

## New York Enacts New Requirements for Independent Contractor Relationships



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New York State recently enacted a new Article 44-A of the New York State General Business Law, known as the “Freelance Isn’t Free Act” (“Act”). Once it goes into effect on **August 28, 2024**, the Act will require individuals and entities who engage individual or single owner entity independent contractors to, among other things, enter into a written contract with those independent contractors (the agreement can be provided physically or electronically to the independent contractor), and thereafter provide timely payment to those independent contractors for their services. Modeled after a New York City local law which imposes similar protections for independent contractors, the Act provides individual and single-owner entity independent contractors in New York with new protections and enforceable rights against those that hire them. However, the Act will not apply retroactively to independent contractor relations created prior to August 28, 2024.

The Act also imposes new recordkeeping requirements on the hiring party, and strictly prohibits any hiring party from retaliating or discriminating against independent contractors who exercise their rights under the Act. Because the Act applies to any independent contractor arrangement having a value of at least \$800, it will likely impact the

many businesses throughout the state that rely on the work of independent contractors to operate.

## The Act's Requirements

An independent contractor — referred to in the Act as a freelance worker — is defined as any individual or single owner entity (including a single member LLC or PLLC or single shareholder corporation or professional services corporation), who is retained or hired to provide virtually any services (such as, for example, IT, financial, tax, accounting, marketing, consulting, cleaning, landscaping, and snow removal services) as an independent contractor rather than an employee. However, the Act does not apply to scenarios where a person or entity hires “licensed medical professionals,” attorneys, sales representatives, or construction contractors to provide services as independent contractors.

The term “licensed medical professionals” is undefined in the Act. Therefore, it is not clear at this time as to exactly which professionals are included in the scope of “licensed medical professionals” — and as a result are not covered by the Act. However, the New York State Department of Labor intends to define the term “licensed medical professionals” in the near future.

The Act's \$800 threshold is easily reached because it is measured by either a single contract or an aggregate of contracts between the parties during a 120-day period and can include one project or multiple projects during this time period. Once the Act's threshold is triggered, its requirements apply and a detailed written agreement between the parties is required for the arrangement.

Under the Act, the agreement between the parties must, at a minimum, contain: (a) the names and mailing addresses of the parties to the agreement; (b) a list of all the services that the independent contractor will provide to the hiring party; (c) the value of the services to be provided; (d) the rate and method of compensation for such services; (e) the date the hiring party will issue payment to the independent contractor, or the mechanism by which such date will be determined; and (f) the date the independent contractor must submit to the hiring party a list of services that were rendered under the written agreement. Furthermore, the Act requires that full payment to the independent contractor must occur on or before the date for payment required in the written agreement between the parties. If the agreement fails to specify when payment is required, the hiring party must make payment no later than thirty days after the independent contractor's services are completed.

The hiring party is required to keep a copy of its written agreement with the independent contractor for a minimum of six years and must make the written agreement available for inspection upon the New York State Department of Labor's request. Any language in the agreement which waives the independent contractor's rights provided under the Act will void as against public policy. Additionally, the Act includes an anti-retaliation provision, which prohibits hiring parties from harassing, discriminating, threatening, intimidating, disciplining, or denying work opportunities to an independent contractor for exercising, or attempting to exercise, any rights under the Act.

## Violations and Enforcement of Act

The Act provides significant government and private options for enforcement. An independent contractor can file a complaint with the Department of Labor for any alleged violation, and the Department of Labor has the authority under the Act to investigate and potentially bring a claim against the hiring party if it determines that violations of the Act have occurred. In addition, the Act provides an aggrieved independent contractor with a private right of

action to recover damages from their hiring party.

Where there is a pattern or practice of violations of the Act by a hiring party, the New York State Attorney General's Office may commence a civil action on behalf of New York State against that hiring party. Penalties include double damage recovery, injunctive relief, \$250 in statutory damages for each violation, and/or statutory damages equal to the contract price for **each** violation, including up to \$25,000 where there has been a finding of a pattern or practice of violations. The Act also provides that aggrieved independent contractors may be awarded any other remedies deemed appropriate.

## **Be Ready to Comply with the Act**

Due to the low monetary threshold (that is, \$800 in services over a 120-day period) that triggers application of the Act, we anticipate that the Act will have a significant impact on businesses throughout New York State. For more information about the Act, or if you would like assistance in updating or drafting compliant independent contractor agreements, please contact Employment Practice Team Leader Amy Habib Rittling ([arittling@lippes.com](mailto:arittling@lippes.com)), Frank J. Fanshawe ([ffanshawe@lippes.com](mailto:ffanshawe@lippes.com)), or Matthew L. Hosford ([mhosford@lippes.com](mailto:mhosford@lippes.com)).

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