

SUMMARY and FISCAL NOTE*

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** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation 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.

Summary and background of the Legislation: In February 2019, the City Council (Council) passed [Resolution 31863](#) to address the problem of employers improperly misclassifying employees as independent contractors. The resolution requested the Office of Labor Standards (OLS) and the Labor Standards Advisory Commission (LSAC) to work on policy, outreach and enforcement proposals to address this problem. In May 2020, the LSAC recommended that the City require hiring entities to provide independent contractors (not just those who are at risk of being misclassified) with information on the proposed terms of engagement between parties and itemized pay information. The LSAC described these recommendations as the first steps toward creating more transparency and access to information for workers hired as independent contractors.

This legislation would incorporate and expand LSAC’s recommendations to establish new labor standards for many independent contractors working in Seattle. The labor standards would become effective on March 1, 2022.

Labor Standards Requirements

The legislation would require all commercial hiring entities to provide independent contractors with pre-contract disclosures, timely payment, and payment disclosures. These requirements would apply to services with a proposed or actual compensation of \$600 or more, or reasonably expected to be \$600 either by itself and when aggregated for services between the same commercial hiring entity and independent contractor during the calendar year.

- 1. Pre-contract disclosures** – Prior to an independent contractor beginning work, a hiring entity would provide a written disclosure of the terms and conditions of the job in English and the independent contractor’s primary language. OLS would create model notices of the pre-contract disclosure in English, Spanish, and other languages.
 - If an independent contractor performed agreed-upon work for the hiring entity, the terms and conditions in the pre-contract disclosure would presumptively become part of the terms and conditions of a contract between parties. The hiring entity could rebut this presumption with clear and convincing evidence, such as a written contract.

- If a hiring entity failed to provide a pre-contract disclosure, there would be a legal presumption that the independent contractor’s claims for payment were true. The hiring entity could rebut this presumption with clear and convincing evidence, such as a written contract.
- 2. Timely payment** – A hiring entity would pay an independent contractor pursuant to the terms and conditions of the contract between parties, whether the amount of payment was specified in the contract resulting from the pre-contract disclosure or by other means such as a superseding written contract. The payment would be due on or before the date specified in the applicable contract. If the contract did not specify a due date, payment would be due no later than 30 days after the completion of the services.
 - 3. Payment disclosures** – With each payment, the hiring entity would provide a written disclosure with itemized pay information including total payment and a breakdown of the rate of pay, pay basis, tip compensation (if included) and other items.

The legislation would also require hiring entities to provide independent contractors with a notice of rights in English and the independent contractor’s primary language; retain records showing compliance for three years; and comply with anti-retaliation prohibitions.

Enforcement

OLS would implement the legislation through rulemaking, outreach, and enforcement. For enforcement, OLS would have authority to conduct complaint-based or directed investigations and/or engage in a new “complaint procedure.” The complaint procedure would serve as an information exchange between parties: OLS would provide the hiring entity with notice of an alleged violation and an opportunity to respond and would provide the hiring entity’s response to the independent contractor. OLS would not determine whether a violation has occurred. After the conclusion of this procedure, the independent contractor could pursue further enforcement of the claim in court.

In addition to filing claims with OLS, independent contractors could file a civil action for violations and could be awarded attorney fees plus costs.

Remedies for violations would include (1) provision of the pre-contract and payment disclosures, and (2) payment of up to three times the unpaid compensation plus interest. OLS could also require hiring entities to pay penalties and/or fines of up to \$556.30 per aggrieved party and per type of violation.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes x No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes x No

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes. There would be financial implications for OLS (e.g., cost of creating model notices in English and other languages, providing outreach, and conducting investigations) and the Hearing Examiner (e.g., cost of conducting hearings on appeals from respondents and aggrieved parties).

Discussions are on-going with OLS about the estimated costs of implementation. OLS has initially estimated \$684,000 to hire three FTES, cover administrative costs, create the required model notices, conduct outreach, and engage in rulemaking. Central Staff plans to gather and analyze information to better understand OLS's estimate and the implications.

Is there financial cost or other impacts of *not* implementing the legislation?

There are no financial costs to the City of not implementing the legislation.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

Yes. OLS would implement and enforce this legislation. The Hearing Examiner would conduct hearings on appeals from respondents and aggrieved parties. There also could be an undetermined number of legal referrals to the City Attorney.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

No.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

The Race and Social Justice Initiative is the City's commitment to eliminate racial disparities and achieve racial equity in Seattle. The implementation of this legislation would support jobs and the financial well-being of BIPOC workers hired as independent contractors – especially Black, Latinx, and immigrant workers who are overrepresented in industries that misclassify employees as independent contractors. The goal of the legislation is for properly classified independent contractors, misclassified employees, and correctly classified employees to have the same baseline rights. The legislation would require hiring entities to provide independent contractors in industries at risk of misclassifying employees as independent contractors (and all independent contractors working for commercial enterprises) with the same with job information and timely pay that is required for employees. The legislation would also create enforcement mechanisms, such as agency

enforcement of claims, agency-initiated investigations, protocols to protect the identifying information of complainants, and a new complaint procedure to encourage vulnerable workers to report violations.

Hiring entities would be required to provide a pre-contract disclosure and notice of rights in English and in the primary language(s) of the independent contractor. OLS would create and distribute model notices/templates of these documents in English and other languages.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

N/A.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

N/A.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s).

OLS could publicly share information on outreach and enforcement efforts on their [on-line, interactive dashboard](#). The same metrics publicized for other labor standards could apply for this legislation (e.g., number of inquiries, number of investigations, amount of remedies).

OLS also could contract with community and business organizations to conduct measurable outreach and education efforts on employee rights and employer responsibilities.