LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2016

No. 140

Introduced by Council Members Lander, Levin, Johnson, Cumbo, Espinal, Chin, Mendez, Ferreras-Copeland, Constantinides, Richards, Rose, Torres, Kallos, Reynoso, Rodriguez, Levine, Treyger, Van Bramer, Gentile, Cabrera, Menchaca, Dickens, Rosenthal, Koslowitz, Miller, Palma, Salamanca, Williams, Cornegy, Gibson, Cohen, Ulrich and the Public Advocate (Ms. James).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to protections for freelance workers

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 10 to read as follows:

CHAPTER 10

FREELANCE WORKERS

§ 20-927 Definitions.
§ 20-928 Written contract required.
§ 20-929 Unlawful payment practices.
§ 20-930 Retaliation.
§ 20-931 Complaint procedure; jurisdiction of director.
§ 20-932 Navigation program.
§ 20-933 Civil action.
§ 20-934 Civil action for pattern or practice of violations.
§ 20-935 Application; waiver; effect on other laws.
§ 20-936 Follow-up; data collection; reporting.

§ 20-927 Definitions. For purposes of this chapter, the following terms have the following meanings:

Director. The term "director" means the director of the office of labor standards established pursuant to section 20-a of the charter.

Freelance worker. The term "freelance worker" means any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation. This term does not include:

1. Any person who, pursuant to the contract at issue, is a sales representative as defined in section 191-a of the labor law;

2. Any person engaged in the practice of law pursuant to the contract at issue and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia and who is not under any order of any court suspending, enjoining, restraining, disbarring or otherwise restricting such person in the practice of law; and

3. Any person who is a licensed medical professional.

Hiring party. The term "hiring party" means any person who retains a freelance worker to provide any service, other than (i) the United States government, (ii) the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary, (iii) the city, including any office, department, agency or other body of the city, (iv) any other local government, municipality or county or (v) any foreign government.

Office. The term "office" means the office of labor standards established pursuant to section 20-a of the charter.

§ 20-928 Written contract required. a. Whenever a hiring party retains the services of a freelance worker and the contract between them has a value of $800 or more, either by itself or when aggregated

with all contracts for services between the same hiring party and freelance worker during the immediately preceding 120 days, the contract shall be reduced to writing. Each party to the written contract shall retain a copy thereof.

b. The written contract shall include, at a minimum, the following information:

1. The name and mailing address of both the hiring party and the freelance worker;

2. An itemization of all services to be provided by the freelance worker, the value of the services to be provided pursuant to the contract and the rate and method of compensation; and

3. The date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined.

c. The director may by rule require additional terms to ensure that the freelance worker and the hiring party understand their obligations under the contract.

§ 20-929 Unlawful payment practices. a. Except as otherwise provided by law, the contracted compensation shall be paid to the freelance worker either:

1. On or before the date such compensation is due under the terms of the contract; or

2. If the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than 30 days after the completion of the freelance worker's services under the contract.

b. Once a freelance worker has commenced performance of the services under the contract, the hiring party shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.

§ 20-930 Retaliation. No hiring party shall threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelancer worker from, exercising or attempting to exercise any right guaranteed under this chapter, or from obtaining future work opportunity because the freelance worker has done so.

§ 20-931 Complaint procedure; jurisdiction of director. a. Complaint. A freelance worker who is aggrieved by a violation of this chapter may file a complaint with the director within two years after the acts alleged to have violated this chapter occurred. The director shall prescribe the form of the complaint, which shall include, at a minimum:

1. The name and mailing address of the freelance worker and of the hiring party alleged to have violated this chapter;

2. A statement detailing the terms of the freelance contract, including a copy of such contract if available;

3. The freelance worker's occupation;

4. A statement detailing the alleged violations of this chapter; and

5. A signed affirmation that all facts alleged in the complaint are true.

b. Referral to navigation program. At the time the director receives a complaint alleging a violation of this chapter, the director shall refer the freelance worker to the navigation program identified in section 20-932.

c. Jurisdiction. 1. The director does not have jurisdiction over a complaint if:

(a) Either party to the contract has initiated a civil action in a court of competent jurisdiction alleging a violation of this chapter or a breach of contract arising out of the contract that is the subject of the complaint filed under subdivision a of this section, unless such civil action has been dismissed without prejudice to future claims; or

(b) Either party to the contract has filed a claim or complaint before any administrative agency under any local, state or federal law alleging a breach of contract that is the subject of the complaint filed under subdivision a of this section, unless the administrative claim or complaint has been withdrawn or dismissed without prejudice to future claims.

