

New NYC Law Imposes Additional Requirements on Companies Contracting With Freelancers

Effective May 15, 2017, the “Freelance Isn’t Free Act” delineates additional duties for businesses contracting with freelance workers on or after May 15, 2017, in New York City.

The law:

- requires the parties to enter into a written contract,
- requires businesses to pay freelancers timely and in full,
- prohibits retaliation, and
- creates penalties for violations, including statutory damages, double damages, injunctive relief, and attorney’s fees.

Previously, New York State law allowed for actions to recover breach of contract damages for failure to pay a freelance worker, whereas the new law establishes and enhances legal remedies available to freelance workers in New York City.

Right to Written Contract

The Act requires a written contract for freelance services valued at \$800 or more.

Failure to create a written contract would entitle the freelance worker to damages of

\$250 if the freelancer requested and was denied a written contract, and the hiring party otherwise paid on time and in full, and damages equal to the value of the contract if the hiring party also violated other provisions of the law.

Right to be Paid Timely and In Full

Currently, failure to pay in full is a breach of contract and an aggrieved freelance worker may sue in state court to recover the actual damages suffered. The Act requires the hiring party to pay the freelance worker on time and in full within 30 days of completion of the work.

In the event of a violation, the aggrieved freelance worker will be entitled to collect double damages, attorney’s fees, and court costs.

Right to be Free of Retaliation

The Act prohibits retaliation against a freelance worker for exercising the rights created by the local law. Damages for retaliation equal the full value of the contract.

Enforcement

To enforce their rights, aggrieved freelancers may file a civil action in state court. Where there is a pattern or practice of violations, the Corporation Counsel may bring action to

enjoin bad actors and collect penalties of not more than \$25,000 on behalf of the City.

The Office of Labor Standards is charged with receiving complaints, creating a navigation program that provides information and assistance (including information about classifying persons as employees or independent contractors), and gathering data and reporting on the effectiveness of the law.

Definitions

The Act defines a “freelance worker” as 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.

Freelance worker does not include:

1. any person who, pursuant to the contract at issue, is a sales representative (per NY Labor Law Sec. 191-a);
2. any person engaged in the practice of law pursuant to the contract at issue and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia and who is not under any order of any court suspending, enjoining, restraining, disbarring, or

otherwise restricting such person in the practice of law; and

3. any person who is a licensed medical professional.

“Hiring party” is defined as any person who retains a freelance worker to provide any service, other than (a) the United States government; (b) the state of New York; (c) the City; (d) other local government, municipality or county; or (e) any foreign government.

The Act is added to the New York City Administrative Code (ADC), Title 20, Chapter 10. The New York City Department of Consumer Affairs, Office of Labor Policy and Standards, has published a Freelance Isn’t Free Act webpage for reference.

Suggested Employer Actions

New York City employers should analyze their protocols to ensure that all contracts with freelance workers entered into or after May 15, 2017, and valued at \$800 or more are in writing. They should also review and modify their payroll processes to ensure that freelancers are paid no later than 30 days after the completion of the work.

Other Council Activity

New York City employers should note the recent enactment of an important employment law limiting a prospective employer’s ability to obtain and use salary history information

from job applicants. This law will go into effect on October 31, 2017.

New York employers also should monitor progress of a significant employment legislation involving predictable scheduling and related issues that is before the Council. The Council has held a hearing on these proposals and is expected to move forward with the legislation shortly.

While not employment-based, other proposed legislation relevant to New York employers would increase the minimum threshold for application of the Commercial Rent Tax, which applies to certain businesses below 96th Street in Manhattan.

Please contact Jackson Lewis with any questions regarding these developments, compliance, or government relations.

For More Information Contact:

Timothy Domanick, Esq.
Associate
Jackson Lewis P.C.
58 South Service Road, Suite 250
Melville, NY 11747
Email: Timothy.Domanick@Jacksonlewis.com
Phone: (631) 247-4630

This article is provided for informational purposes only. It is not intended as legal advice nor does it create an attorney/client relationship between Jackson Lewis P.C. and any readers. Readers should consult counsel of their own choosing to discuss how these matters relate to their individual circumstances.