



## Legislation Details (With Text)

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<b>On agenda:</b>	6/14/2021				
<b>Final Action:</b>	6/24/2021	<b>Ord. No.</b>	Ord 126373		
<b>Title:</b>	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.				
<b>Sponsors:</b>	Lisa Herbold				
<b>Indexes:</b>					
<b>Attachments:</b>	1. Summary and Fiscal Note, 2. Central Staff Memo (5/18/21), 3. Presentation (5/18/21), 4. Central Staff Memo (6/4/21), 5. Presentation (6/4/21), 6. Proposed Substitute Bill-Independent Contractor Protections, 7. Proposed Amendment 1, 8. Mayor's Letter on Returning Bill Unsigned, 9. Signed Ordinance 126373, 10. Affidavit of Publication				

Date	Ver.	Action By	Action	Result
6/24/2021	2	City Clerk	attested by City Clerk	
6/24/2021	2	Mayor	returned	
6/24/2021	2	Mayor	returned unsigned	
6/16/2021	2	City Clerk	submitted for Mayor's signature	
6/14/2021	2	City Council	passed	Pass
6/4/2021	1	Finance and Housing Committee	pass as amended	Pass
5/18/2021	1	Finance and Housing Committee	discussed	
5/10/2021	1	City Council	referred	
5/7/2021	1	Council President's Office	sent for review	
5/7/2021	1	City Clerk	sent for review	

## CITY OF SEATTLE

## ORDINANCE \_\_\_\_\_

## COUNCIL BILL \_\_\_\_\_

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.

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, a Gallup, Inc. survey reported 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 civil court, and the time and expense of going to court and/or hiring an attorney prevents many independent contractors from pursuing payment claims; and

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

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

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

WHEREAS, large delivery businesses and other platform businesses also rely on business models that hire

platform gig workers as independent contractors, thereby creating barriers for gig workers to access employee protections; and

WHEREAS, in 2019 the Harvard Law School Labor and Worklife Program reported that 19 percent of employers in the Seattle-Bellevue-Tukwila area engage in misclassification - the practice of improperly classifying employees as independent contractors - and that the prevalence of misclassification in Washington increased from 5 percent in 2008 to 14 percent in 2017, and averaged 16 percent over the past five years; and

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

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

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

WHEREAS, in 2020, the National Employment Law Project reported that it is increasingly clear that misclassification is an issue of racial justice as many poor workers of color and immigrant workers, deprived of the core rights and protections of employees, are stuck in a separate and unequal economy where they are underpaid, put in harm's way on the job, and left to fend for themselves; and

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

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

WHEREAS, in May 2020, the LSAC issued policy recommendations to create more transparency and access to

information for workers hired as independent contractors, including recommendations for (1) pre-contract disclosures to provide independent contractors with basic job information and (2) payment disclosures to provide a description of the work performed and pay information; and

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

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

WHEREAS, in 2021, the Economic Policy Institute reported that workers of color predominate in the low-paying jobs where misclassification is common and all workers who are misclassified suffer from lack of workplace protections but women, people of color, and immigrants face unique barriers to economic insecurity and disproportionately must accept low-wage, unsafe, and insecure working conditions; and

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

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

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

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

WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers' lives, support

economic security, and contribute to a fair, healthy, and vibrant economy; and

WHEREAS, establishing new labor standards for independent contractors requires appropriate action by the Council; NOW, THEREFORE,

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

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

**Chapter 14.34 INDEPENDENT CONTRACTOR PROTECTIONS**

**14.34.010 Short title**

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

**14.34.020 Definitions**

For purposes of this Chapter 14.34:

“Adverse action” means reducing compensation, garnishing tips or gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, terminating, deactivating, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, or otherwise discriminating against any person for any reason prohibited by Section 14.34.120. “Adverse action” for an independent contractor may involve any aspect of the contractor’s work, including compensation, work hours, responsibilities, or other material change in the terms and conditions in the ability of the independent contractor to perform services for or through the hiring entity. “Adverse action” also includes any action by the hiring entity or a person acting on the hiring entity’s behalf that would dissuade a reasonable person from exercising any right afforded by this Chapter 14.34.

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

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

“Application dispatch” means technology that allows customers to directly request dispatch of

independent contractors for provision of services and/or allows independent contractors or hiring entities to accept requests for services and payments for services via the internet using mobile interfaces such as, but not limited to, smartphone and tablet applications.

