

Alert

New Requirements for Independent Contractor Agreements in New York City

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On May 15, 2017, a new New York City law, the “Freelance Isn’t Free Act,” will take effect. The law applies to arrangements between independent contractors and businesses or individuals that retain them to provide services in New York City. It sets forth required contractual elements and penalties for non-compliance.

The law is intended to provide “freelance workers” with similar protections to those available to employees under existing labor laws. Under the law, a “freelance worker” is defined as “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 ... to provide services in exchange for compensation.” This definition includes contractors retained by businesses and individuals. The law requires that any contract with a freelance worker entered into on or after May 15, 2017 that has a value of \$800 or more (or set of contracts in a 120-day period that has a value of \$800 or more) be in writing. Under proposed rules issued by the New York City Department of Consumer Affairs, the value of the contract includes “the reasonable value of all actual or anticipated services, costs for supplies, and any other expenses under the contract.” The law requires the written contract to set forth the following information:

- The names and mailing addresses of the hiring business or individual and the freelance worker;
- An “itemization of all services” being provided by the freelance worker;
- The value of the services being provided by the freelance worker and the rate and method of payment of the freelance worker; and
- The date by which payment is due (or the process by which the payment date will be determined).

The law requires that freelance workers be paid no later than the date specified in the contract. If, despite the law’s requirements, a contract does not contain a date of payment (or mechanism to determine a date), the freelance worker must be paid within 30 days of the completion of services. A freelance worker cannot be required to accept less than the contracted amount as a condition of timely payment.

The law permits a freelance worker who believes his or her rights under the law have been violated to file a complaint with the New York City Department of Consumer Affairs’ Office of Labor Policy and

Standards. Alternatively, a freelance worker may bring an action in court for violations of the law. Even if no other violations of the law exist, a court can award a freelance worker \$250 and costs and attorneys' fees as a result of the failure to have a written contract as required under the law. For additional violations of the law, damages will be equal to the value of the contract itself. If a freelance worker is not paid as set forth in the contract, a business or individual can be liable for double damages, injunctive relief and other remedies. Finally, freelance workers seeking to enforce their rights under the law are protected from retaliation.

Any provision in an agreement that attempts to waive a freelance worker's rights under the law will be considered void. The Department of Consumer Affairs' proposed rules expand on this provision, providing that any provision in a contract which would require a freelance worker to "waive or limit" any right to participate in a "class, collective or representative proceeding" or to "waive or limit ... any other procedural right normally afforded to a party in a civil or administrative action" will be considered void.

Any individual or business in New York City hiring an independent contractor on or after May 15, 2017 should review the law's requirements and ensure that any contracts being entered into with independent contractors comply with the law's requirements, that all independent contractors are paid on time, and that all payments are made in accordance with the terms of the contract.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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