

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### Illinois enacts broad protections for freelance workers

On August 4, Illinois became the first state in the nation to enact a freelance worker protection law. The Illinois Freelance Worker Protection Act will require businesses that retain the services of freelance workers to provide written contracts and timely compensate them for their services beginning July 1, 2024.

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#### Background

A first-of-its-kind measure, New York City's so-called Freelance Isn't Free Act (Local Law 140 of 2016) gave freelancer workers broad employee-like protections against wage theft. The local law imposed contract and timely payment requirements on employers that use freelancers in NYC. (See our [May 4, 2017 FYI](#).) Similar protections for freelancers are now in place in other large cities including Seattle, Columbus, Los Angeles and Minneapolis.

#### Illinois enacts freelance worker protections

On August 4, Illinois became the first state to enact a freelance worker protection law. With limited exceptions, the Illinois Freelance Worker Protection Act (FWPA) will require businesses that retain the services of "freelance workers" to provide written contracts and compensate them for their services in a timely manner beginning July 1, 2024. The FWPA will apply only to contracts taking effect after that date.

#### Who is covered

The FWPA defines "freelance worker" as a "natural person" or individual who is hired or retained as an independent contractor to provide products or services in Illinois or for an entity located in Illinois in exchange for \$500 or more (either in a single contract or when aggregated with all contracts within a 120-day period). Expressly excluded from statutory coverage are: workers performing construction services; workers performing services as an employee for a contractor who engages in

construction; workers defined as employees under the Illinois Wage Payment and Collection Act; and foreign, federal, state or local government entities (including school districts).

### Written contracts

The FWPA requires the freelance worker and the contracting entity to enter into a written contract, a copy of which must be provided either physically or electronically to the freelancer. At a minimum, the contract must include:

- The name and contact information of both parties (including the contracting entity's mailing address);
- An itemized list of all products and services to be provided by the freelance worker, the value of the products and services to be provided, and the rate and method of compensation;
- The date on which payment is due or the mechanism by which the date will be determined, which must be no later than 30 days after the products or services are provided; and
- The date by which the freelance worker must submit a list of products and services rendered if required by the contracting entity to timely compensate the freelance worker.

The Illinois Department of Labor (IDOL) is charged with providing model contracts for public use on its website in English and in the eight other languages most commonly spoken in the state. Contracting entities must retain contracts for freelancer services for at least two years, and produce them to the IDOL upon request.

### Compensation

The FWPA requires the hiring party to pay freelance workers the contracted compensation amount on or before the date it's due under the terms of the contract. In the absence of a due date, freelancers must be paid no later than 30 days after completion of the contractual services. The contracting entity cannot require as a condition of timely payment that freelance workers accept less than the contracted compensation amount once they have begun to prepare the product or perform services.

### Nondiscrimination

The FWPA contains a broad nondiscrimination provision that prohibits a contracting entity from taking any action to penalize freelancers for — or to deter freelancers from — exercising their rights under the FWPA. Such actions may include threats, intimidation, discipline, harassment, discrimination, or retaliation.

### Enforcement

Under the FWPA, a freelance worker has two years after final compensation was due to file an administrative complaint with the IDOL or to file a civil action. Notably, the law allows freelance workers to sue on their behalf or on behalf of a class of other similarly situated freelancers.

Depending on the nature of the FWPA violation, freelance workers will be entitled to recover:

- Double the amount of the underpayment, injunctive relief, attorney’s fees and costs for untimely payments;
- Statutory damages of \$500 or the value of the underlying contract, whichever is greater, in addition to other remedies for violations of the written contract requirement; and
- The value of the underlying contract for each violation, along with costs and attorney’s fees, for violations of the nondiscrimination provisions.

The Illinois Attorney General may also initiate or intervene in a civil action upon belief that the hiring entity is engaged in a pattern and practice of FWPA violations. In such cases, civil penalties of up to \$5,000 for each violation or \$10,000 for each repeat violation within a five-year period may be imposed, along with monetary damages to the state, restitution, and equitable relief (including any permanent or preliminary injunction and temporary restraining order).

## In closing

While Illinois has enacted the first statewide freelance worker protection law in the nation, similar measures have been introduced in the New York, Kansas and Missouri legislatures in the last year. Employers that use freelance workers should begin to consider what, if any, changes to their staffing models, contracting and payment processes may be needed to ensure compliance.

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