

New Rights for Freelance Workers in New York City

New York City has become the first city in the nation to protect freelance workers through legislation to prevent client non-payment, which is alleged to have become widespread. Some sources have estimated that 4 million workers in NYC freelance and as many as 55 million workers freelance nationwide.

New York City has adopted the Freelance Isn't Free Act (Local Law No. 2016/140), or FIFA. The law becomes effective May 15, 2017 and establishes and enhances protections for freelance workers, including the right to a written contract, the right to be paid timely and in full, and the right to be free of retaliation. A freelance worker is defined as a person or organization composed of no more than one person, hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation. The hiring party need not be based or doing business in NYC.

More specifically, FIFA requires the following:

- Whenever a hiring party retains the services of a freelance worker and the contract between them has a value of \$800 or more (either by itself or when aggregated with all contracts for services during the preceding 120 days), the contract shall be reduced to writing.
- The contracted compensation shall be paid to the freelance worker either (a) on or before the date such compensation is due under the terms of the contract; or (b) if the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than 30 days after the completion of the freelance worker's services under the contract.
- Once a freelance worker has commenced performance of services under the contract, the hiring party shall not require, as a condition of timely payment, that the freelance worker accept less compensation than the amount of the contracted compensation.
- No hiring party shall threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for exercising any right guaranteed under FIFA, or from obtaining future work opportunity because the freelance worker has done so.

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A freelance worker may bring an action alleging violations of FIFA. The law creates penalties for violation of such rights, including damages, statutory damages of \$250, double damages, injunctive relief and reasonable attorney's fees. The protections are similar to the protections that many states, including New York, provide to outside sales representatives who earn commissions. (Sales representatives, attorneys and medical professionals are excluded from FIFA.)

Moreover, the NYC Corporation Counsel may commence a civil action on behalf of the City where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violations of FIFA. In such civil action, the trier of fact may impose a civil penalty of up to \$25,000, which shall be paid into the general fund of the City.

FIFA also creates a new procedure for filing complaints with the director of the NYC Office of Labor Standards. The director is to establish a "navigation program" that provides information and personal assistance by telephone and email, as well as online information that includes model contracts, general court information, templates and forms and attorney referrals. The director also shall send the freelance worker a survey requesting voluntary information about the resolution of the freelance worker's claims. Such survey shall ask whether the freelance worker pursued any claims in court or through an alternative dispute resolution process, whether the hiring party ultimately paid the compensation that the freelance worker alleged was due or if the matter was resolved in a different manner.

In anticipation of FIFA, hiring parties need to review their vendor contracts to determine whether the vendor is located in NYC and a freelancer under FIFA. Hiring parties need to ensure that they are complying with FIFA regardless of whether they do business in NYC.