

ALERT

December 2016

Freelance Isn't Free Act: Companies Beware When Dealing With Freelance Workers

On November 16, 2016, Mayor Bill DeBlasio signed into law a bill to safeguard freelance workers against wage theft by hiring parties. The new law creates significant liability for companies that fail to provide formal written contracts to freelance workers for all but the smallest of engagements, and for failing to make full and timely payments under those contracts.

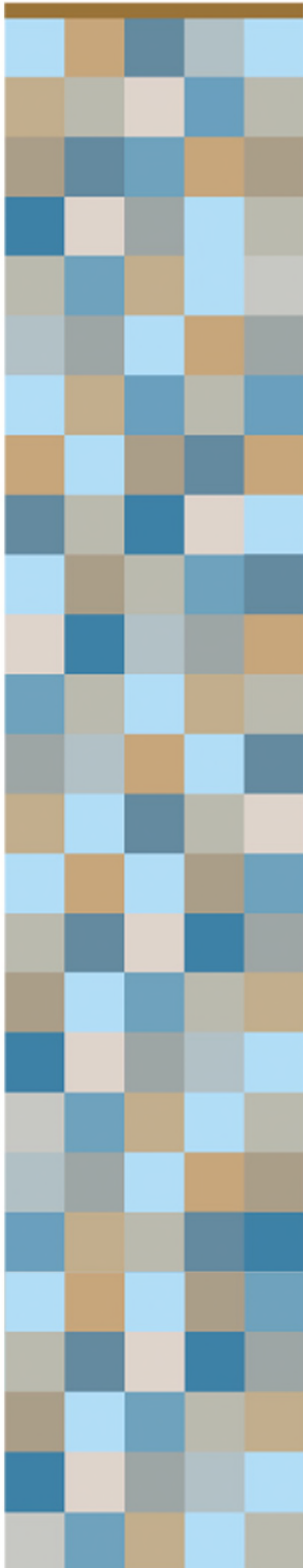
Commonly known as the Freelance Isn't Free Act (the "Act"), the new law establishes and enhances protections for independent contractors, providing them with certain rights, including a written contract, timely payment, and safeguards against retaliation. The law also contemplates specific legal recourse for aggrieved freelancers and sets forth available remedies, including double damages, injunctive relief and attorneys' fees. The new legislation, which has been described as "first-of-its kind" in the United States, becomes effective on May 15, 2017, and will apply to transactions with independent contractors after that date. Highlights of the new law include:

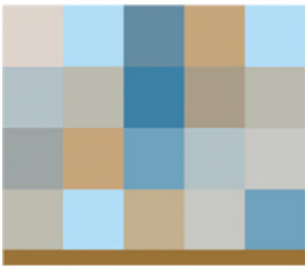
Covered Persons

The Act defines "freelance worker" as "any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name . . . hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation." The law expressly excludes from this definition certain lawyers, licensed health care professionals and/or sales representatives.

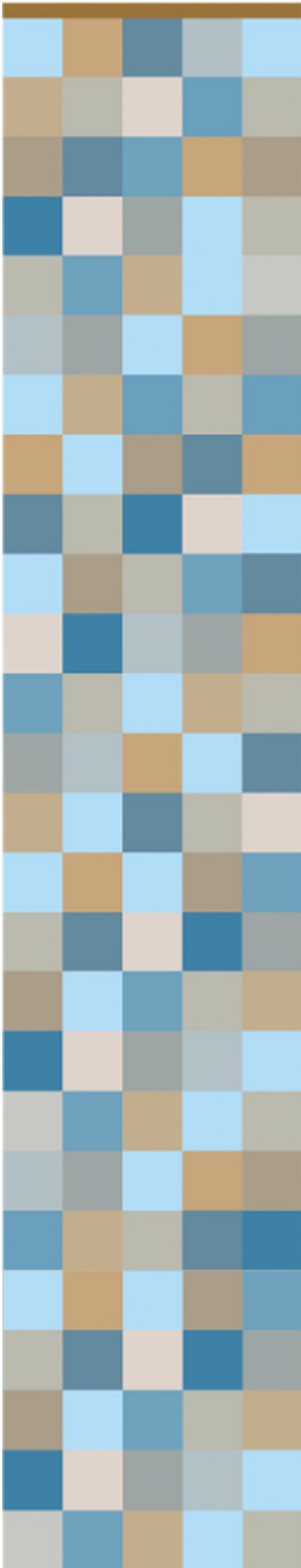
Written Contract:

The Act requires a hiring party to sign a freelance worker to a written agreement if the amount of the services provided is \$800 or more, either by itself or when aggregated with all services provided for the preceding 120 days. The contract must, among other things, itemize all services the freelance worker will provide, the value of the services, the rate and method of compensation, and the date on which the freelance worker must be paid, or the "mechanism" by which such date will be provided. The new measure further provides that the Director of the Office of Labor Standards may require additional terms. Significantly, the parties to such contracts may not waive their rights under the proposed law in such contracts, and any provision purporting to constitute such waiver will be deemed void as a violation of public policy.





