



## **Employee or Independent Contractor?**

### **A. How the Seattle Office of Labor Standards Analyzes Employment Status**

Because Seattle’s labor standards only protect employees, it is critical to know whether a worker is correctly classified as an employee or an independent contractor.

Under Seattle’s labor standards ordinances, an employer who classifies a worker as an independent contractor “bears the burden of proof that the individual is, as a matter of economic reality,” not an employee because the worker is in business for him/herself and is not dependent upon the alleged employer. SMC 14.16.010; 14.17.010; 14.19.010; 14.20.010; 14.22.010; and 14.25.160. This test, known as the “economic realities” or “economic dependence” test, is derived from caselaw interpreting the federal Fair Labor Standards Act (FLSA) and the Washington Minimum Wage Act.<sup>1</sup>

OLS relies on the analysis provided in the Administrator’s Interpretation No. 2015-1, issued on July 15, 2015 by the Administrator of the U.S. Department of Labor’s Wage and Hour Division. A copy of this Interpretation may be found [here](#).<sup>2</sup>

The economic realities test analyzes **whether the worker is economically dependent upon the employer** (and thus an employee) **or in business for himself or herself** (and thus an independent contractor). OLS will analyze the following non-exclusive factors to make that determination:

- (A) Is the work an integral part of the employer’s business?** (If the answer is yes, this factor weighs in favor of employee status);
- (B) Does the worker’s managerial skill affect the worker’s opportunity for profit or loss?** (If the answer is yes, this factor weighs in favor of independent contractor status);
- (C) How does the worker’s relative investment compare to the employer’s investment?** (If the worker’s investment is less than the employer’s, this factor weighs in favor of employee status);

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<sup>1</sup> Two representative FLSA cases on this subject are *Hopkins v. Cornerstone Am.*, 545 F.3d 338 (5<sup>th</sup> Cir. 2008) and *Real v. Driscoll Strawberry Assocs.*, 603 F.2d 748 (9<sup>th</sup> Cir. 1979). The leading Washington case is *Anfinson v. FedEx Ground Package System, Inc.*, 174 Wn.2d 851, 281 P.2d 289 (2012).

<sup>2</sup> Although this document was withdrawn by the Department of Labor on June 7, 2017, OLS continues to rely on this guidance because its reasoning is persuasive and consistent with caselaw.

- (D) **Does the work performed require special skill and initiative?** (If the answer is yes, this factor weighs in favor of independent contractor status);
- (E) **Is the relationship between the worker and the employer permanent or indefinite?** (If the relationship is permanent or indefinite, this factor weighs in favor of employee status); and
- (F) **What is the nature and degree of the employer's control?** (If the employer exercises control over the way the work is performed, this factor weighs in favor of employee status).

These factors are guidelines only and no one factor is determinative. OLS may consider other information that assists in the determination. An agreement labeling the worker as an independent contractor is not relevant to the inquiry because it does not indicate the economic realities of a working relationship.

## **B. What Happens When a Worker Is Misclassified as an Independent Contractor?**

Employees who have been misclassified as independent contractors may have claims under the Seattle labor standards ordinances and may recover remedies provided by those laws, including backpay, liquidated damages, reimbursement of expenses paid, and other penalties.

## **C. Seattle's Labor Standards Protect Against Retaliation**

All individuals are protected against retaliation under Seattle's labor standards ordinances. This protection includes the right to question your employer about any right provided under Seattle's labor standards, including whether workers are properly classified as independent contractors.

## **D. How to Contact the Office of Labor Standards**

If you are a **worker** and are not sure whether you are properly classified, please contact an OLS Intake Investigator through [this online form](#), [workers.laborstandards@seattle.gov](mailto:workers.laborstandards@seattle.gov) or at 206-256-5297.

If you are an **employer** and are not sure whether your workers are properly classified, please contact OLS Business Engagement staff at [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov) or 206-256-5297.