

NEW YORK CITY “FREELANCE ISN’T FREE ACT” TO TAKE EFFECT

Labor & Employment Alert
May 1, 2017

The New York City “Freelance Isn’t Free Act” (FIFA) takes effect on May 15, 2017. The first of its kind in the country, FIFA was designed to protect independent contractors by imposing a number of strict requirements on individuals and entities that contract with freelance workers. FIFA establishes penalties for violating requirements including statutory damages, double damages, injunctive relief, and attorneys’ fees. Businesses covered by FIFA should familiarize themselves with its requirements.

FIFA’s Coverage

FIFA applies to a person who retains a freelance worker to provide any service. Excluded from coverage are the U.S. government, New York State (including agency, authority, or other body of the State), New York City, any local government (e.g., municipality or county), or any foreign government. FIFA refers to a person that engages a freelance worker as a “hiring party.”

FIFA governs the relationship of any hiring party with a freelance worker, which is defined to include “any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name” engaged to provide services in exchange for compensation. The definition excludes commissioned salespersons, attorneys and licensed medical professionals.

FIFA’s Requirements

FIFA requires that any hiring party engaging a freelancer must enter into a written contract with the freelancer whenever 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 the freelancer during the immediately preceding 120 days). Each party must retain a copy of the written contract, which must include, at a minimum, the following information:

1. the name and mailing address of both parties;
2. an itemization of services to be provided by the freelancer;
3. the value of the service to be provided pursuant to the contract;
4. the rate and method of compensation; and

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5. the date on which the hiring party must pay the contracted compensation to the freelancer or, if no date is provided, the mechanism by which such date will be determined.

Any person retaining a freelancer must pay the contracted compensation on or before the date such compensation is due under the contract. If the contract does not specify when the person must pay the contracted compensation, or the mechanism by which the date will be determined, then the freelancer must be paid no later than 30 days after the completion of their services under the contract. After a freelancer has commenced performance of services under the contract, FIFA prohibits the hiring party from requiring, as a condition of timely payment for services, that the freelancer accept less compensation than the amount of the contracted compensation.

FIFA places the burden of compliance on hiring parties. However, failure to comply with FIFA does not render any contract between a hiring party and a freelance worker void or voidable or otherwise impair any obligation, claim, or right related to such contract, and it does not constitute a defense to any action to enforce, or for breach of, such contract.

FIFA's Anti-Retaliation Prohibitions

FIFA prohibits hiring parties from retaliating against freelancers. Specifically, hiring parties 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 freelancer for, or is reasonably likely to deter a freelancer from, exercising or attempting to exercise any right guaranteed under this chapter, or from obtaining future work opportunity because the freelance worker has done so.”

Complaint Process

A plaintiff alleging a violation of FIFA may file a complaint for investigation with the Director of the New York City Office of Labor Standards (“OLS”), or a lawsuit in court. The statute of limitations to file a claim with OLS for violations of FIFA is two years, measured from the date of the alleged violation. For court actions, FIFA provides a two-year statute of limitations for bringing a claim alleging violations of the written contract requirement, and a six-year limitations period for bringing an action alleging failure to make timely or full payment or for retaliation. The Director of OLS will have no jurisdiction to investigate a claim that is also the subject of a court action alleging a violation of FIFA or a breach of contract claim that is pending in any court or administrative proceeding.

Statute of Limitations and Damages for Violations

A plaintiff who prevails on a claim alleging a violation of the written contract requirement will be awarded damages of \$250. A plaintiff who prevails on a claim alleging a violation of the written contract requirement, as well as one other violation of FIFA, will receive damages equal to the value of the underlying contract plus other remedies under FIFA. A plaintiff who prevails on a claim alleging a violation of the timely payment requirements will receive double damages, injunctive relief, and other remedies as may be “appropriate.” Damages equal to the value of the contract are also available if the hiring party retaliates against a freelance worker for exercising, or attempting to exercise, any right under FIFA. If there is evidence of a pattern of repeated violations, the City of New York, through the Corporation Counsel, may bring a civil action to recover a civil penalty not to exceed \$25,000. Prevailing parties will also be awarded reasonable attorneys’ fees and costs.

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Assistance for Workers and Businesses

Pursuant to FIFA, the OLS will establish a “navigation program” that will provide information and assistance to individuals who have questions regarding FIFA. Under the navigation program, model contracts will be available to the general public at no cost, in English and six languages most commonly spoken by limited English proficient individuals in New York City. Further, the navigation program will provide information about procedures under FIFA, available templates and court forms, classifying workers as employees or independent contractors, and organizations that can be used for identification of attorneys.

Data Collection

Under FIFA, the OLS is directed to follow up with freelance workers who file complaints to determine whether the freelance workers commenced a court action to enforce their rights or entered into alternative dispute resolution proceeding with the hiring party, and whether the freelancer was paid any or all of the compensation due to the freelancer. The Director of OLS will collect and track information about complaints alleging violations of FIFA. OLS’s records will include, at a minimum, the identity of the hiring party alleged to have violated FIFA, the freelance worker’s occupation, the section of FIFA that was alleged to have been violated, the value of the contract, the response or non-response of the hiring party in OLS’s investigation, and information from a completed survey done by the freelance worker.

In view of the potential penalties for noncompliance, any person or entity engaging a freelance worker in New York City should evaluate its practices and independent contractor agreements to ensure compliance in connection with any contracts executed with freelance workers after May 15, 2017. Please contact any one of our labor and employment attorneys should you have questions about FIFA.