

Employee or Independent Contractor?

How the Seattle Office of Labor Standards Analyzes Worker Classification

Whether a worker is a bona fide independent contractor or an employee is an important question for determining coverage by Seattle’s labor standards because the labor standards only protect employees.

In determining whether a worker is an employee, the Office of Labor Standards (OLS) applies the “economic realities test.” Since Seattle’s labor standards are liberally construed in favor of the employee¹, the burden is on the employer to demonstrate a worker is *not* an employee.² For these reasons, when it is unclear whether a worker is an employee or a bona fide independent contractor, our office favors classification as an employee.

What is the Test?

The main question OLS seeks to answer is **whether the worker, as a matter of “economic reality,” is dependent on the employer** (and thus its employee) **or is really in business for oneself** (and thus its independent contractor).³

To answer that question, OLS analyzes the situation through the lens of five factors. No single factor is determinative and OLS may consider other information that provides clarity as to whether a worker is classified correctly. The five factors are:

- (A) the extent to which the **work performed is an integral** part of the employer’s business;
- (B) the **worker’s opportunity for profit or loss** depending on their managerial skill;
- (C) the **worker’s investment** in equipment or material;
- (D) whether the work performed requires **special business skills and initiative**;
- (E) the **permanency of the relationship**; and
- (F) the **degree of control** exercised or retained by the employer.

¹ OLS 2015 Wage Theft Prevention ORD, Seattle Ord. 124960, 2015.

² SMC 14.16.010, SMC 14.17.010, SMC 14.19.010, SMC 14.20.010, SMC 14.22.010.

³ OLS continues to rely on the legal analysis of the “economic realities test” included in Department of Labor’s Administrative Interpretation No. 2015-1 about misclassification. This document was withdrawn by the US Secretary of Labor on June 7, 2017 with the recognition that there had been no change to the legal responsibilities of employers. OLS maintains a copy on file, available upon request. DOL’s [Fact Sheet 13](#) also provides an overview of the six-factor test.

Why Does this Matter?

OLS is concerned that some Seattle workers may be misclassified, which may mean their rights under Seattle's labor standards are being violated. OLS is committed to ensuring workers are properly classified and compensated.

Seattle's labor standards cover employees working in city limits and include:

- **Minimum Wage** - sets wages for employees working within city limits. The minimum wage will increase every year on January 1.
- **Wage Theft** - provides protections against wage theft by establishing basic requirements for payment of wage and tips within city limits. The ordinance requires employers to pay all wages and tips owed to employees, provide written notice to employees, and itemize pay information when employees are paid.
- **Paid Sick and Safe Time (PSST)** - requires employers to provide paid sick and safe time for employees. PSST can be used for an employee's absence from work due to illness, medical appointments, or a critical safety issue.
- **Fair Chance Employment (FCE)** - restricts how employers can use conviction and arrest records during the hiring process and course of employment within city limits.
- **Secure Scheduling** - establishes scheduling requirements for covered retail and food services establishments. The law applies to retail and food services establishments with 500+ employees worldwide, and full-service restaurants with 500+ employees and 40+ full-service restaurant locations worldwide.
- **Hotel Employee Health and Safety (HEHS)** - establishes protections for the health and safety of hotel employees working in Seattle.

Protections against retaliation. All workers are protected against retaliation if they ask their employer about whether they are properly classified as an independent contractor and/or about their labor standards rights.

Workers. If you are a worker and are not sure whether you are properly classified, or if you think you were retaliated against for inquiring about your classification or rights, please contact the OLS Intake Investigator at <http://www.seattle.gov/laborstandards/contact>, workers.laborstandards@seattle.gov or 206-256-5297.

Employers. If you are an employer and are not sure whether your workers are properly classified, please contact the OLS Business Liaisons at business.laborstandards@seattle.gov or 206-256-5297.

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