

**Client Alert** | August 16, 2024

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## New York's Freelance Isn't Free Act Takes Effect August 28, 2024

New York State's Freelance Isn't Free Act ("NYS FIFA"),<sup>1</sup> signed into law by New York Governor Kathy Hochul last year, is set to go into effect on August 28, 2024. As detailed in our prior [Client Alert](#), the new state law mirrors the protections of New York City's law of the same name, which took effect in May 2017.

### Impact on New York Freelancer Contracts

While NYS FIFA becomes effective on August 28, 2024, it is important to note that it will have only prospective—and not retroactive—effect, meaning the new law only applies to contracts entered into on and after August 28, 2024. Hiring parties, however, should keep in mind that freelancers performing work in New York City prior to that date are already covered by existing local law.

### Who is a Covered Freelancer Under NYS FIFA?

The new state law defines a freelance worker as a person or single-member organization (regardless of incorporation status) hired or retained as an independent contractor to provide services in exchange for an amount greater than or equal to \$800 in any 120-day period.

Sales representatives (as defined in New York Labor Law § 791-a), attorneys, licensed medical professionals, or construction contractors are not considered freelancers and are thus not protected under NYS FIFA.

### Documentation Requirements Under NYS FIFA

Under NYS FIFA, whenever a hiring party (defined as any person or entity other than a federal, state, or municipal governmental agency or authority) engages a freelance worker, the terms of the engagement must be reflected in a written contract between the parties which must include the following:

- The names and mailing addresses of both the hiring party and the freelance worker;
- An itemization of all services to be provided by the freelancer, the value of the services to be provided, and the rate and method of compensation;
- The date on which the contractual payment must be rendered or the method by which the date of payment will be determined; and
- The date by which a freelance worker must submit a list of services rendered under the contract in order to meet any internal processing deadlines required by the hiring party for purposes of ensuring timely compensation to the freelancer.

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<sup>1</sup> NYS FIFA is, somewhat ambiguously, codified at [Section 191-D](#) of the New York Labor Law, providing potential confusion for practitioners inasmuch as NY Labor Law Section 191(1)(d) is included in New York's statute regarding frequency of payments to employees.

In addition, NYS FIFA sets forth rules regarding payment terms for freelance workers. Freelance workers must be compensated on or before the date when compensation is due under the terms of the written contract, or, if the contract fails to properly specify the timing of compensation, no later than 30 days after the completion of the freelancer's services.

### **Violations and Remedies Under NYS FIFA**

Freelancers alleging violations of NYS FIFA can file an action in any court of competent jurisdiction, including the New York State Supreme Court. NYS FIFA establishes penalties for proven violations, as follows:

- Double damages (in addition to the amounts owed under the contract with the hiring party), injunctive relief, reasonable attorneys' fees, costs, and "other remedies as may be appropriate" for plaintiffs prevailing on claims of non-payment; and
- Statutory damages equal to the value of the underlying contract for each violation of New York FIFA's anti-retaliation provision (including, but not limited to, any reduction in compensation, the denial of future work opportunities, and intimidation or harassment).

Claims alleging violations of NYS FIFA's requirements regarding written contracts must be brought within two years. Actions to recover damages for other violations of NYS FIFA, such as nonpayment or underpayment of amounts owed, or retaliation for raising such issues (including penalizing, threatening, blacklisting, or otherwise deterring freelancers from exercising their rights under the law), are subject to New York's six-year statute of limitations for contract claims and certain other labor law violations regarding failure to pay owed wages.

Alternatively, any freelancer or their authorized representative may file a complaint with the Commissioner of the New York State Department of Labor regarding any violation of NYS FIFA, for an investigation of such complaint and statement setting the appropriate remedy, if any.

Furthermore, where the New York Attorney General has reason to believe that a hiring party has engaged in a pattern or practice of violating NYS FIFA, the Attorney General may commence a civil action against the hiring party on behalf of the state and seek injunctive relief, civil penalties of up to \$25,000, in addition to "any other appropriate relief" as set forth under the new law.

### **Practical Advice for Hiring Parties**

Although many entities based in New York City are already familiar with the requirements under the local law, the impending effective date of NYS FIFA presents a good opportunity for hiring parties to review their relationships with independent contractors and ensure that such arrangements are fully compliant with both state and local law. For example, we recommend the following:

- Hiring parties that regularly use freelancer services should review any existing contracts and contract templates to ensure that existing and future independent contractor arrangements are compliant with the new law and do not contain any impermissible waiver language. Hiring entities should take advantage of the [Model Freelance Work Agreement](#) provided by the New York City Department of Consumer and Worker Protection ("DWCP") to standardize their own freelancer agreements and ensure that they meet the requirements of the NYS FIFA, which mirrors the requirements of the New York City law.
- Written independent contractor agreements should clearly dictate the requirements for all services to be rendered, and the documentation and the timeframe for submission related the provision of services and payment.

- Hiring parties should maintain copies of independent contractor agreements, as well as documents reflecting the date and amount of compensation paid to such freelance workers, for at least six years. Hiring parties should also send each freelancer a copy of their executed contract and retain proof of the transmission in the hiring party's business records.
- While hiring parties not previously covered by any freelancer laws may be accustomed to informally negotiating disputes concerning the performance of, and compensation for, services rendered by independent contractors, such entities should be particularly mindful of NYS FIFA's and the analogous New York City prohibitions on retaliation going forward. To the extent that a freelancer appears to be attempting to enforce their rights under either law, the hiring party should speak with legal counsel to avoid taking actions that could be construed as retaliatory. For instance, freelancers should never be asked to accept reduced pay in exchange for timely payment or other more onerous terms than their arrangements otherwise provide for.

Finally, it should be noted that like the New York City law, NYS FIFA aims to create some parity between employees and freelancers hired under a time-limited contract. Neither NYS FIFA or the New York City law is concerned with "business-to-business" relationships or engagements not involving individual service providers. Nonetheless, hiring parties will not be shielded from liability for misclassifying freelancers under wage and hour, tax, or other employment-related laws if the freelancer does not qualify as a *bona fide* independent contractor under applicable law.

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## Key Contacts

Our Labor & Employment Law team is available to help those who contract for services navigate compliance with the requirements of NYS FIFA and the analogous New York City law, in addition to providing other guidance regarding freelancers, independent contractors, employee classification and related wage and hour issues.

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