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10 THINGS NEW YORK BUSINESSES NEED TO KNOW ABOUT NEW FREELANCER PROTECTION LAW

Insights
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A recently signed state law will soon protect New York freelance and contract workers from wage theft and delayed payments – and require businesses to put certain terms in writing. Businesses across the state will need to comply with the Freelance Isn't Free Act by May 20, so it's a good idea to start planning now. What are the 10 things your business needs to know about this impending new law – and what should you do to prepare?

The Basics

The new Freelance Isn't Free law protects freelance and contract workers from wage theft and aims to ensure they are paid in a timely manner. The state will also provide additional support to aggrieved freelancers to recoup unpaid wages.

1. Who is Protected?

The law applies to "freelance workers," defined as workers "hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than \$800." This amount can be reached either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding 120 days.

2. Terms Must Be Put in Writing

The centerpiece of the new law is a requirement for hiring parties to put the terms of a work engagement with a

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freelancer in a written contract. A physical or electronic copy must be provided to the freelancer, and certain information must be included in the contract:

- 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 pursuant to 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 a freelance worker must submit a list of services rendered under the contract to the hiring party in order to meet any internal processing deadlines of the hiring party for the purpose of compensation being timely rendered by the agreed upon date.

The law leaves open the possibility for the New York State Department of Labor (NYSDOL) to add additional items.

3. Certain Workers and B2B Not Included

The law does not apply to “sales representatives” as defined in state law (who already have protections under NYLL 191-b), attorneys, licensed medical professional, or any person who is a construction contractor as defined in the NYLL. Also, this law is not concerned with “business-to-business” relationships or other work engagements that do not involve an individual service provider.

4. Businesses Must Retain Contract

The hiring party must keep the contract for at least six years and make it available to the commissioner upon request. Failure to present the contract creates a presumption that the terms the freelance worker has presented are in fact the agreed upon terms.

5. No Retaliation Permitted

The law contains an anti-retaliation provision. Hiring parties are prohibited from threatening, intimidating, disciplining, harassing, denying a work opportunity to, or discriminating against a freelance worker. Businesses also cannot take any

other action that penalizes a freelance worker for, or is reasonably likely to deter them 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.

6. Cannot Negotiate a Pay Decrease

Once a freelance worker begins performing services, the law says that a hiring party cannot require, as a condition of timely payment, that the freelance worker accept less compensation than the amount contracted for.

7. Only Applies to Contracts Signed on or After May 20

Businesses need not to worry about existing contracts with freelancers. The new law will apply only to contracts entered into on or after May 20.

8. NYC Businesses Might Find This New Law Familiar

The new state law – New York Labor Law (NYLL) 191-d – is a near-identical copycat to a 2017 New York City law which goes by the same name. [You can read about NYC's law here.](#)

9. Violating the Law Will Have Consequences for Businesses

The law provides two mechanisms for enforcement. Freelance workers can file a complaint with the NYSDOL, which is empowered to investigate the complaint and take the following actions:

- Equitably remedy disputes between freelance workers and hiring parties;
- Take assignment of wage claims from freelance workers;
- File lawsuits to recover claims for unpaid wages for freelance workers;
- Enter into reciprocal agreements with authorities in other states to enforce protections of the law; and
- Join any number of wage claims against the same hiring party as necessary.

Additionally, freelance workers have a private right of action under the law to sue for damages. Claims for unpaid wages or retaliation have a six-year statute of limitations, while

claims for failure to provide a written contract have a two-year statute of limitations.

10. What is Recoverable Against Businesses?

The purpose of the law is to provide additional teeth to claims for unpaid wages by freelance workers. Previously, a freelance worker could only sue for breach of contract (or for quasi contractual claims), but the cost of doing so could often outweigh any amount they could hope to recover. Now, a successful freelance worker with a successful claim for non-payment of wages can recover the amount owed to them under the contract, double damages, injunctive relief, reasonable attorneys' fees and costs, and other such remedies as may be appropriate.

For retaliation claims, a successful freelance worker can recover statutory damages equal to the value of the underlying contract for each violation of the anti-retaliation provision. Moreover, a freelance worker who has a combined claim under the new law along with another NYLL claim for failure to pay wages can recover statutory damages equal to the value of the underlying contract.

Lastly, the New York Attorney General can bring a civil action on behalf of the state for alleged "pattern and practice" violations and seek injunctive relief, civil penalties up to \$25,000, and any other appropriate relief as determined by the courts.

What Businesses Should Do to Prepare

It is important to ensure that agreements with freelance workers are memorialized in writing by May 20. Make sure you draft agreements that comply with the law and best protect your organization in the case of disputes over payment or work.

It should be simple for a company to remit payment to a freelance worker when work is done timely and satisfactorily, but it is inevitable that disputes over the work provided will arise and get ensnared by the new law.

While the NYSDOL is tasked with developing model freelance contracts, it is likely that these model contracts will be overly worker friendly. With the law containing more specific prohibitions against non-payment or under-payment, and potentially additional damages, it is important

for companies to carefully draft agreements to ensure you are able to receive the services contracted for without running afoul of the law's new requirements.

Conclusion

We will continue to monitor developments and provide updates, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New York City](#) office.