

Freelance Isn't Free Act Free Webinar for Freelance Workers

June 15, 2017

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Agenda

- DCA Office of Labor Policy & Standards
- Worker Rights and Misclassification
- Freelance Isn't Free Act
- Your Rights
- Questions



Local Law 104 of 2015: DCA Office of Labor Policy & Standards (OLPS)



DCA's Office of Labor Policy & Standards (OLPS) is a **dedicated voice in City government for workers**. Charged with helping vulnerable workers, OLPS embraces our mandate to focus on issues affecting immigrants, people of color, and women in the workplace.



What we do for you:



Enforcement



Outreach and Education



Paid Care Division



Complaint Intake and Referral



Research, Advocacy, and Policy Development

OLPS Team



Robust staff of attorneys, investigators, outreach and education specialists, as well as research and policy analysts.



Interdisciplinary and data-driven.



Strong collaboration with workers, unions, and worker organizations.

We enforce key NYC workplace laws and rules, including:

- Paid Sick Leave Law
- Freelance Isn't Free Act
- Commuter Benefits Law
- Grocery Worker Retention Act
- Living and Prevailing Wage Law
- Fair Workweek (*Law takes effect in November 2017*)



Freelance Isn't Free Act, first of its kind in nation, took effect on May 15, 2017

BEFORE Freelance Isn't Free Act:

- **71%** of freelance workers had trouble collecting payment during their careers.
- **Only 28%** of freelance workers operated under written contracts.
- **\$5,968** is the average annual unpaid income for freelance workers.

Source: 2015 Freelancers Union Report, The Costs of Nonpayment.

Worker Classification

- **Employees and independent contractors have different rights.**
 - Most workers are employees.
 - When an employer inaccurately treats a worker as an independent contractor when he/she is an employee, it is a **misclassification**.
- **Main Question:** Is the person truly working for themselves or are they economically dependent on the employer?
 - *Note: Courts have created many fact-dependent tests to answer this question.*

BEFORE Freelance Isn't Free Act:

- Written contracts were **not** required.
- For non-payments, freelancers filed **breach of contract claim**.
- **Few, if any, protections** from retaliation.
- Freelancers **paid** their own attorney fees.

BEFORE the Law



Employee Rights:

Minimum wage

Overtime

State and federal anti-harassment and anti-discrimination law

Right to unionize & collectively bargain

Health insurance through ER

Family and Medical Leave Act

NYC Paid Sick Leave

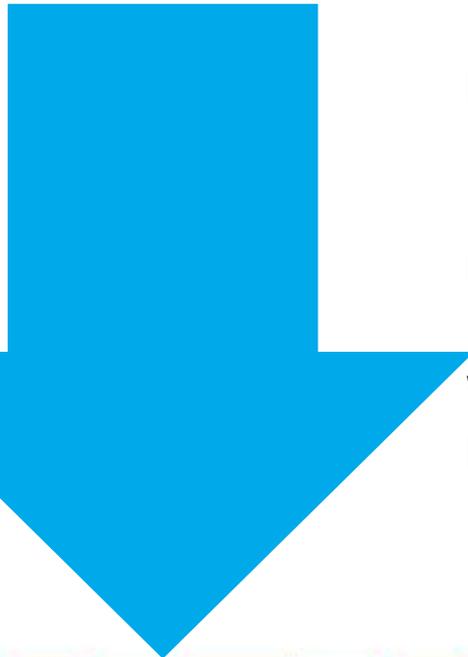
Safe working environment laws (OSHA and NYS health and safety standards)

Workers' compensation premiums

ER pays half of FICA taxes

Unemployment insurance

Misclassification occurs when an employer inaccurately treats a worker as a contractor when they are an employee.



Independent Contractor Rights:

Based on contract

Independent Contractor Obligations:

100% of FICA taxes

Work-related expenses

If purchased, liability insurance

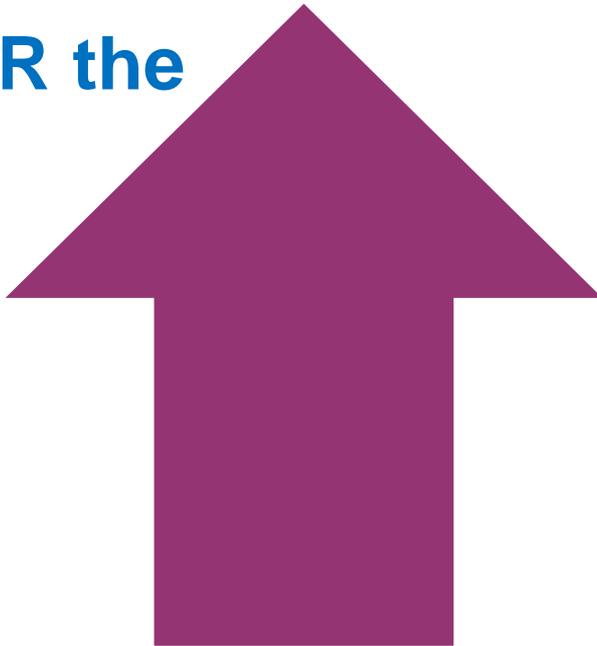
Your Rights

You have rights regardless of your immigration status.