“City” means The City of Seattle.

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

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

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

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

“Employ” means to suffer or permit to work.

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

“Employer” means any individual, partnership, association, corporation, business trust, or any entity,

person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee. More than one entity may be the “employer” if employment by one employer is not completely disassociated from employment by the other employer.

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

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

“Independent contractor” means a person or entity composed of no more than one person, regardless of corporate form or method of organizing the person’s business, that is hired by a hiring entity as a self-employed person or entity to provide services in exchange for compensation.

1. “Independent contractor” includes a platform gig worker.

2. “Independent contractor” does not include any person duly authorized to practice law and who is engaged in the practice of law for the services at issue.

3. The Director may issue rules excluding classes of independent contractors from this definition based on the Director’s determination that the class of independent contractors has adequate bargaining power in establishing their business relationships with hiring entities. The Director shall not exclude classes of independent contractors from this definition who are working in professions with workforces that are vulnerable to violations of this Chapter 14.34. When considering whether classes of independent contractors are vulnerable to violations of this Chapter, the Director may consider any number of factors, including but not limited to whether classes of independent contractors work in industries prone to misclassification, have limited English proficiency, or are unlikely to volunteer information about violations.

“Online order” or “online order for work” means an order for services placed through an online-enabled

application or platform, including but not limited to an application dispatch system, provided by a hiring entity.

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

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

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

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

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

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

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

#### **14.34.030 Independent contractor coverage**



A. For the purposes of this Chapter 14.34, covered independent contractors are limited to those who perform work for a covered hiring entity, where

1. The work is performed in whole or part in Seattle,
2. The hiring entity knows or has reason to know that the work is performed in whole or part in Seattle, and
3. The hiring entity hires the independent contractor for services in the course of the hiring entity's business or commercial activity.

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

1. The hiring entity specifies the location of the work to be performed, including a service area that is wholly or partially within Seattle;
2. The hiring entity provides a location within Seattle at which the independent contractor is permitted or required to perform the work;
3. The independent contractor maintains a regular place of business at an address in Seattle and the hiring entity is aware of this regular place of business as indicated by inclusion of the independent contractor's address in Seattle in a pre-contract disclosure, written contract, payment, or other means;
4. The independent contractor provides information to the hiring entity indicating that work will be performed in whole or part in Seattle;
5. The independent contractor provides services that in fact include a work-related or commercial stop in Seattle; or
6. Pursuant to rules that the Director may issue, other factors that are material and necessary to effectuate the terms of this Chapter 14.34.

C. If a pre-contract disclosure, payment disclosure, or a written contract references Seattle as a location for services or the independent contractor's regular place of business, there shall be a presumption rebuttable by

clear and convincing evidence that the hiring entity knows or has reason to know that the independent contractor's work is performed in whole or part in Seattle. The lack of a reference to Seattle in the disclosures or contract does not conclusively establish that a hiring entity did not know, or did not have reason to know, that work was to be performed in Seattle.

D. Time spent by an employee in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle, with no work-related or commercial stops in Seattle except for refueling or the independent contractor's personal meals or errands, does not create coverage for an independent contractor under this Chapter 14.34.

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

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

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

#### **14.34.040 Hiring entity coverage**

A. For the purposes of this Chapter 14.34, covered hiring entities are limited to commercial hiring entities.

B. Separate entities that form an integrated enterprise shall be considered a single hiring entity under

this ordinance. Separate entities will be considered an integrated enterprise and a single hiring entity under this ordinance where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

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

#### **14.34.045 Value of services**

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

#### **14.34.050 Pre-contract disclosure**

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

1. Current date;
2. Name of the independent contractor;
3. Name of the hiring entity;
4. Contact information for the hiring entity, including but not limited to physical address,

mailing address, telephone number, and/or email address as applicable;

5. Description of work;

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

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

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

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

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

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

12. Payment schedule; and

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

B. Hiring entities shall satisfy the pre-contract disclosure requirements by providing the required information in a single document, which may be in the form of a pre-contract disclosure, contract offer, counteroffer, application, or other single document meeting the disclosure requirements.

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

D. Hiring entities shall provide the pre-contract disclosure in English and any language that the hiring

entity knows or has reason to know is the primary language of the independent contractor.

