

To: Members of the City Council  
From: Steven Marchese, Director, Office of Labor Standards (OLS)  
Subject: Resolution 31863: Report on Misclassification  
Date: May 18, 2022

On February 19, 2019, City Council passed Resolution 31863 calling on the Office of Labor Standards (OLS) to develop policy, outreach, and enforcement solutions for the problem of misclassification of employees as independent contractors, and to work with the Labor Standards Advisory Commission (LSAC). OLS submits this report on its work that is responsive to Resolution 31863 with a focus on labor standards that provide protections to independent contractors.

## **A. Policy Development**

### 1. Independent Contractor Protections

Since January 2022, OLS has held five stakeholder meetings to discuss administrative rules for the Independent Contractor Protections Ordinance (ICP), which goes into effect on September 1, 2022. OLS aims to publish final rules and model notices during the summer of 2022, prior to the ICP taking effect.

### 2. Domestic Workers Ordinance

OLS is working closely with the Domestic Workers Coalition to develop a proposal on portable paid time off (PTO) for domestic workers by the first quarter of 2023 pursuant to Resolution 32028. These proposals would advance these rights for domestic workers who are employees as well as independent contractors. The OLS team is also overseeing the one-time allocation of \$400,000 to advance the recommendations of the Domestic Workers Standards Board (DWSB). To that end, OLS contracted with an equity consultant, Equity & Results, to facilitate workshops during the first quarter of 2022 with DWSB and community members to develop strategic recommendations for spending the one-time allocation in 2022. In late March, DWSB approved the budget recommendations that emerged from those workshops and is currently working with OLS on implementation. The funding recommendations include strategies to strengthen access to language services, engage employers and hiring entities in new ways, innovate on enforcement of existing laws, and support policy research to expand safety net protections for domestic workers, and establish grants and micro-grants for peer-to-peer organizing via an RFP process expected to conclude in Quarter 3 of 2022.

### 3. Pay Up Legislation

City Council is currently considering “Pay Up” legislation to provide a minimum pay guarantee, transportation protections, and flexibility provisions to gig workers that hiring entities classify as independent contractors. City Council is also contemplating additional legislation around deactivation protections for gig workers, background checks, and other measures. OLS staff have

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provided technical feedback on City Council’s proposals, attended multiple stakeholder and policy discussions, and shared insights from the transportation network company (TNC) ordinances that address similar protections for TNC drivers. Once passed, OLS anticipates a significant work stream to stand up implementation of the Pay Up legislation, including rulemaking, policy guidance, outreach and education, and enforcement. OLS continues to work with City Council to refine OLS’ budget and staffing needs in light of this legislation.

#### 4. Statewide Transportation Network Company Legislation (HB 2076) Impacts

In March 2022, the Washington State legislature passed House Bill (HB) 2076, which provides certain rights to TNC drivers in Washington and will be enforced by the Washington State Department of Labor and Industries (DLI). The TNCs classify these drivers as independent contractors. OLS provided extensive technical and policy impact assessments of HB 2076 to the Office of Intergovernmental Relations throughout the legislative session. HB 2076 preempts the City of Seattle from regulating TNC labor standards and enforcing its Transportation Network Company Minimum Compensation Ordinance and Transportation Network Company Deactivation Rights Ordinance after January 1, 2023. As a result, OLS is beginning its process to winddown TNC labor standards programming. OLS is working to support DLI in its transition to enforcement under HB 2076, including through sharing best practices that OLS has learned through policymaking, outreach, and enforcement in this area.

#### 5. Transportation Network Companies

As part of its continued implementation of the TNC Minimum Compensation Ordinance, OLS instituted an affirmative data production model requiring the TNCs to provide data on every trip drivers make. This has allowed OLS to analyze the policy’s impact and proactively ensure that drivers are paid correctly on every trip.

The TNC Deactivation Rights Ordinance (DRO) went into effect on July 1, 2021. OLS entered into an agreement with Washington Arbitration & Mediation Service to maintain roster of arbitrators to hear deactivation appeals cases. OLS developed materials and worked with community partners to train a panel of arbitrators on the DRO in addition to implicit bias and trauma-informed sexual assault trainings.

State law will preempt OLS from enforcing both TNC ordinances after January 1, 2023.

#### 6. 2023 State Legislative Agenda

If a bill is introduced in the State legislature to simplify or otherwise address the legal test for misclassification status, OLS will provide analysis and recommendations to the Office of Intergovernmental Relations regarding whether the City should support the bill.

## **B. Outreach and Education**

### **1. Transportation Network Company Ordinances**

The OLS team continued its efforts to educate workers and businesses about rights and obligations under the TNC Minimum Compensation Ordinance. Specifically, the OLS team has:

- Created TNC Minimum Compensation Notice of Rights for 2022 in English and posted it to the OLS website; and
- Created 2022 TNC Driver Protections summary to highlight TNC Minimum Compensation, TNC DRO, and Gig Worker Paid Sick and Safe Time (GW PSST) in seven languages (Amharic, Simplified Chinese, Traditional Chinese, Oromo, Somali, Spanish, and Tigrigna) and posted materials to the OLS website.

