Hiring Entities - Seattle Independent Contractor Protections Ordinance

Laura & Silver, Communities Rise
Linda Fang, Keller Rohrback LLP
Star Berry, OLS Labor Standards Engagement Specialist
Laine Middaugh, OLS Policy Analyst
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Communities Rise

• Communities Rise fosters movements to build power in communities impacted by systemic oppression.
• CR small business legal services prioritize low-income BIPOC folks.
• Resources for small businesses
• Resources for nonprofits and small community-based organizations
Legal Disclaimer

No Legal Advice, Agency Decision, or Attorney-Client Relationship

These materials and the accompanying presentation are for informational purposes only, are not for the purpose of providing legal advice or creating an agency decision, and do not create an attorney-client relationship between you and Keller Rohrback LLP or the Seattle Office of Labor Standards. You should contact an attorney to obtain advice regarding your particular issue or question.

Please do not share any private or confidential information about yourself or anyone else during the presentation.
• Welcome and Introductions
• Overview of the Seattle Independent Contractor Protections Ordinance
• Role of the Seattle Office of Labor Standards
• Questions
Independent Contractors vs. Employees

Employees have minimum statutory protections under federal, state, and local laws

- Mandatory notices, policies, agreements
- Minimum wage, overtime, paid sick leave, meal and rest breaks
- Pay timing requirements, pay stubs, recordkeeping

Independent contractors do not have these protections

- Also called gig workers, freelancers, consultants, contract labor, 1099s
- No employee protections
- Lack of info about terms of work, risk of non-payment or late payment
- Misclassification
- Recourse – legal action, difficult to prove if no contract, no accounting
What is the ICP and What Does It Do?

Independent Contractor Protections (ICP) Ordinance

• Became effective on September 1, 2022
  • New law, hasn’t been tested yet

• What does it do?
  • City believes all workers are entitled to certain baseline rights
  • Ensure that ICs have written information about the terms and conditions of their work before they begin work -> pre-work written disclosures
  • Protections from delayed or non-payment after the work is completed -> timely payment requirements
  • Access to efficient enforcement mechanisms -> OLS complaints
What Situations are Covered by the ICPO?

• Self-employed “single-person” independent contractor

• Engaged by a commercial hiring entity

• To perform work within the city of Seattle (in whole or in part)

• For which the IC will be paid at least $600 over the course of the year
What Independent Contractors are Covered?

- **Self-employed**
  - Not employed by another person or business
  - Likely files Schedule C for the business
  - Pays business taxes
  - Have multiple customers
  - Not financially dependent on one person or entity

- **Single person**
  - Can be a one-person shop with an LLC or corp
  - No employees or business partners

- **Exclusions**: No attorneys, workers only leasing space, TNC workers
What is a Commercial Hiring Entity?

- A **hiring entity** is an individual or entity that hires an IC to provide services to the hiring entity itself or a third party.

- A **commercial hiring entity** is:
  - An individual or entity that is regularly engaged in business or commercial activity (any trade, occupation, or business), including not-for-profit entities(!), and
  - Hires the IC for services in the course of the hiring entity’s business or commercial activity
  - Includes separate entities that are part of an **integrated enterprise**
Where Will the Work Be Performed?

- Does ALL of the work have to be performed in Seattle? No
- The hiring entity must **know or have reason to know** that at least part of the work will be performed in Seattle; examples:
  - The HE requires work to be performed in Seattle
  - The HE doesn’t require but knows that work will be performed in Seattle
  - The HE knows that the IC’s office is in Seattle
  - “Has reason to know” – this requires the HE to ask the question, **where will the work be performed?** Willful ignorance not a defense!
How Much Will the IC Be Paid?

• Proposed or actual compensation for IC’s services must be at least $600
• Aggregated over the calendar year
• Compensation based on what the parties “reasonably expected” to pay
Scenario 1

A consultant hires a nanny to watch her child in her home in Seattle while she has Zoom calls with an important new client for two days. The agreed pay will be $25/hour, for a total of 8 hours over the two days.

Questions:

- Is the consultant a *commercial hiring entity*?
- What if the consultant hired the nanny to watch her employee’s child during the workday?
- Will the nanny be paid by the hiring entity at least $600 over the course of the year?
Scenario 2

A law firm in Seattle hires a social media manager to manage its website and social media accounts and they agree that she can work remotely from home. When asked for her address where the work will be performed, she gives them her address in Kirkland. Unbeknownst to the firm, the social media manager’s boyfriend lives in Seattle and she stays with him often and does work for the law firm from his condo in South Lake Union.

Questions:

• Is there any work performed within the city of Seattle?
• Did the law firm know or have reason to know that work was performed in Seattle?
Scenario 3

A company in Edmonds that makes custom-made gift baskets hires a driver to deliver baskets to customers in Tacoma and Olympia. The company knows that the driver drives through the city of Seattle, occasionally stopping for gas and/or food for herself, but does not assign her any deliveries within the city of Seattle. The driver will be paid $15 per delivery, plus gas and parking, with an average of 10 deliveries per week.

Questions:

• Is there any work performed within the city of Seattle?
• Will the driver be paid by the hiring entity at least $600 over the course of the year?
Scenario 4

A contractor is hired to remodel an office space for a business located in Capitol Hill. The contractor hires an electrician as a subcontractor to help with the electrical work. The fee for the entire remodel project is $20,000. The fee for the electrical work is $5,000.

Questions:

• Is the contractor a covered independent contractor?
• Is the contractor a commercial hiring entity?
• Is the electrician a covered independent contractor?
What Does the ICP Require?

1. Pre-work notice of rights

2. Pre-work written notice
   - Info about the IC and hiring entity
   - Location and description of work
   - Payment details (rate, pay basis, expenses, deductions, payment schedule)

3. Timely payment

4. Itemized payment notice

Plus: Recordkeeping (3 years), no retaliation
What is Timely Payment?

• Payment on or before the due date specified in the contract or pre-work written notice; OR

• Within 30 days after work is completed

• **Important**: Once the IC has started work, the HE shall not require as a condition of timely payment that the IC accept less pay than stated in the contract or pre-work written notice

• **What if the hiring entity is unsatisfied with the IC’s work?**
What if a Hiring Entity Fails to Provide Notices?

In any legal action or investigation, it will be presumed that what the IC claims were the terms of the agreement with the hiring entity were the terms of the agreement, unless the hiring entity can show by clear and convincing evidence that there was some other agreement.

Scenario: IC and HE verbally agree that HE will pay IC $2,500 for a written report that analyzes data for a 6-month period in 2022. After the IC completes the work and provides HE with the report, HE refuses to pay unless IC provides a new report with an analysis of data for all of 2022.

Questions:
- How does the timely payment requirement apply to this situation?
- How does the presumption regarding the terms of the agreement work?
What if a Term of the Agreement Changes?

The hiring entity must provide the independent contractor with a written notice of any change to the information in the original pre-work written notice before the change takes place.

**Scenario:** IC and HE agree that HE will pay IC $2,500 for a written report that analyzes data for a 6-month period in 2022. HE provides the required pre-work notice of rights and pre-work written notice. A week later, HE realizes he needs an analysis of data for all of 2022 and he proposes to pay IC $3,500 for the reporting including all of 2022.

**Questions:**
- Is HE required to provide a new pre-work written notice?
- Is HE asking IC to accept a lower compensation for the work she initially agreed to do? Does the IC have to agree?
Does Compliance Mean Hiring Entity is in the Clear?

- Complying with the requirements of the ICP **does not** mean that a person who performed services for the hiring entity was correctly classified as an independent contractor under applicable laws
  - An IC could attempt to enforce the requirements of the ICP and allege that they should have been classified as an employee
  - Pursuing an enforcement action against the HE under the ICP does not prejudice the IC’s right to pursue a misclassification action
- Determining whether a worker was improperly classified as an independent contractor depends on the **nature of the relationship** between the worker and the hiring entity
How is the ICP Enforced?

Remedies for violation of the ICP include:

- Payment of unpaid compensation
- Interest
- Liquidated damages of up to 2x unpaid compensation
- Civil penalties
- Fines
- Right to file a private lawsuit and be awarded attorneys’ fees

Failure to comply with the ICP may result in denial, revocation, or refusal to renew a hiring entity’s Seattle business license.
OLS Mission: Advancing Workplace Equity

The mission of OLS 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.
OLS’ Services

- Labor Standards Investigations
- Outreach and Education
- Compliance Assistance and Training
- Resources and Referrals
<table>
<thead>
<tr>
<th>Ordinances</th>
</tr>
</thead>
<tbody>
<tr>
<td>App-Based Workers Minimum Payment Ordinance</td>
</tr>
<tr>
<td>Cannabis Employee Job Retention Ordinance</td>
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<tr>
<td>Commuter Benefits Ordinance</td>
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<tr>
<td>Covid-19 Gig Worker Protections</td>
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<tr>
<td>Domestic Workers Ordinance</td>
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<tr>
<td>Fair Chance Employment Ordinance</td>
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<tr>
<td>Grocery Employee Hazard Pay</td>
</tr>
<tr>
<td>Hotel Employee Protections Ordinances</td>
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<tr>
<td>Independent Contractor Protections Ordinance</td>
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<tr>
<td>Minimum Wage Ordinance</td>
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<td>Paid Sick &amp; Safe Time Ordinance</td>
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<td>Secure Scheduling Ordinance</td>
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<tr>
<td>Transportation Network Company Legislation</td>
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<td>Wage Theft Ordinance</td>
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Independent Contractor Protections Ordinance

On June 14, 2021, Seattle City Council passed SMC 14.34, the Independent Contractor Protections (ICP) Ordinance. This ordinance requires covered hiring entities to provide independent contractors with disclosures prior to entering a contract with the contractor. The disclosures include the specific information required by the ordinance and any other information that may be required to comply with the ordinance.
ICP Notice of Rights

Notice of Rights

Independent Contractor Protections Ordinance

Independent Contractors Have a Right to:

- Receive a written notice that identifies the
  proposed terms and conditions of work
  and the terms and conditions of payment
  before starting work.
- Receive timely payment in accordance with
  the terms and conditions of the pre-verb
  written notice or contract.
- If not specified, then receive payment
  within 30 days after the completion of
  services under the contract.
- Receive a written notice that gives specific
  intended payment information each time
  that payment is made.

Who Is Covered?

Self-Employed Independent Contractors who:

1. have no employees,
2. perform any part of their work in Seattle
   for a commercial entity.

AND

3. will receive or may reasonably expect to
   receive at least $500 in total
   compensation from the commercial entity
   between January 1 and December 31
   in a given year.

Know YOUR Worker Rights:

- RETALIATION IS PROHIBITED: These laws
  protect workers from retaliation for exercising
  these rights.
- RIGHT TO FILING A COMPLAINT: Workers have
  a right to make a complaint with the Office of
  Labor Standards (OLS) or file a lawsuit if a
  hiring entity violates these laws.
- EMPLOYMENT RIGHTS: If you believe you are
  an employee, rather than an independent
  contractor, OLS may be able to assist you.
  As an employee, you may be entitled to paid
  or unpaid leave, minimum wage, overtime,
  and paid or unpaid work breaks. Please review
  the Worker Classification guide before
  contacting OLS with further questions.
  Exercising your rights under the ICP ordinance
  will not affect any rights a worker might have
  as an employee.

Other

- Hiring entities must provide this notice to
  independent contractors in English and
  the worker’s primary language in hard copy
  or online format that is accessible prior to
  beginning work.
- OLS provides translations, interpretations,
  and accommodations for people with
  disabilities.

Contact Office of Labor Standards

INDEPENDENT CONTRACTOR: File a complaint with OLS or file a lawsuit in court.
HIRING ENTITIES: Obtain complete assistance and/or receive training.

206-256-5297
seattle.gov/laborstandards
Seattle Office of Labor Standards
Pre-Work Written Notice (Sample)

Commercial hiring entities must provide self-employed Independent Contractors covered by Seattle’s Independent Contractor Protections Ordinance (ICP) with a written notice that identifies the proposed terms and conditions of work and the terms and conditions of payment before the Independent Contractor begins the work. The pre-work written notice must be provided in English and the primary language of the Independent Contractor receiving the information.

After issuing the Initial Pre-Work Written Notice, hiring entities may provide piece-meal notice of changes (i.e., notice separate from the original pre-work written notice). However, if changes are made to more than six of the items required in the Pre-Work Written Notice, hiring entities must issue a revised single document with all the required items.

For more information contact Seattle Office of Labor Standards at (206) 256-5297 or see https://www.seattle.gov/laborstandards.

Today’s Date: __________________________

INDEPENDENT CONTRACTOR

1. Independent Contractor’s Name: __________________________

2. Location of Independent Contractor’s Regular Place of Business:
   
   Street: __________________________
   
   City: __________________________
   
   State: __________________________
   
   Zip: __________________________

Optional Information (Independent Contractor Items 3 & 4):

3. Company and Doing Business As Names (If any):

4. Phone: __________________________

   Email: __________________________

HIRING ENTITY

1. Hiring Entity’s Name:

2. Hiring Entity’s Physical Address:
   
   Street: __________________________
   
   City: __________________________
   
   State: __________________________
   
   Zip: __________________________

3. Hiring Entity’s Mailing Address (If different):
   
   □ Same as Physical Address
   
   Street: __________________________
   
   City: __________________________
   
   State: __________________________
   
   Zip: __________________________

4. Phone: __________________________

   Email: __________________________
**LOCATION(S) OF WORK**

Check all that apply and list any additional locations of work (including coverage area(s) if applicable). Check the box for Unspecified/Not Limited by Hiring Entity if the location of work is not specified or limited. Attach additional page if necessary.

- [ ] Independent Contractor’s Regular Place of Business  
- [ ] Coverage / Service Area: ________________________________
- [ ] Hiring Entity’s Physical Address  
- [ ] Unspecified / Not Limited by Hiring Entity

- [ ] Street __________________________  City __________  State ______  Zip ______
- [ ] Street __________________________  City __________  State ______  Zip ______
- [ ] Street __________________________  City __________  State ______  Zip ______

**DESCRIPTION OF WORK**

Describe the work and/or services that the Independent Contractor will provide. Include the information that is important to your agreement. Attach additional pages if necessary. If the work is described in another document, identify the document and attach it. Include all terms and conditions the Hiring Entity requires to be met before payment is made.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
1. Rate or rates of pay (include any price multiplier, variable pricing policy, or incentive pay as applicable):

2. Pay basis (Check all that apply):
   - By the Hour
   - Fee Per Project
   - Non-Discretionary Bonus
   - By the Day
   - Piece Rate
   - Discretionary Bonus
   - By the Week
   - Commission
   - Other (explain below)

3. Payment Schedule (Check one box and complete the related section):
   - Payment will be made in one lump sum payment as follows:
     Payment in full will be due on this date: ____________________________

     (OR)

     This is how the due date for payment in full will be determined:

     ____________________________

     (For example: 10 days after the above-described work is completed)

   - Payment will be made in installments, after reaching the specified milestones, as follows:
     - $________________________ (OR) ___% due within ________ days of ________________
     - $________________________ (OR) ___% due within ________ days of ________________
     - Remaining balance will be due within ______ days of the completion of all remaining items included in the Description of Work provided above.
Written Notice – Itemized Payment Information

Seattle Office of Labor Standards
Written Notice – Itemized Payment Information (Sample)

Commercial hiring entities must provide self-employed Independent Contractors covered by Seattle’s Independent Contractor Protections (ICP) ordinance with a written notice that gives specific itemized payment information each time payment is made to the Independent Contractor. The written notice must be provided in English and the primary language of the Independent Contractor receiving the information. Hiring entities are encouraged to notify the Office of Labor Standards if a translated copy of this document is needed. For more information contact Seattle Office of Labor Standards at (206) 256-5297 or see https://www.seattle.gov/laborstandards.

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<thead>
<tr>
<th>ITEMIZED PAYMENT INFORMATION</th>
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<tbody>
<tr>
<td>Payment must meet terms and conditions agreed to by both parties in the Pre-Work Written Notice</td>
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<tr>
<th>A.</th>
<th>Today's Date</th>
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<tr>
<td>B.</td>
<td>Independent Contractor's Name</td>
</tr>
<tr>
<td>C.</td>
<td>Hiring Entity's Name</td>
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<tr>
<td>D.</td>
<td>Description of Work Covered by Payment (e.g., hours and dates worked, description of project or tasks completed, the installment number for a contract milestone, or incorporating the description of work stated in a specific invoice)</td>
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<tr>
<td>E.</td>
<td>Location(s) of Work Covered by Payment</td>
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<tr>
<td>Itemized Deductions, Fees, or Other Charges (if applicable) – specify each deduction, fee, or other charge</td>
<td>Amount</td>
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<td>= deduction for ____________</td>
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<td>= fee for ____________</td>
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<td>= other charge for ____________</td>
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GROSS PAYMENT TOTAL:

$ |

NET PAYMENT TOTAL:

$
Employer Resources

Investigation Assistance

If you are an employer under investigation and have questions, please call the Office of Labor Standards at (206) 684-4291. Please request to speak with the investigator listed on the Notice of Investigation form.

Compliance Assistance

The Office of Labor Standards has a dedicated staff who handle employer inquiries. These phone conversations, or email exchanges, are kept entirely separate from the investigation process. We will answer questions about how Seattle’s labor standards apply to your business. OLS encourages businesses to consult us with the goal of attaining full compliance.

To Ask a Question

1. Submit a request through our web form.
2. Call (206) 684-5347.

When you call, please inform us if you need an interpreter. 

Complaints in discrimination and retaliation are filed through the following:

- The U.S. Equal Employment Opportunity Commission (EEOC) at 1-800-669-4000.
- The Seattle Office of Economic Development at 1-800-562-6900.
- The Department of Labor and Industry at 1-800-562-6900.

Visit our office in the Central Building, 601 3rd Avenue Suite 375 Seattle, WA 98104-1627. 

Our hours: Monday to Friday, 9am to 5pm.
Additional ICP Enforcement Measures

1. Company-Wide Investigation Based on Confidential Complaint
2. Directed Investigation in the Absence of Complaint
3. Non-Confidential Notice of Complaint
4. Court Navigation Program
Please Stay in Touch!

Star Berry  
Labor Standards Engagement Specialist  
Star.Berry@seattle.gov  
206-256-5557

Laine Middaugh  
Policy Analyst  
Laine.Middaugh@seattle.gov  
(206) 743-2307
Thank you!

Communities-rise.org - Smallbiz@communities-rise.org

Linda S. Fang at Keller Rohrback LLP
lfang@kellerrohrback.com (206) 428-0577

Office of Labor Standards (206) 256-5297
Laborstandards@seattle.gov