



NYC Passes Wage Theft Protections For Freelancers; Sharing Economy Employers Take Notice

Insights

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On October 27, 2016, the New York City Council passed the Freelance Isn't Free Act, the nation's first wage theft protections for independent contractors. The Act creates harsh penalties for employers who delay or deny payments to freelancers and sets a strict time limit in which freelancers must be paid for their services.

Under the Act, whenever a hiring party retains the services of a freelance worker for work worth at least \$800, including multiple smaller projects aggregated over a 120 day period, the contract must be in writing. The written contract must include: (1) the name and mailing address of both the hiring party and the independent contractor; (2) an itemization of all services to be provided by the independent contractor, the value of the services to be provided and the rate and method of compensation; and (3) the date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined. If the contract does not specify when the freelancer will be paid, payment must be made within 30 days after the work is completed.

The Act also establishes a mechanism for the director of the Department of Consumer Affairs to enforce the labor rights of independent contractors who are not paid their agreed-upon compensation. An aggrieved freelance worker can file a complaint with the City, detailing the alleged violations. The City will then send a notice to the company accused of failing to pay its bills. Failure to respond to the complaint creates a rebuttable presumption that the hiring party committed the alleged violations. This means that burden will not be on the independent contractor to prove his or her case, but rather the hiring party will need to prove that they should not have to pay.

Freelancers who bring successful litigation to recover their compensation will be entitled to recover double damages as well as attorneys' fees. Hiring parties are also prohibited from retaliating against freelancers who seek to enforce their rights under the Act.

Mayor de Blasio is expected to sign the Act into law. The Act will take effect 180 days thereafter and will only apply to contracts entered into on or after the effective date.

Employers in New York City who use independent contractors should be aware of the new legislation. Additionally, although this Act does not speak to misclassification of workers as independent contractors, organizations who utilize freelance workers should always evaluate

whether such workers should be deemed as true independent contractors under federal and state law.

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