



NYC's "Freelance Isn't Free Act" Might End Up Impacting Businesses Across the Country

Insights

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Many workers are leaving the comfort and stability of traditional 9 to 5 jobs in favor of more flexible options. This paradigm shift may be new to the general public, but it certainly does not appear to be a passing fad. In fact, in 2016, almost 53 million Americans made a living working in the gig economy. To be clear: that's nearly 34% of the American workforce (wow!). Recent projections forecast that by 2020, nearly 43% of the American workforce will be comprised of freelancers. So why are workers opting for opportunities in the gig economy over more traditional employment options?

After reading surveys, and conducting independent research (yes, asking my Uber and Lyft drivers why he or she chooses to work in the gig economy counts!), certain responses come up frequently. Probably the most popular answer workers provide is that they enjoy the flexibility of being the "boss" of their world. Common complaints include that workers do not have consistent gigs, and they do not receive traditional employer benefits, i.e. health benefits, 401k options, pensions, etc. In addition, because these workers are not W-2 employees, they are not covered by many traditional employment discrimination laws.

Freelance Isn't Free Act

On May 15, 2017, the "Freelance Isn't Free Act" went into effect in New York City. This law was championed by a Brooklyn city council member. Among other things, the law provides additional employment rights to freelance workers. According to the Act, when a hiring party retains the services of a freelance worker, and the value of the contract is at least \$800, the contents of it must be reduced to writing. The Act provides that compensation should be provided to a freelance worker either: (1) on or before the date payment is due under the terms of the contract, or (2) no later than 30 days after the completion of the worker's services under the contract.

The Act also includes a provision prohibiting retaliation for "exercising or attempting to exercise any right guaranteed under this chapter, . . ." It allows a worker who is aggrieved to file a complaint within two years of the alleged violations. If a hiring party is found liable for violation of the Act, the trier of fact may impose a civil penalty of not more than \$25,000.00.

Are More Laws on the Horizon?

The Act is limited to New York City, but it is the first law of its kind across the country. Businesses need to pay attention because employee advocates across the country will likely be monitoring the

progress of this law. Of course, because the law is so new, it is not clear whether it will have the intended impact. However, if it is effective, we can be assured that employee advocates in other locations will push for stronger protections for workers in the gig economy. This could impact employer liability, which impacts legal spend and could have even broader reaching implications.