COLLAZO FLORENTINO & KEIL LLP *Client Advisory*

For Clients And Friends Of The Firm

July 14, 2017

Update: New York City Freelancer Rules to Take Effect July 24

As we advised you in our client advisory dated November 17, 2016, available here, the New York City Council passed a law imposing requirements on businesses and individuals who retain the services of freelance workers as independent contractors, which took effect on May 15, 2017. The "Freelance Isn't Free Act" requires companies to provide a written contract to most freelancers whose services are valued at $800 or more in the aggregate (notable exceptions include licensed medical professionals, attorneys engaged in the practice of law, and certain sales representatives), requires timely payment for services, prohibits retaliation against freelancers for exercising protected rights, and imposes significant penalties for noncompliance. The New York City Department of Consumer Affairs ("DCA") has now issued rules under this law expanding the restrictions on businesses that contract with freelancers, which will become effective on July 24, 2017.

Notably, the DCA's new rules will substantially limit contractual restrictions on a freelancer's ability to participate in litigation. In particular, the rules void any contractual limitations on a worker's right to participate in class, collective, or representative actions, and nullify agreements that limit or waive procedural rights "normally afforded to a party in a civil or administrative action." The effect of these provisions may preclude businesses from enforcing pre-dispute arbitration agreements, jury trial waivers, and other similar provisions in contracts with freelancers. The pending rules also specify that freelancers have a right to disclose the terms of their contracts to the DCA's Office of Labor Policy and Standards, and void contract provisions that purport to waive or limit this right.

The rules also establish the burden of proof required to sustain retaliation claims, providing that a freelancer need only show that he or she exercised a right provided by the law (or attempted to do so), and that this was a motivating factor for an adverse action. The DCA's publication further clarifies that freelancers will be permitted to bring retaliation claims even if the parties do not have any prior contractual agreement. For example, refusing to hire a freelancer because he or she sued another business to recoup delayed payments could potentially form the basis of

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a retaliation claim. The rules also indicate that the law protects freelancers regardless of their immigration status, and that adverse actions (including threats) related to an individual's perceived immigration status or work authorization may constitute unlawful retaliation.

Finally, the DCA has clarified the standard it will apply in determining the "value" of a contract, both for purposes of determining whether the freelancer's services meet the $800 jurisdictional threshold and calculating damages in the event of a violation. In making such determinations, the agency will consider the "reasonable" value of the freelancer's actual or expected services, the cost of supplies, and any expenses under the applicable contract(s).

To ensure ongoing compliance with the Freelance Isn't Free Act in advance of the pending DCA rules, businesses would be well-served to evaluate covered contracts with freelancers, review relevant internal policies and protocols, and confirm that both employees and business associates who are involved in recruiting, hiring, compensating, or collaborating with the company's freelance workers are familiar with the law's requirements and applicable company policy.

If you have any questions about the law or DCA rules, or would like additional information. Please contact Nick Bauer at (212) 758-7793, or any other attorney at the Firm.