

PROPOSED RULES FOR NOTICE AND COMMENT

SEATTLE OFFICE OF LABOR STANDARDS Seattle Human Rights Rules (SHRR) Chapter 220

Practices for administering Independent Contractor Protections Ordinance requirements under
Seattle Municipal Code 14.34

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SHRR 220-010 Purpose.

These Rules govern the practices of the Seattle Office of Labor Standards in administering the requirements of the Independent Contractor Protections Ordinance, Seattle Municipal Code (SMC) 14.34.

SHRR 220-020 Practice where Rules do not Govern.

If a matter arises in administering the Independent Contractor Protections Ordinance that is not specifically covered by these Rules, the Director shall specify the practices to be followed.

SHRR 220-030 Construction of Rules.

These Rules shall be liberally construed to permit the Seattle Office of Labor Standards to accomplish its administrative duties in implementing the Independent Contractor Protections Ordinance, including providing technical assistance, determining if a violation has occurred and prescribing penalties and remedies.

SHRR 220-040 Severability.

These Rules are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of these rules or the application thereof to any hiring entity, independent contractor, or person or circumstance, is held to be invalid, it shall not affect the validity of the remainder of these Rules, or the validity of the application of the Rules to other persons or circumstances.

SHRR 220-050 Force of Law.

These Rules supplement the provisions of the Independent Contractor Protections Ordinance and shall have the force and effect of law.

SHRR 220-060 More Generous Practices.

Nothing shall be construed as discouraging or prohibiting any hiring entity from adopting or retaining practices that provide more generous independent contractor labor standards than the protections established by SMC 14.34.

SHRR 220-070 No Effect on Contract Validity

No provision of these Rules shall be construed to render any otherwise valid contract void or voidable or otherwise impair any obligation, claim, or right related to such contract.

SHRR 220-080 Other Legal Requirements.

The Independent Contractor Protections Ordinance defines requirements for independent contractor protections and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater requirements; and nothing in SMC 14.34 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall SMC 14.34 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under SMC Chapter 14.34 affecting such person.

SHRR 220-090 Definitions

Definitions are consistent with those in SMC 14.34.020 and are supplemented by the following definitions.

1. **“Calendar year”** means the twelve (12) month period that begins on January 1 and ends on December 31.
2. **“Independent Contractor”**: The Director may issue rules excluding classes of independent contractors from this definition based on the Director’s determination that the class of independent contractors has adequate bargaining power in establishing their business relationships with hiring entities.

In making this determination, the Director may consider whether a class of independent contractors is subject to an existing statutory and/or regulatory framework that contains protections that are similar to the independent contractors’ right to pre-contract disclosures (SMC 14.34.050), timely payment (SMC 14.34.055), and payment disclosures (SMC 14.34.060).

3. **“Primary language”** means the language in which the independent contractor feels most comfortable communicating. Each hiring entity shall make a good faith effort to determine the primary languages of independent contractors performing services.
4. **“Service Charge”**: means a separately designated amount collected by hiring entities from customers that is for services provided by independent contractors, or is described in such a way that customers might reasonably believe that the amounts are for such services. Service charges include but are not limited to charges designated on receipts as a “service charge,” “gratuity,” “delivery charge,” or “portage charge.”

SHRR 220-100 Coverage

1. **In general.** Covered independent contractors are limited to those who perform work for a covered hiring entity, where
 - a. The work is performed in whole or part in Seattle,
 - b. The hiring entity knows or has reason to know that the work is performed in whole or part in Seattle, and
 - c. The hiring entity hires the independent contractor for services in the course of the hiring entity’s business or commercial activity.
2. **In the course of the hiring entity’s business or commercial activity.** “In the course of the hiring entity’s business or commercial activity” means any service rendered as part of that business or commercial activity, including incidental services (e.g. a graphic design firm that hires a plumber to conduct a repair.)
3. **Technical error.** SMC 14.34.030.D contains a technical error. That section reads, in part, “Time spent by an employee in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle...” (emphasis added). The section is properly read as “Time spent by an independent contractor in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle...”

SHRR 220-110 Pre-contract disclosures

1. **In general.** Prior to an independent contractor beginning work for the hiring entity, the hiring entity shall provide the independent contractor with a written pre-contract disclosure that provides the information described in SMC 14.34.050.

