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Requirements for Engaging Musicians as Independent Contractors

The Washington Employment Security Department (ESD) has recently been auditing Seattle restaurants, resorts, hotels, and nightclubs and claiming that, under Washington law, their musicians (such as solo artists, pianists, and DJs) are employees of the company unless they have a *written* independent contractor agreement. Nightclubs, hotels, restaurants, and other businesses that hire musicians to perform on their premises should prepare for the possibility of similar audits.

Washington's Requirements

Washington law [provides](#) that services performed by a musician or entertainer do not constitute "employment" if the musician or entertainer is under a written contract with a business that purchases their services. Accordingly, a business that wishes to engage a musician as an independent contractor must enter into a written independent contractor agreement with the musician; otherwise, the musician will be considered an employee.

The law applies to entities that provide music or entertainment for members or patrons incidental to their principal business activity, such as nightclubs, hotels, resorts, and restaurants. The law does not apply to music and entertainment businesses whose principal activity is music or entertainment.

In addition to the written contract requirement, the law also sets forth the following conditions in order for the musician or entertainer to not be considered an employee:

- The contract must be for a specific engagement or engagements.
- The musician or entertainer must not be regularly or continuously employed by the business.
- The musician or entertainer must not perform other duties for the business.
- The contract must designate the leader of the music or entertainment group.

Seattle employers engaging musicians as independent contractors should also be aware of the requirements from Seattle's new [Independent Contractor Protections Ordinance](#) (the Ordinance). The Ordinance requires certain employers to provide independent contractors with disclosures before entering a contract and at the time of payment. More information about the Ordinance can be found [here](#).

Similar Statutes in Other States

A handful of other states have statutes with similar language requiring written contracts for musicians to be considered independent contractors, including Florida, New York, and Montana.

- [Florida](#). Musical and theatrical performers who perform at a licensed premise are not considered employees if a *written contract* evidencing an independent contractor relationship is entered into before commencement of the entertainment.
- [New York](#). Musicians who perform at establishments such as hotels, restaurants, and nightclubs are considered employees unless "by *written contract*, such musician or person is stipulated to be an employee of another employer covered by this chapter."
- [Montana](#). Musicians performing under a *written contract* are not covered by the Workers' Compensation Act unless the employer elects coverage.

Takeaways for Employers

Washington employers, including restaurants, nightclubs, hotels, and resorts, are strongly encouraged to assess their relationships with musicians they have engaged to perform on their premises. These employers should make certain that they have written contracts with such musicians, and Seattle employers in particular should ensure compliance with the Ordinance's disclosure requirements.

As for employers in Florida, New York, and Montana, it is unclear whether the governing bodies in these states will enforce their statutes in a similar manner to ESD. However, in the event these states follow Washington's lead, employers in these states are encouraged to ensure they have written contracts with musicians and other entertainers they hire to perform on their premises.

Employers who are concerned about meeting any of these requirements are encouraged to seek advice from trusted counsel.

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