

CLIENT ALERT

New York City Passes Nation's First Law Protecting Freelance Workers From Wage Theft

NOVEMBER 3, 2016

On October 27, 2016, the New York City (NYC) Council unanimously passed a first of its kind bill, known as the “Freelance Isn't Free Act” (Act), aimed at protecting freelance workers from wage theft. The Act provides significant changes for NYC entities utilizing independent contractors, including requiring written contracts for projects with payment of \$800 or more, establishing certain payment practices as unlawful, and imposing substantial penalties for failure to comply. If NYC Mayor Bill de Blasio signs the bill as expected, it will take effect 180 days after signature. The Act will apply prospectively—to contracts entered into on or after the effective date. A summary of the significant provisions of the Act follows below.

Written Agreements

The Act requires that whenever a hiring entity engages a “freelance worker” for \$800 or more in services, the parties must execute a written agreement prior to beginning the work. “Freelance worker” 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.” It excludes sales representatives, licensed lawyers, and medical providers. The Act also excludes state, local, and federal governments from being considered hiring parties. With respect to meeting the \$800 compensation threshold, it can be met either based on the particular contract for freelance services, or based on the aggregation of a single contract with all other contracts for services between the same hiring party and freelance worker in the immediately preceding 120 days.

The written agreement must include the following details:

- Name and mailing address of both the hiring party and the freelance worker;
- Itemization of all services to be provided;
- Value of services to be provided;
- Rate and method of payment of the freelancer's compensation;
- Date on which payment shall occur, or the mechanism by which such date will be determined; and

- Any other terms that the NYC Office of Labor Standards (OLS) designates by rule.

The Act directs the OLS to provide model contracts on its website in English and six other languages. The Act also establishes a “navigation program,” aimed at providing freelancers the tools necessary to seek redress under the Act.

Payment Practices

In addition, the Act creates “unlawful payment practices” with respect to freelance workers. A freelancer’s earned compensation must be paid on or before the date such payment is due as specified in the parties’ agreement or, if the agreement does not specify, within 30 days following completion of services. Moreover, once the freelancer starts performing the services, the hiring party cannot require, as a condition of timely payment, that the freelancer accept less than the contractually specified compensation.

Retaliation

The Act bars retaliation—including threats, intimidation, discipline, harassment, denying a work opportunity, and discrimination—against contractors who exercise or attempt to exercise their rights under the Act.

Legal Recourse and Damages

Under the Act, aggrieved freelancers are able to seek recourse by either filing an administrative complaint with OLS, or a civil action in court. Freelancers cannot bring multiple claims about the same complaint to different governmental agencies. If the freelancer has already filed a complaint with any other governmental agency alleging a breach of the contract between the freelancer and the hiring party, the OLS cannot entertain the freelancer’s complaint unless the earlier administrative complaint has been dismissed or withdrawn without prejudice to future claims. However, the freelancer can assert other claims. The Act provides that the rights under the Act supplement, and do not diminish or replace, any other grounds for liability or legal requirements.

Statutory damages of \$250 are available for failing to provide a written agreement (but only if the freelancer can show that a written contract was requested from the hiring party before work began). If, however, the hiring party failed to provide a written agreement **and** also violated another provision of the Act, statutory damages equal to the value of the contract, plus any damages for the additional violation are available. For unlawful payment practices, double damages and injunctive relief may be awarded. For retaliation, in addition to other damages, a freelancer is entitled to statutory damages equal to the value of the contract. A successful plaintiff is also entitled to an award of reasonable attorneys’ fees and costs.

Finally, the Act provides that the NYC corporation counsel may bring a civil action where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violating of the Act. The court may impose a civil penalty of up to \$25,000 for a pattern or practice finding.

Other Provisions

The Act specifies that it is not to be construed as providing a determination about the legal classification of any individual as an employee or independent contractor. Additionally, the Act precludes freelancers from contractually waiving their rights under the Act.

The Act also requires the OLS to issue a report after the first year that the Act has been in effect, and then every five years thereafter, outlining the following:

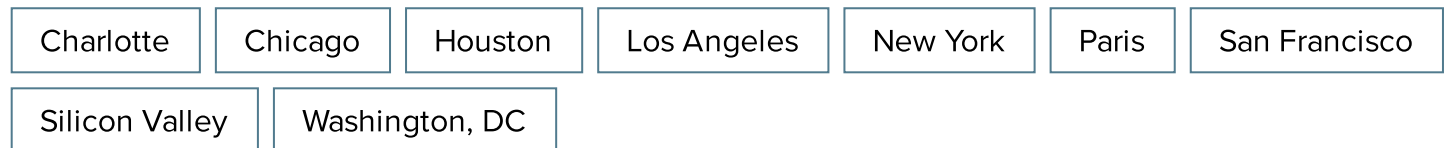
- The number of complaints received under the Act;

- The value of the contracts alleged to have been violated;
- The number of responses and non-responses received by the OLS;
- The proportion of surveys received from freelance workers indicating that the freelancers pursued their claims in court, and the proportion of surveys received from freelance workers indicating that they pursued their claims through an alternative dispute resolution process, as well as a summary of the outcomes of such cases; and
- Legislative recommendations for the Act, including consideration of whether certain occupations should be exempted from the scope of the definition of freelance worker.

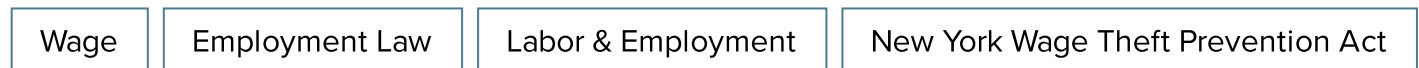
While the Act awaits the mayor’s signature, NYC businesses that utilize independent contractors should proactively review and update their independent contractor agreements, and/or consult with counsel to ensure that their agreements and payment practices are in compliance with the Act.

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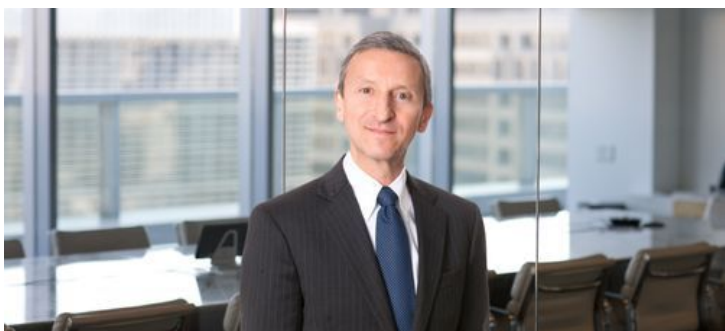
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