2. **Description of the work.** Prior to an independent contractor beginning work for the hiring entity, the hiring entity shall provide the independent contractor with a written pre-contract disclosure that provides itemized information on the proposed terms and conditions of work, including but not limited to a description of work. SMC 14.34.050.A. The description of work 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. Any 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.
3. **Tip policy.**
 - a) Where the hiring entity has a policy or practice regulating tipping in any respect, it must describe that policy or practice in the pre-contract disclosure
 - b) At a minimum, the pre-contract disclosure must describe whether tips are retained by the hiring entity, the independent contractor, or split between the parties and the percentage split.
 - c) If the hiring entity does not regulate tipping or the contracted services do not typically involve tipping, the hiring entity may indicate “not applicable” or a similar formation in the pre-contract disclosure.
 - d) If the independent contractor performs agreed-upon work for the hiring entity and the hiring entity has not provided a pre-contract disclosure describing the hiring entity’s policy or practice regulating tips, there is a rebuttable presumption that the independent contractor’s alleged terms and conditions regarding tipping are the terms and conditions of the contractual relationship.
4. **Service charge policy.** Where the contracted services typically involves service charges, hiring entities must disclose the percentage of the service charge that is paid to the independent contractor(s) serving a client or customer. If any portion of a service charge is not clearly designated as being retained by the hiring entity, it is due to the independent contractor(s) serving a client or customer.
5. **Translations.** The Office of Labor Standards shall create and distribute a model notice of the pre-contract disclosure in English, Spanish, and other languages. Hiring entities are not required to provide the pre-contract disclosures in languages other than English until the Office of Labor Standards makes the necessary translation available. Hiring entities are encouraged to notify the Office of Labor Standards of the need for additional translations.

SHRR 220-120 Timely Payment

1. **In general.** The hiring entity shall provide compensation as follows:
 - a) On or before the date the compensation is due under the terms and conditions of the contract; or
 - b) If the contract does not specify when the hiring entity shall provide the independent contractor with compensation or the mechanism by which the date for compensation shall be determined, the hiring entity shall provide the independent contractor with compensation no later than 30 days after the completion of the independent contractor’s services under the contract.

2. **Commencement of 30-day payment timeline.** The 30-day period begins to run when the hiring entity knows or has reason to know the independent contractor's has completed services under the contract. The determination of whether a hiring entity knows or has reason to know the independent contractor has completed services under the contract may be demonstrated by any number of factors, including but not limited to:
 - a. The hiring entity's opportunity to observe the completion of services;
 - b. Verbal communication of completion by the independent contractor;
 - c. Written communication of completion by the independent contractor (e.g. email, text message);
 - d. Provision of a final invoice by the independent contractor.
3. **Presumption does not apply to Transportation Network Company (TNC) Independent Contractors.** The presumption in SMC 14.34.055.C shall not apply to Independent contractors who are TNC drivers and are not owed pre-contract disclosures or payment disclosures pursuant to SMC 14.34.030.F.

SHRR 220-130 Payment Disclosures

1. **In general.** Each time the hiring entity provides the independent contractor with compensation, the hiring entity shall provide a written payment disclosure that provides the information described in SMC 14.34.060.
2. **Translations.** The Office of Labor Standards shall create and distribute a model notice of the payment disclosure in English, Spanish, and other languages. Hiring entities are not required to provide the payment disclosure in languages other than English until the Office of Labor Standards makes the necessary translation available. Hiring entities are encouraged to notify the Office of Labor Standards of the need for additional translations.

SHRR 220-140 Notice and Posting

1. **In general.** Hiring entities shall provide each independent contractor with a written notice of rights established by SMC 14.34 in English and any language that the hiring entity knows or has reason to know is the primary language of the independent contractor.
2. **Translations.** The Office of Labor Standards shall create and make available translated versions of the Notice of Rights. Hiring entities are not required to provide the Notice of Rights in languages other than English until the Office of Labor Standards makes the necessary translation available. Hiring entities are encouraged to notify the Office of Labor Standards of the need for additional translations.

SHRR 220-150 Recordkeeping

1. **In general.** Each hiring entity shall retain for three years records that document compliance with SMC 14.34, including, but not limited to, records of pre-contract disclosures pursuant to SMC 14.34.050, records of timely payment pursuant to SMC 14.34.055, and records of payment disclosures pursuant to SMC 14.34.060.

SHRR 220-160 Enforcement

1. **In general.** Practice and procedure for enforcement of this ordinance (SMC 14.34) are determined by the Seattle Office of Labor Standards Rules: Practice and Procedure for Labor Standards Enforcement, (SHRR) Chapter 140.

SHRR 220-170 Remedies

1. **In general.** Where the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records, the Director may assess unpaid compensation in favor of the aggrieved party.
2. **Remedy for non-production of records or impracticable records.** If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records, or where a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Office of Labor Standards may assess an amount for unpaid compensation in an amount of (1) the total contract value; (2) a daily equivalent of the contract value (e.g. contract value divided by the number of days of performance); or, if (1) or (2) are not readily determinable, (3) \$140 per aggrieved party for each day that each violation occurred or continued. This amount shall be increased annually to reflect the rate of inflation, as defined by SMC 14.34.020, and calculated to the nearest cent on January 1 of each year. The Office of Labor Standards shall determine the amounts and file a schedule of such amounts with the City Clerk.