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FREELANCE ISN'T FREE ACT: FREQUENTLY ASKED QUESTIONS

- I. GENERAL INFORMATION
- II. COVERAGE
- III. REQUIREMENTS
- IV. OLPS COMPLAINT PROCESS
- V. PURSUING RIGHTS IN COURT

I. GENERAL INFORMATION

1. What is the Freelance Isn't Free Act?

The City's Freelance Isn't Free Act (the Law) creates new rights, remedies, and resources for freelance workers in NYC to help ensure they are paid on time and in full. The Law:

- Requires contracts between freelance workers and hiring parties that are worth \$800 or more to be in writing.
- Prohibits hiring parties from paying workers late or underpaying workers.
- Protects freelance workers against retaliation for asserting their rights under the Law.

2. When does the Law go into effect?

The Law became effective on May 15, 2017 and covers contracts or agreements made on or after May 15, 2017.

3. What role does the Office of Labor Policy & Standards (OLPS) play?

Located within the Department of Consumer Affairs (DCA), OLPS is NYC's central resource for all workers, including freelance workers. Under the Law, freelance workers can file complaints about violations of the Law with OLPS. See Part IV for information about filing a complaint. OLPS:

- Takes complaints from freelance workers alleging that hiring parties violated the Law, notifies hiring parties of complaints against them, and requests written responses from hiring parties.
- Provides a navigation program for freelance workers pursuing their claims in court.
- Surveys freelance workers about their experiences working as freelance workers and pursuing their claims under the Law in court.

OLPS also provides information to [freelance workers](#) and [hiring parties](#) about their rights and responsibilities; however, **OLPS cannot provide legal advice**. Information is available online at nyc.gov/dca. Freelance workers and hiring parties can also call 311 and say "Freelance Workers" to speak with an OLPS representative.

II. COVERAGE

4. Who is a freelance worker?

Under the Law, a freelance worker is 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:

The following workers are *not* covered by the Law:

- Freelance workers hired as employees.
- Freelance workers who agree to perform services for a hiring party for no pay.
- Sales representatives as defined in section 191-a of the New York Labor Law.
- Attorneys who are:
 - Providing legal services under the contract at issue. AND
 - Members in good standing of a bar within any state, possession, territory, commonwealth, or the District of Columbia. AND
 - Not under a court order restricting the attorney from practicing law.
- Licensed medical professionals.
- Freelance workers hired or retained by any federal, state, local, or foreign government.

Businesses and other organizations that have more than a single person do not qualify as freelance workers under the Law.

5. In which industries do freelance workers work?

Freelance work is not limited to any particular industry, and freelance work can look different in different professions. The Law is not limited to any particular industry or industries.

6. 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.

7. Do freelance workers need a license?

No. There is no license specific to being a freelance worker. However, some freelance workers may need a license to work in their profession or to perform specific job duties; for example, Auctioneer license, Pawnbroker license, Home Improvement Contractor license. Many government agencies—including DCA—license workers and businesses. For more information about DCA licenses, visit nyc.gov/dca.

8. What if a worker is called an independent contractor but is really an employee?

Whether a worker is an employee or an independent contractor depends on the nature of the relationship between the worker and the hiring party. If a worker is an employee, the worker may be entitled to a broad set of workplace rights. These rights may include the right to be paid the minimum wage and overtime, paid safe and sick leave, unemployment insurance, and employer-funded workers' compensation benefits, among others.

OLPS is a resource for workers who believe they may be misclassified; however, **OLPS cannot provide legal advice to workers or hiring parties.** OLPS may be able to provide a referral to an attorney for

workers who believe they may be misclassified as independent contractors. Hiring parties may wish to consult an attorney to be sure that they are properly classifying workers.

For more information about misclassification, visit nyc.gov/dca or call 311 and say “Freelance Workers.”

9. Can workers who are covered under a collective bargaining agreement (CBA) bring a claim under the Law?

It depends. A CBA generally outlines an employment relationship between an employer and a group of organized employees. *Workers may not bring a claim under the Law about work done under a CBA if they were hired as an employee to do the work.* However, if workers covered by a CBA are hired as independent contractors to perform work outside the scope of the CBA, they may be able to bring a claim under the Law based on that work.

Freelance workers or hiring parties with general questions about CBAs and the Law can call 311 to speak with an OLPS representative; however, OLPS cannot give legal advice to hiring parties or workers.

