definition, “person” means an
22 individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm,
23 corporation, business trust, partnership, limited liability partnership, company, joint stock

1 company, limited liability company, association, joint venture, or any other legal or commercial
2 entity.

3 “Tip” or “tips” means a verifiable sum to be presented by a customer as a gift or gratuity
4 in recognition of some service performed for the customer by the independent contractor
5 receiving the tip.

6 “Written” or “writing” means a printed or printable communication in physical or
7 electronic format, including but not limited to a communication that is transmitted through email,
8 text message, or a computer or mobile system, or that is otherwise sent and maintained
9 electronically.

10 **14.34.030 Independent contractor coverage**

11 A. For the purposes of this Chapter 14.34, covered independent contractors are limited to
12 those who perform work for a covered hiring entity, where ~~(1)†~~

13 1. The work is performed in whole or part in Seattle, and ~~(2)†~~

14 2. The hiring entity knows or has reason to know that the work is performed in
15 whole or part in Seattle, and

16 3. The hiring entity hires the independent contractor for services in the course of
17 the hiring entity’s business or commercial activity.

18 B. The determination of whether a hiring entity knows or has reason to know that work is
19 performed in whole or part in Seattle, may be demonstrated by any number of factors, including
20 but not limited to:

21 1. The hiring entity specifies the location of the work to be performed, including a
22 service area that is wholly or partially within Seattle;

1 2. The hiring entity provides a location within Seattle at which the independent
2 contractor is permitted or required to perform the work;

3 3. The independent contractor maintains a regular place of business at an address
4 in Seattle and the hiring entity is aware of this regular place of business as indicated by inclusion
5 of the independent contractor’s address in Seattle in a pre-contract disclosure, written contract,
6 payment, or other means;

7 4. The independent contractor provides information to the hiring entity indicating
8 that work will be performed in whole or part in Seattle;

9 5. The independent contractor provides services that in fact include a work-related
10 or commercial stop in Seattle; or

11 6. Pursuant to rules that the Director may issue, other factors that are material and
12 necessary to effectuate the terms of this Chapter 14.34.

13 C. If a pre-contract disclosure, payment disclosure, or a written contract references
14 Seattle as a location for services or the independent contractor’s regular place of business, there
15 shall be a presumption rebuttable by clear and convincing evidence that the hiring entity knows
16 or has reason to know that the independent contractor’s work is performed in whole or part in
17 Seattle. The lack of a reference to Seattle in the disclosures or contract does not conclusively
18 establish that a hiring entity did not know, or did not have reason to know, that work was to be
19 performed in Seattle.

20 D. Time spent by an employee in Seattle solely for the purpose of travelling through
21 Seattle from a point of origin outside Seattle to a destination outside Seattle, with no work-
22 related or commercial stops in Seattle except for refueling or the independent contractor’s

1 personal meals or errands, does not create coverage for an independent contractor under this
2 Chapter 14.34.

3 ~~EE~~. Independent contractors who are employees under Chapter 14.20 for covered hiring
4 entities are not covered independent contractors under this Chapter 14.34. Hiring entities must
5 make all required disclosures and pay all compensation owed to such workers in accordance with
6 their obligations under Chapter 14.20.

7 ~~FD~~. Independent contractors who are Transportation Network Company (TNC) drivers
8 under Chapter 14.33 for covered hiring entities are not owed pre-contract disclosures under
9 Section 14.34.050 or payment disclosures under Section 14.34.060. Hiring entities that hire TNC
10 drivers must comply with all other requirements of this Chapter 14.34, including provision of
11 timely payment under Section 14.34.055, and make all required disclosures and pay all
12 compensation owed to such workers in accordance with their obligations under Chapter 14.33.

13 G. If the only relationship between the independent contractor and the hiring entity is a
14 property rental agreement, such as an agreement to lease workspace from the hiring entity, the
15 independent contractor is not covered by this Chapter 14.34

16
17 **14.34.040 Hiring entity coverage**

18 A. For the purposes of this Chapter 14.34, ~~a~~ covered hiring entities ~~is~~ are limited to a
19 commercial hiring entity ~~iesy~~. ~~that hires an independent contractor for services in the course of the~~
20 ~~commercial hiring entity's business or commercial activity.~~

21 B. Separate entities that form an integrated enterprise shall be considered a single hiring
22 entity under this ordinance. Separate entities will be considered an integrated enterprise and a

1 single hiring entity under this ordinance where a separate entity controls the operation of another
2 entity. The factors to consider in making this assessment include, but are not limited to:

- 3 1. Degree of interrelation between the operations of multiple entities;
- 4 2. Degree to which the entities share common management;
- 5 3. Centralized control of labor relations;
- 6 4. Degree of common ownership or financial control over the entities; and
- 7 5. Use of a common brand, trade, business, or operating name.

8 **14.34.045 Value of services**

9 For the purposes of this Chapter 14.34, covered services by independent contractors are limited
10 to those with proposed or actual compensation of \$600 or more, or compensation reasonably
11 expected to be \$600 or more either by itself or when aggregated for services between the same
12 hiring entity and independent contractor during the calendar year. The threshold amount of
13 compensation contained in this Section 14.34.045 shall be adjusted to reflect the minimum
14 amount of compensation required for Internal Revenue Service (IRS) Form 1099-NEC or
15 equivalent IRS form for businesses reporting non-employee compensation. The Agency shall
16 determine the amounts and file a schedule of such amounts with the City Clerk.

17 **14.34.050 Pre-contract disclosure**

18 A. Prior to an independent contractor beginning work for the hiring entity, the hiring
19 entity shall provide the independent contractor with a written pre-contract disclosure that
20 provides itemized information on the proposed terms and conditions of work, including but not
21 limited to:

- 22 1. Current date;
- 23 2. Name of the independent contractor;

1 3. Name of the hiring entity;

2 4. Contact information for the hiring entity, including but not limited to physical
3 address, mailing address, telephone number, and/or email address as applicable;

4 5. Description of work;

5 6. Location(s) of work and regular place of business of independent contractor
6 or hiring entity;

7 7. Rate or rates of pay, including any applicable price multiplier or variable
8 pricing policy, or incentive pay applicable to the offer of work;

9 ~~8. Estimated tips and/or service charge distributions, if the hiring entity includes~~
10 ~~tips or service charge distributions as part of the offered compensation;~~

11 ~~9~~8. Pay basis (e.g., hour, day, week, monthly, fee per project, piece rate,
12 commission);

13 ~~10~~9. Tips and/or service charge distribution policy, if applicable;

14 ~~11~~10. Typical expenses incurred in the course of work and which expenses will
15 be paid or reimbursed by the hiring entity, if applicable;

16 ~~12~~11. Deductions, fees, or other charges that the hiring entity may subtract from
17 payment and accompanying policies for each type of charge, if applicable;

18 ~~13~~12. Payment schedule; and

19 ~~14~~13. Pursuant to rules that the Director may issue, other information that is
20 material and necessary to effectuate the terms of this Chapter 14.34.

