

October 2016

LABOR & EMPLOYMENT LAW ALERT

NYC "FREELANCE ISN'T FREE ACT" GIVES UNPAID INDEPENDENT CONTRACTORS THE RIGHT TO DOUBLE DAMAGES, LEGAL FEES

On October 27, 2016, the New York City Council passed a law amending the NYC Administrative Code to provide employee-like "wage" protection to most NYC freelance workers (independent contractors). In addition to requiring a written contract defining the terms of most contractor relationships, the new law provides a covered contractor the ability to file an administrative claim (within 2 years) or a private right of action (within 6 years) to recover their compensation (in the form of double their contractual damages plus the contractor's attorney's fees) for non-payment of compensation by a private party. This represents a major upgrade to the traditional breach of contract remedy available to an independent contractor alleging non-payment by a client. Additionally, it includes an anti-retaliation provision prohibiting clients from taking any action to penalize or deter a contractor from exercising the protected rights.

The law, which will become effective 180 days after being signed by the Mayor, covers all "freelance workers" (whether individuals or single person organizations) hired or retained as an independent contractor to provide services in exchange for compensation, excluding sales representatives covered by NY Labor Law §191-a, lawyers in good standing and licensed medical professionals. The law requires a hiring party to have a written contract with a contractor when the contract value is \$800 or more (either individually or when aggregated with other contracts between the parties over the preceding 120 days), which contract must include: (a) name and mailing address of the contracting parties; (b) itemization and value of services to be performed; (c) rate and method of compensation; and (d) date on which contractor is to be paid (or a mechanism to determine that date). The contracted compensation must be paid on or before the date due under the contract, or if the date is not specified, no later than 30 days after the completion of the services. The law prohibits a hiring party from requiring the contractor to accept less compensation than the amount contracted for as a condition of timely payment.

A contractor who prevails on a claim for non-payment of compensation is entitled to double the contractual value and injunctive relief. Violations of the law's anti-retaliation provision provides for additional statutory damages equal to the value of the contract (such that a claim for failure to pay compensation and retaliation could result in triple damages plus attorney's fees).

Bottom Line -- Memorialize Your Arrangements With Contractors!

The new law reinforces the importance of having independent contractor agreements with contractors that set forth, among other things, payment terms. Avoidance of ambiguity in this regard not only will assist companies to properly classify individuals who provide services as independent contractors (as opposed to employees), but also to highlight the payment structure to avoid significant new penalties for untimely payment of compensation to such service providers.

We are available to provide counsel and guidance concerning these issues, as well as other management labor and employment law concerns. For additional information, please contact one of the attorneys named below or the attorney with whom you have a primary relationship.

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