

Prepare Now for NYC Freelancer Law

New York City's [first-of-its-kind law establishing protections for freelancer worker compensation](#) will take effect May 15, 2017, but employers can prepare now to comply with the law's requirements. Signed by Mayor Bill de Blasio on November 16, 2016, the Freelance Isn't Free Act (the "Act") requires all agreements for freelance work of a value of at least \$800 to be in the form of a written contract. The Act also requires full compensation for the services to be paid by a date specified in the contract, or within 30 days after completion of the services.

Employers can take various steps now to ensure they are compliant with the Act prior to its May 15, 2017 effective date:

- Employers should determine which engagements fall under the Act's written contract requirement. Directed towards the growing "gig-industry," the Act broadly defines freelance workers as any person (or organization consisting of only one person) hired or retained as an independent contractor to provide services in exchange for compensation. Sales representatives, licensed lawyers and medical professionals are specifically excluded from the scope of the Act. The Act requires a written contract for any single project with a freelance worker valued at least \$800 or for any cumulative work by a freelance worker valuing \$800 or more over a four-month period.
- Employers should create, or review, their contract template to ensure compliance with the Act's requirements. Under the Act, each written contract must include, at a minimum, the name and mailing address of both parties, an itemization of all services to be provided by the freelance worker, the value of the services to be provided, the rate and method of compensation, and the date on which compensation must be paid.
- Employers should ensure that proper payment mechanisms are in place to ensure timely payment under the Act. If the contract does not provide for a due date of the compensation, compensation must be paid no later than 30 days after the completion of the freelancer's services. These requirements are similar to those for commission plans required for commissioned sales representatives under Article 6 of the New York State Labor Law.
- Finally, employers should train their human resources professionals, as well as those involved in procurement, as to the Act's requirements and prohibitions. Employers should be particularly mindful that the Act prohibits retaliation, including any action that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed by the Act.

Non-compliance could expose an employer to liabilities. The Act provides a private cause of action for aggrieved freelancers to seek the following damages:

- Double damages, injunctive relief and other such remedies as may be appropriate for not being fully paid on time; and/or
- Statutory damages (equal to the value of the underlying contract for lack of written contract and/or each instance of retaliation; amounting to \$250 if solely a lack of written contract is alleged, upon proof that a written contract had been unsuccessfully requested by the freelancer); and
- Reasonable attorney's fees and costs.

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The Act also establishes a complaint procedure to be administered by the Director of the City's Office of Labor Standards ("OLS"). Upon receipt of a complaint under this procedure, OLS will notify the hiring party, which then has 20 days to respond with either (i) proof that the freelancer has been paid in full; or (ii) the reasons for non-payment. OLS does not have jurisdiction to adjudicate the complaint. However, OLS will advise the freelancer of his or her right to bring an action and refer the freelancer to a "navigation program" designed to apprise freelancers of resources available to assist them in their complaint.

Furthermore, where OLS determines reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violations of the Act, the City's Corporation Counsel may commence a civil action in court on behalf of the City. The Act provides for civil penalties of up to \$25,000 for pattern and practice violations.

This post was authored by [Matt Lampe](#), [Martin Schmelkin](#), [Justin Martin](#), and [Remo Decurtins](#) of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

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