21 B. Hiring entities shall satisfy the pre-contract disclosure requirements by providing the
22 required information in a single document, which may be in the form of a pre-contract

1 disclosure, contract offer, counteroffer, application, or other single document meeting the
2 disclosure requirements.

3 ~~C. Hiring entities shall provide platform gig workers with a pre-contract disclosure at~~
4 ~~the initial time of hire and for each online order for work covered by this Chapter 14.34.~~
5 ~~However, pre-contract disclosures for each online order may abbreviate or omit information~~
6 ~~required by subsections 14.34.050.A.4 and 14.34.050.A.10-13 if the hiring entity fully~~
7 ~~provided such information in the pre-contract disclosure provided at the initial time of hire and~~
8 ~~there have been no changes to such information.~~

9 DC. Hiring entities shall provide an independent contractor with written notice of any
10 change to the information required by subsection 14.34.050.A before the change takes place, or
11 as soon as practicable for retroactive changes to such information. Hiring entities may provide
12 piece-meal notice of such changes (i.e., notice separate from the single document required in
13 subsection 14.34.050.B). However, for changes to more than six of the items required by
14 subsection 14.34.050.A, hiring entities shall issue a revised single document with all
15 disclosures required by subsection 14.34.050.A.

16 ED. Hiring entities shall provide the pre-contract disclosure in English and any
17 language that the hiring entity knows or has reason to know is the primary language of the
18 independent contractor.

19 FE. The Agency shall create and distribute a model notice of the pre-contract disclosure
20 in English, Spanish, and other languages by ~~March~~ September 1, 2022. Hiring entities are not
21 required to use the model notice when providing the pre-contract disclosure. However, hiring
22 entities are responsible for providing the pre-contract disclosure in a format that is readily
23 accessible to the independent contractor. ~~Hiring entities of platform gig workers shall provide~~

~~the pre-contract disclosure in an electronic format via smartphone application or online web portal.~~

GF. Hiring entities shall satisfy pre-contract disclosure requirements for independent contractors working for the hiring entity as of ~~March~~September 1, 2022 by providing the required information by ~~March~~September 31, 2022 or by the date of compensation, whichever date is sooner.

HG. If the independent contractor performs agreed-upon work pursuant to the pre-contract disclosure, the terms and conditions in the pre-contract disclosure shall presumptively become part of the terms and conditions of a contract between the hiring entity and the independent contractor. This presumption shall be rebuttable by clear and convincing evidence, such as a written contract.

14.34.055 Timely payment

A. Except as otherwise provided by law, the hiring entity shall provide the independent contractor with timely compensation for work performed.

B. The hiring entity shall provide compensation that conforms to the terms and conditions of the contract between the hiring entity and the independent contractor, whether the amount of compensation is specified by the contract resulting from the pre-contract disclosure pursuant to subsection 14.34.050.HG or by other means such as a superseding written contract.

C. If the independent contractor performs agreed-upon work for the hiring entity and the hiring entity has not provided a pre-contract disclosure regarding the terms and conditions of payment, there is a rebuttable presumption that the independent contractor's alleged terms

1 and conditions of the contractual relationship are the terms and conditions of the contractual
2 relationship pursuant to subsections 14.34.170.C and 14.34.230.B.

3 D. The hiring entity shall provide the compensation as follows:

4 1. On or before the date the compensation is due under the terms and conditions
5 of the contract; or

6 2. If the contract does not specify when the hiring entity shall provide the
7 independent contractor with compensation or the mechanism by which the date for
8 compensation shall be determined, the hiring entity shall provide the independent contractor
9 with compensation no later than 30 days after the completion of the independent contractor's
10 services under the contract.

11 E. Once the independent contractor has commenced performance of the services under
12 the contract, the hiring entity shall not require as a condition of timely compensation that the
13 independent contractor accept less compensation than the amount of compensation due under
14 the contract.

15 **14.34.060 Payment disclosure**

16 A. Each time the hiring entity provides the independent contractor with compensation,
17 the hiring entity shall provide a written payment disclosure that provides itemized payment
18 information, including but not limited to:

- 19 1. Current date;
- 20 2. Name of independent contractor;
- 21 3. Name of hiring entity;
- 22 4. Description of services covered by payment (e.g., description of project, tasks
23 completed, or hours worked);

- 1 5. Location of services covered by payment;
- 2 6. Rate or rates of pay, including any applicable price multiplier or variable
- 3 pricing policy, or incentive pay applicable to the work;
- 4 7. Tip compensation and/or service charge distributions, if applicable;
- 5 8. Pay basis (e.g., hour, day, week, monthly, fee per project, piece rate,
- 6 commission) with accounting of method(s) for determining payment earned during the pay
- 7 period;
- 8 9. Expenses reimbursed, if applicable;
- 9 10. Gross payment;
- 10 11. Deductions, fees, or other charges, if applicable;
- 11 12. Net payment after deductions, fees, or other charges; and
- 12 13. Pursuant to rules that the Director may issue, other information that is material
- 13 and necessary to effectuate the terms of this Chapter 14.34.

14 B. Hiring entities shall satisfy the payment disclosure requirements in subsection
15 14.34.060.A by providing the required information in a single document, including but not
16 limited to a payment disclosure notice, paycheck stub, or an independent contractor’s invoice
17 accompanied by a single document with supplemental information as necessary.

18 ~~C. In addition to providing a payment disclosure at the time of compensation, hiring~~
19 ~~entities of platform gig workers shall provide a payment disclosure for each completed online~~
20 ~~order for work covered by this Chapter 14.34. The Director may issue rules governing the~~
21 ~~timing and content of payment disclosures for each completed online order for work.~~

22 DC. The Agency shall create and distribute a model notice of the payment disclosure in
23 English, Spanish, and other languages by March-September 1, 2022. Hiring entities are not

1 required to use the model notice when providing the payment disclosure. However, hiring
2 entities are responsible for providing the payment disclosure in a format that is readily
3 accessible to the independent contractor. ~~Hiring entities of platform gig workers shall provide~~
4 ~~the payment disclosure in an electronic format via smartphone application or online web~~
5 ~~portal.~~

6 **14.34.100 Notice of rights**

7 A. Hiring entities shall provide each independent contractor with a written notice of
8 rights established by this Chapter 14.34.

9 1. For independent contractors working for the hiring entity as of ~~March~~
10 September 1, 2022, hiring entities shall provide the notice of rights by ~~March~~ September 31,
11 2022 or by the date of compensation, whichever date is sooner.

12 2. For independent contractors hired by the hiring entity after ~~March~~ September
13 31, 2022, hiring entities shall provide the notice of rights prior to the independent contractor
14 beginning work for the hiring entity.

15 3. Hiring entities shall provide the notice of rights in English and any language
16 that the hiring entity knows or has reason to know is the primary language of the independent
17 contractor.

