

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

AUGUST 28, 2024

New York Enacts Statewide “Freelance Isn’t Free” Legislation

On Nov. 22, 2023, Gov. Kathy Hochul signed into law the “Freelance Isn’t Free Act” (the Act or FIFA), which was amended on March 1, 2024. The Act is codified in Article 44-A of the New York General Business Law. Article 44-A of the General Business Law creates several protections for freelance workers retained as independent contractors. The Act is intended to ensure that freelance workers receive timely compensation for all services performed. The law goes into effect on Aug. 28, 2024.

The Act Applies to “Freelance Workers” and “Hiring Parties”

Subject to specified exceptions, the Act defines freelance workers as “any natural person or 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 an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days.” In short, a freelance worker is any individual hired to provide services of \$800 or more as part of a one-time transaction or over the course of several transactions with the same hiring party in the preceding 120 days.

Individuals engaged in the practice of law, licensed medical professionals, construction contractors, and sales representatives as defined by Section 191-a of the Labor Law, are excluded from the definition of freelance worker.

The Act broadly defines “hiring party” as “any person who retains a freelance worker to provide any service,” except local, state, and federal governments. Given the breadth of this definition most individuals and organizations that hire independent contractors to provide services will need to comply with the Act’s requirements.

The Act’s Primary Requirements

The Act imposes several requirements for hiring parties engaging freelance workers. As discussed in greater detail below, the main requirements pertain to written contracts, timely payment and anti-retaliation. The Act also creates an administrative complaint procedure for freelance workers whose rights have been violated as well as a private right of action.

Written Contract

Most significantly, the Act requires a hiring party that retains the services of a freelance worker to reduce the contract to writing. Written agreements must include:

- the name and mailing address of both parties;

- an itemization of all services to be provided by the freelance worker, the value of services to be provided, and the rate and method of compensation;
- the date on which payment by the hiring party is due or the mechanism by which the due date for payment will be determined; and
- the date by which the freelance worker must provide a list of services rendered under the contract in order to ensure timely payment.

The Act explicitly states that freelance workers and hiring parties may not waive the rights provided under the Act, and any contract provision attempting to do so shall be void and unenforceable.

A copy of the written contract must be furnished to the freelance worker (either physically or electronically) and must be retained by both parties. The hiring party must retain a copy of the contract for a minimum of six years. Though not explicitly stated, the Act suggests that the burden of preparing the written contract falls on the hiring party.

Upon request, hiring parties must also make their contracts with freelance workers available to the attorney general. The failure to produce a contract upon request carries significant consequences, including a presumption that the terms presented by the freelance worker are the agreed upon terms.

Model contracts will be made available on the Department of Labor's website.

Timely Payment

The Act requires that freelance workers be paid for their services in a timely manner. For purposes of the Act, this means that freelance workers must be paid on or before the date compensation is due under the terms of the contract; or if the contract does not state when payment is due, payment must be made within 30 days of completion of the freelance workers' services.

Once a freelance worker has begun performing services under the contract, the hiring party may not require that the freelance worker accept less pay than agreed upon, as a condition of timely payment.

Discrimination and Retaliation Prohibited

The Act prohibits discrimination and retaliation against freelance workers who exercise or attempt to exercise their rights under the Act.

Avenues for Redress

The New York State Attorney General is authorized to investigate alleged violations of the Act and to provide appropriate remedies. The Attorney General may bring an action on behalf of the State to enjoin a hiring party from engaging in acts that violate FIFA and to obtain restitution for affected freelance workers.

The Act separately creates a private right of action for aggrieved freelance workers. Such claims may be brought in a court of competent jurisdiction for up to two or six years, depending on the nature of the alleged violation. Claims alleging violations of the written contract requirement may be brought for up to two years. Claims alleging violations of the timely payment requirement or the anti-discrimination and anti-retaliation provisions may be brought for up to six years.

Penalties

In the event that the Attorney General pursues such a civil action, civil penalties may be assessed against the hiring party in the amount of \$1,000 for a first violation, \$2,000 for a second violation and \$3,000 for a third or subsequent violation. Where there is evidence of a pattern or practice of violations under the Act, civil penalties may be imposed of not more than \$25,000.

The damages and penalties available to a plaintiff for violations of the Act depend on the nature of the violation. For example:

- a hiring party's failure to provide timely payment per the terms of a contract may result in double damages, injunctive relief, attorneys' fees and costs and other remedies as appropriate;
- a civil penalty of \$250 may be imposed as a result of a hiring party's failure to provide a freelance worker with a written contract; and
- a freelance worker who prevails on a retaliation claim under the Act, may be entitled to statutory damages equal to the value of the underlying contract for each violation, in addition to other damages.

New York City's Act

For those residing and doing business in New York City, the FIFA requirements noted above may not be entirely unfamiliar. The passage of FIFA follows New York City's enactment of similar legislation in 2017. In fact, FIFA is largely modeled after the New York City Freelance Isn't Free Act (the City Act), which also requires written contracts and timely payment.

The terms "freelance worker" and "hiring party" are defined similarly under FIFA and the City Act, except that the construction contractor exception is not recognized under the City Act's definition of freelance worker.

Similar to FIFA, the City Act requires a written contract whenever a hiring party retains the services of a freelance worker and the contract has a value of \$800 or more either by itself or when aggregated with all contracts for services between the same parties in the preceding 120 days. The terms that must be included in such a written contract are similar to the requirements under FIFA, except that the City Act does not require freelance workers to provide a list of services rendered under the contract in order to ensure timely payment.

Both FIFA and the City Act also contain identical provisions regarding: (i) the timeliness of payments to be made to freelance workers; and (ii) the prohibition of discrimination or retaliation against freelance workers who exercise their rights under applicable law. Like FIFA, the City Act creates a private right of action and uses the same two and six year limitation periods described above.

The key differences between FIFA and the City Act include FIFA's record retention requirement and its requirement that the hiring party furnish a copy of the written contract to the freelance worker. The City Act is silent on these matters. The City Act also establishes its own administrative complaint process, through which freelance workers may file complaints with the City's Office of Labor Policy & Standards.

Though FIFA and the City Act are largely coextensive, FIFA specifically states that it shall not be construed or interpreted to override or supplant any of the provisions of the City Act.

Conclusion

Individuals and organizations that engage the services of freelance workers should prepare to comply with the Freelance Isn't Free Act requirements by reviewing internal processes for engaging the services of freelance workers and independent contractors before the effective date of Aug. 28, 2024. Among other things, this includes preparing written contracts that comply with the requirements set forth above when contracting with covered freelance workers.

If you have any questions about the Freelance Isn't Free Act, or any of the information contained in this memo, please contact [Rebecca Kimura](#), [Hannah Redmond](#) or the Bond attorney with whom you are in regular contact.