2. Where the director lacks jurisdiction over a complaint, the director shall notify the following, in writing, within 10 days of discovering the lack of jurisdiction:

(a) The freelance worker; and

(b) The hiring party, if the director discovered the lack of jurisdiction after sending a notice to the hiring party pursuant to subdivision d of this section.

d. Notice to hiring party. Within 20 days of receiving a complaint alleging a violation of this chapter, the director shall send the hiring party named in the complaint a written notice of complaint. Such notice shall inform the hiring party that a complaint has been filed alleging violations of this chapter, detail the remedies available to a freelance worker for violations of this chapter by a hiring party and include a copy of the complaint and notice that failure to respond to the complaint creates a rebuttable presumption in any civil action commenced pursuant to this chapter that the hiring party committed the violations alleged in the complaint. The director shall send such notice by certified mail and shall bear the cost of sending such notice.

e. Response. 1. Within 20 days of receiving the notice of complaint, the hiring party identified in the complaint shall send the director one of the following:

(a) A written statement that the freelance worker has been paid in full and proof of such payment; or

(b) A written statement that the freelance worker has not been paid in full and the reasons for the failure to provide such payment.

2. Within 20 days of receiving the written response, the director shall send the freelance worker a copy of:

(a) The response;

(b) Any enclosures submitted to the director with the response;

(c) Materials informing the freelance worker that he or she may bring an action in a court of competent jurisdiction;

(d) Any other information about the status of the complaint; and

(e) Information about the navigation program described in section 20-932.

3. If the director receives no response to the notice of complaint within the time provided by paragraph 1 of this subdivision, the director shall mail a notice of non-response to both the freelance worker and the hiring party by regular mail and shall include with such notice proof that the director previously mailed the notice of complaint to the hiring party by certified mail. Upon satisfying the requirements of this paragraph, the director may close the case.

§ 20-932 Navigation program. a. The director shall establish a navigation program that provides information and assistance, as set forth in subdivision c of this section, relating to the provisions of this chapter. Such program shall include assistance by a natural person by phone and e-mail and shall also include online information.

b. The director shall make available model contracts on the website of the office for use by the general public at no cost. Such model contracts shall be made available in English and in the six languages most commonly spoken by limited English proficient individuals in the city as determined by the department of city planning.

c. The navigation program shall provide the following:

1. General court information and information about procedures under this chapter;

2. Information about available templates and relevant court forms;

3. General information about classifying persons as employees or independent contractors;

4. Information about obtaining translation and interpretation services and other courtroom services;

5. A list of organizations that can be used for the identification of attorneys; and

6. Other information, as determined by the director, related to the submission of a complaint by a freelance worker or the commencement of a civil action pursuant to this chapter by a freelance worker.

d. The navigation program shall include outreach and education to the public on the provisions of this chapter.

e. The navigation program shall not provide legal advice.

§ 20-933 Civil action. a. Cause of action. 1. Except as otherwise provided by law, a freelance worker alleging a violation of this chapter may bring an action in any court of competent jurisdiction for damages as described in subdivision b of this section.

2. Any action alleging a violation of section 20-928 shall be brought within two years after the acts alleged to have violated this chapter occurred.

3. Any action alleging a violation of sections 20-929 or 20-930 shall be brought within six years after the acts alleged to have violated this chapter occurred.

4. Within 10 days after having commenced a civil action pursuant to subdivision a of this section, a plaintiff shall serve a copy of the complaint upon an authorized representative of the director. Failure to so serve a complaint does not adversely affect any plaintiff's cause of action.

5. A plaintiff who solely alleges a violation of section 20-928 must prove that such plaintiff requested a written contract before the contracted work began.

b. Damages. 1. A plaintiff who prevails on a claim alleging a violation of this chapter shall be awarded damages as described in this subdivision and an award of reasonable attorney's fees and costs.