18 B. The notice of rights shall provide information on:

19 1. The right to pre-contract disclosures, timely payment, and payment disclosures
20 guaranteed by this Chapter 14.34;

21 2. The right to be protected from retaliation for exercising in good faith the rights
22 protected by this Chapter 14.34;

1 3. The right to file a complaint with the Agency or bring a civil action for a
2 violation of the requirements of this Chapter 14.34, including a hiring entity’s failure to provide
3 a pre-contract disclosure, timely payment, and a payment disclosure, and a hiring entity or other
4 person's retaliation against an independent contractor or other person for asserting the right to
5 disclosures, timely payment, or otherwise engaging in an activity protected by this Chapter
6 14.34; and

7 4. Pursuant to rules that the Director may issue, other information that is
8 material and necessary to effectuate the terms of this Chapter 14.34.

9 C. The Agency shall create and distribute a model notice of rights in English and other
10 languages by ~~March-September~~ 1, 2022. Hiring entities are not required to use the model notice
11 when providing the notice of rights. However, hiring entities are responsible for providing the
12 notice of rights in a format that is readily accessible to the independent contractor. ~~Hiring~~
13 ~~entities of platform gig workers shall provide the notice of rights in an electronic format via~~
14 ~~smartphone application or online web portal.~~

15 **14.34.110 Hiring entity records**

16 A. Hiring entities shall retain records that document compliance with this Chapter 14.34
17 for each independent contractor.

18 B. Hiring entities shall retain the records required by subsection 14.34.110.A for a period
19 of three years.

20 C. If a hiring entity fails to retain adequate records required under subsection
21 14.34.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the
22 hiring entity violated this Chapter 14.34 for the periods and for each independent contractor for
23 whom records were not retained.

1 **14.34.120 Retaliation prohibited**

2 A. No hiring entity or any other person shall interfere with, restrain, or deny the exercise
3 of, or the attempt to exercise, any right protected under this Chapter 14.34.

4 B. No hiring entity or any other person shall take any adverse action against any person
5 because the person has exercised in good faith the rights protected under this Chapter 14.34.
6 Such rights include, but are not limited to, the right to make inquiries about the rights protected
7 under this Chapter 14.34; the right to inform others about their rights under this Chapter 14.34;
8 the right to inform the person's hiring entity, the person's legal counsel, a union or similar
9 organization, or any other person about an alleged violation of this Chapter 14.34; the right to
10 file an oral or written complaint with the Agency or bring a civil action for an alleged violation
11 of this Chapter 14.34; the right to cooperate with the Agency in its investigations of this Chapter
12 14.34; the right to testify in a proceeding under or related to this Chapter 14.34; the right to
13 refuse to participate in an activity that would result in a violation of city, state or federal law; and
14 the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.34.

15 C. No hiring entity or any other person shall communicate to a person exercising rights
16 protected in this Section 14.34.120, directly or indirectly, the willingness to inform a government
17 worker that the person is not lawfully in the United States, or to report, or to make an implied or
18 express assertion of a willingness to report, suspected citizenship or immigration status of an
19 independent contractor or family member of an independent contractor to a federal, state, or local
20 agency because the independent contractor has exercised a right under this Chapter 14.34.

21 D. It shall be a rebuttable presumption of retaliation if a hiring entity or any other person
22 takes an adverse action against a person within 90 days of the person's exercise of rights

1 protected in this Section 14.34.120. The hiring entity may rebut the presumption with clear and
2 convincing evidence that the adverse action was taken for a permissible purpose.

3 E. Proof of retaliation under this Section 14.34.120 shall be sufficient upon a showing
4 that a hiring entity or any other person has taken an adverse action against a person and the
5 person's exercise of rights protected in this Section 14.34.120 was a motivating factor in the
6 adverse action, unless the hiring entity can prove that the action would have been taken in the
7 absence of such protected activity.

8 F. The protections afforded under this Section 14.34.120 shall apply to any person who
9 mistakenly but in good faith alleges violations of this Chapter 14.34.

10 G. A complaint or other communication by any person triggers the protections of this
11 Section 14.34.120 regardless of whether the complaint or communication is in writing or makes
12 explicit reference to this Chapter 14.34.

13 **14.34.125 Rulemaking authority**

14 The Director is authorized to administer and enforce this Chapter 14.34. The Director shall
15 exercise all responsibilities under this Chapter 14.34 pursuant to rules and regulations
16 developed under Chapter 3.02. The Director is authorized to promulgate, revise, or rescind rules
17 and regulations deemed necessary, appropriate, or convenient to administer, evaluate and
18 enforce the provisions of this Chapter 14.34, providing affected entities with due process of
19 law and in conformity with the intent and purpose of this Chapter 14.34. Any guidelines or
20 rules promulgated by the Director shall have the force and effect of law and may be relied on by
21 hiring entities, independent contractors, and other parties to determine their rights and
22 responsibilities under this Chapter 14.34.

23 **14.34.130 Enforcement power and duties**

1 A. The Agency shall have the power to administer and enforce this Chapter 14.34 and
2 shall have such powers and duties in the performance of these functions as are defined in this
3 Chapter 14.34 and otherwise necessary and proper in the performance of the same and provided
4 for by law.

5 ~~B. The Agency is authorized to coordinate implementation and enforcement of this~~
6 ~~Chapter 14.34 and may promulgate appropriate guidelines or rules for such purposes.~~

7 ~~C. The Director is authorized to promulgate rules consistent with this Chapter 14.34 and~~
8 ~~Chapter 3.02. Any guidelines or rules promulgated by the Director shall have the force and effect~~
9 ~~of law and may be relied on by hiring entities, independent contractors, and other parties to~~
10 ~~determine their rights and responsibilities under this Chapter 14.34.~~

11 **14.34.140 Violation**

12 The failure of any respondent to comply with any requirement imposed on the respondent under
13 this Chapter 14.34 is a violation.

14 **14.34.150 Investigation**

15 A. The Agency shall have the power to investigate any violations of this Chapter 14.34
16 by any respondent. The Agency may prioritize investigations of workforces that are vulnerable to
17 violations of this Chapter 14.34. The Agency may initiate an investigation pursuant to Director
18 rules, including but not limited to situations when the Director has reason to believe that a
19 violation has occurred or will occur, or when circumstances show that violations are likely to
20 occur within a class of hiring entities or businesses because the workforce contains significant
21 numbers of independent contractors who are vulnerable to violations of this Chapter 14.34 or the
22 workforce is unlikely to volunteer information regarding such violations. An investigation may

1 also be initiated through the receipt by the Agency of a report or complaint filed by an
2 independent contractor or other person.

