

ATTENTION EMPLOYERS: NEW YORK CITY'S "FREELANCE ISN'T FREE ACT" TAKES EFFECT

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Labor, Employment & Workplace Safety Alert

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Businesses, organizations, and individuals alike in New York City should be aware that on May 15, 2017, the City's "Freelance Isn't Free Act" (the "Act") went into effect. The Act significantly broadens safeguards for freelance workers, by, among other things, requiring written contracts in certain situations, prohibiting retaliation against them, and establishing complaint mechanisms and remedies for violations.

The Act applies to any person (except for the government) who engages a freelance worker to offer services. A freelance worker is defined as a natural person (or an organization composed of no more than one natural person) hired or retained as an independent contractor to offer services in exchange for compensation. The Act exempts certain sales representatives, lawyers, and medical professionals from its protections.

MANDATORY WRITTEN CONTRACT

When a person covered by the Act hires a freelance worker for services valued at \$800 or more, the parties must have a written contract that includes at least the following:

- The parties' names and mailing addresses;
- An itemization of all services the freelance worker is to provide;
- The value of such services;
- The rate and method of compensation; and
- The date compensation must be made to the freelance worker, or how such a date will be set.

The value threshold triggering the contract requirement is met where the services have a one-time value of \$800 or more, or where contracts for services between the same parties within the past 120 days amount to \$800 or more.

TIMING OF PAYMENTS

The freelance worker must be paid on or before the date specified in the contract, or if the date or mechanism of payment is not provided for in the agreement, no more than 30 days after he or she completes the bargained for services. After a freelance worker has started to provide the services, the hiring party may not demand less than the contracted amount in order to make payment on time.

PROTECTIONS AND REMEDIES

Freelance workers whose rights under the Act have been violated can file a complaint with the director of the NYC Office of Labor Policy and Standards or in a court of competent jurisdiction. A hiring party's failure to respond to the director's written notice of the Complaint creates a rebuttable presumption that the hiring party violated the law. The City can also bring a lawsuit against a hiring party for engaging in a pattern or practice of violating the Act, and for this type of action, a civil penalty of up to \$25,000 may be imposed. Depending on the particular provision violated, a hiring party may be subject to damages, statutory damages, double damages, and/or injunctive relief.

Hiring parties, including employers, should ensure that written contracts are in place — at least wherever the threshold value for services has been met — and that such contracts have the information required under the Act and are clearly drafted. Hiring parties should also be mindful of the Act's requirements on the timeliness of payments.

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