



NYC Gig Workers Earn Workplace Protections

Insights

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Gig workers in New York City recently gained a suite of workplace protections normally reserved for employees. The City Council amended its antidiscrimination laws in September to cover independent contractors, meaning that gig workers will soon have the right to pursue legal remedies against hiring entities that typically don't have to be concerned about claims from this segment of their workforce.

Beginning January 11, 2020, the New York City Human Rights Law (NYCHRL) will apply not just to employees but also to freelancers and independent contractors. The law is very broad, providing protections against discrimination because of race, color, creed, age, national origin, alienage or citizenship status, gender, gender identity, sexual orientation, disability, marital status, and partnership status. It also prohibits sexual harassment as part of the protections based on gender. Further, it provides protection based on unemployment status, arrest or conviction record, and status as a victim of domestic violence, stalking, and sex offenses. Finally, it prohibits retaliation and bias-related harassment, including cyberbullying. Those believing they are aggrieved can file complaints with the city's Commission on Human Rights and also pursue civil remedies in a court of law.

The broad wording of the amendment may also be read to give independent contractors the same protections as employees under the NYCHRL beyond prohibitions against discrimination, such as the Fair Chance Act (which, as discussed below, prohibits criminal background checks prior to a conditional offer employment), the Stop Credit Discrimination in Employment Act (which bans most pre-employment credit checks), and the laws mandating reasonable accommodations in connection with a disability, religious observance or practice obligations, pregnancy or child-birth related medical conditions, or status as a victim of domestic violence, sex offenses or stalking.

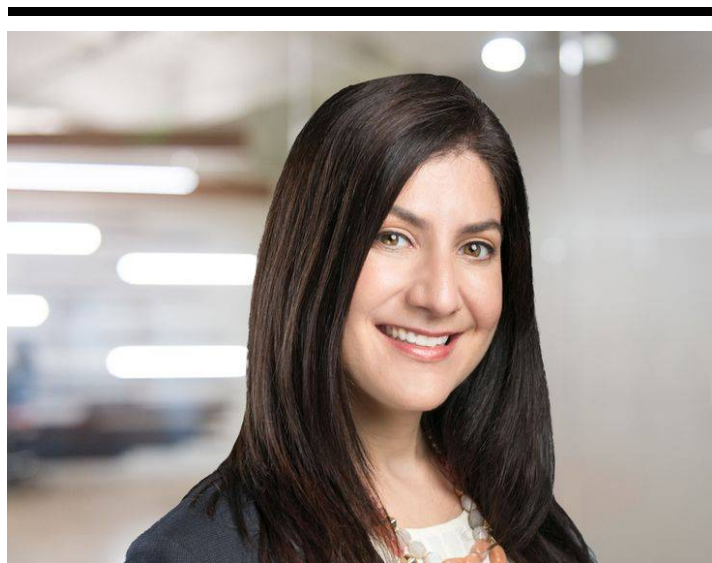
What's the practical impact of this development? For starters, it means that entities that hire independent contractors will need to be even more vigilant when it comes to ensuring the contractors work in a professional environment. This means taking into account written policies, reporting mechanisms, oversight, training, and other steps normally reserved for employers

It also means that hiring entities need to ensure that they follow the same protocols they use for potential employees when it comes to the past criminal history of potential contractors who might be retained. Not only does the NYCHRL prohibit companies from refusing to hire somebody just because of prior convictions, it requires you to walk through an eight-step analysis to assess the

because of prior convictions, it requires you to walk through an eight step analysis to assess the individualized risk a specific candidate might pose if you uncover a past criminal conviction during the hiring/retention process. As noted by [Alonzo Martinez in a recent Forbes article](#), New York Correction Law Article 23-A mandates that you consider: 1. the duties of the job, 2. the bearing of the person's conviction history on their ability to do the job, 3. the time elapsed since the conviction, 4. the candidate's age at the time of the offense, 5. the seriousness of the crime, 6. any evidence of rehabilitation provided by the candidate, and 7. the employer's legitimate interest to protect property or the public as well as 8. the state's policy to encourage the employment of persons with criminal rerecords.

And what does this development portend for the gig economy on a larger scale? It would not come as a surprise if additional jurisdictions across the country begin to develop similar portions of a workplace safety net that has gone missing for gig workers in 2020. We'll continue to monitor the landscape and report back as developments unfold.

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