

New York City Enacts First-of-Its-Kind Law to Protect Freelance Workers

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By Susan Gross Sholinsky, Nancy L. Gunzenhauser, and Alexandra Bruno Carlo

On November 16, 2016, New York City Mayor Bill de Blasio signed [Int. No. 1017-C](#), known as the Freelance Isn't Free Act ("Act"), which establishes protections for the estimated 1.3 million independent workers in New York City. There have been some changes to the language of the Act since [it was introduced](#) on January 28, 2016. Now that it has been signed, the Act goes into effect on May 15, 2017.

The Act governs individuals working as a "freelance worker," which term is defined 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." Under the Act, any person who retains a freelance worker to provide any service where the contract between them has a value of \$800¹ or more must reduce the contract to writing. The \$800 threshold is reached whenever the combined value of all the contracts for services between the same hiring party and freelance worker within the 120-day period immediately preceding the contract equals or exceeds \$800.

Each party to a written contract must keep a copy of it. The contract must include, at a minimum, the following information:

- the name and address of both the hiring party and the freelance worker,
- an itemized list of the services that will be provided and the value of those services,
- the rate and method of compensation, and

¹ The original language of the Act listed the value at \$200.

- the date on which payment is due or the mechanism by which such date will be determined.

If the date of payment is not indicated and the contract does not specify a mechanism by which such date will be determined, the freelance worker must be compensated within 30 days of the completion of services. As a further protection, once services are commenced, the Act prohibits a hiring party from requiring freelance workers to receive less money as a condition of being paid in a timely manner.

A hiring party is also prohibited from threatening, intimidating, disciplining, harassing, denying a work opportunity, or discriminating against a freelance worker who exercises his or her rights under the Act.

Freelance workers can bring administrative or legal claims against a hiring party that violates the Act. Specifically, an aggrieved freelance worker may file a complaint with the New York City Office of Labor Standards (“OLS”) or initiate a claim in civil court within two years of the alleged violation.² The Act contemplates several types of claims and penalties:

- A freelance worker who prevails on a claim based on a hiring party’s failure to execute a contract or failure to include all the terms required in the contract will be awarded \$250 in damages. If he or she prevails on this claim and any additional claims for violations of the Act, the freelance worker will be awarded statutory damages equaling the value of the contract.
- A freelance worker who prevails on a claim based on unlawful payment practices, such as failing to pay the freelance worker or making late payments, is entitled to an award of double damages, injunctive relief, and such other remedies as may be appropriate.
- A hiring party that is found to engage in a pattern or practice of violating the Act may face a civil penalty of up to \$25,000.

The director of the OLS will provide model contracts on the OLS website for use by the general public and make available other information, including, but not limited to, general court information and information about procedures under the Act, and general information about classifying persons as employees or independent contractors.

² On November 30, 2015, [Int. 0743-2015](#) was signed, creating the OLS. According to Mayor de Blasio, the OLS, which sits within the Department of Consumer Affairs, “will ensure rules, regulations, and laws designed to improving working conditions are enforced properly, and that workers and businesses know and understand those laws.” In addition to enforcing the Act, the OLS will take over the enforcement of New York City’s Earned Sick Time Act.

What Employers Should Do Now

In anticipation of the May 15, 2017, effective date of the Act, New York City employers should do the following:

- Ensure that contracts entered into with freelance workers (or existing contracts that are renewed) with a value of \$800 or more contain the terms required by the Act.
- Train human resources personnel and supervisors regarding the Act's requirements and prohibitions.
- Review your designations of individuals hired as freelance workers (as opposed to employees), since misclassification can lead to even more substantial penalties than those provided under the Act.

For more information about this Advisory, please contact:

Susan Gross Sholinsky
New York
212-351-4789
sgross@ebglaw.com

Nancy L. Gunzenhauser
New York
212-351-3758
ngunzenhauser@ebglaw.com

Alexandra Bruno Carlo
New York
212-351-3702
acarlo@ebglaw.com

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