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### **New York City to Enact Significant Protections for Freelancers**

On October 27, 2016, the New York City Council passed a bill that will impose significant requirements on businesses and individuals who retain the services of freelance workers as independent contractors. Mayor de Blasio is expected to sign the bill, which will take effect 180 days after signature and apply to contracts entered into after its effective date.

All businesses and persons who engage individuals as independent contractors (referred to as a “hiring party”) will be subject to the bill’s requirements, with the exception of government entities. The bill protects almost all single-individual independent contractors, regardless of whether the person performs work under a trade name or as a corporation. Licensed medical professionals, sales representatives (as defined by the New York Labor Law), and individuals practicing law are, however, excluded from the bill’s requirements.

Under the bill, hiring parties must provide freelancers with a written contract if the freelancer’s work is valued at \$800 or more, whether under a single agreement or multiple agreements aggregated over a period of 120 days. Contracts must provide: the parties’ names and mailing addresses; an itemization of the services to be provided, the value of the services, and the rate and method of compensation; and either the date by which the freelancer must be paid or a method for determining the date of payment. The City’s Office of Labor Standards may also issue regulations requiring additional terms in freelancer contracts, and will publish model contracts in English and other languages.

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Hiring parties will be required to pay freelancers all compensation by the time specified in the contract or – if not identified in the contract – 30 days after the services are completed. Once a freelancer has begun work, the hiring party cannot require the freelancer to accept less compensation as a condition of timely payment. In addition, the bill prohibits retaliation against a freelancer who exercises or attempts to exercise his or her rights, and prohibits hiring parties from taking any action that is “reasonably likely to deter a freelancer” from exercising his or her rights.

The bill provides significant penalties for noncompliance, and freelancers alleging a violation will be permitted to report complaints to the Office of Labor Standards or file a civil lawsuit. While the failure to provide a written contract when required is, by itself, punishable by \$250 in damages to the freelancer, these damages increase to the entire value of the contract if another violation is proven (such as retaliation or untimely payment). Freelancers who can show a violation of the bill’s payment requirements will be entitled to double damages, injunctive relief, or any other appropriate relief. The bill also permits freelancers to recover damages equal to the value of the underlying contract for any instance of retaliation. The OLS may also bring an action alleging a pattern or practice of violations, which may be punishable by a civil penalty of up to \$25,000.

The bill leaves a number of significant questions unanswered, and the Firm will be closely monitoring publications from the OLS for additional guidance. Most notably, the bill does not specify whether it applies only to work performed wholly or predominantly within the City, whether \$800 of work performed within the City will be sufficient to trigger the bill’s protections if more work was performed elsewhere, or whether and to what extent it will apply to New York City hiring parties who engage freelancers to perform work outside of the City. In addition, the bill does not specify whether all required terms of an agreement with a freelancer must be memorialized in a single, written document, or whether written correspondence (such as email negotiations) will satisfy the bill’s requirement that agreements with freelancers be in writing.

In recent years, business relationships with independent contractors have been subject to increasing scrutiny from a number of government agencies, such as the U.S. Department of Labor, in connection with employee misclassification initiatives. Given this change in New York City Law, businesses should confer with counsel to determine appropriate steps for compliance with the new requirements, including drafting agreements and assessing whether current and future independent contractors are subject to the new requirements.

If you have any questions or would like more detailed information, please contact Nick Bauer at (212) 758-7793 or any other attorney at the firm.

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