- Written Contract
- Timely Payment
- Freedom from Retaliation
- Right to File a Complaint
- Right to Sue for Double Damages + Attorney Fees
- Right to Court Navigation Services



AFTER the Law



Employee Rights:

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Right to unionize & collectively bargain

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Family and Medical Leave Act

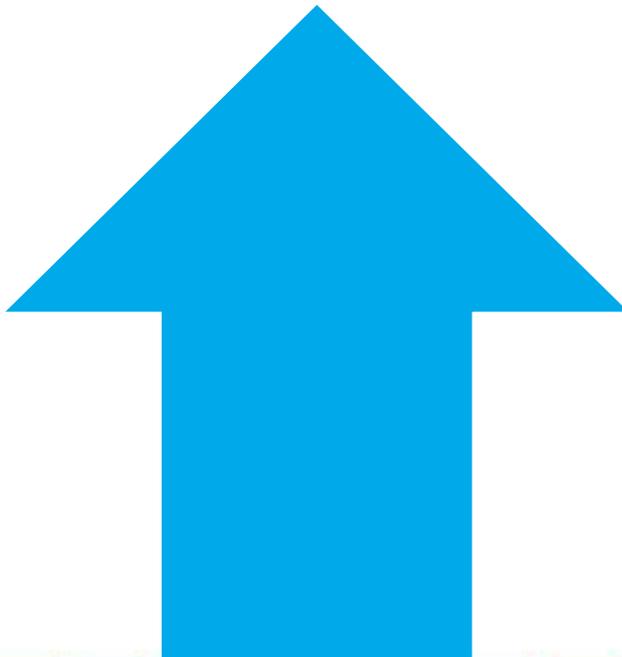
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Freelance Isn't Free Act

Written Contract

Timely Payment

Freedom from Retaliation

Right to File a Complaint

Right to Sue for FIF Violation

Independent Contractor Rights:

Based on contract

Independent Contractor Obligations:

100% of FICA taxes

Work-related expenses

If purchased, liability insurance

Who is a freelance worker?

- Any **individual** hired or retained as an independent contractor by a hiring party to provide services for compensation. Individuals may qualify as freelance workers under the Law even if they are incorporated or use a trade name.
- Freelance workers are covered by the Law regardless of their immigration status.
- **EXCEPTIONS:** Certain sales representatives, attorneys, licensed medical professionals, and workers hired/retained by any government agency.

Who is a hiring party?

- A hiring party is any person, organization, or entity other than a local, state, federal, or foreign government that retains a freelance worker to provide any service for compensation.

Scenarios: Who is a freelance worker?

Quick Checklist to Identify Freelance Worker:

- Is an individual worker (i.e., single person)
- Was hired as an independent contractor
- Provides services in exchange for compensation
- Is not an exempt worker as defined by the Law

A knitter sells an \$1,000 blanket on her website, and the buyer agrees to pay by check. However, the check never arrives, despite the fact that the knitter mails the blanket.

A Long Island family commissions an architectural firm to design a spiral staircase. There is only one architect working with the firm. There is a written contract, and the Hiring Party misses the first installment payment by 60 days. The firm's office administrator calls the Hiring Party, but no payment results.

A physician has a written agreement with a local restaurant to play the saxophone every weekend for 120 days. However, the restaurant doesn't pay him the \$3,000 he is owed by the payment date listed in the contract.

Questions?



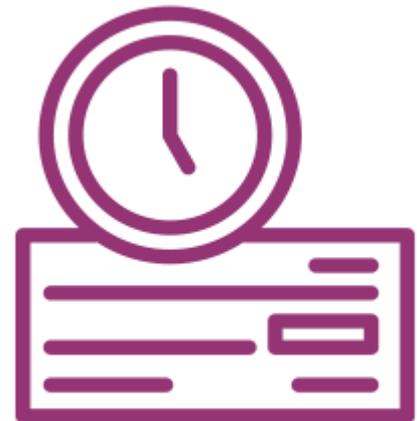
Right to a Written Contract

- **All contracts worth \$800 or more must be in writing.** This includes all agreements between you and the hiring party that total \$800 in any 120-day period. This applies to contracts entered on or after May 15, 2017 (*date the Law went into effect*).
- **Contracts must include:**
 - Name and mailing address of worker and hiring party
 - Itemization of all services
 - Value of the services provided
 - Rate & method of compensation
 - Pay date (or mechanism to determine pay date)



Right to Timely Payment

- **The hiring party must pay you for all completed work.** You must receive payment on or before the date that is in the contract. If the contract does not include a payment date, the hiring party must pay you within 30 days of completing the work.
- **Once you begin the work, the hiring party may not require you accept less than the agreed-upon amount.**



Scenarios: What are contract and nonpayment violations?

