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Labor and Employment Alert: New Rules Further Restrict Independent Contract Agreements in New York City

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In November 2016, New York City enacted the nation's first "Freelance Isn't Free Act" to establish and enhance protections for independent contractors. Effective May 15, 2017, the law gives freelance workers the right to a written contract, the right to be paid timely and in full, and the right to be free of retaliation. Recently adopted rules define several terms in the act and impose further restrictions on independent contractor agreements.

First and foremost, the rules prohibit freelancers from waiving certain rights (which are commonly included in independent contractor agreements). Any of these provisions are deemed void and unenforceable as a matter of law:

- The contract cannot include any prospective waiver or limitation of rights under the act.
- The contract cannot waive or limit a freelance worker's right to participate in or receive money or any other relief from any class, collective or representative proceeding.
- The contract cannot require a freelance worker to waive or limit any other procedural right normally afforded to a party in a civil or administrative action, including those rights under the New York Civil Practice Law and Rules, the Federal Rules of Evidence and the Federal Rules of Civil Procedure.
- The contract cannot prohibit a freelance worker from disclosing the terms of his or her contract to the director of the New York City Office of Labor Standards.

Second, the act prohibits retaliation against a freelance worker for exercising the rights provided by this new law – broadly defined to include threats, intimidation, discipline, harassment, denying work opportunities, discrimination, or penalties or other action that is reasonably likely to deter a freelancer worker from exercising or attempting to exercise his or her rights or from obtaining future work opportunity for having done so. The rules expand retaliation to include adverse actions relating to perceived immigration status or work

authorization and adverse actions taken against a freelance worker by “any person” regardless of whether that person has been a party to a contract with the freelance worker.

And third, the act requires a written contract when a person retains a freelance worker and the contract has a value of \$800 or more, either by itself or when aggregated with all contracts for services between them during the immediately preceding 120 days. The “value of the contract” is now defined to mean the reasonable value of all actual or anticipated services, costs for supplies and any other expenses under the contract.

Employers should review their independent contractor agreements to ensure they conform to both the act’s requirements and the new restrictions imposed by the rules. Contact your Vorys lawyer if you have questions about your agreements with or classification of freelance workers.