

New York City Freelance Isn't Free Act Now in Effect

By: Scott Casher and George Morrison
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In October 2016, the New York City Council unanimously approved the "Freelance Isn't Free Act" (the "Act"). The Act requires a hiring party to enter into a written contract with a freelance worker if the services performed are valued at \$800 or more, either alone or in aggregate during the immediately preceding 120 days. The Act went into effect on May 15, 2017.

The Act applies to any person or organization (except for certain government entities) who engages a freelance worker to offer services. A "freelance worker" is defined as a person or organization hired or retained as an independent contractor to offer services in exchange for compensation. The Act exempts from the definition of "freelance worker" certain sales representatives, lawyers, and medical professionals.

The Act mandates that a contract with a freelance worker specify the names and addresses of the parties, itemize all services performed by the freelancer, the services' value, the rate of the freelancer's work, and the method of compensation. The contract must also expressly address the date on which payment for the freelancer's services will be issued or, in the alternative, the mechanism for determining such a date.

Compensation must be paid on or before the due date stated in the parties' contract or no later than 30 days after completion of the freelancer's services. The Act provides for a private right of action, and also provides the City of New York with standing to bring an action. Should a freelance worker attempt to exercise any rights under the Act, the law provides that the hiring party may not take any action that penalizes or is reasonably likely to deter a freelancer from exercising his or her rights in the future.

Damages may be assessed against hiring parties who violate provisions of the Act, including a failure to enter into a written contract or to abide by the lawful payment provisions. The Act provides for double damages, injunctive relief, attorney's fees and costs, and civil penalties of up to \$25,000.

It should be noted that the Act is silent as to whether it covers freelance workers and/or service recipients outside of New York City, although the jurisdiction of the New York City Administrative Code, which codifies the Act, is limited to New York City.

Many companies routinely hire independent contractors, consultants and other freelancers to provide services on a project, hourly or other basis. We, as a rule, even before the adoption of the Act, have historically recommended that all such arrangements should be in writing. This is particularly true in certain industries such as technology or where creative works are the subject of the services as there is a need to ensure ownership of any work product or deliverables created by the freelancer. However, in light of the Act, all parties who engage service providers, regardless of industry or the nature of the services to be provided should review their practices and procedures regarding freelancers and any agreements they use in connection with such engagements, to ensure compliance with the Act, including the timeliness of payments.

If you have questions or would like additional information, please contact, Scott Casher (cashers@whiteandwilliams.com; 914.487.7343) or George Morrison (morrison@whiteandwilliams.com; 610.782.4911)

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questions.