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New NYC Rules For Hiring Domestic Workers And Other Freelancers As Independent Contractors

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July 27, 2017 - New York City's Freelance Isn't Free Act, which went into effect on May 15, 2017, protects domestic workers and other freelancers hired to perform work as independent contractors. Specifically, the NYC law requires written contracts for services valued at \$800 or more and requires that freelance workers are paid in full in a timely manner. The NYC Department of Consumer Affairs (the "DCA") has published rules, which will become effective on July 24, 2017, that are intended to "clarify provisions in the law, establish requirements to implement and meet the goals of the law, and provide guidance to covered hiring parties and protected freelance workers."

Section 12-05 of the DCA's rules places the following limitations on the terms and conditions that may be contained in contracts with freelance workers. These agreements may not include: (i) a prospective waiver or limitation of rights under the Act; (ii) a waiver or limitation of the freelance worker's right to join in or receive any relief from a class, collective, or representative proceeding; (iii) a waiver or limitation of "any other procedural right normally afforded to a party in a civil or administrative action" (such as procedural rights under the New York Civil Practice Law and Rules, the Federal Rules of Evidence, and the Federal Rules of Civil Procedure); and (iv) provisions that restrict the right to divulge the contract's terms to the Director of the NYC Office of Labor Standards.

The rules also clarify what the term "value" means both when establishing coverage under the Act and to calculate damages for violations of the Act. For example, damages for violations of the Act are based on the value of the underlying contract and the rules provide that the value of a contract between a freelance worker and a hiring party includes "the reasonable value of all services performed and/or anticipated, and the reasonable costs for supplies and other expenses reasonably incurred by the freelance worker."

Another clarification provided by the DCA's rules is that freelance workers are entitled to the protections of the Act

"regardless of immigration status." The new rules also establish a "motivating factor" standard (as opposed to a but-for standard) applicable to retaliation claims under the Act, which means that retaliation can be established even if a freelance worker's exercise of a right under the Act was not the sole reason an adverse action was taken against the worker.

Those who hire domestic workers and other freelancers to work as independent contractors should be aware of the new rules.

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