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Prohibited Payment Practices

The Act also prohibits certain payment practices. If the contract fails to specify the date or mechanism for determining the date payment is due, payment must be provided “no later than 30 days after the completion of the freelance worker’s services under the contract.” Once a freelance worker has begun work under the contract, the hiring party may not “require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.”

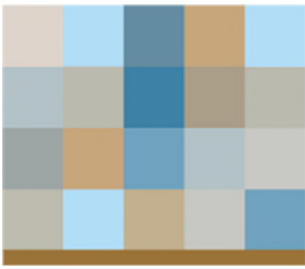
Retaliation

The new law also prohibits retaliation. Under the Act, retaliation includes threats, intimidation, harassment, denial of a work opportunity, or discrimination against a covered worker or any act “reasonably likely to deter a freelance[] worker from exercising or attempting to exercise any right guaranteed under this chapter, or from obtaining future work opportunity because the freelance worker has done so.”

Remedies

Aggrieved freelancers may bring a civil action in any court of competent jurisdiction for the damages contemplated by the proposed new law. Any action alleging a violation of section 20-928 (right to a written contract) must be brought within two (2) years after the alleged violation occurred. Any action alleging violation of sections 20-929 (payment practices) or 20-930 (retaliation) must be brought within six (6) years after the alleged violations. A freelancer who alleges only a violation of the right to a contract under section 20-928 must prove that he or she requested a written contract before the contracted work began. The damages available to a freelancer who prevails in a civil action are as follows:

- An award of reasonable attorney’s fees and costs in all instances.
- On a claim alleging a violation of section 20-928 (right to a written contract), statutory damages of \$250;
- On a claim alleging a violation of 20-928 and on one or more claims under other provisions of the new law, statutory damages equal to the value of the underlying contract for the violation of section 20-928 in addition to the remedies specified for other violations;
- On a claim alleging a violation of section 20-929 (unlawful payment practices), an award for double damages, injunctive relief and other such remedies as may be appropriate; and



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This Alert was written by James P. Chou and A. Jonathan Trafimow.

Mr. Chou, a partner with the firm, focuses his practice on complex commercial litigation including employment litigation and counseling.

Mr. Trafimow, a partner with the firm, chairs the firm's employment practice and co-chairs its cybersecurity practice. Mr. Trafimow represents employers in all areas of workplace discrimination, retaliation, harassment and civil rights claims, and class actions. He also routinely advises employers on compliance with local and federal employment laws and regulations.

Any matters raised in the Alert should be addressed to Mr. Chou or Mr. Trafimow. They can be reached at (212) 239-2000 or (516) 873-2000 respectively, or by email at jchou@morittthock.com or jtrafimow@morittthock.com.

- On a claim alleging a violation of section 20-930 (retaliation), statutory damages equal to the value of the underlying contract for each violation arising under such section.

In addition to the above relief, the bill provides that the New York City Office of the Corporation Counsel may commence an action within six (6) years after the alleged violation occurred if “reasonable cause exists to believe that a hiring party is engaged in a pattern or practice” of violating the law. The Corporation Counsel may request relief, including injunctive relief, civil penalties and any other appropriate relief. Further, the trier of fact may impose a civil penalty up to \$25,000 for a finding that a hiring party has engaged in a pattern or practice of violations. Civil penalties awarded to Corporation Counsel are to be paid into the City’s general fund.

Implications for Employers

The implications of the Freelance Isn’t Free Act on hiring parties subject to it are potentially profound, requiring formal, written contracts for work relationships that employers might previously have handled through so-called “handshake deals.” The Act clearly contemplates “pattern and practice” cases against companies that continue to routinely handle matters through verbal arrangements that now require formal contracts. Thus, understanding whether a hiring party may or may not be subject to the new law is critical. Indeed, a hiring party may mistakenly believe that it is not subject to the Act if the independent contractor operates as a limited liability company or under a trade name and does not disclose that it is in fact a single-individual operation.

MH&H can assist you in understanding and addressing these issues and implementing best practices to ensure that you comply with the new legislation.



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