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## *New York Passes Law Protecting Solo Independent Contractors*

By [Marc Bernstein](#), [Matthew Savage Aibel](#), [Kenneth W. Gage](#), [Emily R. Pidot](#), [Patrick W. Shea](#), [Sara B. Tomezsko](#) & Chelsea Desruisseaux

On November 21, 2023, New York Governor Kathy Hochul signed [Senate Bill S5026](#) into law, enacting the "Freelance Isn't Free Act" ("the Act"). The Act provides that freelance workers or solo independent contractors (referred to collectively in this alert as "freelance workers") must be paid wages for their services pursuant to a written contract, extending protections similar to those provided by a similarly-named New York City law passed in 2017. The purpose of the Act is to provide additional remedies to freelance workers who are not properly paid. The Act also authorizes the Department of Labor to receive complaints concerning disputes relating to payment, and issue penalties rather than leaving freelance workers to file in small claims court to resolve such issues. This law will go into effect on May 20, 2024.

### **Requirements When Retaining Services from a Freelance Worker**

Under the Act, a freelance worker is any natural person who is hired to render services in exchange for an amount equal to or greater than \$800, in the aggregate, during the immediately preceding 120 days. Some examples of potential freelance workers include writers, editors, graphic designers, videographers, consultants, and those who are otherwise self-employed. This does not include (i) sales representatives as defined by NYS Labor Law § 191-a, (ii) lawyers, (iii) licensed medical professionals, or (iv) construction contractors. Additionally, the Act does not apply to independent contractors who are part of a group or company, but it does make clear that an individual with an LLC or other form of corporate protection may be covered by the Act.

The Act requires the hiring party (any person or entity retaining services not on behalf of the government) to enter into a written contract with the freelance worker, which must include:

- the name and mailing address of both the hiring party and the freelance worker;
- 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;
- the date by which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined; and
- the date by which a freelance worker must submit a list of services rendered under such contract to the hiring party in order to meet any internal processing deadlines of such hiring party for the purposes of compensation being timely rendered by the agreed-upon date.

Model contracts will be available on the Department of Labor website. The hiring party must retain the contract in its records for at least six years.

The Act also requires that contracted compensation be paid to the freelance worker on or before the agreed-upon date or, if the contract does not specify such a date or the mechanism by which such a date will be determined, no later than 30 days after the completion of the contracted services.

Finally, the Act provides an anti-retaliation provision. A hiring party is prohibited from deterring or penalizing freelance workers for exercising their rights under the Act, and any provision of the contract attempting to waive rights provided by the Act is void. However, failure to comply with the Act “does not render any contract between a hiring party and a freelance worker void or voidable or otherwise impair any obligation, claim or right related to such contract or constitute a defense to any action or proceeding to enforce, or for breach of, such contract.”

### **Penalties for Violations**

Under the Act, freelance workers are authorized to file a complaint with the commissioner and/or bring an action for damages against a hiring party regarding an alleged violation of the Act’s provisions. If a hiring party fails to keep adequate records or provide a written contract, it bears the burden of proving that the complaining worker was paid in accordance with the Act.

Actions alleging the failure to produce a written contract must be brought within two years after the alleged violation occurred. A complainant need only show that they requested a contract before the work began, and a successful complainant is entitled to statutory damages of \$250.

Actions alleging failure to provide timely payment and actions alleging retaliation can be brought within six years after the alleged violation occurred. A successful complainant alleging failure to provide timely payment is entitled to damages and reasonable attorneys’ fees.

Moreover, a successful complainant with claims alleging violation of the Act and one or more other labor laws is entitled to statutory damages equal to the value of the contract plus the remedies for the other violations including double damages, injunctive relief, and other appropriate remedies. This is also true for a successful complainant alleging retaliation; in addition to any other damages awarded pursuant to the Labor Law, a complainant may be entitled to statutory damages equal to the value of the underlying contract for each violation alleged.

The Act also authorizes the New York State Department of Labor Commissioner to sue a hiring party for wage claims. Where reasonable cause exists that a hiring party is engaged in a practice or pattern of violations of the Act, the New York Attorney General may bring a civil action on behalf of the state. Remedies in such cases could include injunctive relief, civil penalties of not more than \$25,000, and any other appropriate relief.

### **What Employers Should Do Next**

1. Ensure that contracts with any freelance workers adhere to the statutory terms described above;
2. Review payment practices for freelance workers to avoid breaches of any agreement based on timing considerations; and

3. Consider incorporating the above-listed requirements into the employer's standard written form when negotiating with freelance workers for the rendering of services.

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*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:*

Marc E. Bernstein  
1.212.318.6907  
[marcbernstein@paulhastings.com](mailto:marcbernstein@paulhastings.com)

Patrick W. Shea  
1.212.318.6405  
[patrickshea@paulhastings.com](mailto:patrickshea@paulhastings.com)

Matthew Savage Aibel  
1.212.318.6934  
[matthewaibel@paulhastings.com](mailto:matthewaibel@paulhastings.com)

Kenneth W. Gage  
1.212.318.6046  
[kennethgage@paulhastings.com](mailto:kennethgage@paulhastings.com)

Sara B. Tomezsko  
1.212.318.6267  
[saratomezsko@paulhastings.com](mailto:saratomezsko@paulhastings.com)

Chelsea Desruisseaux  
1.212.318.6737  
[chelseadesruisseaux@paulhastings.com](mailto:chelseadesruisseaux@paulhastings.com)

Emily R. Pidot  
1.212.318.6279  
[emilypidot@paulhastings.com](mailto:emilypidot@paulhastings.com)

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