



## **FREELANCE ISN'T FREE ACT NEW YORK CITY ALERT**

*Enacted May 15, 2017*

A freelancer or independent contractor is a term for a person who is self-employed and not obligated to a particular employer on a long-term basis, often working for several employers at the same time. These workers are not employees, and are not eligible for employee benefits and protections. Historically, these workers have had very few labor protections, and the work world for them was very dog-eat-dog. However, in New York City, that has changed within the past year.

On May 15, 2017, the *Freelance Isn't Free Act*, which is aimed at protecting freelancers and independent contractors, went into effect. New York City is the home to a significant number of these workers, and the law is the first of its kind anywhere. The Act significantly broadens safeguards for freelancers by requiring written contracts in certain situations, prohibiting retaliation against them, and establishing complaint mechanisms and remedies for violations of the Act.

Here's what you need to know to make sure you don't run afoul of this law.

### **A Written Contract Is An Absolute Must**

When a person or company hires a freelancer covered by the Act for services worth \$800 or more in value, the parties must have a written contract that includes at the very least the following:

- The parties' names and mailing addresses;
- An itemized list of all of the services the freelancer is to provide;
- The value of the services to be provided;
- The compensation rate and method; and
- The date compensation must be made to the freelance worker, or how such a date will be set in the future.

The value threshold that mandates a contract is met when the services have a one-time value of \$800 or more, or where contracts for services between the same parties within the past 120 days amount to \$800 or more. Thus, if you hire the same freelancer several times over the course of 4 months, even if it's for different projects, if the combined value is \$800 within that period, you must have a written agreement that meets the minimum requirements above.

### **When Payment Must Be Made**

Payment to the freelancer must be made on or before the date specified in the contract. If the date or mechanism of payment is not specified (for example, if it's a project that doesn't have a hard deadline), payment must be made no more than 30 days after the freelancer completed the contracted for services. Further, once a freelance worker has started to provide services, the hiring party may not make a demand that it pay less than the contracted amount in order to make a timely payment. Basically, the hiring party can't extort the freelancer to accept a lower payment to get it on time.



## **What To Do**

Hiring parties, should ensure that written contracts are in place — certainly wherever the threshold value for services has been met — and that the contracts have the information required under the Act and are clearly drafted. Hiring parties should also be mindful of the Act’s requirements on the timeliness of payments. Hiring parties should consider contracts even when the amounts are anticipated to be under the threshold amount, especially if costs may potentially escalate.

While it may seem that the *Freelance Isn’t Free Act* creates more headaches and costs for hiring parties, in practice, it can protect you just as much as it protects the freelancers you hire. LOVE LAW FIRM is an advocate for contracts because the best business dispute is the one that doesn’t take place. Clear contracting thwarts a number of such misunderstandings.

## **Covered by the Act**

- Freelancers hired or retained in New York City
- Freelance work performed in New York City
- If the hiring party has significant operations in New York City

## **Not Covered by the Act**

- Freelance workers hired as an employee
- Freelance workers who agree to work for no pay
- Certain sales representatives
- Attorneys providing legal services who are members in good standing of a state bar
- Licensed medical professionals
- Freelancers hired by government entities

## **Penalties For Not Complying**

- Failure to enter into an agreement
  - And other violations of law – Freelancer may be awarded entire value of agreement
  - And no other violations of law – Freelancer may be awarded \$250
- Nonpayment or underpayment of the contract
  - Not on due pay of contract as specified –Freelancer may be awarded double damages, injunctive relief, and any other appropriate remedy
  - Not paid within 30 days of work completion (if contract doesn’t specify payment date) – Freelancer may be awarded double damages, injunctive relief, and any other appropriate remedy
- Retaliation against a freelancer – Freelancer may be awarded entire value of agreement for each act of retaliation
- Judges are able to award attorney’s fees and costs to freelancer for seeking to enforce
- And, if a judge finds repeated violations by a hiring party, a judge could impose additional penalties up to \$25,000, injunctive relief and other remedies



## **Next Steps**

If you need assistance putting a contract in place with a freelancer, contact us and we'll be glad to help. We can create a form contract for you to use with freelancers you hire, as well. Whatever you do, be sure to put your agreements in writing.

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