



## New Protections Created for New York City Freelance Workers

On November 16, 2016, New York City Mayor Bill de Blasio signed into law the Freelance Isn't Free Act (the "Act"), which creates new protections for freelance workers residing in New York City beginning on May 15, 2017. Freelancers often do not have the resources or clout to protect their interests prior to entering into a relationship with a client or to collect on unpaid invoices. The Act creates several obligations for clients and remedies for freelancers in an effort to help reduce the disparities between them.

Freelance workers are defined in the Act as a single natural person or a business entity with a single natural person as the sole owner. Freelancers of any kind are protected under the Act, except for sales representatives, licensed attorneys, and licensed medical professionals. The federal government, State of New York, City of New York, foreign governments, and any other any other local government, municipality or county are exempted from compliance with the Act as a hiring party.

### A Written Contract Must be Provided to the Freelancer

Any agreement between a client and a freelancer for which the freelancer would be compensated at least \$800 (or if the aggregate compensation under more than one agreement over the prior 120 days between the freelancer and the same client is at least \$800), then there must be a written contract between them. At the very least, the written agreement must contain:

1. The name and mailing address of both the hiring party and the freelance worker;
2. An itemization of all services to be provided by the freelance worker;
3. The value of the services to be provided pursuant to the contract;
4. The rate and method of compensation; and
5. The date on which the hiring party must pay to the freelancer the compensation under the contract or the mechanism by which the payment date will be determined.

Requiring a written contract between freelancers and their clients will strengthen any legal action for non-payment by the freelancer, as it is often difficult to prove damages without a signed agreement between the parties. This is especially true for freelancers who bring an action in small claims court, as they typically do not have the aid of an attorney.

### The Freelancer Must Receive Timely Payment

The client must provide payment to the freelancer in accordance with the terms of their written contract. If the contract does not specify a date that payment is due, or include a mechanism by which to determine the due date, the freelancer must receive his or her compensation within thirty days after completing the services under the agreement. In addition, the hiring party is also expressly prohibited from requiring a freelance worker to accept less than the amount owed under the contract in order to receive timely payment.

### Non-Payment of Freelancer Invoices Can Result in Double Damages

Failing to timely pay a freelancer covered by the Act can be very costly for a hiring party. If a freelancer successfully brings an action against a delinquent client under the Act, the freelancer will be entitled to double the amount owed plus his or her legal fees. Statutory damages of \$250 would also be



awarded to the freelancer if the hiring party failed to provide a written agreement, or the written agreement was not in compliance with the requirements of the Act.

### **Repeated Failure to Comply Can Result in Additional Monetary Penalties**

Freelancers may file a complaint with NYC's Office of Labor Standards within two years of a client's failure to comply with the Act. The hiring party will have the opportunity to respond, and if the freelancer still believes that he or she still has a claim, the freelancer will be referred by the Office of Labor Standards to resources to help him or her pursue it, including attorney databases.

In the case of hiring parties that repeatedly fail to comply with the Act, New York City's Corporation Counsel is authorized to initiate action against them, which may seek civil penalties of up to \$25,000.

### **Conclusion**

While the Act will only apply to contracts entered into on or after May 15, 2017, businesses that engage freelance service providers residing in New York City should begin reviewing their template contractor agreements now to ensure they are in compliance with the Act. Additional steps businesses should begin taking now include establishing organized contractor payment processes to avoid potential penalties and complaints as a result of late payment and, if they do not have a template agreement to provide to freelance workers, engaging an attorney to draft one that is compliant with the Act.