3 B. An independent contractor or other person may report to the Agency any suspected
4 violation of this Chapter 14.34. The Agency shall encourage reporting pursuant to this Section
5 14.34.150 by taking the following measures:

6 1. The Agency shall keep confidential, to the maximum extent permitted by
7 applicable laws, the name and other identifying information of the independent contractor or
8 person reporting the violation. However, with the authorization of such person, the Agency may
9 disclose the independent contractor's or person's name and identifying information as necessary
10 to enforce this Chapter 14.34 or for other appropriate purposes.

11 2. The Agency may require the hiring entity to post or otherwise notify other
12 independent contractors working for the hiring entity that the Agency is conducting an
13 investigation. The hiring entity shall provide the notice of investigation in a form, place, and
14 manner designated by the Agency. The Agency shall create the notice of investigation in English
15 and other languages.

16 3. The Agency may certify the eligibility of eligible persons for "U" Visas under
17 the provisions of 8 U.S.C. § 1184.p and 8 U.S.C. § 1101.a.15.U. This certification is subject to
18 applicable federal law and regulations, and Director rules.

19 C. The Agency's investigation shall commence within three years of the alleged violation.
20 To the extent permitted by law, the applicable statute of limitations for civil actions is tolled
21 during any investigation under this Chapter 14.34 and any administrative enforcement
22 proceeding under this Chapter 14.34 based upon the same facts. For purposes of this Chapter
23 14.34:

1 1. The Agency's investigation begins on the earlier date of when the Agency
2 receives a complaint from a person under this Chapter 14.34, or when the Agency provides
3 notice to the respondent that an investigation has commenced under this Chapter 14.34.

4 2. The Agency's investigation ends when the Agency issues a final order
5 concluding the matter and any appeals have been exhausted; the time to file any appeal has
6 expired; or the Agency notifies the respondent in writing that the investigation has been
7 otherwise resolved.

8 D. The Agency's investigation shall be conducted in an objective and impartial manner.

9 E. The Director may apply by affidavit or declaration in the form allowed under RCW
10 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring a hiring entity to
11 produce the records required by Section 14.34.110, or for the attendance and testimony of
12 witnesses, or for the production of documents required to be retained under Section 14.34.110, or
13 any other document relevant to the issue of whether any independent contractor or group of
14 independent contractors received the information or other benefits required by this Chapter
15 14.34, and/or to whether a hiring entity has violated any provision of this Chapter 14.34. The
16 Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue
17 subpoenas upon a showing that there is reason to believe that: a violation has occurred, a
18 complaint has been filed with the Agency, that circumstances show that violations are likely to
19 occur within a class of businesses because the workforce contains significant numbers of
20 independent contractors who are vulnerable to violations of this Chapter 14.34, the workforce is
21 unlikely to volunteer information regarding such violations, or the Agency has gathered
22 preliminary information indicating that a violation may have occurred.

1 F. A hiring entity that fails to comply with the terms of any subpoena issued under
2 subsection 14.34.150.E in an investigation by the Agency under this Chapter 14.34 before the
3 issuance of a Director's Order issued pursuant to subsection 14.34.160.C may not use such
4 records in any appeal to challenge the correctness of any determination by the Agency of
5 liability, damages owed, or penalties assessed.

6 G. In addition to other remedies, the Director may refer any subpoena issued under
7 subsection 14.34.150.E to the City Attorney to seek a court order to enforce any subpoena.

8 H. Where the Director has reason to believe that a violation has occurred, the Director
9 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
10 status quo pending completion of a full investigation or hearing, including but not limited to a
11 deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest,
12 damages, and penalties due. A respondent may appeal any such order in accordance with Section
13 14.34.180.

14 **14.34.160 Findings of fact and determination**

15 A. Except when there is an agreed upon settlement, the Director shall issue a written
16 determination with findings of fact resulting from the investigation and statement of whether a
17 violation of this Chapter 14.34 has or has not occurred based on a preponderance of the evidence
18 before the Director.

19 B. If the Director determines that there is no violation of this Chapter 14.34, the Director
20 shall issue a "Determination of No Violation" with notice of an independent contractor's or other
21 person's right to appeal the decision, pursuant to Director rules.

1 C. If the Director determines that a violation of this Chapter 14.34 has occurred, the
2 Director shall issue a “Director's Order” that shall include a notice of violation identifying the
3 violation or violations.

4 1. The Director’s Order shall state with specificity the amounts due under this
5 Chapter 14.34 for each violation, including payment of unpaid compensation, liquidated
6 damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to
7 Section 14.34.170.

8 2. The Director's Order may specify that civil penalties and fines due to the
9 Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party
10 pursuant to subsection 14.34.170.A.4.

11 3. The Director’s Order may specify that civil penalties and fines are due to the
12 aggrieved party rather than due to the Agency.

13 4. The Director's Order may direct the respondent to take such corrective action as
14 is necessary to comply with the requirements of this Chapter 14.34, including but not limited to
15 monitored compliance for a reasonable time period.

16 5. The Director's Order shall include notice of the respondent's right to appeal the
17 decision pursuant to Section 14.34.180.

18 **14.34.165 Complaint procedure**

19 A. The Agency shall have the power to respond to any violations of this Chapter 14.34
20 with a complaint procedure.

21 B. The Agency may initiate a complaint procedure as an alternative enforcement method
22 to an investigation for responding to a report or complaint by any person of a violation of this
23 Chapter 14.34. The Director may issue rules for the complaint procedure, including but not

1 limited to rules to establish the timeline for sending the information required by subsection
2 14.34.170.D and to indicate when the Agency may prioritize use of a complaint procedure prior
3 to an investigation or in lieu of an investigation. The Director may also establish other
4 enforcement methods to efficiently resolve violations of this Chapter 14.34.

5 C. The Agency may require the complainant to provide information pursuant to the
6 complaint procedure, including but not limited to:

- 7 1. Contact information for the independent contractor and hiring entity;
- 8 2. A statement describing the proposed terms and conditions of work, such as the
9 information required by the pre-contract disclosure pursuant to Section 14.34.050;
- 10 3. A copy of the pre-contract disclosure, payment provided to the independent
11 contractor, or payment disclosure, if available; and
- 12 4. A statement describing the alleged violations of this Chapter 14.34.

13 D. The Agency ~~shall~~ may send notices to the hiring entity and complainant, including but
14 not limited to:

15 1. Notice of the alleged violation(s). The Agency ~~shall~~ may send notice to the
16 hiring entity of the alleged violation(s) of this Chapter 14.34. The Agency shall bear ~~the~~ any cost
17 of sending such notice by certified mail or by other means incurring a cost to the Agency. This
18 notice ~~shall~~ may include but not be limited to:

- 19 a. Statement of the alleged violation(s) of this Chapter 14.34; and
- 20 b. Description of the remedies available to an independent contractor for
21 violation(s) of this Chapter 14.34;

1 2. Response from the hiring entity. ~~Within 20 days of service of the notice to~~
2 ~~hiring entity of the alleged violation, the~~The hiring entity ~~shall~~may send the Agency ~~one of the~~
3 following:

4 a. Written statement that the hiring entity provided the independent
5 contractor with the pre-contract disclosure, timely payment in full, or payment disclosure
6 required by this Chapter 14.34 and proof of such disclosure(s) or payment; or

7 b. Written statement that the hiring entity did not provide the independent
8 contractor the pre-contract disclosure, timely payment in full, or payment disclosure required by
9 this Chapter 14.34 and the reason(s) for not providing such disclosure(s) or payment.