Since the TNC DRO went into effect on July 1, 2021, the OLS team has managed its contract with Drivers Union to deliver Driver Resolution Center (DRC) services to TNC drivers. DRC services include providing drivers with culturally competent outreach and education about their rights, and free representation in deactivation disputes. Under the contract, the Drivers Union has:

- Completed 3,530 driver intakes;
- Represented 708 drivers in deactivation cases;
- Assisted 224 drivers with informal resolution of deactivation cases;
- Created four types of Know Your Rights materials to educate TNC drivers about the DRO, GW PSST, TNC Minimum Compensation, and DRC support services;
- Subcontracted with King's Dream Consulting and Northwest Passage Consulting to launch social media and multi-lingual digital advertising campaigns in seven languages (Amharic, Arabic, Chinese, English, Punjabi, Somali, and Vietnamese) that link to Drivers Union's in-language web pages that cover the Know Your Rights materials content. In March 2022 alone, there were more than 6,000 visits to Drivers Union's in-language web pages; and
- Translated Know Your Rights materials in seven languages (Amharic, Arabic, English, Russian, Somali, Spanish, and Vietnamese), and made materials available to drivers.

### **2. Domestic Workers Ordinance**

The Office of Labor Standards team has continued its work on implementation of the Domestic Workers Ordinance (DWO) through direct efforts and partnerships with community organizations that have trusted relationships with domestic workers and hiring entities. As part of its outreach and education efforts, the OLS team has:

- Collaborated with community partners on a series of recorded community conversations to promote online;
- Celebrated the 2-year anniversary of the DWO going into effect by promoting outreach materials and recorded community conversations;
- Collaborated with a community partner on Facebook live Q&A sessions;

- Awarded DWO contracts to three community organizations for outreach to hiring entities and domestic workers; and
- Translated the DWO Notice of Rights and Wage Information into Vietnamese, Somali, and Korean.

The OLS team also identified projects to advance the Domestic Worker Standards Board's (DWSB) outreach recommendations with the one-time budget allocation for work relating to the DWO. OLS presented DWSB members with an outreach and engagement strategy and DWSB approved funding of the following work:

- Pilot DWO social media awareness campaign to increase awareness among hiring entities through sponsored ads and promoted content;
- Host paid listening sessions to gather feedback from domestic workers, while providing them with information about their rights under the DWO and other Seattle labor standards;
- Contract with BIPOC consultant (The Vida Agency) for communications and marketing services;
- Contract with Utopia Media & Entertainment to work on the audio production of a multilingual (12 languages) voicemail recording for OLS;
- Collaboration with members of the DWSB and community partners to evaluate the DWO and DWSB pages on the OLS website; and
- Broadcasting agreement with El Rey 1360 AM (Spanish Radio) to increase awareness of the DWO and 2022 minimum wage through advertisements and live interviews.

### 3. Independent Contractor Protections

The Office of Labor Standards team has started educating workers and businesses about the new Independent Contractor Protections (ICP) Ordinance that will become effective on September 1, 2022. Specifically, OLS has:

- Created an ICP Fact Sheet with translations available in 12 languages (Amharic, Simplified Chinese, English, Japanese, Khmer, Korean, Punjabi, Somali, Spanish, Tagalog, Tigrigna, and Vietnamese) and posted materials to the OLS website; and
- Begun implementing an outreach and engagement plan to increase general awareness of ICP to independent contractors, hiring entities, and the public prior to the ordinance's effective date.

### 4. Labor Standards Community Outreach and Education Fund

Through the Labor Standards Community Outreach and Education Fund (COEF), OLS provides funds to community-based organizations to develop awareness and understanding of worker rights provided by Seattle's labor standards. The OLS team trained COEF partner organizations on Gig Worker Protection Ordinances, TNC Ordinances, and the Domestic Workers Ordinance. The OLS team also implemented two pilot projects to facilitate coordination between "cluster groups" of COEF partners that provide services to domestic workers or to workers in the residential construction industry, an industry with high rates of misclassification. Through the Domestic

Workers Industry Cluster Group, COEF partners that work with domestic workers aimed to identify ways to collaborate on outreach and education to domestic workers. Similarly, the Residential Construction Industry Cluster Group brought together organizations that work with Latino residential construction workers to share expertise and work together on outreach efforts. Both cluster groups met six times with meetings facilitated by an OLS Engagement Specialist.