10. Can the Law apply outside of New York City?

It depends. The Freelance Isn't Free Act is a New York City law. While judges will decide how the Law applies in each case, the Law does apply to work performed inside New York City and may apply to work performed outside New York City depending on the overall circumstances. For example, whether the Law applies may depend on whether some, but not all, of the work is performed in New York City, the freelance worker is hired or retained in New York City, or the hiring party has significant operations in New York City.

III. REQUIREMENTS

11. Do all contracts have to be in writing?

Starting May 15, 2017, any contract between a freelance worker and a hiring party with a value of \$800 or more must be in writing. Multiple contracts between the same freelance worker and hiring party over a period of 120 days that add up to \$800 or more must also be in writing.

A freelance worker may pursue a claim against a hiring party for failing to use a written contract. *If this claim is the only alleged violation of the Law, freelance workers must show that they requested a written contract from the hiring party before they began work under the contract.*

Note: The Law became effective on May 15, 2017. The Law ONLY applies to contracts entered into on or after May 15, 2017.

12. What terms must a written contract include?

Under the Law, all written contracts between freelance workers and hiring parties must include:

- 1) Name and mailing address of both the freelance worker and the hiring party
- 2) Itemization of all services to be provided by the freelance worker
- 3) Value of the services provided
- 4) Rate of compensation
- 5) Method of compensation
- 6) Date on which the hiring party must pay the worker or the mechanism by which the payment date will be determined

The Law requires that both the freelance worker and the hiring party keep a copy of the contract.

13. What if there is a term in the contract that a party does not like?

A contract requires an agreement between a freelance worker and a hiring party. Both freelance workers and hiring parties may propose their own contract or contract terms and/or negotiate any terms in a contract prepared by either party. Neither a freelance worker nor a hiring party can force one another to enter into a contract.

Any terms in a contract that attempt to waive a freelance worker's rights under the Law—for example, the right to participate in a lawsuit—are invalid. Any terms limiting a freelance worker's right to communicate about the contract or to file a complaint with OLPS also are invalid.

14. Will the Law apply if there is no written contract?

Yes, the Law can apply even in the absence of a written contract and even if the contract did not include all terms required under the Law.

15. Where can I find model contracts?

Model contracts are available at nyc.gov/dca.

16. When must a hiring party pay a freelance worker?

The Law requires that hiring parties pay freelance workers on or before the payment due date in the contract. If the contract does not specify the payment date or how the payment date will be determined, the hiring party must pay the freelance worker no later than 30 days after the completion of the freelance worker's services under the contract.

After a freelance worker has begun work under the contract, the Law prohibits a hiring party from requiring that the worker accept less than the contracted rate in order to be paid on time.

17. Does the Law require that freelance workers be paid minimum rates or amounts?

No. The Law requires timely payment but does not say how much a hiring party must pay a freelance worker. The amount of payment is something that a freelance worker and a hiring party must negotiate and agree on.

18. Can a hiring party retaliate against freelance workers for asserting their rights under the Law?

No, retaliation is illegal under the Law. A hiring party cannot retaliate against freelance workers because they exercised their rights under the Law. Retaliation includes threats, intimidation, harassment, or taking any action that is reasonably likely to penalize freelance workers for or deter them from exercising or attempting to exercise their rights under the Law. Retaliation also includes any action, such as blacklisting, that prevents freelance workers from obtaining a future work opportunity because they exercised or attempted to exercise their rights.

19. How can hiring parties learn about their obligations under the Law?

Hiring parties may contact OLPS to ask general questions about the Law; however, **OLPS cannot provide legal advice to hiring parties or freelance workers.** Hiring parties may consult an attorney for help complying with the Law.

IV. OLPS COMPLAINT PROCESS

20. Where can freelance workers file a complaint under the Law?

Freelance workers may file a complaint either with OLPS or directly in court. See Part V for more information about filing a lawsuit in court. Freelance workers may file a complaint about a hiring party's failure to provide a written contract, failure to pay, and/or retaliation.

To file a complaint with OLPS, a freelance worker may:

- Fill out the complaint form available online at nyc.gov/dca and mail it to OLPS at 42 Broadway, 9th Floor, New York, NY 10004 or email it to freelancer@dca.nyc.gov.
- Call 311 and say “Freelance Workers.”
- Visit OLPS at 42 Broadway, 9th Floor, New York, NY 10004.

