

ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

New York City Enacts Freelancer Wage Payment Protection Law

By Bennett Pine

On November 16, 2016, New York City Mayor Bill de Blasio signed a law designed to provide better protection for non-employee, freelance workers. The new law aims to prevent wage theft by requiring written contracts and prompt payment, and by imposing penalties on those who hire freelancers and either fail to pay them, or retaliate against them for seeking to enforce their rights.

Background and Purpose

On October 27, 2016, the New York City Council unanimously passed the Freelance Isn't Free Act. The act requires a written contract for freelance opportunities valued at \$800 or more, either by itself or when aggregated with all work performed for a single employing party over a span of 120 days. In many respects, the new law mirrors protections offered by the New York Wage Theft Prevention Act (See *Employment Law Insider Alert*, January 15, 2013).

According to a NYC Council document, approximately 1.3 million freelance contractors work in New York City. Nationwide, 71% of freelancers report having faced difficulty being paid for services provided. The average loss per year for freelancers is approximated at \$6,000, based on 2014 data.

Contract Requirements

Written contracts with freelancers must state, at minimum, the name and address of both the freelancer and the hiring party, an itemized accounting of the work to be performed, the rate of pay, and the required payment date. If no date is specified, the freelancer must be paid within 30 days after completion of the work. The new law also protects freelancers from being harassed, intimidated or threatened for exercising their rights under the law.

Forms

Model contracts in English and six other languages will be provided by the newly created Office of Labor Standards within the Department of Consumer Affairs.

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Enforcement and Penalties

The law sets up a complaint process to be enforced by the Office of Labor Standards. Statutory damages can be assessed against the hiring party for (1) failure to enter into a written contract, (2) failure to abide by lawful contract or payment provisions, or (3) retaliation against freelancers for seeking to enforce their rights. The law also provides for double damages, injunctive relief, and attorney's fees and costs for violating the lawful payment provisions.

Civil action may be commenced in a court of competent jurisdiction, and civil penalties of up to \$25,000 may be assessed against a hiring party if there is a pattern or practice of violations found.

Effective Date

The Freelance Isn't Free law takes effect on May 15, 2017, and applies to contracts entered into with freelancers after this date.

Conclusion

Businesses should be prepared to enter into agreements for work performed by freelancers in New York City by May 15, 2017, or face penalties.

If you have questions about the Freelance Isn't Free Act, or about preparing an appropriate agreement with a freelancer you are engaging, please do not hesitate to contact Bennett Pine at bpine@andersonkill.com. ▲

SPECIAL ALERT:

Federal Judge Blocks Expansion of Overtime Eligibility

On November 22, 2016, a federal district court judge in Texas entered a nationwide injunction blocking the Labor Department from implementing a regulation, that was scheduled to take effect on December 1, 2016, that would have raised the threshold for "exempt" salaried employees eligible to receive overtime pay to \$47,476 annually (\$913 a week). So, for the indefinite future, federal overtime eligibility for salaried employees remains the same, i.e., it does not apply to salaried employees earning over \$23,660 annually (\$455 weekly).

Be aware that higher thresholds may exist on a state-by-state basis.

On December 1, 2016, the U.S. Department of Labor announced its intention to appeal the injunction to the Fifth Circuit Court of Appeals.

We will continue to monitor any developments here.

