

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:

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4 is REPEALED.

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

7 ARTICLE 44-A
8 FREELANCE ISN'T FREE ACT

9 Section 1410. Definitions.

10 1411. Contracted compensation payments.

11 1412. Written contracts.

12 1413. Discrimination Prohibited.

13 1414. Violations.

14 1415. Additional rights.

15 § 1410. Definitions. As used in this article, the following terms
16 shall have the following meanings:

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

22 2. "Construction project" means the providing of any labor or
23 services, and the use of any materials or equipment in order to alter,
24 build, excavate, add to, subtract from, improve, repair, maintain, reno-
25 vate, move, wreck or demolish any bridge, building, highway, road, rail-
26 road, 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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1 opment, or improvement, or the doing of any part thereof, including the
2 erection of scaffolding or other structures or works in connection ther-
3 ewith.

4 3. "Freelance worker" means any natural person or organization
5 composed of no more than one natural person, whether or not incorporated
6 or employing a trade name, that is hired or retained as an independent
7 contractor by a hiring party to provide services in exchange for an
8 amount equal to or greater than eight hundred dollars, either by itself
9 or when aggregated with all contracts for services between the same
10 hiring party and freelance worker during the immediately preceding one
11 hundred twenty days, but does not include:

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

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

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

22 (d) any person who is a construction contractor.

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

25 (a) the United States government;

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

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

31 (d) any foreign government.

32 § 1411. Contracted compensation payments. 1. Except as otherwise
33 provided by law, the contracted compensation shall be paid to a free-
34 lance worker either:

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

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

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

45 § 1412. Written contracts. 1. Whenever a hiring party retains the
46 services of a freelance worker, as such terms are defined in this arti-
47 cle, the contract between such party and worker shall be reduced to
48 writing. The hiring party must furnish a copy of such written contract,
49 either physically or electronically, to the freelance worker and each
50 party to the written contract shall retain a copy thereof.

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

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

1 (b) an itemization of all services to be provided by the freelance
2 worker, the value of the services to be provided pursuant to the
3 contract, and the rate and method of compensation;

4 (c) the date on which the hiring party must pay the contracted compen-
5 sation or the mechanism by which such date will be determined; and

6 (d) the date by which a freelance worker must submit a list of
7 services rendered under such contract to the hiring party in order to
8 meet any internal processing deadlines of such hiring party for the
9 purposes of compensation being timely rendered by the agreed-upon date
10 as stipulated in paragraph (c) of this subdivision.

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

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

22 § 1413. Discrimination prohibited. No hiring party, as defined in this
23 article, shall threaten, intimidate, discipline, harass, deny a work
24 opportunity to, or discriminate against a freelance worker, or take any
25 other action that penalizes a freelance worker for, or is reasonably
26 likely to deter a freelance worker from, exercising or attempting to
27 exercise any right guaranteed under this article, or from obtaining any
28 future work opportunity because the freelance worker has done so.

29 § 1414. Violations. 1. The attorney general shall be authorized to
30 investigate complaints regarding a violation of this article and provide
31 appropriate remedies. Whenever the attorney general shall believe from
32 evidence satisfactory to them that any hiring party has engaged in or is
33 about to engage in any of the acts or practices stated to be unlawful
34 they may bring an action in the name and on behalf of the people of the
35 state of New York to enjoin such unlawful acts or practices and to
36 obtain restitution for one or more freelance workers of any moneys or
37 property obtained directly or indirectly by any such unlawful acts or
38 practices. In such action preliminary relief may be granted under arti-
39 cle sixty-three of the civil practice law and rules. In such action a
40 civil penalty in an amount not to exceed one thousand dollars for a
41 first violation, two thousand dollars for a second violation or three
42 thousand dollars for a third or subsequent violation may be sought by
43 the attorney general.

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

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

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

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

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

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

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

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

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

18 (c) In addition to other damages awarded pursuant to this article, a
19 plaintiff who prevails on a claim alleging a violation of section four-
20 teen hundred eleven of this article is entitled to an award of double
21 damages, injunctive relief, and other such remedies as may be appropri-
22 ate.

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

28 4. Nothing in this section prohibits:

29 (a) a person alleging a violation of this article from filing a civil
30 action based on the same facts as a civil action commenced by the attor-
31 ney general pursuant to this section; or

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

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

39 § 1415. Additional rights. 1. Except as otherwise provided by law, any
40 provision of a contract purporting to waive rights under this article is
41 void as against public policy.

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

45 3. Failure to comply with the provisions of this article does not
46 render any contract between a hiring party and a freelance worker void
47 or voidable or otherwise impair any obligation, claim or right related
48 to such contract or constitute a defense to any action or proceeding to
49 enforce, or for breach of, such contract.

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

53 5. The provisions of this article shall not be construed or interpret-
54 ed to override or supplant any of the provisions of chapter ten of title
55 twenty of the administrative code of the city of New York.

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