10 3. Notice to the complainant of the response from the hiring entity. The Agency
11 ~~shall~~may send a notice to the complainant of the response from the hiring entity. This notice to
12 the complainant ~~shall~~may include but not be limited to:

13 a. The response from hiring entity, including any enclosures;

14 b. Information on the right to bring a civil action in a court of competent
15 jurisdiction;

16 c. Any other information about the status of the complaint; and

17 d. Information about the navigation program pursuant to Section

18 14.34.167.

19 4. Notice of no response. If the Agency receives no response from the hiring
20 entity within the timeframe established by Director rule for subsection 14.34.165.D.3, the
21 Agency ~~may~~shall send a notice of no response to the complainant and the hiring entity, and ~~shall~~
22 may include proof that the Agency previously sent notice of the alleged violation(s) to the hiring
23 entity.

1 5. Notice of closure. The Agency ~~shall~~may send the complainant and hiring
2 entity notice of the Agency’s completion of the complaint procedure and/or closure of the case.

3 E. Upon satisfying the requirements of subsections 14.34.165.C and 14.34.165.D, the
4 Agency may close the case.

5 **14.34.167 Navigation program**

6 A. The Agency ~~shall~~may establish a navigation program that provides intake and
7 information relating to the provisions of this Chapter 14.34.

8 1. The navigation program ~~shall~~may provide a range of information, including
9 but not limited to:

10 a. Information on the provisions and procedures of this Chapter 14.34;

11 b. Model notices of the pre-contract disclosure, payment disclosure, and
12 notice of rights required by this Chapter 14.34;

13 c. General court information, including but not limited to:

14 i. Information on court procedures for filing civil actions in small
15 claims, district court, and superior court; and

16 ii. Information on obtaining translation and interpretation services,
17 and other courtroom services;

18 d. A list of organizations that can be used to identify attorneys;

19 e. Organizations providing outreach and education, and/or legal assistance
20 to independent contractors;

21 f. Information about classifying workers as employees or independent
22 contractors; and

1 g. As determined by the Director, additional information related to the
2 provisions of this Chapter 14.34, other workplace protections for independent contractors, or
3 other resources for resolving workplace issues.

4 2. The navigation program ~~shall~~may include outreach and education to the public
5 on the provisions and procedures of this Chapter 14.34.

6 3. The navigation program shall not include legal advice from the Agency.
7 However, if the Agency refers an independent contractor to a community organization through
8 the navigation program, the community organization is not precluded from providing legal
9 advice.

10 **14.34.170 Remedies**

11 A. The payment of unpaid compensation, liquidated damages of up to twice the amount
12 of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest
13 provided under this Chapter 14.34 is cumulative and is not intended to be exclusive of any other
14 available remedies, penalties, fines, and procedures.

15 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
16 fines contained in this Section 14.34.170 shall be increased annually to reflect the rate of
17 inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency
18 shall determine the amounts and file a schedule of such amounts with the City Clerk.

19 2. If a violation is ongoing when the Agency receives a complaint or opens an
20 investigation, the Director may order payment of unpaid compensation plus interest that accrues
21 after receipt of the complaint or after the investigation opens and before the date of the Director's
22 Order.

1 3. Interest shall accrue from the date the unpaid compensation was first due at 12
2 percent annum, or the maximum rate permitted under RCW 19.52.020.

3 4. If there is a remedy due to an aggrieved party, the Director may waive part or
4 all civil penalties and fines due to the Agency based on timely payment of the full remedy due to
5 the aggrieved party.

6 a. The Director may waive the total amount of civil penalties and fines due
7 to the Agency if the Director determines that the respondent paid the full remedy due to the
8 aggrieved party within ten days of service of the Director's Order.

9 b. The Director may waive half the amount of civil penalties and fines due
10 to the Agency if the Director determines that the respondent paid the full remedy due to the
11 aggrieved party within 15 days of service of the Director's Order.

12 c. The Director shall not waive any amount of civil penalties and fines due
13 to the Agency if the Director determines that the respondent has not paid the full remedy due to
14 the aggrieved party after 15 days of service of the Director's Order.

15 5. When determining the amount of liquidated damages, civil penalties, penalties
16 payable to aggrieved parties, and fines due under this Section 14.34.170 for a settlement
17 agreement or Director's Order, including but not limited to the mitigation of civil penalties and
18 fines due to the Agency for timely payment of remedy due to an aggrieved party under
19 subsection 14.34.170.A.4, the Director may consider:

20 a. The total amount of unpaid compensation, liquidated damages,
21 penalties, fines, and interest due;

22 b. The nature and persistence of the violations;

23 c. The extent of the respondent's culpability;

- d. The substantive or technical nature of the violations;
- e. The size, revenue, and human resources capacity of the respondent;
- f. The circumstances of each situation;
- g. The amount of penalties in similar situations; and
- h. Pursuant to rules that the Director may issue, other factors that are material and necessary to effectuate the terms of this Chapter 14.34.

B. A respondent found to be in violation of this Chapter 14.34 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this Chapter 14.34, and other equitable relief. If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may designate a daily amount for unpaid compensation due to aggrieved party. For any violation of this Chapter 14.34, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

C. If the independent contractor performs agreed-upon work for a hiring entity and the hiring entity has not provided a pre-contract disclosure pursuant to Section 14.34.050, there shall be a presumption rebuttable by clear and convincing evidence, such as a written contract, that the independent contractor's alleged terms and conditions of the contractual relationship are the terms and conditions of the contractual relationship.

D. A respondent found to be in violation of this Chapter 14.34 for retaliation under Section 14.34.120 shall be subject to any appropriate relief at law or equity including, but not limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full

1 payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of
2 this Chapter 14.34, and liquidated damages in an additional amount of up to twice the unpaid
3 compensation. The Director also shall order the imposition of a penalty payable to the aggrieved
4 party of up to \$5,565.10.

5 E. The Director is authorized to assess civil penalties for a violation of this Chapter 14.34
6 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

7 1. For a first violation of this Chapter 14.34, the Director may assess a civil
8 penalty of up to \$556.30 per aggrieved party.

9 2. For a second violation of this Chapter 14.34, the Director shall assess a civil
10 penalty of up to \$1,112.60 per aggrieved party, or an amount equal to ten percent of the total
11 amount of unpaid compensation, whichever is greater.

12 3. For a third or any subsequent violation of this 14.34, the Director shall assess a
13 civil penalty of up to \$5,565.10 per aggrieved party, or an amount equal to ten percent of the
14 total amount of unpaid compensation, whichever is greater.

