

New York State's Freelance Isn't Free Act Takes Effect August 28, 2024

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On November 22, 2023, New York became the second state—after [Illinois](#)—to adopt statutory protections for freelance workers statewide when Governor Kathy Hochul signed the “[Freelance Isn't Free Act](#)” (the “Act”). The Act is scheduled to take effect on August 28, 2024. Employers should be aware of the Act's provisions to ensure compliance, and the trend of states and local governments to adopt and enforce similar protections.

Who Is Subject to the Act?

The Act applies to agreements which take effect on or after August 28, 2024, in the state of New York, between “freelance workers” and “hiring entities,” provided the amount in exchange for the freelance worker's services is at least \$800 over a 120-day period.

Under the Act, a “freelance worker” is any “natural person or organization composed of no more than one natural person, whether or not registered,” that is hired or retained as an independent contractor by a “hiring party.” Of note, “freelance worker” does not include “sales representatives” as defined in New York Labor Law Section 191-a, practicing attorneys; licensed medical professionals, or “construction contractors” as defined in the Act.

A “hiring entity” under the Act is any person or entity that retains a freelance worker to provide any service. However, foreign, federal, state of New York, and municipal government agencies or authorities are not hiring entities under the Act.

What Are the Act's Key Substantive Protections?

1.) Written Agreement Requirement.

The Act requires that covered contracts for products or services must be in writing, and that the *hiring entity* provide a physical or electronic copy of the contract to the freelance worker. Covered contracts must include certain types of information, including the name and mailing address of both parties; an itemized list of all services to be provided and their value; the rate and method of compensation; and the payment date or mechanism by which such date will be determined.

The hiring entity must also retain a copy of the contract for a six-year period. Failure to do so shall give rise to a presumption that the terms a freelance worker presents are the agreed upon terms.

2.) Timing of Payment.

Under the Act, hiring entities must pay the freelance worker by the deadline set in the parties' written agreement or, if no date or mechanism by which the payment date will be determined is specified, within 30 days of when the freelance worker completes all applicable obligations under the agreement. The Act expressly prohibits the hiring entity from conditioning timely payment on the freelance worker's acceptance of less compensation than contracted once the freelancer has begun the work covered by the contract.

3.) Prohibition on Discrimination and Retaliation.

A hiring entity violates the Act if it engages in any discriminatory, harassing or retaliatory conduct towards a freelance worker for exercising or attempting to exercise rights under the Act. Prohibited conduct includes threatening, intimidating, disciplining or harassing the worker; or barring the worker from future work opportunities.

Can Freelance Workers Pursue Claims for Violations of the Act?

Freelance workers may pursue claims for violations of the Act by commencing a civil action in court or filing a complaint with the New York State Department of Labor. Actions must be filed within two or six years of the date the act(s) alleged to have violated the Act occurred, depending on the violation alleged.

A worker is not required to exhaust administrative remedies before filing a civil action in court.

What Are the Potential Penalties for Violating the Act?

Potential penalties depend on the nature of the violation and may include, for example, double the amount of any underpayment to the freelance worker, civil monetary penalties, injunctive relief, and attorney's fees and costs.

What Else Should Hiring Entities Know?

- Hiring entities should evaluate whether any of their workers (or potential workers) fall within the Act's definition of "freelance worker," and take affirmative steps to comply with the Act.
- Although often similar, freelance worker laws vary across jurisdictions. For example, the Act largely mirrors—but is not the same as—New York City's "[Freelance Isn't Free Act](#)." Additionally, as we previously wrote about [here](#), Illinois's "[Freelance Worker Protection Act](#)," which took effect on July 1, 2024, has a lower, \$500 contract threshold; excludes fewer categories of workers from its definition of "freelance worker"; and likely does not apply to individuals who may be retained through a separate corporation or LLC, even if the organization is composed of no more than one natural person. Companies should be mindful of the potential impact different laws may have on their independent contractor relationships, particularly if template documents or payment procedures are used across different jurisdictions.
- Lawsuits challenging employee classification are on the rise, and companies should continue to carefully evaluate whether their independent contractors are properly classified.

If you have any questions about the topics discussed in this article, please contact **James P. Looby** at jlooby@vedderprice.com or any Vedder Price attorney with whom you have worked.

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