

## New York “Freelance Isn’t Free Act” Set to Go Into Effect

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- This Act establishes and enhances protections for freelance workers. Specifically: the right to written contract, the right to be paid timely and in full and the right to be free of retaliation.
- The bill becomes effective May 15, 2017.
- This local law applies only to contracts entered into on or after the effective date of the law, except that the Director of the Office of Labor Standards may take any actions necessary for the implementation of the law, including the promulgation of rules, before such date.

### Who Is Covered By the Regulation?

BEIJING

NEW YORK

PORTLAND

SEATTLE

WASHINGTON, D.C.

**Freelance workers:** Any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation.

- This does not include:
  - any person who, pursuant to the contract at issue, is a sales representative as defined in section 191-a of the labor law;
  - any person engaged in the practice of law pursuant to the contract at issue; and
  - any person who is a licensed medical professional.

**Hiring Party:** any person or entity who retains a freelance worker to provide any service.

- This does not include:
  - the United States government;

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- the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary;
- the City of New York, including any office, department, agency or other body of the City of New York;
- any other local government, municipality or county; or
- any foreign government.

The Act is not clear on the geographic scope of the Act. A conservative approach would be to assume that it applies to freelance workers located in New York, hiring parties located in New York services performed in New York.

### **What Is Required?**

**Written Contract:** A written contract is required whenever a hiring party retains the services of a freelance worker and the contract between them has a value of \$800 or more, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the 120 days immediately preceding the date on which the parties entered into the current contract. Each party to the written contract is required to retain a copy of the contract.

- The written contract must include, at a minimum, the following:
  - The name and mailing address of both the hiring party and the freelance worker;
  - An itemization of all services to be provided by the freelance worker, the value of the services to be provided pursuant to the contract and the rate and method of compensation; and
  - The date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined.
  - The Director of the Office of Labor Standards may, by rule, require additional terms to ensure that the freelance worker and the hiring party understand their obligations under the contract.

**Lawful Payment Practices:** The freelance worker must be paid the contracted compensation either:

- On or before the compensation due date pursuant to the contract; or
- If the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be

determined, no later than 30 days after the completion of the freelance worker's services under the contract.

- Once the freelance worker has commenced performance of the services under the contract, the hiring party must not require, as a condition of timely payment, that the freelance worker accept less compensation than the amount of the contracted compensation.

**No Retaliation:** The hiring party may not threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelancer worker from, exercising or attempting to exercise any right guaranteed in the Act, or from obtaining future work opportunity because the freelance worker has done so.

### **What Are the Penalties for Failing to Comply With the Requirements?**

A hiring party who is in violation of the rules is liable for damages and an award of reasonable attorney's fees and costs.

- **Violation of Written Contract Requirement:** A hiring party who is found liable on a claim alleging a violation of the written contract requirements shall be liable for statutory damages of \$250 to the freelance worker.
  - A hiring party who is found liable for violation of the written contract requirement and one or more other violations of the Act, (such as a violation of rules against unlawful payment practices or rules against retaliation) is liable for statutory damages to the freelance worker equal to the value of the underlying contract for the violation of the written contract requirements in addition to the remedies specified in the Act for the other violations.
- **Violation of Rules against Unlawful Payment Practices:** In addition to any other damages awarded to the freelance worker pursuant to the Act, a hiring party who is found liable for a violation of the rules against unlawful payment practices is liable to the freelance worker for double damages, injunctive relief and other such remedies as may be appropriate.
- **Violation of Rules against Retaliation:** In addition to any other damages awarded pursuant to the Act, a hiring party who is found liable for a violation of the rules against retaliation is liable for statutory damages to the freelance worker equal to the value of the underlying contract for each violation of the rules against retaliation.

The Act is not clear about computing the value of an underlying contract with contingent compensation.

For any questions, feel free to contact [Hillary Hughes](#) at [hhughes@gsblaw.com](mailto:hhughes@gsblaw.com) or at 212.965.4527 or your attorney for more information on the applicability and requirements of this new law.