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## NEW YORK CITY PASSES THE “FREELANCE ISN’T FREE” ACT

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On October 27, 2016, the New York City Council unanimously passed a bill adding new requirements governing the hiring of so-called “freelancers” and imposing strong penalties if a company violates the proposed law. The Mayor is expected to sign the bill into law within the next several weeks.

The bill, entitled the “Freelance Isn’t Free” Act, would require all freelance jobs (or an aggregate of jobs over the span of 120 days) with a value of at least \$800 to be memorialized in a written contract. The contract must include the names and addresses of the freelancer and the hiring party, an itemized accounting of the work to be performed, the rate of pay and the payment date. In the event that a payment date is not specified, the bill requires payment within 30 days from the completion of the work.

The bill defines a “freelance worker” 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 by a hiring party to provide services in exchange for compensation.” Thus, the provision is only intended to apply to those situations where a business hires an individual to complete a project rather than another business. According to this definition, a freelance worker qualifies as an independent contractor. As such, employers hiring freelancers must also ensure compliance with state and federal laws concerning independent contractors.

The bill also permits freelancers to bring claims against hiring parties who fail to pay or delay payment under contract, and prohibits hiring parties from harassing and intimidating freelancers from exercising their rights under the bill. Freelancers will be able to file complaints within two years of an alleged violation with the newly created Office of Labor Standards (OLS), which operates within the Division of Consumer Affairs, an agency that, as we have seen, has been aggressively enforcing the New York City Earned Sick Time Act in recent years. Alternatively, a freelancer can bring a claim in civil court within six years of an alleged breach of contract and for retaliation under the bill.

A prevailing freelancer in a claim for a violation of the written contract requirement will be awarded \$250 in statutory damages and double damages for the underlying value of the contract. The bill also gives the OLS the right to bring legal action against a repeat offender and impose a penalty of up to \$25,000. Mayor de Blasio is expected to sign the bill into law and it would go into effect 180 days later.

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