### C. Enforcement

#### 1. Enforcement Summary

Between January 1, 2021 to the present, OLS has received 978 worker inquiries overall (726 in 2021 and 252 in 2022 to date). Of those, 12 related to misclassification (9 in 2021 and 3 in 2022 to date), 149 pertained to issues under the gig worker protection ordinances (105 in 2021 and 44 in 2022 to date), 50 pertained to issues under the TNC ordinances (46 in 2021 and 4 in 2022 to date), and 3 pertained to domestic workers (3 in 2021 and none in 2022 to date), as shown in the tables below:

| Year                   | 2021 | 2022 | Total |
|------------------------|------|------|-------|
| Total Worker Inquiries | 726  | 252  | 978   |

| Year                        | 2021 | 2022 | Total |
|-----------------------------|------|------|-------|
| Misclassification Inquiries | 9    | 3    | 12    |

| Year   | 2021       | 2022      | Total      |
|--|------------|-----------|------------|
| Gig Worker Premium Pay Inquiries             | 28         | 20        | 48         |
| Gig Worker Paid Sick and Safe Time Inquiries | 77         | 24        | 101        |
| TNC Minimum Compensation Inquiries           | 46         | 4         | 50         |
| DWO Inquiries                                | 3          | 0         | 3          |
| <b>Total</b>                                 | <b>154</b> | <b>48</b> | <b>202</b> |

Additionally, OLS has initiated informal compliance inquiries and filed formal investigations under the Premium Pay for Gig Workers (GW PP), PSST for Gig Workers (GW PSST), TNC Minimum Compensation (TNC MC), and Domestic Worker (DWO) Ordinances. Since implementation, 8 GWPP matters, 9 GW PSST matters, 1 TNC MC matter, and 2 DWO matters have been initiated, as shown in the table below:

| Year Initiated | GW PP Matters | GW PSST Matters | TNC MC Matters | DWO Matters | Total     |
|----------------|---------------|-----------------|----------------|-------------|-----------|
| 2020           | 4             | 3               | 0              | 0           | 7         |
| 2021           | 4             | 4               | 0              | 2           | 10        |
| 2022           | 0             | 2               | 1              | 0           | 3         |
| <b>Total</b>   | <b>8</b>      | <b>9</b>        | <b>1</b>       | <b>2</b>    | <b>20</b> |

From implementation through the present, OLS has resolved 5 GW PP matters, 5 GW PSST matters, and 1 TNC MC matter and has assessed the following remedies for affected workers:

| <b>Ordinance</b> | <b>Total Assessed</b> | <b># of Workers</b> |
|------------------|-----------------------|---------------------|
| GW PP            | \$ 473,905.02         | 6,046               |
| GW PSST          | \$4,595,649.26        | 19,962              |
| TNC MC           | \$2,668.63            | 1                   |
| <b>Total</b>     | <b>\$5,072,222.91</b> | <b>26,009</b>       |

## 2. Gig Workers and Transportation Network Companies

In July 2021, OLS reached its second largest settlement agreement under the GW PSST ordinance with Postmates. Postmates settled allegations that the company failed to provide PSST to its workers, among other things, for a total financial remedy of \$949,815.49 to 1,646 affected workers and \$22,260.40 to the City of Seattle. OLS issued a press release about the GW PSST settlement with Postmates in August. The case resolution received national and local media attention, including [Newsweek](#), [U.S. News & World Report](#), [The Seattle Times](#), The Olympian, Eater Seattle, Law360, and [Geekwire](#), among others.

OLS also reached settlements for individual workers under the GW PSST Ordinance with DoorDash, GW PP with GoPuff, and TNC Minimum Compensation Ordinances with Uber, resulting in \$5,281.71 going to three affected workers.

## 3. Domestic Workers Ordinance

OLS opened two cases under the DWO in 2021, including a directed investigation and a complaint-based investigation. The directed investigation is ongoing and involves coordinated efforts with other jurisdictions regarding the same hiring entity. The complaint-based investigation involves a live-in domestic worker and should be resolved this quarter.

A member of the enforcement team regularly attended board meetings for the Domestic Worker Standards Board (DWSB) as well as conducted trainings to foster relationships with OLS community partners and domestic workers. The enforcement team member also participated in a series of budget equity sessions with the DWSB facilitated by Equity & Results to understand how OLS can assist in implementation of one-time allocated funds to the DWSB from the City Council. The enforcement team member will continue working with the DWSB and OLS partners to increase awareness of OLS enforcement actions and to build trust within community for domestic workers.

## 4. All Staff Misclassification Training

In September 2021, an assistant city attorney conducted a presentation for the entire OLS staff on issues relating to the misclassification of workers as independent contractors when they should be treated as employees. The training focused on the relevant legal standards and guidance under

local, state, and federal law and best practices for approaching investigations involving worker misclassification.

**D. Labor Standards Advisory Commission (LSAC)**

LSAC has conducted outreach to the Mayor's Office and Council on recommended labor standards priorities. These priorities include policies that protect independent contractors who fall outside of traditional labor standards protections, such as domestic workers, TNC drivers, and gig workers. LSAC also invited Working Washington to present on its Pay Up campaign.