STATE OF NEW YORK

8039

IN SENATE

January 5, 2024

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to contracted compensation payments; and to repeal section 191-d of the labor law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 191-d of the labor law, as added by a chapter of the laws of 2023 amending the labor law constituting the freelance isn't free act, as proposed in legislative bills numbers S. 5026 and A. 6040, is REPEALED.

§ 2. The general business law is amended by adding a new article 44-A to read as follows:

ARTICLE 44-A
FREELANCE ISN'T FREE ACT

Section 1410. Definitions.
1411. Contracted compensation payments.
1412. Written contracts.
1413. Discrimination Prohibited.
1414. Violations.
1415. Additional rights.

§ 1410. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Construction contractor" means any person, sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake a construction project.

2. "Construction project" means the providing of any labor or services, and the use of any materials or equipment in order to alter, build, excavate, add to, subtract from, improve, repair, maintain, renovate, move, wreck or demolish any bridge, building, highway, road, railroad, land, tunnel, sewer, drainage or other structure, project, devel-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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opment, or improvement, or the doing of any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

3. "Freelance worker" means 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, but does not include:

(a) any person who, pursuant to the contract at issue, is a sales representative as defined in section one hundred ninety-one-a of the labor law;

(b) any person engaged in the practice of law pursuant to the contract at issue and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia and who is not under any order of court suspending, enjoining, restraining, disbarring or otherwise restricting such person in the practices of law;

(c) any person who is a licensed medical professional; or

(d) any person who is a construction contractor.

4. "Hiring party" means any person who retains a freelance worker to provide any service, other than:

(a) the United States government;

(b) the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary;

(c) a municipality, including any office, department, agency or other body of a municipality; or

(d) any foreign government.

§ 1411. Contracted compensation payments. 1. Except as otherwise provided by law, the contracted compensation shall be paid to a freelance worker either:

(a) on or before the date such compensation is due under the terms of the contract; or

(b) if the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than thirty days after the completion of the freelance worker's services under the contract.

2. Once a freelance worker has commenced performance of the services under the contract, the hiring party shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.

§ 1412. Written contracts. 1. Whenever a hiring party retains the services of a freelance worker, as such terms are defined in this article, the contract between such party and worker shall be reduced to writing. The hiring party must furnish a copy of such written contract, either physically or electronically, to the freelance worker and each party to the written contract shall retain a copy thereof.

2. The written contract shall include, at a minimum, the following information:

(a) the name and mailing address of both the hiring party and the freelance worker;

(b) 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;

(c) the date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined; and

(d) 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 as stipulated in paragraph (c) of this subdivision.

3. Such hiring party shall be required to keep such contract for a period of no less than six years and shall make such contract available to the attorney general upon request. The failure of a hiring party to maintain such contracts or produce such contracts to the attorney general shall give rise to a presumption that the terms that the freelance worker has presented are the agreed upon terms.

4. The commissioner of labor shall make available model contracts on the website of the department of labor for use by the general public at no cost. Such model contracts shall be made available in English and in the twelve languages most commonly spoken by limited English proficient individuals in the state.

§ 1413. Discrimination prohibited. No hiring party, as defined in this article, shall threaten, intimidate, discipline, harass, deny a work opportunity to, or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed under this article, or from obtaining any future work opportunity because the freelance worker has done so.

§ 1414. Violations. 1. The attorney general shall be authorized to investigate complaints regarding a violation of this article and provide appropriate remedies. Whenever the attorney general shall believe from evidence satisfactory to them that any hiring party has engaged in or is about to engage in any of the acts or practices stated to be unlawful they may bring an action in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution for one or more freelance workers of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. In such action a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation may be sought by the attorney general.

2. (a) A freelance worker alleging a violation of this article may bring an action in any court of competent jurisdiction for damages.

(b) Any action alleging a violation of section fourteen hundred twelve of this article shall be brought within two years after the acts alleged to have violated this article occurred.

(c) Any action alleging a violation of section fourteen hundred eleven of this article or section fourteen hundred thirteen of this article shall be brought within six years after the acts alleged to have violated this article occurred.

(d) Within ten days after having commenced a civil action pursuant to this subdivision, a plaintiff shall serve a copy of the complaint upon an authorized representative of the attorney general. Failure to so

serve a complaint does not adversely affect any plaintiff's cause of action.

(e) A plaintiff who solely alleges a violation of section fourteen hundred twelve of this article must prove that such plaintiff requested a written contract before the contracted work began.

3. (a) A plaintiff who prevails on a claim alleging a violation of section fourteen hundred eleven of this article shall be awarded damages as described in this section and an award of reasonable attorneys' fees and costs.

(b) (i) A plaintiff who prevails on a claim alleging a violation of section fourteen hundred twelve of this article shall be awarded statutory damages of two hundred fifty dollars.

(ii) A plaintiff who prevails on a claim alleging a violation of one or more claims under provisions of this article shall be awarded statutory damages equal to the value of the underlying contract for the violation in addition to the remedies specified in this article for such other violations.

(c) In addition to other damages awarded pursuant to this article, a plaintiff who prevails on a claim alleging a violation of section fourteen hundred eleven of this article is entitled to an award of double damages, injunctive relief, and other such remedies as may be appropriate.

(d) In addition to any other damages awarded pursuant to this article, a plaintiff who prevails on a claim alleging a violation of section fourteen hundred thirteen of this article is entitled to statutory damages equal to the value of the underlying contract for each violation arising under such section.

4. Nothing in this section prohibits:

(a) a person alleging a violation of this article from filing a civil action based on the same facts as a civil action commenced by the attorney general pursuant to this section; or

(b) the attorney general from sending a notice of complaint, unless otherwise barred from doing so.

5. In any civil action commenced pursuant to this section, the trier of fact may impose a civil penalty of not more than twenty-five thousand dollars for a finding that a hiring party has engaged in a pattern or practice of violations of this article. Any civil penalty so recovered shall be paid into the general fund.

§ 1415. Additional rights. 1. Except as otherwise provided by law, any provision of a contract purporting to waive rights under this article is void as against public policy.

2. The provisions of this article supplement, and do not diminish or replace, any other basis of liability or requirement established by statute or common law.

3. Failure to comply with the provisions of this article 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.

4. No provision of this article relating to freelance workers shall be construed as providing a determination about the legal classification of any such worker as an employee or independent contractor.

5. The provisions of this article shall not be construed or interpreted to override or supplant any of the provisions of chapter ten of title twenty of the administrative code of the city of New York.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that section one of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the labor law constituting the freelance isn't free act, as proposed in legislative bills numbers S. 5026 and A. 6040, takes effect.