

**PRACTICAL NEWS
LEGAL ALERTS**
August 1, 2024

Effective August 28, 2024, New York State will join New York City in placing requirements on the hiring of freelancers with the New York State “Freelance Isn’t Free Act”

Key Takeaways:

1. Effective Date: Enacted on November 22, 2023 and initially scheduled to become effective on May 20, 2024, New York State’s Freelance Isn’t Free Act (“FIFA”) now has an effective date of August 28, 2024. All FIFA requirements will be effective as of that date and not retroactively.

FIFA greatly mirrors and does not preempt the requirements of the New York City FIFA which took effect on May 15, 2017.

2. \$800 Triggering Mechanism; Definitions: FIFA requirements will only be triggered where a “freelance worker” is hired or retained by a “hiring party” to provide services for eight hundred dollars (\$800.00) or more for either one or more services performed or to be performed within a period of one hundred twenty days.

A “freelance worker” is defined as “any natural person or organization composed of no more than one person, whether or not incorporated or employing a trade name” hired or retained as an independent contractor for such purposes.

Explicitly excluded from the definition of freelance worker are sales representatives, attorneys, licensed medical professionals, and construction contractors.

A “hiring party” includes any nongovernmental entity or person that retains a freelance worker to provide such services.

This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.

3. FIFA Requirements:

- a. there must be a contract between the hiring party and the freelance worker;
- b. the contract must be in writing with a copy to be provided by the hiring party to the freelance worker to be retained by both parties;
- c. the written contract must include, at a minimum:
 - i. the names and mailing addresses of both parties;
 - ii. an itemization of all services to be provided by the freelance worker, the value of the services pursuant to the contract, and the rate and method of compensation;
 - iii. the date of compensation or the mechanism by which to determine such date;
 - iv. the date that the freelance worker must submit the itemization or list of services to be provided so payment for such services can be timely made; and
- d. the hiring party must retain a copy of the written contract for no less than six years.

4. Damages; Civil Penalties:

FIFA violations can be costly and time-consuming. Freelance workers can seek remedies and recourse for alleged FIFA violations administratively through the State Department of Labor ("DOL") or through a private right of action in court. The applicable statutes of limitations for which a freelance worker can commence a court action against a hiring party range from two years to six years depending upon the claimed violations.

A freelance worker who prevails on a FIFA claim may be awarded statutory damages equal to the value of the underlying contract, double damages, injunctive relief, and reasonable attorneys' fees and costs based on the nature, scope, and severity of the violations.

In addition, the State Attorney General can seek civil penalties against a hiring party in an amount not exceeding twenty-five thousand dollars (\$25,000.00) where a "pattern or practice" of such violations has been established.

Preventive Steps To Be Taken:

In light of FIFA, all entities deemed "hiring parties" should review and, where necessary, reassess their worker classification designations to determine that their freelance workers are, in fact, independent contractors and not employees and that such independent contractors have agreements that comply with FIFA mandates and requirements.

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As the DOL is statutorily-mandated to make available sample or model contracts in English and other languages on its website for use by hiring parties and freelance workers, it is strongly recommended that such contracts be reviewed, revised where appropriate, and applied once made available to the public.

A follow-up client announcement or alert will be provided once the DOL has promulgated and made such contracts available.

Until then, and for more information about FIFA or other legislative or regulatory developments and requirements, please feel free to contact the attorneys within our Employment & Labor Law Practice.

To read the full alert download the pdf below.

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