

## *New York Significantly Strengthens Protections of Freelance Workers, by Matthew Cohen, Esq. Jared Nossen, Esq., and Keith Gutstein, Esq.*

*New York businesses and individuals who hire freelance workers or independent contractors will soon have to comply with stricter new requirements under a new state law that greatly expands the rights of these gig workers.*

*New York State Governor Kathy Hochul recently signed into law the Freelance Isn't Free Act (A.6040/S.5026) (the "Act"), which strengthens and broadens protections for freelance workers and imposes various new requirements including the right to a written contract, timely payment of compensation, and protections against unlawful discrimination, harassment, and retaliation.*

*The new state law goes into effect August 28, 2024. The Act is similar to New York City's law, which has been in effect since May 2017.*

*Under the Act, a freelance worker is defined as "any natural person or 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 an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days." It is important to note the Act includes the following four exemptions to the definition of freelance worker: (1) attorneys, (2) licensed medical professionals, (3) sales representatives, and (4) construction contractors.*

*The Act further defines a "hiring party" as "any person who retains a freelance worker to provide any service" other than the United States government, New York State, a municipality, or foreign government. Under this broad definition, all natural persons and companies of any size and type are covered under the Act.*

### **What Does the Act Require?**

#### **1. Written Contract**

*The Act requires hiring parties to enter into written contracts with freelance workers and memorialize key provisions to include:*

- The names and mailing address of the freelance worker and the hiring party;*
- An itemized list of all services to be performed by the freelance worker;*
- The rate of pay;*
- The payment date; and,*
- The date by which the freelance worker must submit to the hiring party a list of services under the contract to enable the hiring party to ensure timely payment.*

*The hiring party shall be required to keep a copy of the contract for at least six years. While the statute does not specify that the contract be signed, as a best practice it would be prudent to have the employee do so.*

#### **2. Timely payments**

*The Act requires the hiring party to remit payments to freelance workers on or before the date the compensation is due under the written contract, or if the contract does not specify the due date for payment, no later than thirty (30) days after the completion of the*

freelancer's services.

### 3. Anti-Discrimination/Anti- Retaliation

*The Act prohibits any hiring party from discriminating, harassing, threatening, intimidating, disciplining, or denying work opportunities to a freelance worker for exercising or attempting to exercise any rights under the Act.*

*The Act imposes a two-year statute of limitations for failure to provide a written contract. In contrast, the Act provides that the statute of limitations for non-payment of the freelance worker or for retaliation is six years.*

#### Penalties

The Act permits a freelance worker to either file a complaint with the Commissioner of the New York State Department of Labor or initiate a private lawsuit in any jurisdiction for damages. If a freelance worker prevails on a claim, they can recover double damages, injunctive relief, statutory damages, reasonable attorney's fees, and such other relief as appropriate. In sum, freelancers can receive double the value of the contract for late payment, underpayment, or nonpayment. On the other hand, if the freelance worker decides to file a complaint with the Department of Labor, the Commissioner is empowered to investigate such complaints and to award relief, including civil and criminal penalties.

Moreover, if there is a reasonable belief that the hiring party is engaged in a pattern of violations of the Act, the New York Attorney General can initiate an action on behalf of the State seeking injunctive relief, civil penalties, and any other appropriate relief against the hiring party.

#### Steps Employers Should Take

Any company doing business in New York should ensure that all agreements they enter into with freelance workers are in writing and start taking measures to prepare to comply with all the Act's requirements once it takes effect. Moreover, employers should take precautions to ensure that they classify their workers correctly.

**Kaufman Dolowich Can Help:** If your company needs assistance preparing any contracts with freelance workers or if you have any questions regarding the Act, our team of skilled labor and employment attorneys can help.