

New York State Legislature Approves Statutory Protections for Independent Contractors

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In 2016, [New York City enacted the Freelance Isn't Free Act](#), a [local law](#) establishing protections for certain freelance workers providing services for entities located in the City. Earlier this month, the New York State Legislature approved a bill providing similar protections to freelance workers throughout the state. The New York State [Freelance Isn't Free Act](#) (the "Act"), if signed by Governor Kathy Hochul, would take effect 180 days after signing and would apply to contracts entered into with certain independent contractors on or after that effective date.

The statewide Act—which substantively mirrors its City-specific predecessor in almost all materials respects—would amend the New York Labor Law to establish protections for covered freelance workers, including the right to receive a written contract, the right to be paid timely and in full, and the right to be free from retaliation. The Act defines covered "freelance workers" to include "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." However, certain sales representatives, attorneys, licensed medical professionals, and construction contractors—all as defined in the Act—would be exempt from the Act's coverage.

For covered freelance workers, the Act's protections would include the following:

- Contracts between a hiring party and a covered freelance worker must be reduced to writing and contain, at a minimum:
 - the name and mailing address of both the hiring party and the freelance worker;

- an itemization of all services to be provided by the freelance worker;
- the value of the services to be provided under the contract and the rate and method of compensation;
- the date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined; and
- the date by which the freelance worker must submit a list of services rendered under the contract to the hiring party in order to meet any of such hiring party's internal processing deadlines for purposes of timely compensation.

The Commissioner of Labor may promulgate rules requiring additional terms.

- The contracted compensation must be paid to the freelance worker either on or before the date such compensation is due under the terms of the contract, or if the contract is silent, not later than 30 days after the completion of services.
- A hiring party must keep a contract entered into with a freelance worker for a period of no less than six years and shall make such contract available to the Labor Commissioner upon request. A hiring party's failure to produce such contract, upon request of the Labor Commissioner, would give rise to a presumption that the contractual terms that the freelance worker has presented are the agreed upon terms.
- Hiring parties are prohibited from threatening, intimidating, disciplining, harassing, denying a work opportunity to, or discriminating against a freelance worker, or taking any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelancer worker from, exercising or attempting to exercise any right guaranteed under the new law, or from obtaining any future work opportunity because the freelance worker has done so.

A freelance worker alleging a violation of the Act would be able to either file an administrative complaint with the New York State Department of Labor or commence a civil action against the "hiring" party within two years (for claims of failure to have a written contract in place) or six years (for claims of failure to make a payment or retaliation) of the allegedly offending act(s). Unlike the City law, which requires administrative complaints to be filed within two years of the alleged violation(s), the statewide version of the law would not place a time limit on when administrative complaints may be filed.

A freelance worker who prevails on a claim under the Act would be able to recover—depending on the nature of the claim—the value of the underlying contract, double damages, reasonable attorney’s fees and costs, injunctive relief, statutory damages, and “other such remedies as may be appropriate.”

The Act would authorize the Commissioner of Labor to investigate disputes between freelance workers and the entities that engage them and to bring suit against such entities for statutory violations. The New York Attorney General would also be empowered to commence a civil action against an entity allegedly engaged in a pattern or practice of violations of the Act and seek up to \$25,000 in civil penalties.

As it is expected that Governor Hochul will sign the Act, employers that contract with freelancers and other independent contractors should begin to prepare for compliance, including by ensuring that any contracts will satisfy the Act’s requirements. For employers in New York City, the Act would not “override or supplant” any of the provisions of the City law and therefore such employers may be covered by both laws.

We will continue to report on this pending legislation and any further developments if and when it is enacted into law.

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