

MEMORANDUM

DATE: November 21, 2016

TO: Hotel Association of New York City, Inc.
Labor Relations Members
General Managers, Controllers and Human Resources Directors

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: NYC Enacts the "Freelance Isn't Free Act" Protecting Independent Contractors From Wage Theft

On November 16, 2016, Mayor Bill de Blasio signed into law the "Freelance Isn't Free Act", which protects certain independent contractors from wage theft by employers. The Act applies to "freelance workers" who are defined as "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 to provide services in exchange for compensation. The Act does not apply to attorneys, medical professionals, or sales representatives. Employers under the Act are referred to as "hiring part[ies]" and are defined as any person who retains a freelance worker other than governmental entities.

The law requires that the freelance worker and the hiring party enter into a written contract when the services are valued at \$800 or more. This valuation includes all services provided by the freelance worker for the same hiring party within a 120-day period. The written contract must contain the following information:

1. The name and mailing address of the freelance worker and the hiring party,
2. An itemization of all services to be provided by the freelance worker,
3. The value of the services to be provided,
4. The rate and method of compensation, and
5. The date on which the hiring party must pay the contracted compensation or the mechanism by which such date shall be determined.

The hiring party must pay the freelance worker either on or before the date stated in the contract or, if the contract does not provide a date specific or a mechanism by which a date will be determined, within thirty (30) days after the completion of the freelancer's work. Once the freelance worker begins performing under the contract, the hiring party is prohibited from conditioning timely payment on the freelance worker's agreement to reduce his or her costs.

The Act provides a two (2) year statute of limitations for a freelance worker to bring a complaint of any violation of the Act before the City's Office of Labor Standards. For complaints filed in state or federal court, the Act provides a two (2) year statute of limitations for violation of the written contract requirement and a six (6) year statute of limitations for breach of contract or retaliation claims.

The law will be enforced by New York City's Office of Labor Policy and Standards, which will be developing resources to help workers and employers in complying with the law. Penalties under the Act include a \$250 penalty for violating the written contract requirement; damages at twice the value of the contract for violations of the failure to pay; and additional damages equal to the value of the contract for each violation of the anti-retaliation provision. Additionally, if a factfinder determines that the hiring party has engaged in a pattern of unlawful practices under the Act, the hiring party may be assessed fines up to \$25,000.

The law goes into effect on May 15, 2017 and will only apply to contracts entered into on or after the effective date. Model written contracts are expected to be provided by the Office of Labor Standards.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Lois M. Traub, Alexander Soric, Robert L. Sacks, Michael Lydakis, Jennifer Schmalz or Jaclyn Ruocco.

cc: Joseph E. Spinnato, Esq.
Vijay Dandapani, Chairman

This memo is provided for informational purposes only. It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.