A fashion magazine hires a freelance journalist to write an article in April of 2017. The work is finished in June, but the magazine never pays the journalist.

A couple hires a videographer for their wedding. The videographer requests a contract, but the couple does not sign one and no payment date is agreed upon. The couple pays the videographer in full 60 days after the video is finished.

A family hires a housecleaner to spend 16 hours each week in July to clean their 4-story brownstone after consecutive weekend summer parties, for a total of \$2,000. After the cleaner has completed one day of work, the family tells her that she will be paid according to their contract if she will accept \$1,500. Otherwise, she can wait until September for the full amount.

Questions?



Freedom from Retaliation

- **It is illegal for a hiring party to penalize, threaten, or blacklist you because you exercised your rights.**

- Preventing the worker from procuring work by telling other employers not to hire them
- Sending the worker a letter threatening unwarranted legal action
- Delaying or reducing payment, or refusing to pay



Scenarios: What is a violation of worker's freedom from retaliation?

A screenwriter sues a hiring party for a violation of the NYC Freelance Isn't Free law. The day after the hiring party receives a copy of the lawsuit, the hiring party angrily calls the screenwriter and tells her that he will never work with her again because she filed a lawsuit against him.

A model asks a hiring party for a written contract, but is told in the next conversation that the hiring party has decided to "go in another direction."

An interpreter's payment is one day late and he requests payment from the hiring party. The hiring party pays the worker a day late and tells him that normally he would not work with someone again if they asked for payment the day after the due date, but she will "let it slide this time." The hiring party leaves a negative review on the interpreter's website, but contacts him the following week for another job.

Questions?



How to Access Your Rights

- Communicate directly with the Hiring Party
 - Request payment for violation of Freelance Isn't Free Law
 - Negotiate a settlement
- File a complaint with OLPS
- Go to court

Right to File a Complaint

- You can file a complaint with DCA's Office of Labor Policy & Standards.
- You must file complaint **within two years** of the date of violation.



Complaint Process

OLPS Process

Research



If Hiring Party does not respond, Freelance Worker will receive a presumption in their favor in court.

Court Navigation Services can help

Right to Sue

- **Freelance workers can sue the hiring party in court to seek damages.**
- Freelance workers must file claim in court for no written contract **within two years** of the date of violation.
- Freelance workers must file claim in court for nonpayment, underpayment, or act of retaliation **within six years*** of the date of violation.



**Six years is the New York State statute of limitations under contract law.*

Court Navigation Program

- **Court Navigation Services** are non-attorneys specifically trained to help you:
 - Access the court system, court forms and templates.
 - Access interpretation and translation resources.
 - Access resources about work classification.
 - Find an attorney.
- Download our **Court Navigation Guide for Freelance Workers** at nyc.gov/dca

Violations and Damages

	<i>If a hiring party:</i>	<i>A judge may order the hiring party to:</i>
Failure to enter into a written contract	Failed to enter into a written contract AND violated any other provision of the Law	Pay the freelance worker damages equal to the value of the contract
	Refused to enter into a written contract, but did not violate the Law in any other way	Pay the freelance worker \$250
Nonpayment or underpayment	Failed to pay a freelance worker the amount agreed to under the contract <ul style="list-style-type: none"> on the payment due date under the contract; OR within 30 days after the freelance worker completes work on the contract (<i>if the contract does not specify a due date</i>) 	Pay the freelance worker double damages, injunctive relief, and other appropriate remedies
Retaliation	Retaliated against a freelance worker	Pay the freelance worker damages equal to the value of the contract for each retaliation violation

*Attorneys' fees and costs are available for all successful claims.

Patterns of Abuse

- **If a Hiring Party has a “pattern or practice” of violating the Freelance Isn’t Free Act, the City of New York may sue the Hiring Party.** NYC may pursue any appropriate relief and civil penalties of up to \$25,000.
- When a hiring party demonstrates such a pattern:
 - City Law Department may file a civil suit against the hiring party.
 - Freelance workers may still file a complaint and a civil suit for the same violations.

Scenarios: How can freelance workers access their rights?

A wedding planner finishes work for a client, but the hiring party does not pay the worker on time. The worker requests payment and the hiring party sues him for breach of contract.

A construction worker contracts individually with a hiring party. The worker discovers that other workers have been similarly hired by the same hiring party to do the same work. The hiring party does not pay the workers the amount promised.

Questions?



The Department of Consumer Affairs (DCA) Office of Labor Policy & Standards is NYC's central resource for workers.

How to reach us:

- Call **311** (212-NEW-YORK outside NYC). Ask for Freelance Workers.
- Email **Freelancer@dca.nyc.gov**
- Visit **[42 Broadway, 9th Floor, in Lower Manhattan.](#)**
- Visit **nyc.gov/dca**