

EMPLOYMENT LAW UPDATE

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On October 27, 2016, the New York City Council unanimously passed Int 1017-2015, also known as the "Freelance Isn't Free Act," which amends Title 10 of the New York City Administrative Code. The Act will go into effect May 15, 2017. The New York City Office of Labor Standards, as a part of the New York City Department of Consumer Affairs (DCA), will enforce the Act.

The Freelance Isn't Free Act is considered the first of its kind. It will protect freelance workers, also known as independent contractors, from wage theft. A freelance worker is "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 Act requires hiring parties to have a written contract with a freelance worker for a project, or multiple projects over a 120-day period, that adds up to a value of \$800 or more. The written contract may be as simple as an e-mail, but must include the following information: (1) the name and mailing address of the hiring party and the freelance worker; (2) itemized list of the services to be provided; (3) the value of those services; (4) rate and method of payment for the compensation; and (5) the payment date or the mechanism that will determine the payment date. If the contract is silent regarding the payment date, the hiring party will be required to pay the freelance worker 30 days after services have been completed. In addition, once the freelance worker has begun working, the hiring party may not require the freelance worker to take less than the agreed amount as a condition of timely payment. Furthermore, except as provided by other laws, any contract provision that waives a freelance worker's rights under this Act will be considered void as against public policy. Moreover, the Act contains an anti-retaliation clause that protects freelance workers from retaliation (e.g. threats, intimidation, harassment, discipline, discrimination, or denial of work) for attempting to and/or exercising their rights under this law.

The Act permits the freelance worker to make a complaint to the DCA, bring the claim as a civil action, or go to another agency. The freelance worker must file an administrative complaint with the City within two years after the violation of the Act, or bring a civil action against the hiring party within two or six years (depending on the claim being alleged).

If the complaint is brought to the DCA, the Office will send the complaint to the hiring party, who must then respond and explain their failure to pay or provide proof of full payment, within 20 days. If there is no response, there is a presumption, in court, that the hiring party breached their contract with the freelance worker. This would then allow the worker to go to court in order to obtain the damages outlined in the Act.

If the freelance worker wins in court, the Act provides for various forms of damages. First, if the worker wins on the failure to provide a contract for work valued \$800 or more, they will be able to obtain statutory damages equal to \$250. Second, if the worker is not provided payment, they will be able to collect statutory damages equal to the value of their contract. Third, if there were unlawful payment practices, they will be able to obtain double damages and may be awarded injunctive relief. Fourth, if the worker is retaliated against, they will be entitled to statutory damages equal to the value of the contract, in addition to other damages. Successful plaintiffs are entitled to an award of reasonable attorney's fees and costs.

The Act also provides for the New York City Corporate Counsel to bring a civil action against hiring parties who are considered to have a pattern and practice of violating the Act. The civil action can provide for civil penalties of up to \$25,000 for being a repeat offender.

In addition, the Act requires DCA to create a navigation program, including providing examples of contracts in approximately six languages (including English), information on when a worker would be considered an independent contractor or employee, as well as court resources. The DCA is also required to collect data on complaints made and report on the effectiveness of the law within a year of its enactment and every five years thereafter.

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