

## Hiring Parties Beware: New York State's Freelance Isn't Free Act

On November 22, 2023, New York Governor Kathy Hochul signed into law the Freelance Isn't Free Act, which goes into effect in 180 days, on May 20, 2024 and applies to all freelancer and independent contractor arrangements entered into on or after such date. Pursuant to new codified Section 191-d of the New York Labor Law, the Freelance Isn't Free Act requires that all agreements between freelancers/independent contractors and hiring parties must be reduced to writing. For those who regularly practice within New York City, this new state law should be familiar as it is nearly identical to New York City's Freelance Isn't Free Act, which has been in effect since 2017.

Under the new state law, a freelance worker is defined as a person or single-member organization (regardless of incorporation status) hired or retained as an independent contractor to provide services in exchange for an amount greater than or equal to \$800 in a 120-day period, including for multiple projects within such a time period. The definition of freelance worker does not include sales representatives (as defined in New York Labor Law § 191-a), attorneys, licensed medical professionals, or construction contractors. Nor does the law apply to the hiring of freelancers by the government. It also does not apply to any contracting entity comprised of more than a single person – whether an owner or employee thereof – even if only one person within a larger entity deals directly with the hiring party.

When the law takes effect, all contracts between freelance workers and hiring parties must be reduced to writing. The freelance worker must be provided with a copy of the contract, either physically or electronically, and the hiring party must retain the contract for at least six years. The following must also be included in the contracts: the name and mailing address of both the freelance worker and the hiring party; an itemization of the services to be provided, the value of the services, and the rate and method of compensation; the date on which the hiring party must pay the compensation (or the mechanism by which such date will be determined); and the date by which the freelance worker must submit any lists of services rendered in order to receive the specified compensation. Any provision of a contract purporting to waive a freelancer's or independent contractor's rights under the Act will be found void as a matter of public policy.

The law also sets forth rules regarding freelancer pay frequency. Freelance workers must be compensated on or before the date when compensation is due under the terms of the contract, or, if the contract fails to properly specify the timing of compensation, no later than 30 days after the completion of the freelancer's services. After the freelancer's work has commenced, the hiring entity cannot require acceptance of reduced compensation as a condition of timely payment thereafter. The new law further prohibits retaliation against freelance workers who exercise or attempt to exercise their rights under the law. Examples of impermissible retaliatory conduct can include, but are not limited to, denial of future work opportunities, harassment, intimidation, and of course any reduction in compensation.

Freelancers or independent contractors or their representatives can file complaints with the Commissioner of Labor regarding any perceived violation of the law. In addition to having the discretion to investigate and attempt to resolve controversies, the Commissioner can also bring claims against hiring parties in Court on behalf of freelance workers to recover unpaid compensation.

Freelancers and independent contractors nonetheless have a private right of action to bring claims on their own against hiring parties alleging violations of the law. Claims alleging violations of the requirements regarding written contracts must be brought within two years and if a claim is solely predicated on allegations involving a deficient or non-existent written contract, a plaintiff must prove that they requested a written contract before the work began. A prevailing plaintiff in such

type of matters shall be awarded statutory damages of \$250. For claims alleging other violations of the law, such as nonpayment, underpayment, or retaliation, claims must be brought within six years. Plaintiffs who prevail on claims regarding nonpayment or underpayment of compensation can recover double damages and reasonable attorney's fees and costs. Successful retaliation claims could also result in the payment of the value of the contract for each violation.

Further, the New York State Attorney General's Office has the authority to bring claims where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violating the Freelance Isn't Free Act. Hiring parties could face stiff civil penalties of up to \$25,000 if found to have engaged in such an unlawful pattern or practice.

### **Practical Advice for Entities that Hire Freelancers/Independent Contractors**

Although many entities based in New York City are already familiar with these freelancer and independent contractor requirements, the enactment of the new state law is a good opportunity for all entities to review relationships with independent contractors and ensure that such arrangements are compliant. Additionally, entities that make use of freelancers' services should update any freelancer contract templates to ensure that they include all necessary information and do not contain any impermissible waiver language. Employers should also take this time to review payment practices in conjunction with those contracts to ensure that all workers, including freelancers, are being paid in accordance with those agreements and on a timely basis pursuant to the law.

If a list of rendered services is needed internally to manage the payment process to freelancers, written contracts should clearly dictate the requirements for such documentation and the timeframe for submission related thereto. Under no circumstances should a freelancer be advised to accept reduced pay in exchange for timely payment.

Hiring entities should also be mindful of the law's prohibition on retaliation. As in any business relationship, there may be times where disputes arise with freelancers and independent contractors over the performance of services and payment of compensation. To the extent a freelancer appears to be attempting to enforce rights under the Freelance Isn't Free Act, hiring entities should speak with their legal counsel to avoid taking actions that could be seen as retaliatory.

As soon as any freelance contract is executed, a copy should be sent to the freelancer and proof of transmission maintained in the hiring entity's records. Employers should also maintain copies of freelancer and independent contractor agreements, as well as documents reflecting the date and amount of compensation paid to those individuals over at least a six-year period.

Companies hiring freelancers and independent contractors should take these requirements seriously. Since the enactment of New York City's law, nearly 2,800 complaints have been filed by freelancers with the City's Department of Consumer and Worker Protection ("DCWP"). In July 2023, DCWP settled a lawsuit against L'Officiel USA, a fashion media company, for over \$275,000 after over 40 former freelancers, including a copy editor, graphic designer, videographers, photographers, and writers, alleged that the publication failed to pay them agreed-upon rates for their freelancer services. With the enactment of the Freelance Isn't Free Act, it is expected that even more complaints and lawsuits will be filed against hiring parties.

---

## Key Contacts

Our Labor & Employment Law team is available to help employers navigate the Freelance Isn't Free Act and compliance with this new statute, as well as provide other guidance regarding freelancers, independent contractors and all other employment-related matters.

**Jeffrey P. Englander***Partner & Co-Chair*

D 212.735.8720

[jenglander@morrisoncohen.com](mailto:jenglander@morrisoncohen.com)**John B. Fulfree***Senior Counsel*

D 212.735.8850

[jfulfree@morrisoncohen.com](mailto:jfulfree@morrisoncohen.com)**Alana Mildner Smolow***Associate*

D 212.735.8784

[amildner@morrisoncohen.com](mailto:amildner@morrisoncohen.com)**Keith A. Markel***Partner & Co-Chair*

D 212.735.8736

[kmarkel@morrisoncohen.com](mailto:kmarkel@morrisoncohen.com)**Cassandra N. Branch***Associate*

D 212.735.8838

[cbranch@morrisoncohen.com](mailto:cbranch@morrisoncohen.com)**Kayla West***Associate*

D 212.735.8760

[kwest@morrisoncohen.com](mailto:kwest@morrisoncohen.com)

This document is attorney advertising and is provided for informational purposes only as a service to clients and other friends. This document does not constitute legal advice. Reading or receiving this document does not create an attorney-client relationship, nor should the information in the document be deemed to be provided to you confidentially. Please contact one of our attorneys should you wish to engage Morrison Cohen LLP to represent you, so that an attorney-client relationship may be established between our Firm and you. Prior results do not guarantee a similar outcome.