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Labor and Employment Alert: New York City Enacts the Nation's First Freelance Worker Protection Law

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In November 2016, New York City enacted its “Freelance Isn’t Free Act” to establish and enhance protections for freelance workers (in other words, independent contractors). 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. And the law provides several mechanisms through which independent contractors can enforce these rights. The law becomes effective on May 15, 2017, and is expected to affect 1.3 million independent contractors in New York City.

The new law defines a “freelance worker” as an independent contractor retained or hired to provide services in exchange for compensation, except for lawyers, medical professionals, and certain sales representatives. The law requires that there be a written contract when a person retains 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 them during the immediately preceding 120 days. Each party must retain a copy of the contract. The contract must include at least: (1) the name and mailing address of both the hiring party and the freelance worker; (2) 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 (3) the date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined. The New York City Office of Labor Standards may prescribe additional requirements as well.

The freelance worker must be paid the contracted-for compensation either on or before the date specified in the contract. If the contract does not specify a date, payment must be made no later than 30 days after the completion of the freelance worker’s services. Once the freelance worker has begun performing the contracted-for services, the hiring party cannot require that he or she accept less than the contracted compensation as a condition of timely payment.

A hiring party is further prohibited from in any way retaliating against a freelance worker for exercising the rights provided by this new law. Retaliation is 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 law's legislative history provides the following examples of retaliation: "blacklisting a freelance worker from an industry, discrediting a freelance worker to other potential hiring parties or canceling a multipart contract after the contracted work has begun."

A freelance worker may file an administrative complaint with the Director of the New York City Office of Labor Standards within two years after the alleged violation has occurred. In addition to processing the complaint, the director must refer the freelance worker to a soon-to-be-created "navigation program." This program will contain model contracts and information about the courts, attorney referrals, and "general information about classifying persons as employees or independent contractors." Alternatively, a freelance worker may bring an action in court for damages.

A freelance worker may recover \$250 in damages based on a hiring party's failure to execute a contract or include all the required terms. This claim is subject to a two year statute of limitations. The freelance worker also will be awarded statutory damages equal to the value of the contract if he or she prevails on this claim and any additional claims for violations of the law. A freelance worker may recover double damages, injunctive relief, and other appropriate remedies against a hiring party who engages in unlawful payment practices, such as failing to pay the freelance worker or making late payments. Claims of this type are subject to a six year statute of limitations. Finally, the law provides for a civil penalty of up to \$25,000 against a hiring party who engages in a pattern or practice of violations.

The new law does not diminish or replace any other basis of liability or requirement established by statute or common law, and a contractual provision attempting to waive the law's requirements violates public policy and is void. At the same time, failing to comply with the law's requirements does not render a contract void or voidable or otherwise impair any obligation, claim, or right related to such contract or constitute a defense to any action or proceeding to enforce, or for breach of, such contract.

Employers now have approximately five months to ensure their contracts with freelance workers after May 15, 2017, meet with these new requirements. The law's navigation program will provide freelance workers with information about independent contractor misclassification and attorney referrals. Given this, employers may also consider reviewing whether freelance workers with whom they contract are appropriately classified. Contact your Vorys lawyer if you have questions about your agreements with or classification of freelance workers.