15 4. For purposes of this subsection 14.34.170.E, a violation is a second, third, or
16 subsequent violation if the respondent has been a party to one, two, or more than two settlement
17 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than
18 two Director's Orders, respectively, have issued against the respondent in the ten years preceding
19 the date of the violation; otherwise, it is a first violation.

20 F. The Director is authorized to assess fines for a violation of this Chapter 14.34 and may
21 specify that fines are due to the aggrieved party rather than due to the Agency. The Director is
22 authorized to assess fines as follows:

Violation	Fine
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Failure to provide written pre-contract disclosure under Section 14.34.050	Up to \$556.30 per aggrieved party
Failure to provide written payment disclosure under Section 14.34.060	Up to \$556.30 per aggrieved party
Failure to provide written notice of rights under Section 14.34.100	Up to \$556.30 per aggrieved party
Failure to retain hiring entity records for three years under subsections 14.34.110.A and 14.34.110.B	Up to \$556.30 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.34.120	Up to \$1,112.60 per aggrieved party
Failure to provide notice of investigation to independent contractors under subsection 14.34.150.B.2	Up to \$556.30 per aggrieved party
Failure to post or distribute public notice of failure to comply with final order under subsection 14.34.210.A.1	Up to \$556.30

1
2 For each independent contractor hired by the hiring entity, the maximum amount that may be
3 imposed in fines in a one-year period for each type of violation listed above is \$5,565.10. For
4 each hiring entity, if a fine for retaliation is issued, the maximum amount that may be imposed in
5 a one-year period is \$22,259.36.

6 G. A respondent who willfully hinders, prevents, impedes, or interferes with the Director
7 or Hearing Examiner in the performance of their duties under this Chapter 14.34 shall be subject
8 to a civil penalty of not less than \$1,112.60 and not more than \$5,565.10.

9 H. In addition to the unpaid compensation, penalties, fines, liquidated damages, and
10 interest, the Agency may assess against the respondent in favor of the City the reasonable costs
11 incurred in enforcing this Chapter 14.34, including but not limited to reasonable attorneys' fees.

12 I. A respondent that is the subject of a settlement agreement stipulating that a violation
13 has occurred shall count for debarment, or a final order for which all appeal rights have been
14 exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such
15 amounts due under the final order have been paid in full to the Director. If the respondent is the

1 subject of a final order two times or more within a five-year period, the hiring entity shall not be
2 allowed to bid on any City contract for two years. This subsection 14.34.170.I shall be construed
3 to provide grounds for debarment separate from, and in addition to, those contained in Chapter
4 20.70 and shall not be governed by that chapter provided that nothing in this subsection
5 14.34.170.I shall be construed to limit the application of Seattle Municipal Code Chapter 20.70.
6 The Director shall notify the Director of Finance and Administrative Services of all respondents
7 subject to debarment under this subsection 14.34.170.I.

8 **14.34.180 Appeal period and failure to respond**

9 A. An independent contractor or other person who claims an injury as a result of an
10 alleged violation of this Chapter 14.34 may appeal the Determination of No Violation, pursuant
11 to Director rules.

12 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
13 to Section 14.34.170, by requesting a contested hearing before the Hearing Examiner in writing
14 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
15 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
16 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
17 until 5 p.m. on the next business day.

18 **14.34.190 Appeal procedure and failure to appear**

19 A. Contested hearings shall be conducted pursuant to the procedures for hearing
20 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
21 hearing contested cases. The hearing shall be conducted de novo and the Director shall have the
22 burden of proving by a preponderance of the evidence that the violation or violations occurred.
23 Upon establishing such proof, the remedies and penalties imposed by the Director shall be

1 upheld unless it is shown that the Director abused discretion. Failure to appear for a contested
2 hearing shall result in an order being entered finding that the respondent committed the violation
3 stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner
4 deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

5 B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying
6 or reversing the Director's Order, consistent with Ordinance 126068.

7 **14.34.200 Appeal from Hearing Examiner order**

8 A. The respondent may obtain judicial review of the decision of the Hearing Examiner by
9 applying for a Writ of Review in the King County Superior Court within 30 days from the date
10 of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable
11 law, and court rules.

12 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
13 sought in compliance with this Section 14.34.200.

14 **14.34.210 Failure to comply with final order**

15 A. If a respondent fails to comply within 30 days of service of any settlement agreement
16 with the Agency, or with any final order issued by the Director or the Hearing Examiner for which
17 all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following
18 measures to secure compliance:

19 1. The Director may require the respondent to post or distribute public notice of
20 the respondent's failure to comply in a form and manner determined by the Agency.

21 2. The Director may refer the matter to a collection agency. The cost to the City
22 for the collection services will be assessed as costs, at the rate agreed to between the City and the
23 collection agency, and added to the amounts due.

1 3. The Director may refer the matter to the City Attorney for the filing of a civil
2 action in King County Superior Court, the Seattle Municipal Court, or any other court of
3 competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the
4 Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under
5 Section 14.34.190.

6 4. The Director may request that the City's Department of Finance and
7 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
8 requested by the hiring entity or person until such time as the hiring entity complies with the
9 remedy as defined in the settlement agreement or final order. The City's Department of Finance
10 and Administrative Services shall have the authority to deny, refuse to renew, or revoke any
11 business license in accordance with this subsection 14.34.210.A.4.

12 B. No respondent that is the subject of a final order issued under this Chapter 14.34 shall
13 quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or
14 stock of goods without first notifying the Agency and without first notifying the respondent's
15 successor of the amounts owed under the final order at least three business days before such
16 transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise
17 disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined
18 in a final order issued by the Director or the Hearing Examiner, shall become immediately due
19 and payable. If the amount due under the final order is not paid by respondent within ten days
20 from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable
21 for the payment of the amount due, provided that the successor has actual knowledge of the order
22 and the amounts due or has prompt, reasonable, and effective means of accessing and verifying
23 the fact and amount of the order and the amounts due. The successor shall withhold from the

1 purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes
2 such payment, that payment shall be deemed a payment upon the purchase price in the amount
3 paid, and if such payment is greater in amount than the purchase price the amount of the
4 difference shall become a debt due such successor from the hiring entity.

5 **14.34.220 Debt owed The City of Seattle**

6 A. All monetary amounts due under the Director's Order shall be a debt owed to the City
7 and may be collected in the same manner as any other debt in like amount, which remedy shall
8 be in addition to all other existing remedies, provided that amounts collected by the City for
9 unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay
10 shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be
11 paid by the City to the aggrieved party.