2. Violation of section 20-928. (a) A plaintiff who prevails on a claim alleging a violation of section 20-928 shall be awarded statutory damages of $250.

(b) A plaintiff who prevails on a claim alleging a violation of section 20-928 and on one or more claims under other provisions of this chapter shall be awarded statutory damages equal to the value of the underlying contract for the violation of section 20-928 in addition to the remedies specified in this chapter for the other violations.

3. Violation of section 20-929. In addition to any other damages awarded pursuant to this chapter, a plaintiff who prevails on a claim alleging a violation of section 20-929 is entitled to an award for double damages, injunctive relief and other such remedies as may be appropriate.

4. Violation of section 20-930. In addition to any other damages awarded pursuant to this chapter, a plaintiff who prevails on a claim alleging a violation of section 20-930 is entitled to statutory damages equal to the value of the underlying contract for each violation arising under such section.

§ 20-934 Civil action for pattern or practice of violations. a. Cause of action. 1. Where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. An action pursuant to paragraph 1 of this subdivision shall be commenced by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.

3. Nothing in this section prohibits:

(a) A person alleging a violation of this chapter from filing a civil action pursuant to section 20-933 based on the same facts as a civil action commenced by the corporation counsel pursuant to this section.

(b) The director from sending a notice of complaint pursuant to section 20-931, unless otherwise barred from doing so.

b. Civil penalty. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than $25,000 for a finding that a hiring party has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city.

§ 20-935 Application; waiver; effect on other laws. a. Except as otherwise provided by law, any provision of a contract purporting to waive rights under this chapter is void as against public policy.

b. The provisions of this chapter supplement, and do not diminish or replace, any other basis of liability or requirement established by statute or common law.

c. Failure to comply with the provisions of this chapter does not render any contract between a hiring party and a freelance worker void or voidable or otherwise impair any obligation, claim or right related to such contract or constitute a defense to any action or proceeding to enforce, or for breach of, such contract.

d. No provision of this chapter shall be construed as providing a determination about the legal classification of any individual as an employee or independent contractor.

§ 20-936 Follow-up; data collection; reporting. a. No later than six months after the director sends to a freelance worker either a hiring party's response and accompanying materials or a notice of non-response pursuant to paragraph 2 or 3 of subdivision e of section 20-931, the director shall send the freelance worker a survey requesting additional information about the resolution of the freelance worker's claims. Such survey shall ask whether or not the freelance worker pursued any such claims in court or through an alternative dispute resolution process and whether or not the hiring party ultimately paid any or all of the compensation the freelance worker alleged was due or if the matter was resolved in a different manner. Such survey shall state clearly that response to the survey is voluntary.

b. The director shall collect and track information about complaints alleging violations of this chapter. The information collected shall include, at minimum:

1. The identity of the hiring party alleged to have violated this chapter;

2. The freelance worker's occupation;

3. The section of this chapter that was alleged to have been violated;

4. The value of the contract;

5. The response or non-response from the hiring party; and

6. Information from a completed survey identified in subdivision a of this section.

c. One year after the effective date of the local law that added this chapter, and every fifth year thereafter on November 1, the director shall submit to the council and publish on its website a report regarding the effectiveness of this chapter at improving freelance contracting and payment practices. That report shall include, at a minimum:

1. The number of complaints the director has received pursuant to this chapter;

2. The value of the contracts disaggregated into ranges of $500 and by section of this chapter alleged to have been violated;

3. The numbers of responses and non-responses received by the director disaggregated by contract value into ranges of $500 and by section of this chapter alleged to have been violated;

4. The proportion of surveys received from freelance workers that indicate that they pursued their claims in court and the proportion of surveys received from freelance workers that indicate that they pursued their claims through an alternative dispute resolution process and a summary of the outcomes of such cases; and

5. Legislative recommendations for this chapter, including consideration of whether certain occupations should be exempted from the scope of the definition of freelance worker in section 20-927.

§ 3. This local law takes effect 180 days after it becomes law and applies only to contracts entered into on or after the effective date of this local law, except that the director shall take any actions necessary for the implementation of this local law, including the promulgation of rules, before such date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on October 27, 2016 and approved by the Mayor on November 16, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 140 of 2016, Council Int. No. 1017-C of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel