Independent Contractors – Seattle Independent Contractor Protections Ordinance

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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.
Agenda

• 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
What is the ICP and What Does It Do?

*Independent Contractor Protections (ICP) Ordinance*

• Became effective on September 1, 2022

• Designed to:
  • Ensure that ICs have written information about the terms and conditions of their work before they begin work, and
  • Protect them from delayed or non-payment after the work is completed
What Independent Contractors are Covered?

- Self-employed “single-person” independent contractor
  - Can be a one-person shop with an LLC or corp
  - No ICs with employees or business partners
  - No employees, attorneys, workers only leasing space, TNC workers
- 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
Scenario 1

An organizational 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 organizational consultant a commercial hiring entity?
• What if the organizational 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?
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, schedule, costs)

3. Timely payment

4. Itemized payment notice

Model notices available on the Office of Labor Standards website
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 provides HE with the report, HE refuses to pay unless IC provides a new report with an analysis of data for all of 2022.
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. IC agrees to the change.

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?
What Does Timely Payment Mean?

Providing timely payment means paying the IC:
• Within the time specified in the pre-work written notice; OR
• If not specified, within 30 days of the work being completed

Does the ICP require ICs to be paid a minimum wage?

What if the hiring entity is unsatisfied with the IC’s work?
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.

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
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<th>Ordinances</th>
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<td>App-Based Workers Minimum Payment Ordinance</td>
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<td>Cannabis Employee Job Retention Ordinance</td>
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<td>Commuter Benefits Ordinance</td>
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<td>Covid-19 Gig Worker Protections</td>
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<td>Domestic Workers Ordinance</td>
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<td>Fair Chance Employment Ordinance</td>
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<td>Grocery Employee Hazard Pay</td>
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<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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<td>Transportation Network Company Legislation</td>
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<td>Wage Theft Ordinance</td>
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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.

Independent Contractor Protections (ICP) Ordinance

For more information, visit the Seattle website: https://seattle.gov/labstandards/ordinances/independent-contractor-protections
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-work written notice or contract.
- If left unspecified, then receive payment within 30 days after the completion of services under the terms of the contract.
- Receive a written notice that gives specific information about payment or information about payment after 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 hiring entity,

AND

3. Will receive or may reasonably expect to receive at least $500 in total compensation from the hiring 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 or exercising these rights.
- RIGHT TO FILE 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 have rights to paid time off, minimum wage, overtime, and paid sick and safe leave. Please review the Worker Classification Guide before contacting OLS with further questions.

Exercising your rights under the ICP ordinance will not affect any rights you may have as an employee.

Other

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

Contact Office of Labor Standards

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

206-256-5297
seattle.gov/laborstandards

ICP Notice of Rights
# Pre-Work Written Notice

**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](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: ____________________
Pre-Work
Written Notice

<table>
<thead>
<tr>
<th>LOCATION[S] OF WORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
<tr>
<td>□ Independent Contractor’s Regular Place of Business</td>
</tr>
<tr>
<td>□ Coverage / Service Area: ________________________</td>
</tr>
<tr>
<td>□ Street ________________________ City ___________ State _______ Zip _______</td>
</tr>
<tr>
<td>□ Street ________________________ City ___________ State _______ Zip _______</td>
</tr>
<tr>
<td>□ Street ________________________ City ___________ State _______ Zip _______</td>
</tr>
<tr>
<td>□ Hiring Entity’s Physical Address</td>
</tr>
<tr>
<td>□ Unspecified / Not Limited by Hiring Entity</td>
</tr>
<tr>
<td>□ Street ________________________ City ___________ State _______ Zip _______</td>
</tr>
<tr>
<td>□ Street ________________________ City ___________ State _______ Zip _______</td>
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</tbody>
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<table>
<thead>
<tr>
<th>DESCRIPTION OF WORK</th>
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<tbody>
<tr>
<td>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.</td>
</tr>
<tr>
<td>____________________________________________________________________________</td>
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<td>____________________________________________________________________________</td>
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## Pre-Work Written Notice

### PAYMENT

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.

<table>
<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>
</tr>
</tbody>
</table>

A. **Today's Date**

B. **Independent Contractor's Name**

C. **Hiring Entity's Name**

D. **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)

E. **Location(s) of Work Covered by Payment**
### F. Payment

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1) Payment by Rate(s) and Basis <strong>– specify any price multiplier, variable pricing policy, or incentive pay as applicable:</strong></td>
<td></td>
</tr>
<tr>
<td>- By the Hour</td>
<td>$</td>
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<tr>
<td>- By the Day</td>
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<td>- By the Week</td>
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<td>- Fee Per Project</td>
<td>$</td>
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<td>- Piece Rate</td>
<td>$</td>
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<td>- Commission</td>
<td>$</td>
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<tr>
<td>- Non-Discretionary Bonus</td>
<td>$</td>
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<tr>
<td>- Discretionary Bonus</td>
<td>$</td>
</tr>
<tr>
<td>- Other (specify)</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$</td>
</tr>
<tr>
<td>2) Tip Payment (if applicable)</td>
<td>$</td>
</tr>
<tr>
<td>3) Service Charge Payment (if applicable)</td>
<td>$</td>
</tr>
<tr>
<td>4) Itemized Costs Reimbursed (if applicable) <strong>– specify each cost</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

**GROSS PAYMENT TOTAL**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>5) Itemized Deductions, Fees, or Other Charges (if applicable) <strong>– specify each deduction, fee, or other charge</strong></td>
<td></td>
</tr>
<tr>
<td>- deduction for ____________</td>
<td>$</td>
</tr>
<tr>
<td>- fee for ____________</td>
<td>$</td>
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<tr>
<td>- other charge for ____________</td>
<td>$</td>
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</tbody>
</table>

**NET PAYMENT TOTAL**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td><strong>Total</strong></td>
<td>$</td>
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Worker Resources - File a Complaint

To Ask a Question or File a Complaint

1. Send us a message through web form

2. Call (206) 256-5297
   Cuando llame, infórmenos si necesita un intérprete. Vui lòng thông báo cho chúng tôi nếu bạn cần một thông dịch viên. 如果您需要口譯員，請通知我們。통역사가 필요한 경우 알려주십시오.
   Markii aad na soo wacdo, fadlan noo soo sheeg haddii aad u baahan tahay turjubaan. ከተማው ከሆንም ከማስቻል ያድረጉ ይመልከቱ.

3. Visit our office in the Central Building
   810 3rd Avenue, Suite 375
   Seattle, WA 98104-1627
   Our hours: Monday to Friday 8am to 5pm
OLS Enforcement Framework Generally

- Company-Wide Investigations Based on Confidential Complaint
- Directed Investigations in the Absence of Complaint
Additional ICP Enforcement Measures

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

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206-256-5557

Claire Looney
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Mark Rose
Senior Investigator
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206-684-4533
Thank you!

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

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lfang@kellerrohrback.com  (206) 428-0577

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