

New York State Provides New Protections to Independent Contractors

The Bottom Line

- Employers in New York State that engage independent contractors should review their contractor agreements to ensure compliance with the Freelance Isn't Free Act, which takes effect on May 20, 2024.
- Any agreement with an independent contractor must clearly state the amount and timing of compensation, among other required information.
- Violations of the Act can lead to significant remedies, including double damages and attorneys' fees.

Independent contractors in New York State will soon have expanded protections under the New York Labor Law. On May 20, 2024, the [Freelance Isn't Free Act](#) takes effect and imposes new requirements for written agreements with most independent contractors in the State.

The Act is similar in many ways to [New York City's Freelance Isn't Free Act](#).

Contractors Who are Covered by the Law

Under the Act, a "freelance worker" is any individual or organization made up of one person, whether or not incorporated or using a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for payment. A single contract or multiple contracts in the preceding 120 days valued at \$800 or more will trigger the Act's requirements.

Sales representatives, persons engaged in the practice of law, licensed medical professionals, and construction contractors fall outside the definition of "freelance worker" and are not covered by the Act.

Written Contract Requirements

When a hiring party engages a freelance worker, the parties are required to enter into a written contract and the hiring

party must provide a physical or electronic copy of the contract to the individual.

The contract must include, at a minimum, the following details:

- The name and mailing address of the hiring party and freelance worker;
- An itemization of all services that will be provided by the freelance worker, the value of these services and the rate and method of compensation;
- The date on which the hiring party must pay the freelancer or “the mechanism by which such date will be determined;” and
- The date by which the freelance worker must submit a list of services provided to meet any of the hiring party’s internal processing deadlines so that compensation is paid within the time frame established in the contract.

If the contract between the hiring party and the freelance worker does not specify timing for payment or a mechanism for determining the payment date, the Act imposes a 30-day deadline for payment.

Once work has begun under the contract, a hiring party may not reduce the rate of compensation that was agreed upon.

The Act states that model contracts will be available on the New York Department of Labor’s website in English and several other languages.

Hiring parties are required to retain contracts for at least six years and make them available to the New York Labor Commissioner upon request.

Remedies and Other Protections for Contractors

The Act prohibits any retaliatory action by the hiring party that penalizes or is reasonably likely to deter a freelance worker from exercising their rights under the Act.

In the event of a violation, a freelance worker or their representative may file a complaint with the Labor Commissioner. The Labor Commissioner has the authority, among other powers, to investigate complaints and determine appropriate remedies. If the hiring party cannot produce adequate records or provide a written contract, the hiring party can be exposed to penalties and will also bear the burden of proving that the freelancer was paid in accordance with the Act.

Freelance workers may also file legal claims in court and the Act imposes different remedies and statutes of limitations depending on the nature of the violation.

For violations related to the hiring party's failure to pay compensation due under the contract, which has a six-year statute of limitations, freelancers can recover double damages, injunctive relief, reasonable attorneys' fees and other remedies.

Violations of the anti-retaliation provisions can be brought within six years as well and a freelancer may recover statutory damages "equal to the value of the underlying contract" for each violation that occurred. These damages, in addition to other available remedies, can also be recovered when a freelancer prevails on a claim under both the Act and one or more other provisions of the Labor Law.

If the hiring party fails to comply with the written contract requirements, there is a two-year statute of limitations and statutory damages of \$250 can be awarded.

The Attorney General is also empowered to bring a civil action on behalf of the State where there is reasonable cause to believe that the hiring party engaged in a pattern or practice of violating the Act.

Contractor vs. Employee Classification

Significantly, the Act states that its provisions should not be construed as providing a determination about the legal classification of any freelancer as an employee or independent contractor. Thus, employers and other hiring parties continue to be responsible for ensuring that any decision to classify a worker as an independent contractor and pay them on a 1099 basis complies with all applicable legal requirements.

For More Information

Please contact the attorney listed below or the Davis+Gilbert attorney with whom you have regular contact.

Shira Franco

Partner

212 468 4839

sfranco@dglaw.com