During the complaint process, OLPS will provide freelance workers with information and resources about filing their case in court through OLPS’s Navigation Program.

Important:

Freelance workers cannot file a complaint with OLPS if they file a claim in court first. The claim will fall outside of OLPS’s jurisdiction. Freelance workers who file a complaint in court must provide a copy of the complaint to OLPS.

21. How much time does a freelance worker have to file a complaint with OLPS?

Freelance workers must file complaints with OLPS within two (2) years of an alleged violation.

22. Can hiring parties file complaints under the Law?

No. Under the Law, only freelance workers can file a complaint with OLPS. Hiring parties cannot file complaints with OLPS under the Law.

23. What happens after a freelance worker files a complaint with OLPS?

After OLPS receives a complaint, OLPS notifies the hiring party of the complaint. The hiring party must respond to the complaint within 20 days. After the hiring party responds, OLPS sends the hiring party’s response to the complainant.

24. What if the hiring party does not respond to OLPS’s notice of complaint?

If the hiring party does not respond to OLPS’s notice of complaint within 20 days, freelance workers receive a “rebuttable presumption” in their favor when they bring their complaint in court. A rebuttable presumption in the freelance worker’s favor means that a judge should presume that the hiring party committed the violations that the freelance worker alleged in the complaint. Practically, this means that when the court case starts, the freelance worker will not bear the burden of proving that the hiring party violated the Law. Rather, the burden will be on the hiring party to show that the hiring party did not violate the Law.

OLPS’s Navigation Program includes resources for workers who will present their right to a rebuttable presumption in court. Freelance workers with questions about rebuttable presumption should contact OLPS by calling 311 or emailing freelancer@dca.nyc.gov.

25. Does OLPS file complaints against hiring parties in court?

No, OLPS cannot file lawsuits under the Law. Generally, only freelance workers can file complaints under the Law in court. However, the City may file a lawsuit against a hiring party when a hiring party engages in repeated violations of the Law.

26. What else happens if a hiring party does not respond to OLPS’s notice of complaint?

If a hiring party does not respond to OLPS’s notice of complaint, OLPS will provide a notice of no response to the freelance worker. OLPS will also provide services under its navigation program to freelance workers to help them understand the court system and identify an attorney, if needed.

V. PURSUING RIGHTS IN COURT

27. What is OLPS's Navigation Program?

OLPS's Navigation Program is a resource for freelance workers that provides information about:

- Procedures under the Law
- Court processes
- Sample court forms
- Court services, including translation and interpretation
- Classification of workers as employees and independent contractors
- Finding an attorney

Navigators are available to answer questions and provide information to freelance workers. Call 311 and say "Freelance Workers" or email freelancer@dca.nyc.gov.

28. Can OLPS help freelance workers file claims in court?

OLPS cannot act as a freelance worker's attorney or representative. However, OLPS can provide information and resources to guide freelance workers in pursuing their claims in court, including referrals to attorneys who may be able to represent them in court. Freelance workers can get information about OLPS's Navigation Program at nyc.gov/dca. Workers can also call 311 and say "Freelance Workers."

29. How much time does a freelance worker have to file a claim in court under the Law?

Under the Law, freelance workers must file claims against hiring parties within specific time periods:

Type of Claim	Time Period to File Claim
Failure to provide a written contract	Within 2 years of an alleged violation
Nonpayment, underpayment, or act of retaliation	Within 6 years of an alleged violation

30. If a judge finds that a hiring party violated the Law, what damages may a judge award to a freelance worker?

Workers can seek damages for violations of the Law. See the table on Page 7.

	<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 (1) on the payment due date under the contract; OR (2) 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

31. What are double damages?

Double damages mean that freelance workers can recover twice the amount they are owed under the contract.

32. Are attorneys' fees available under the Law?

Yes. If a judge finds that a hiring party violated a freelance worker's rights under the Law, a judge may award the freelance worker reasonable attorneys' fees and costs incurred in going to court.

33. What if a hiring party frequently violates freelance workers' rights under the Law?

If a hiring party violates the Law on multiple occasions, the City may be able to bring a case against the hiring party in court. If a judge finds that a hiring party committed these violations, a judge could impose additional penalties up to \$25,000, injunctive relief, and other appropriate remedies.