12 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
13 time period set forth in subsection 14.34.180.B, the Director's Order shall be final, and the
14 Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to
15 enforce the Director's Order by entering judgment in favor of the City finding that the respondent
16 has failed to exhaust its administrative remedies and that all amounts and relief contained in the
17 order are due. The Director's Order shall constitute prima facie evidence that a violation occurred
18 and shall be admissible without further evidentiary foundation. Any certifications or declarations
19 authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply
20 with the order or any parts thereof, and is therefore in default, or that the respondent has failed to
21 appeal the Director's Order to the Hearing Examiner within the time period set forth in
22 subsection 14.34.180.B, and therefore has failed to exhaust the respondent's administrative
23 remedies, shall also be admissible without further evidentiary foundation.

1 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
2 within the time period set forth in subsection 14.34.200.A, the order of the Hearing Examiner
3 shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
4 Order by entering judgment in favor of the City for all amounts and relief due under the order of
5 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
6 that the violations contained therein occurred and shall be admissible without further evidentiary
7 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing
8 evidence that the respondent has failed to comply with the order or any parts thereof, and is
9 therefore in default, or that the respondent has failed to avail itself of judicial review in
10 accordance with subsection 14.34.200.A, shall also be admissible without further evidentiary
11 foundation.

12 D. In considering matters brought under subsections 14.34.220.B and 14.34.220.C, the
13 Seattle Municipal Court may include within its judgment all terms, conditions, and remedies
14 contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable,
15 that are consistent with the provisions of this Chapter 14.34.

16 **14.34.230 Private right of action**

17 A. Any person or class of persons that suffers an injury as a result of a violation of this
18 Chapter 14.34, or is the subject of prohibited retaliation under Section 14.34.120, may bring a
19 civil action in a court of competent jurisdiction against the hiring entity or other person violating
20 this Chapter 14.34 and, upon prevailing, may be awarded reasonable attorney fees and costs and
21 such legal or equitable relief as may be appropriate to remedy the violation including, without
22 limitation: the payment of any unpaid compensation plus interest due to the person and
23 liquidated damages in an additional amount of up to twice the unpaid compensation; and a

1 penalty payable to any aggrieved party of up to \$5,565.10 if the aggrieved party was subject to
2 prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due
3 at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

4 B. In a civil action against the hiring entity under this Chapter 14.34 or in a breach of
5 contract action against the hiring entity, there shall be a presumption rebuttable by clear and
6 convincing evidence, such as a written contract, that if the independent contractor performs
7 agreed-upon work for a hiring entity and the hiring entity has not provided a pre-contract
8 disclosure pursuant to Section 14.34.050, the independent contractor's alleged terms and
9 conditions of the contractual relationship are the terms and conditions of the contractual
10 relationship.

11 C. For purposes of this Section 14.34.230, "person" includes any entity a member of
12 which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an
13 aggrieved party that has suffered an injury or retaliation.

14 D. For purposes of determining membership within a class of persons entitled to bring an
15 action under this Section 14.34.230, two or more independent contractors are similarly situated if
16 they:

- 17 1. Are or were hired for the same hiring entity or hiring entities, whether
- 18 concurrently or otherwise, at some point during the applicable statute of limitations period,
- 19 2. Allege one or more violations that raise similar questions as to liability, and
- 20 3. Seek similar forms of relief.

21 E. For purposes of subsection 14.34.230.C, independent contractors shall not be
22 considered dissimilar solely because the independent contractors':

- 23 1. Claims seek damages that differ in amount, or

1 2. Job titles or other means of classifying independent contractors differ in ways
2 that are unrelated to their claims.

3 F. An order issued by the court may include a requirement for a hiring entity to submit a
4 compliance report to the court and to the Agency.

5 **14.34.233 Waiver**

6 Any waiver by an individual of any provisions of this Chapter 14.34 shall be deemed contrary to
7 public policy and shall be void and unenforceable.

8 **14.34.235 Encouragement of more generous policies**

9 A. Nothing in this Chapter 14.34 shall be construed to discourage or prohibit a hiring
10 entity from the adoption or retention of disclosure policies more generous than the one required
11 herein.

12 B. Nothing in this Chapter 14.34 shall be construed as diminishing the obligation of the
13 hiring entity to comply with any contract, or other agreement providing more generous
14 disclosure policies to an independent contractor than required herein.

15 **14.34.240 Other legal requirements; effect on other laws**

16 A. Subject to subsections 14.34.050.H, 14.34.055.C, 14.34.170.C, and 14.34.230.B, the
17 provisions of this Chapter 14.34:

18 1. Supplement and do not diminish or replace any other basis of liability or
19 requirement established by statute or common law;

20 2. Shall not be construed to preempt, limit, or otherwise affect the applicability of
21 any other law, regulation, requirement, policy, or standard for disclosure requirements or timely
22 payment, or that extends other protections to independent contractors; and

1 3. Shall not be interpreted or applied so as to create any power or duty in conflict
2 with federal or state law.

3 Nor shall this Chapter 14.34 be construed to preclude any person aggrieved from seeking judicial
4 review of any final administrative decision or order made under this Chapter 14.34 affecting
5 such person. Nothing in this Section 14.34.240 shall be construed as restricting an independent
6 contractor’s right to pursue any other remedies at law or equity for violation of the contractor’s
7 rights.

8 B. A hiring entity’s failure to comply with the provisions of this Chapter 14.34 shall not
9 render any contract between the hiring entity and an independent contractor void or voidable.

10 C. No provision of this Chapter 14.34 shall be construed as providing a determination
11 about the legal classification of any individual as an employee or independent contractor.

12 **14.34.250 Severability**

13 The provisions of this Chapter 14.34 are declared to be separate and severable. If any clause,
14 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.34, or the
15 application thereof to any hiring entity, independent contractor, person, or circumstance, is held
16 to be invalid, it shall not affect the validity of the remainder of this Chapter 14.34, or the validity
17 of its application to other persons or circumstances.

18 Section 2. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance
19 126283, is amended as follows:

20 **3.02.125 Hearing Examiner filing fees**

21 A. The filing fee for a case before the City Hearing Examiner is \$85, with the following
22 exceptions:

Basis for Case	Fee in dollars
-----------------------	-----------------------

* * *	
Hazard Pay for Grocery Employees Ordinance (Ordinance 126274)	No fee
<u>Independent Contractor Protections Ordinance (Chapter 14.34)</u>	<u>No fee</u>
Land Use Code Citation (Chapter 23.91)	No fee
* * *	

1

* * *

2

Section 3. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance

3

126189, is amended as follows:

4

3.15.000 Office of Labor Standards created – Functions

5

There is created within the Executive Department an Office of Labor Standards, under the

6

direction of the Mayor. The mission of the Office of Labor Standards is to advance labor

7

standards through thoughtful community and business engagement, strategic enforcement and

8

innovative policy development, with a commitment to race and social justice. The Office of

9

Labor Standards seeks to promote greater economic opportunity and further the health, safety,

10

and welfare of ~~((employees))~~ workers; support employers and other hiring entities in their

11

implementation of labor standards requirements; and end barriers to workplace equity for

12

women, communities of color, immigrants and refugees, and other vulnerable workers.

