

Los Angeles Passes the Freelance Worker Protection Ordinance Imposing New Obligations on Employers, by Partner Sanjay Bansal, 9-18-2023

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Employers utilizing freelance workers must tread carefully given new obligations under the recently passed Freelance Worker Protections Ordinance. The new law, which took effect on July 1, is aimed at “ensuring that freelance workers are treated fairly and receive the compensation they are due.”

According to the ordinance, freelance workers typically do not receive the same protections as employees, including protections against wage theft. They “face challenges with payment of their services, including delayed payment, less than full payment, and non-payment,” according to language in the law. LA City Councilmember Bob Blumenfield, who first introduced a motion in January 2021 calling for protections, states the purpose of the ordinance is to address these type of concerns in a city home to 300,000 freelancers—the second largest such population in the United States.

Key Provisions

The ordinance applies to any written or oral contract between a “Hiring Entity” and a “Freelance Worker” operating within the City of Los Angeles entered into on or after July 1, 2023. Specifically, the law requires a written contract for those freelance workers entitled to payment of \$600 or more (either by itself or when aggregated with previous written or oral contracts) from the hiring entity in a calendar year.

The written contract should include, at a minimum, the following information:

1. The name, mailing address, phone number, and, if available email address of both the hiring entity and freelance worker;
2. An itemization of all services to be provided by the freelance worker, the value of the services to be provided pursuant to the contract, and the rate and method of compensation; and
3. The date by which the hiring entity must pay the contracted compensation or the manner by which such date will be determined.

According to the ordinance, “a hiring entity must provide full payment to the freelance worker on or before the date specified in the written contract, or, if the written contract does not specify a due date or if there is no written contract, no later than 30 calendar days after the services are rendered.”

Hiring Entity and Freelance Worker Defined

A hiring entity is defined as an entity regularly engaged in business or commercial activity. A freelance worker is defined as an individual or entity (of no more than one person) “hired or engaged as a bona fide independent contractor to perform services for a hiring entity in exchange for compensation.” It does not include an individual or any entity that:

1. Is required by the California Business and Professions Code or other law to have a written agreement to provide services in exchange for compensation;
2. Is an employee of the hiring entity under Los Angeles Municipal Code Section 187 et seq.;
3. Agrees to perform services for a hiring entity for no pay; or
4. Has employees other than the one individual natural person who is the sole legal and beneficial owner.

Recordkeeping

A hiring entity and freelance worker must each retain written records for no less than four years, including contracts, payment records, and any other written or electronic records to demonstrate compliance.

Remuneration

Freelance workers can file a complaint with the Office of Wage Standards of the Bureau of Contract Administration within the Department of Public Works (referred as the “Designated Administrative Agency” in the ordinance) or bring forth a civil action against a hiring entity to enforce or recover damages for any alleged violations of the ordinance. Any complaint with the DAA must be filed on or before the one-year anniversary of an alleged violation irrespective of the civil statute of limitations. Retaliatory action by the hiring entity is prohibited.

Damages

If the freelance worker requested a written contract prior to commencing work under the contract and the hiring entity refused, they are entitled to an additional \$250. If the hiring entity fails to pay the freelance worker the amount agreed to under the contract by the time specified in the ordinance, the freelance worker will be awarded damages up to twice the amount that remains unpaid under the contract; and if the hiring entity violates any other provision in the article, the freelance worker shall be awarded damages equal to the value of the contract or work performed, whichever is greater.

Steps Employers Can Take

- Familiarize your team with the new obligations under the ordinance;
- Review existing freelancer agreements;
- Ensure you are classifying freelancers/independent contractors correctly;
- Provide written contracts to freelancers as per the ordinance; and
- Maintain appropriate records for the timeframe specified in the ordinance.

Kaufman Dolowich Can Assist

Our labor and employment attorneys can assist in evaluating policies, procedures and contracts with freelancers in light of this new ordinance, as well as provide assistance in defending claims.