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NYC'S 'FREELANCE ISN'T FREE' ACT TAKES EFFECT MAY 15: BEWARE OF THE INDEPENDENT CONTRACTOR

By Carolyn D. Richmond and Raquel A. Gutiérrez

As reported in a previous [alert](#), the New York City Council unanimously passed the “Freelance Isn’t Free” Act in October 2016. On November 16, 2016, Mayor de Blasio signed the bill into law and it will take effect on May 15, 2017. Employers must become familiar with the requirements of the act and dedicate the necessary resources to comply with its strict provisions.

The act 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 applies to those situations where a business hires an individual to complete a project rather than another business, even when that individual uses a corporate or trade name. According to this definition, a freelance worker is an independent contractor. For this reason, employers hiring freelancers must also ensure compliance with state and federal laws concerning independent contractors.

The act requires 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 act requires payment within 30 days from the completion of the work.

The act 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. Within two years of an alleged violation, freelancers will be able to file complaints 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 or for retaliation.

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 act also gives the OLS the right to bring legal action against a repeat offender and impose a penalty of up to \$25,000.

The act places the burden of compliance on the employer and subjects noncompliant employers to substantial liability. Employers should work closely with counsel in order to properly follow the act’s provisions.

For more information about this alert, please contact [Carolyn D. Richmond](#) at 212.878.7983 or crichmond@foxrothschild.com, [Raquel A. Gutiérrez](#) at 646.601.7637 or rgutierrez@foxrothschild.com or any member of the firm’s [Hospitality Practice](#).

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