Cooley

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Effective September 1, 2022, employers hiring independent contractors who perform services in Seattle must comply with the Independent Contractor Protections Ordinance. The ordinance requires covered hiring entities to provide independent contractors with certain disclosures prior to entering into a contract and at the time of payment, as well as a notice of rights before work begins.

Under the ordinance's broad definitions, a covered contractor is any self-employed person who:

1. Has no employees.
2. Performs services in whole or in part in Seattle.
3. Will receive or can reasonably expect to receive at least $600 in total compensation from the hiring entity during a calendar year.

A covered hiring entity includes any company regularly engaged in business or commercial activity, including not-for-profit organizations. We discuss the key requirements of the ordinance below.

Pre-work written disclosure

First, the ordinance requires a hiring entity to provide the contractor with a pre-work written disclosure identifying certain terms and conditions before beginning work. The required information includes:

- Date of disclosure.
- Name of the independent contractor.
- Name of the hiring entity.
- Contact information for the hiring entity, including but not limited to physical address, mailing address, telephone number and/or email address, as applicable.
- Description of work.
- Location(s) of work and regular place of business of independent contractor or hiring entity.
- Rate(s) of pay.
- Pay basis (e.g., hourly, daily, weekly, monthly, fee per project, piece rate, commission).
- Tips and/or service charge distribution policy, if applicable.
- Typical expenses incurred in the course of work, and which expenses will be paid or reimbursed by the hiring entity, if applicable.
- Deductions, fees, or other charges that the hiring entity may subtract from payment and accompanying policies for each type of charge, if applicable.
- Payment schedule.

If an existing agreement such as a written contract between the parties already contains the above required information, no separate pre-work written disclosure is necessary. However, if any information is missing, the hiring entity should prepare a document containing the missing information, with supporting documentation, so that all the required information can be found in a single document. Curiously, hiring entities can provide "piece-meal notice" of any changes to up to six of the above items, but must issue a revised disclosure if there are changes to more than six items.

Descriptions of work are critical under the ordinance: The Seattle Office of Labor Standards (OLS) notes that the description must include "all terms and conditions that the hiring entity would require to be met as a pre-condition to payment for the agreed upon work," as "[a]ny terms and conditions not itemized in the pre-contract disclosure may not be relied on by the hiring entity as a basis for the failure to make timely payment under the ordinance."

Notice of rights

Second, the ordinance provides that hiring entities furnish a notice of rights to contractors before they begin work. The notice must include:

- The rights to pre-contract disclosures, timely payment and payment disclosures.
- The right to be protected from retaliation.
- The right to file a complaint with the OLS or to bring a civil action for a violation of the law.

Any contractor already working for an entity as of September 1 must be provided with the notice of rights (and the pre-work disclosure) by the next date of compensation or September 30, 2022, whichever is sooner.

Payment disclosures

Finally, the ordinance requires hiring entities to provide certain disclosures each time they provide the contractor with compensation for services. Each disclosure must include:

- Date of disclosure.
- Name of independent contractor.
- Name of hiring entity.
- Description of services covered by payment (e.g., description of project, tasks completed or hours worked).
- Location of services covered by payment.
- Rate or rates of pay.
- Tip compensation and/or service charge distributions, if applicable.
- Pay basis (e.g., hourly, daily, weekly, monthly, fee per project, piece rate, commission), with accounting of method(s) for determining payment earned during the pay period.
- Expenses reimbursed, if applicable.
- Gross payment.
- Deductions, fees or other charges, if applicable.
- Net payment after deductions, fees or other charges.

If the payment is based on the number of hours worked, a statement of hours for which payment is being made may suffice. In other cases, if the pre-work disclosure provides that payments are to be made in installments based upon phases of a project being completed, the payment disclosure should identify the “project milestones or parts of the work described in the pre-contract disclosure” for which the payment is made.

In addition to the payment disclosure, the ordinance requires contractors to be paid in accordance with the terms of any contract between the parties, the terms in the pre-work disclosure, or within 30 days after completion of services.

Other requirements, retaliation protections and violations

Hiring entities are required to keep electronic or hard copy records that document compliance with the ordinance for three years. Although these records may include the disclosures, notice and payment information, the OLS notes that “[e]mails and text messages attaching such disclosures or notices should also be retained as evidence that documents were in fact provided to the independent contractor on specific dates.” Any hiring entity failing to retain these required records is subject to a rebuttable presumption that the entity violated the ordinance’s recordkeeping requirements.

Contractors also are protected from retaliation for exercising rights protected by the ordinance and may file a complaint with the OLS, which administers the ordinance. For example, the OLS notes that protected activity includes making inquiries about or informing others about their rights under the ordinance, or informing the hiring entity or filing a complaint alleging a violation of the law. Potential adverse actions against a contractor include temporarily or permanently denying or limiting the contractor’s access to work, offering less desirable work, or terminating, deactivating or taking any other action that would dissuade a reasonable person from exercising rights under the ordinance. Significantly, the ordinance also creates a rebuttable presumption of

retaliation if an adverse action is taken against a contractor within 90 days of a contractor's protected activity.

Hiring entities violating the law may be subject to payment of unpaid compensation, liquidated damages, civil penalties, fines and interest.

Next steps

Employers who engage independent contractors to perform services in Seattle should update any independent contractor agreements and payment forms for the required information. Employers also should distribute the required notices as appropriate. Employers may use the OLS' pre-work disclosure, notice and payment disclosure documents, but they are not required to. In addition, employers should review their policies and practices relating to hiring independent contractors to ensure compliance with the ordinance.

If you have any questions about the ordinance, please contact a member of Cooley's employment group.

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