E. The Agency shall create and distribute a model notice of the pre-contract disclosure in English, Spanish, and other languages by September 1, 2022. Hiring entities are not required to use the model notice when providing the pre-contract disclosure. However, hiring entities are responsible for providing the pre-contract disclosure in a format that is readily accessible to the independent contractor.

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

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

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

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

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

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

#### **14.34.060 Payment disclosure**

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

1. Current date;
2. Name of independent contractor;
3. Name of hiring entity;
4. Description of services covered by payment (e.g., description of project, tasks completed, or hours worked);
5. Location of services covered by payment;
6. Rate or rates of pay, including any applicable price multiplier or variable pricing policy, or incentive pay applicable to the work;
7. Tip compensation and/or service charge distributions, if applicable;
8. Pay basis (e.g., hour, day, week, monthly, fee per project, piece rate, commission) with accounting of method(s) for determining payment earned during the pay period;

9. Expenses reimbursed, if applicable;
10. Gross payment;
11. Deductions, fees, or other charges, if applicable;
12. Net payment after deductions, fees, or other charges; and
13. Pursuant to rules that the Director may issue, other information that is material and necessary

to effectuate the terms of this Chapter 14.34.

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

C. The Agency shall create and distribute a model notice of the payment disclosure in English, Spanish, and other languages by September 1, 2022. Hiring entities are not required to use the model notice when providing the payment disclosure. However, hiring entities are responsible for providing the payment disclosure in a format that is readily accessible to the independent contractor.

#### **14.34.100 Notice of rights**

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

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

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

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

B. The notice of rights shall provide information on:

1. The right to pre-contract disclosures, timely payment, and payment disclosures guaranteed by this Chapter 14.34;
2. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.34;
3. The right to file a complaint with the Agency or bring a civil action for a violation of the requirements of this Chapter 14.34, including a hiring entity's failure to provide a pre-contract disclosure, timely payment, and a payment disclosure, and a hiring entity or other person's retaliation against an independent contractor or other person for asserting the right to disclosures, timely payment, or otherwise engaging in an activity protected by this Chapter 14.34; and
4. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Chapter 14.34.

C. The Agency shall create and distribute a model notice of rights in English and other languages by September 1, 2022. Hiring entities are not required to use the model notice when providing the notice of rights. However, hiring entities are responsible for providing the notice of rights in a format that is readily accessible to the independent contractor.

#### **14.34.110 Hiring entity records**

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

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

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

#### **14.34.120 Retaliation prohibited**



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

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

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

D. It shall be a rebuttable presumption of retaliation if a hiring entity or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 14.34.120. The hiring entity may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this Section 14.34.120 shall be sufficient upon a showing that a hiring entity or any other person has taken an adverse action against a person and the person's exercise of rights

protected in this Section 14.34.120 was a motivating factor in the adverse action, unless the hiring entity can prove that the action would have been taken in the absence of such protected activity.

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

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

#### **14.34.125 Rulemaking authority**

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

#### **14.34.130 Enforcement power and duties**

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

#### **14.34.140 Violation**

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

#### **14.34.150 Investigation**

A. The Agency shall have the power to investigate any violations of this Chapter 14.34 by any

respondent. The Agency may prioritize investigations of workforces that are vulnerable to violations of this Chapter 14.34. The Agency may initiate an investigation pursuant to Director rules, including but not limited to situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of hiring entities or businesses because the workforce contains significant numbers of independent contractors who are vulnerable to violations of this Chapter 14.34 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an independent contractor or other person.

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

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

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

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

C. The Agency's investigation shall commence within three years of the alleged violation. To the extent

permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this Chapter 14.34 and any administrative enforcement proceeding under this Chapter 14.34 based upon the same facts. For purposes of this Chapter 14.34:

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

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

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

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

F. A hiring entity that fails to comply with the terms of any subpoena issued under subsection 14.34.150.E in an investigation by the Agency under this Chapter 14.34 before the issuance of a Director's

Order issued pursuant to subsection 14.34.160.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of liability, damages owed, or penalties assessed.

