

NYC Freelancer Law Poised to Take Effect

Late last year, New York Mayor Bill de Blasio signed into law the Freelance Isn't Free Act. This first-of-its-kind law in the nation creates new rights and extends certain wage protections to freelancers and independent contractors in the city. The law is slated to take effect on May 15, and applies to contracts entered into on or after that date. Companies that use freelance workers will want to familiarize themselves with the new requirements to ensure compliance.

Background

Wage and hour laws, as most employment-related laws, have traditionally entitled employees – but not independent contractors – to statutory protections. A growing number of workers – estimated at more than 1.3 million in NYC alone – freelance or work on their own terms, allowing companies to service clients by using so-called “gig” workers rather than hiring employees.

Last November, New York City Mayor Bill de Blasio signed into law the so-called [Freelance Isn't Free Act](#) (Local Law 140 of 2016), establishing certain employee-like protections for freelancers against wage theft. This first-of-its-kind measure has far reaching implications for any business that uses freelancers in NYC, regardless of where it is headquartered. It amends Title 10 of the NYC Administrative Code to impose payment and contract requirements on private – but not public – employers that hire freelance workers and provides substantial penalties for noncompliance. (See our [November 3, 2016](#) *For Your Information*.) The local law is scheduled to take effect on May 15.



New Protections

Among other things, the new law requires employers to provide a written contract for freelance work valued at \$800 or more in a 120-day period (including single and multiple projects) that itemizes the services to be provided, their value, and applicable payment terms. The law gives freelancers the right to timely payment and freedom from retaliation for seeking to enforce those rights.

For these purposes, the term “freelance worker” is broadly defined to include “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.” The term does not include lawyers, licensed medical professionals, certain sales representatives, or workers retained by governmental entities.

The written contract for services between a hiring party and a freelance worker must include at a minimum:

- The name and mailing address of both parties
- An itemization of all services to be provided, their value, and the rate and method of compensation
- The date on which the contracted compensation is due or how the date will be determined

Businesses will have to pay freelancers in accordance with the contract terms. Once a freelancer has started to perform services, the hiring party cannot require the worker to accept lesser compensation as a condition of timely payment. If the contract does not specify a payment date or how it will be determined, payment will be due no later than 30 days after completion of the contracted-for services.

Enforcement

The new law provides several methods for freelance workers to enforce these rights. A freelancer may either file an administrative complaint with the Department of Consumer Affairs’ Office of Labor Policy & Standards (OLPS) or sue the hiring party for violation. Because the new law provides that it supplements but does “not diminish or replace, any other basis of liability or requirement established by statute or common law,” a freelancer would also be able to bring other common law or legal claims against the hiring party.

The law creates procedures for freelancers to file complaints with OLPS within two years after the alleged violation. Alternatively, a civil action may be brought within two or six years after the claimed violation (depending on the nature of the claim). A freelance worker who is not provided a written contract will be entitled to statutory damages of \$250. A freelancer who prevails on a claim for unlawful payment practices or retaliation may recover the contract value of the services, double damages for nonpayment or late payment, attorney’s fees and costs, injunctive relief, statutory damages, and “other such remedies as may be appropriate.” The law also allows the city to bring a suit against a hiring party engaged in a pattern or practice of violations and seek up to \$25,000 in civil penalties in addition to other damages listed above.

The law requires OLPS to establish a “navigation program” to provide information and assistance about freelancers’ rights, along with public outreach. In addition, OLPS is charged with providing model contracts in English and in the six other languages most commonly spoken in the city, as well as information about classifying workers as employees or independent contractors. While this information is not yet available, employers should continue to monitor the OLPS [website](#) for postings of contracts as well as other guidance that may be provided prior to the new law’s effective date.

In Closing

Businesses that use independent contractors will want to familiarize themselves with these new requirements to ensure compliance.

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