

Client Alert

New York City Passes the First Wage Theft Protection Law in the Nation for Freelance Workers

October 31, 2016 – A new bill was passed last week by the New York City Council that is intended to protect the rights of freelance workers who are engaged to work in New York City.

The *Freelance Isn't Free Act*, amends the N.Y.C. Administrative Code and provides, among other things, that all freelancers have the right to receive a written contract memorializing the scope of services to be provided for jobs paying \$800 or more, and that all freelance workers shall be paid on time and in full pursuant to the terms of that written contract. If the contract is silent on payment terms, then the freelancer must be paid within 30 days after their services have been completed. The new law also provides freelance workers with the right to be free from retaliation by the hiring party, a protection afforded only to common law employees previously.

The *Freelance Isn't Free Act* also imposes severe penalties for violators of the law including statutory damages, double damages, injunctive relief and attorneys' fees. The bill, in essence, puts freelance workers on equal footing with employees who are protected under the New York Labor Law and Fair Labor Standards Act from wage and hour violations.

Freelance workers who believe that a violation of this new law has occurred have the option of filing an administrative complaint with the New York City Office of Labor Standards within two years after the alleged violation or bringing a civil action against the hiring party within two or six years depending on the particulars of the claim. In addition, New York City may commence its own civil action against a hiring party that is engaged in a pattern or practice of violating this new law and seek up to \$25,000 in civil penalties in addition to other statutory damages.

The *Freelance Isn't Free Act* will take effect 180 days after it is signed into law by the mayor and will apply only to contracts entered into after its effective date. Employers in New York City must be mindful of this new law, particularly those that rely heavily on the services of freelance workers and should seek legal advice in drafting appropriate contracts to safeguard against potential liability accordingly. Of course, the question of when and under what circumstances a service provider is properly characterized as a freelancer (independent

contractor) as opposed to a common law employee remains one requiring vigilance and, as necessary, proper counseling.

If you have any questions about this new law, or any other employment related issue, please contact:

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