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

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

#### **14.34.160 Findings of fact and determination**

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

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

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

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

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

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

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

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

#### **14.34.165 Complaint procedure**

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

B. The Agency may initiate a complaint procedure as an alternative enforcement method to an investigation for responding to a report or complaint by any person of a violation of this Chapter 14.34. The Director may issue rules for the complaint procedure, including but not limited to rules to establish the timeline for sending the information required by subsection 14.34.170.D and to indicate when the Agency may prioritize use of a complaint procedure prior to an investigation or in lieu of an investigation. The Director may also establish other enforcement methods to efficiently resolve violations of this Chapter 14.34.

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

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

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

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

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

2. Response from the hiring entity. The hiring entity may send the Agency the following:

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

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

- a. The response from hiring entity, including any enclosures;
- b. Information on the right to bring a civil action in a court of competent jurisdiction;
- c. Any other information about the status of the complaint; and
- d. Information about the navigation program pursuant to Section 14.34.167.

4. Notice of no response. If the Agency receives no response from the hiring entity within the timeframe established by Director rule for subsection 14.34.165.D.3, the Agency may send a notice of no response to the complainant and the hiring entity, and may include proof that the Agency previously sent notice

of the alleged violation(s) to the hiring entity.

5. Notice of closure. The Agency may send the complainant and hiring entity notice of the Agency's completion of the complaint procedure and/or closure of the case.

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

#### **14.34.167 Navigation program**

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

1. The navigation program may provide a range of information, including but not limited to:
  - a. Information on the provisions and procedures of this Chapter 14.34;
  - b. Model notices of the pre-contract disclosure, payment disclosure, and notice of rights required by this Chapter 14.34;
  - c. General court information, including but not limited to:
    - i. Information on court procedures for filing civil actions in small claims, district court, and superior court; and
    - ii. Information on obtaining translation and interpretation services, and other courtroom services;
  - d. A list of organizations that can be used to identify attorneys;
  - e. Organizations providing outreach and education, and/or legal assistance to independent contractors;
  - f. Information about classifying workers as employees or independent contractors; and
  - g. As determined by the Director, additional information related to the provisions of this Chapter 14.34, other workplace protections for independent contractors, or other resources for resolving workplace issues.



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

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

#### **14.34.170 Remedies**

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

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

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

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

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

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

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

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

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

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

b. The nature and persistence of the violations;

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

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

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

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

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

4. For purposes of this subsection 14.34.170.E, a violation is a second, third, or subsequent

violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than two Director's Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

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

<b>Violation</b>	<b>Fine</b>
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

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

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

H. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency

may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 14.34, including but not limited to reasonable attorneys' fees.

I. A respondent that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the respondent is the subject of a final order two times or more within a five-year period, the hiring entity shall not be allowed to bid on any City contract for two years. This subsection 14.34.170.I shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter provided that nothing in this subsection 14.34.170.I shall be construed to limit the application of Seattle Municipal Code Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all respondents subject to debarment under this subsection 14.34.170.I.

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

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

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

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

A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de novo and the Director shall have the burden of proving by a preponderance of the

evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing shall result in an order being entered finding that the respondent committed the violation stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

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

#### **14.34.200 Appeal from Hearing Examiner order**

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

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

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

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

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

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

3. The Director may refer the matter to the City Attorney for the filing of a civil action in King County Superior Court, the Seattle Municipal Court, or any other court of competent jurisdiction to enforce

such order or to collect amounts due. In the alternative, the Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under Section 14.34.190.

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

B. No respondent that is the subject of a final order issued under this Chapter 14.34 shall quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the Agency and without first notifying the respondent's successor of the amounts owed under the final order at least three business days before such transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the final order is not paid by respondent within ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment of the amount due, provided that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due. The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment shall be deemed a payment upon the purchase price in the amount paid, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the hiring entity.

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

A. All monetary amounts due under the Director's Order shall be a debt owed to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other

existing remedies, provided that amounts collected by the City for unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be paid by the City to the aggrieved party.

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

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

D. In considering matters brought under subsections 14.34.220.B and 14.34.220.C, the Seattle



Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this Chapter 14.34.

#### **14.34.230 Private right of action**

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 14.34, or is the subject of prohibited retaliation under Section 14.34.120, may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating this Chapter 14.34 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to \$5,565.10 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. In a civil action against the hiring entity under this Chapter 14.34 or in a breach of contract action against the hiring entity, there shall be a presumption rebuttable by clear and convincing evidence, such as a written contract, that 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, the independent contractor's alleged terms and conditions of the contractual relationship are the terms and conditions of the contractual relationship.

