



Employment Law Note

FEBRUARY 2022

Seattle-Area Employers Get Ready – New Requirements Coming When Using Independent Contractors



By **Trinh Tran**, ttran@sbj.law

On June 14, 2021, the Seattle City Council passed the Independent Contractor Protections Ordinance (“ICPO”), which is slated to take effect on September 1, 2022.

See SMC 14.34. The ICPO will apply to all “covered independent contractors who perform work for a covered hiring entity.” The lengthy ordinance runs on for 49 pages and is full of traps for the unaware, so let us help you unpack it.

The ICPO’s Purpose

What pushed the City of Seattle to pass the ICPO? First, the ICPO cites a Washington State Department of Commerce study’s finding that independent contracting work increased by 15 percent between 2008 and 2016. Second, the Ordinance points to a Gallup, Inc. survey that reported “39 percent of independent contractors reported problems with timely and accurate payment as compared to 18 percent of employees in traditional employment.” At first glance, the ICPO appears intended to add clarity to the relationship between employers and independent contractors. However, a closer look at the numerous obstacles posed by the Ordinance reveals a determined effort to deter employers from utilizing independent contractors.

Breaking Down the ICPO

The ICPO’s protections cover all contracts in which the independent contractor was (1) hired to provide services in the course of the hiring entity’s business; (2) the contract encompasses work performed in whole or in part in Seattle or the hiring entity has reason to believe work will be performed in full or in part in Seattle; and (3) the proposed or actual contract value is \$600 or more, either by itself or when aggregated, for services provided to the same entity.

Among its provisions are new requirements for a hiring entity to provide independent contractors with (1) “disclosures” at different points during the contracting relationship; and (2) timely payment that conforms to the terms and conditions of the contract, the terms of the pre-contract disclosure, or within 30 days of contract performance.

Who is Covered?

The most critical issue is that of coverage. For the purposes of the ICPO, “covered hiring entities” are limited to commercial hiring entities, broadly defined as entities that are “regularly engaged in business or commercial activities.”

A “covered independent contractor” is defined as an independent contractor who performs work for the hiring entity that is fully or partially in Seattle or the hiring entity knows or has reason to know that the work is performed fully or partially in Seattle, and the hiring entity hires the independent contractor for services in the course of its business or commercial activity. Attorneys or contractors whose relationship with a “hiring entity” is limited to a real estate rental agreement (i.e., a manicurist who rents a booth from a salon owner) are not considered “covered independent contractors.”

The “Disclosure” Requirements

Hiring entities must disclose the following information to independent contractors:

1. Pre-Contract Disclosure - Before the independent contractor’s work begins, the hiring entity must provide: current date, name of the independent contractor, name of the hiring entity, contact information for the hiring entity, description of the work, locations of the work and the regular place of business, rate(s) of pay, including any applicable price multiplier or variable pricing policy; pay basis (e.g., hourly, piece rate, based on commission, etc.);

tips and/or service charge distribution policy (where applicable); typical expenses incurred in the course of work, specifying which expenses will be paid or reimbursed by the hiring entity; deductions, fees, or other charges that may be subtracted from payment; and payment schedule. Hiring entities must also provide written notice of any change to the disclosure before the change takes place "or as soon as practicable." *Revisions of more than six of the disclosure items shall require the hiring entity to revise and reissue the entire disclosure statement!*

2. Payment Disclosure - Each time the independent contractor is paid, the hiring entity must provide itemized payment details, including the following: current date; name of the independent contractor; name of the hiring entity; description of services covered by the payment; location of services covered by the payment; rate(s) of pay, including multipliers or variable pricing policies; tip or service charge distribution; the basis of pay; any expenses that were reimbursed; gross pay; deductions, fees, or other charges; and net payment.

Other Requirements

The ICPO strictly prohibits a hiring entity from denying a right from, retaliating against, or taking any adverse action against an independent contractor for exercising a right established by the Ordinance.

Additionally, the ICPO requires that hiring entities provide current independent contractors with a written "notice of rights" as established by the Ordinance, "by September 31, 2022, or by the date of compensation, whichever date is sooner." For independent contractors hired after September 31, 2022, hiring entities must provide the notice of rights prior to the independent contractor beginning their work assignment. The written "notice of rights" must be in English or "any language that the hiring

entity knows or has reason to know is the primary language of the independent contractor." The ICPO also requires that the notice of rights must provide information regarding (1) the right to pre-contract disclosures, timely payment, and payment disclosures; (2) the right to be protected from retaliation for "exercising in good faith" the rights established by the Ordinance; and (3) the right to "file a complaint with the Agency or bring a civil action" for a violation of the established requirements.

Finally, hiring entities must retain records that document compliance with the Ordinance for each independent contractor for three years.

Key Takeaways

As part of the agency's administrative rulemaking process, the Seattle Office of Labor Standards ("OLS") will hold virtual meetings to solicit feedback from stakeholders on the forthcoming rules related to the ICPO. Employers/stakeholders with input on how OLS may interpret and enforce the new Ordinance are encouraged to register to attend a comment session. See the Administrative Rules Stakeholder Meeting page¹ for more information.

Given the heightened concerns with employers' perceived "lack of transparency about job information... and deceptive payment practices," we believe the passage of the ICPO may be the first of many steps by the City to increase protection for independent contractors. In preparation for the September 1st rollout date of the ICPO, employers should begin reviewing hiring and pay practices related to independent contractors to ensure compliance with the Ordinance. Given the complexities and added compliance hurdles presented by the ICPO, please reach out to us if you have any questions.

For more information about this month's Employment Law Note
contact us at 425-454-4233



We publish the Employment Law Note to inform clients and friends of developments in labor and employment relations law. This Note is not intended, nor should it be used, as a substitute for specific legal advice or opinions. Legal counsel can be given only in response to inquiries regarding particular factual situations. © 2022 Sebris Busto James. All rights reserved.

¹ Administrative Rules Stakeholder Meeting -
<https://www.surveymonkey.com/r/9PZG9H7>