13

The functions of the Office of Labor Standards are as follows:

14

A. Promoting labor standards through outreach, education, technical assistance, and

15

training ~~((for employees and employers))~~;

16

B. Collecting and analyzing data on labor standards enforcement;

17

C. Partnering with community, businesses, and workers for stakeholder input and

18

collaboration;

19

D. Developing innovative labor standards policy;

1 E. Administering and enforcing City of Seattle ordinances relating to paid sick and safe
2 time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17),
3 minimum wage and minimum compensation (Chapter 14.19), wage and tip compensation
4 requirements (Chapter 14.20), secure scheduling (Chapter 14.22), domestic workers (Chapter
5 14.23), hotel employees safety protections (Chapter 14.26), protecting hotel employees from
6 injury (Chapter 14.27), improving access to medical care for hotel employees (Chapter 14.28),
7 hotel employees job retention (Chapter 14.29), commuter benefits (Chapter 14.30),
8 transportation network company driver deactivation protections (Chapter 14.32), transportation
9 network company driver minimum compensation (Chapter 14.33), independent contractor
10 protections (Chapter 14.34), and other labor standards ordinances that may be enacted in the
11 future.

12 Section 4. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last
13 amended by Ordinance 126274, is amended as follows:

14 **6.208.020 Denial, revocation of, or refusal to renew business license**

15 A. In addition to any other powers and authority provided under this Title 6, the Director,
16 or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any
17 business license issued under the provisions of this Chapter 6.208. The Director, or the Director's
18 designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or
19 refusal to renew the license and on what grounds such a decision was based. The Director may
20 deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of
21 the following grounds:

- 22 1. The license was procured by fraud or false representation of fact.
- 23 2. The licensee has failed to comply with any provisions of this Chapter 6.208.

1 3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35,
2 5.38, 5.39, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.

3 4. The licensee is in default in any payment of any license fee or tax under Title 5
4 or Title 6.

5 5. The property at which the business is located has been determined by a court to
6 be a chronic nuisance property as provided in Chapter 10.09.

7 6. The applicant or licensee has been convicted of theft under subsection
8 12A.08.060.A.4 within the last ten years.

9 7. The applicant or licensee is a person subject within the last ten years to a court
10 order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29
11 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of
12 either:

13 a. The expiration of the time for filing an appeal from the final judgment
14 order under the court rules in effect at the time of the final judgment order; or

15 b. If a timely appeal is made, the date of the final resolution of that appeal
16 and any subsequent appeals resulting in final judicial affirmation of the findings of violations of
17 chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

18 8. The applicant or licensee is a person subject within the last ten years to a final
19 and binding citation and notice of assessment from the Washington Department of Labor and
20 Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and
21 penalties assessed therewith were not satisfied within 30 days of the date the citation became
22 final and binding.

1 9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4,
2 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4, 14.27.210.A.4, 14.28.210.A.4,
3 14.30.180.A.4, (~~and~~) 14.33.210.A.4, and 14.34.210.A.4, subsection 100.240.A.4 of Ordinance
4 126091, subsection 100.240.A.4 of Ordinance 126094, and subsection 100.240.A.4 of Ordinance
5 126274, the applicant or licensee has failed to comply, within 30 days of service of any
6 settlement agreement, with any final order issued by the Director of the Office of Labor
7 Standards, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17,
8 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, 14.30, (~~and~~) 14.33, and 14.34,
9 Ordinance 126091, Ordinance 126094, and Ordinance 126274 for which all appeal rights have
10 been exhausted, and the Director of the Office of Labor Standards has requested that the Director
11 deny, refuse to renew, or revoke any business license held or requested by the applicant or
12 licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the
13 violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29,
14 14.30, (~~and~~) 14.33, and 14.34, Ordinance 126091, Ordinance 126094, and Ordinance 126274
15 are remedied.

16 10. The business is one that requires an additional license under this Title 6 and
17 the business does not hold that license.

18 11. The business has been determined under a separate enforcement process to be
19 operating in violation of law.

20 * * *

1 Section 5. Acknowledging that implementation of Chapter 14.34 will incur additional
2 costs for the Office of Labor Standards (OLS), the City Council (Council) intends for the
3 Director of OLS to use the process established by Seattle Municipal Code, Chapter 3.15 to
4 establish the office’s funding needs. Pursuant to Section 3.15.007.B, the Director shall certify the
5 minimum annual contribution needed for enforcement and outreach operations and activities to
6 the Mayor and Council by September 1, 2021. The minimum annual contribution shall be
7 reflected in the 2022 Proposed Budget submitted by the Mayor to the City Council. The Director
8 may also make additional recommendations for staffing, funding, and program design.

9 Section 6. Recognizing that more than 40,000 app-based workers in the City of Seattle,
10 including people of color, immigrants, workers with disabilities, LGBTQ+ workers, and single
11 parents are often paid subminimum wages for their work, despite the promise of good wages,
12 flexibility and accessibility, and that the community depends on these essential workers to
13 deliver groceries and food and provide other valuable services, the City Council intends to
14 address this inequity by ensuring that app-based workers are paid at least the City’s minimum
15 wage under ~~Chapter 14.19 of the~~ Seattle Municipal Code Chapter 14.19 plus reasonable
16 expenses and all required benefits, with meaningful transparency, and have the ability to exercise
17 the flexibility promised by app-based companies. The ~~City Council~~ intends to ensure that current
18 definitions of worker classification under Seattle’s labor standards are being effectively enforced
19 and does not intend to establish a new classification of workers distinct from employees or
20 independent contractors, but to ensure that all workers benefit from the protection of Seattle’s
21 labor standards. The ~~City Council~~ has consistently expressed its intent to promote greater
22 economic opportunity and end barriers to workplace equity for all workers in Seattle. To
23 accomplish these goals, the Council will seek to engage stakeholders in the spring and summer

1 of 2021 on legislation that will address these inequities and create new standards to protect
2 workers' pay, flexibility, and transparency, while ensuring workers are correctly classified under
3 existing Seattle labor standards. The Council intends to discuss the legislation in committee in
4 July and August 2021 and consider the legislation for a full Council vote ~~before the start of the~~
5 ~~2021 budget deliberations~~by the end of 2021.

1 Section ~~67~~. Sections 1 through 4 of this ordinance shall take effect and be in force on
2 ~~March-September~~ 1, 2022.

3 Section 78. This ordinance shall take effect and be in force 30 days after its approval by
4 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
5 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

6 Passed by the City Council the _____ day of _____, 2021,
7 and signed by me in open session in authentication of its passage this _____ day of
8 _____, 2021.

9 _____
10 President _____ of the City Council

11 Approved / returned unsigned / vetoed this _____ day of _____, 2021.

12 _____
13 Jenny A. Durkan, Mayor

14 Filed by me this _____ day of _____, 2021.

15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)