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

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

1. Are or were hired for the same hiring entity or hiring entities, whether concurrently or otherwise, at some point during the applicable statute of limitations period,

2. Allege one or more violations that raise similar questions as to liability, and

3. Seek similar forms of relief.

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

1. Claims seek damages that differ in amount, or

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

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

#### **14.34.233 Waiver**

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

#### **14.34.235 Encouragement of more generous policies**

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

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

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

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

1. Supplement and do not diminish or replace any other basis of liability or requirement

established by statute or common law;

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

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

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

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

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

#### **14.34.250 Severability**

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

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

#### **3.02.125 Hearing Examiner filing fees**

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

Basis for Case	Fee in dollars
* * *	
Hazard Pay for Grocery Employees Ordinance (Ordinance 126274)	No fee
Independent Contractor Protections Ordinance (Chapter 14.34)	No fee
Land Use Code Citation (Chapter 23.91)	No fee
* * *	

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Section 3. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance 126189, is amended as follows:

### **3.15.000 Office of Labor Standards created - Functions**

There is created within the Executive Department an Office of Labor Standards, under the direction of the Mayor. The mission of the Office of Labor Standards is to advance labor standards through thoughtful community and business engagement, strategic enforcement and innovative policy development, with a commitment to race and social justice. The Office of Labor Standards seeks to promote greater economic opportunity and further the health, safety, and welfare of ~~((employees))~~ workers; support employers and other hiring entities in their implementation of labor standards requirements; and end barriers to workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers.

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

- A. Promoting labor standards through outreach, education, technical assistance, and training ~~((for employees and employers))~~;
- B. Collecting and analyzing data on labor standards enforcement;
- C. Partnering with community, businesses, and workers for stakeholder input and collaboration;
- D. Developing innovative labor standards policy;
- E. Administering and enforcing City of Seattle ordinances relating to paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), minimum wage and minimum compensation (Chapter 14.19), wage and tip compensation requirements (Chapter 14.20), secure scheduling

(Chapter 14.22), domestic workers (Chapter 14.23), hotel employees safety protections (Chapter 14.26), protecting hotel employees from injury (Chapter 14.27), improving access to medical care for hotel employees (Chapter 14.28), hotel employees job retention (Chapter 14.29), commuter benefits (Chapter 14.30), transportation network company driver deactivation protections (Chapter 14.32), transportation network company driver minimum compensation (Chapter 14.33), independent contractor protections (Chapter 14.34), and other labor standards ordinances that may be enacted in the future.

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

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

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

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 6.208.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.38, 5.39, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.
6. The applicant or licensee has been convicted of theft under subsection 12A.08.060.A.4 within the last ten years.

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

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

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

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

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

are remedied.

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

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

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

Section 6. Recognizing that more than 40,000 app-based workers in the City of Seattle, including people of color, immigrants, workers with disabilities, LGBTQ+ workers, and single parents are often paid subminimum wages for their work, despite the promise of good wages, flexibility and accessibility, and that the community depends on these essential workers to deliver groceries and food and provide other valuable services, the City Council intends to address this inequity by ensuring that app-based workers are paid at least the City's minimum wage under Seattle Municipal Code Chapter 14.19 plus reasonable expenses and all required benefits, with meaningful transparency, and have the ability to exercise the flexibility promised by app-based companies. The Council intends to ensure that current definitions of worker classification under Seattle's labor standards are being effectively enforced and does not intend to establish a new classification of workers distinct from employees or independent contractors, but to ensure that all workers benefit from the protection of

Seattle's labor standards. The Council has consistently expressed its intent to promote greater economic opportunity and end barriers to workplace equity for all workers in Seattle. To accomplish these goals, the Council will seek to engage stakeholders in the spring and summer of 2021 on legislation that will address these inequities and create new standards to protect workers' pay, flexibility, and transparency, while ensuring workers are correctly classified under existing Seattle labor standards. The Council intends to discuss the legislation in committee in July and August 2021 and consider the legislation for a full Council vote by the end of 2021.

Section 7. Sections 1 through 4 of this ordinance shall take effect and be in force on September 1, 2022.

Section 8. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2021, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

Approved / returned unsigned / vetoed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Jenny A. Durkan, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.



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Monica Martinez Simmons, City Clerk

(Seal)