

NYC Passes Wage Protections for Gig Workers

On October 27, the NYC Council unanimously passed a bill aimed at protecting freelancers against wage theft, which the mayor is expected to sign into law. The first-of-its-kind measure would require a written contract for freelance work valued at \$800 or more, itemizing the services to be provided, their value, and payment terms. Companies that use gig workers will want to familiarize themselves with these new requirements to ensure compliance.

Background

Buoyed by technological advances, the way Americans work is changing. An increasingly mobile workforce allows more and more work to be done from anywhere and outside a traditional employment arrangement. Popular among millennials, short-term freelance or on-demand jobs offer a degree of independence and flexibility that more conventional business models do not.

The on-demand economy currently enables an estimated one in three Americans — and as many as 1.3 million workers in NYC — to freelance or work on their own terms, and allows companies like Uber and Lyft to service clients by using so-called “gig” workers instead of hiring employees. That number is expected to grow to 40% of the nation’s workforce by 2020. As the gig economy continues to take hold, this business model is becoming an attractive alternative and a go-to strategy for many companies, particularly startups.



Freelance Isn’t Free Act

On October 27, the NYC Council in a 51 to 0 vote passed the nation’s first law protecting freelance workers against wage theft — the [Freelance Isn’t Free Act](#) — which Mayor Bill de Blasio is expected to sign into law. The Act would amend the administrative code of the city of New York to impose new requirements on private employers that hire a freelancer for work worth at least \$800, and would provide substantial penalties for noncompliance.

Broadly defined, the term “freelance worker” includes “any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation.” Carve-outs exist for certain sales representatives, lawyers and licensed medical professionals.

Under the Act, a hiring party that retains a freelance worker to provide services worth at least \$800 (including multiple projects over a 120-day period) must enter into a written contract that satisfies the following minimum requirements. The contract must include: (1) the names and mailing addresses of both parties; (2) itemized services to be provided by the contractor, the value of those services, and the rate and method of compensation; and (3) the date on which payment for the contracted compensation will be made or how the date will be determined. The Act requires the freelancer to be paid for services within 30 days after the work is completed if the contract is silent.

While existing federal, state and local wage-and-hour laws provide broad protections for employees, they do not extend to independent workers or the self-employed. Like statutes grounded in the employment relationship, the new law protects freelancers against wage theft, and bars retaliating or discriminating against them for exercising or attempting to exercise any right guaranteed under it. It further bars hiring parties from taking any other action to penalize or deter freelancers from exercising such rights, including actions that may affect future work opportunities.

Comment. The Act does not address misclassification of workers as independent contractors — rather than employees. To minimize potential liability, companies that use freelancers should take the opportunity to evaluate whether workers are properly classified under applicable federal and state tax, labor and employment laws.

Compliance Assistance and Enforcement

The city's Office of Labor Policy and Standards (OLPS), a unit of the Department of Consumer Affairs, will establish a program that provides information and assistance with respect to the new law. OLPS is directed to make model contracts available on its website for public use. Templates are to be provided in English and in the six languages most commonly spoken by limited English proficient individuals in the city as determined by the department of city planning.

OLPS will also enforce the new law. Previously relegated to pursuing payment in small-claims court (which caps judgments at \$5,000), a freelance worker who is not timely paid would be able to file either an administrative complaint with the OLPS or a civil action against the hiring party. If the freelancer elects to file an administrative complaint, OLPS will pursue the matter with the hiring party. Failure to respond to a complaint will create a rebuttable presumption of violation. A successful freelancer may recover the contract value of the services provided, double damages, attorneys' fees, statutory damages, and injunctive relief, depending on the nature of the claim. Where the city has reasonable cause to believe that a hiring party is engaged in a pattern or practice of violations, it may bring a civil action on behalf of the city and seek up to \$25,000 in penalties.

Effective Date

If, as expected, Mayor de Blasio signs the Act into law, it will take effect 180 days thereafter. The new requirements would apply to contracts entered into on or after the effective date.

Office of Labor Policy and Standards

The NYC Office of Labor Policy and Standards was created after the mayor signed a Council bill ([Intro. 743-A](#)) late last year. Among other things, OLPS also enforces NYC's Earned Sick Time Act and Commuter Benefits Law. (For more information on those laws, see our [March 18](#) and [August 23, 2016](#) issues of *FYI*.)

In Closing

Employers who use, or are considering using, independent contractors or freelancers in NYC should familiarize themselves with the new legislation to ensure compliance when it takes effect.

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