



Legislation Text

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Proposed Int. No. 1017-A

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 establishing protections for freelance workers

Be it enacted by the Council as follows:

Section 1. Subdivision c of section 20-a of the Charter, as added by local law number 104 for the year 2015, is amended to read as follows:

c. Notwithstanding any other provision of law, the director exclusively shall have and exercise all powers [of]given to the commissioner of consumer affairs [as set forth]in section 2203 of this charter in connection with the enforcement of chapter 8 of title 20 of the administrative code of the city of New York regarding the earned sick time act, all powers and duties of the commissioner of consumer affairs as set forth in section 2203 of this charter in connection with subchapter 19 of chapter 5 of title 20 of such code and [shall have]the power to enforce chapter 9 of title 20 of such code regarding mass transit benefits.

§ 2. Subdivision e of section 2203 of the Charter, as amended by local law number 7 for the year 2014, is amended to read as follows:

(e) The commissioner shall have all powers as set forth in subchapter 19 of chapter 5 and chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding freelance workers and earned sick time, and the power to conduct investigations regarding violations of such [chapter]provisions upon his or her own initiative.

§ 3. Paragraph 1 of subdivision h of section 2203 of the Charter, as amended by local law number 46 for the year 2013, is amended to read as follows:

(h) (1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations, and to order equitable relief for and payment of monetary damages in connection with enforcement of subchapter 19 of chapter 5 and of chapter 8 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

§ 4. Chapter 5 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 19, as follows:

SUBCHAPTER 19

Freelance Workers

§ 20-825 Definitions. For purposes of this section, the following terms have the following meanings.

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. That 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, disbaring or otherwise restricting him or her in the practice of law;

3. Any person for whom the provisions of this subchapter, in relation to the contract at issue, would conflict with other state, federal or local law or an ethical or professional obligation. The department may by rule designate persons or groups of persons excluded pursuant to this paragraph.

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, or (iii) the City or any local government, municipality or county.

§ 20-826 Contract required. a. Any hiring party retaining the services of a freelance worker in exchange for compensation of \$200 or more shall execute a written contract with such freelance worker before the contracted-for work begins. The contract shall be in plain language and in a language understood by both parties. Each party to the contract shall retain a copy thereof.

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

1. Itemization of all services to be provided by the freelance worker and the rate and method of compensation;

2. The date on which the hiring party must pay the above-referenced compensation or the mechanism by which such due date will be determined; and

3. Any other terms that the department may by rule designate.

§ 20-827 Unlawful payment practices. a. Except as otherwise provided by law, all compensation earned

by the freelance worker shall be paid or provided no later than 30 days after the later of completion of the freelance worker's services under the contract or the date such payment is due under the express terms of the contract.

b. Once a freelance worker has commenced performance under the contract, no hiring party may require as a condition of payment consistent with the requirements of this subchapter that a freelance worker accept less than the specified contract price. This provision does not preclude the settlement of a good faith dispute regarding performance under the contract or preclude a modification of a contract in accordance with other applicable law.

§ 20-828 Retaliation. a. No person engaged in any activity to which this subchapter applies may retaliate against any person because such person has:

1. Opposed any practice prohibited by this subchapter;
2. Filed a complaint, testified or assisted in any proceeding under this subchapter;
3. Commenced a civil action alleging a violation of this subchapter;
4. Assisted the department in an investigation commenced pursuant to this subchapter; or
5. Provided any information to the department pursuant to the terms of a mediation or conciliation agreement under this subchapter.

b. For purposes of this section, retaliation is any act reasonably likely to deter a person from engaging in activity protected by subdivision a of this section.

§ 20-829 Agency enforcement. a. Complaints. Any person aggrieved by a violation of this subchapter, or such person's authorized representative, may file a complaint with the department.

b. Jurisdiction. The department does not have jurisdiction over a complaint if:

1. The complaint is filed more than two years after the acts alleged to violate this subchapter occurred;
2. Either party to the agreement previously has initiated a civil action in a court of competent jurisdiction alleging a violation of this subchapter, a breach of contract or any similar claim at law or equity

arising out of the same transaction or series of transactions that is the subject of the complaint under this subchapter, unless such civil action has been dismissed without prejudice to future claims; or

3. Either party to the agreement previously has filed a claim or complaint before any administrative agency under any local, state or federal law alleging a breach of contract or any similar claim arising out of the same transaction or series of transactions that is the subject of the complaint under this subchapter, and such complaint has not been withdrawn or dismissed without prejudice to future claims.

c. Investigation. Upon receiving a complaint alleging a violation of this subchapter, the department shall notify the respondent in writing and investigate such complaint in a timely manner. Within 30 days of receiving such written notification, the person or entity identified in the complaint shall provide the department with a written response and such other information as the department may request. The department shall notify each complainant in writing, not less than every 60 days after the complaint is filed, of the status of the complaint and any resultant investigation.

§ 20-830 Mediation and conciliation. a. The department may, at any time after the filing of a complaint, attempt to resolve the complaint by any method of dispute resolution, including mediation and conciliation.

b. If a conciliation agreement is entered into, the department shall embody such agreement in an order and serve a copy of such order upon all parties to the conciliation agreement. The terms of any conciliation agreement may contain such provisions as may be agreed upon by the department, the complainant and the respondent.

§ 20-831 Enforcement; administrative process. a. Notice of violation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department finds cause to believe that a violation of this subchapter has occurred, it may issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such a notice of violation. The notice of violation shall be returnable to the administrative tribunal of the department.

b. Remedies. The department may impose penalties provided for in this title and may grant a prevailing

complainant all appropriate relief. Such relief shall include double damages, any appropriate equitable relief and attorney's fees and costs. The department also may impose civil penalties as provided in this section.

c. Civil penalties. 1. Any person found to have violated this subchapter or any rule or regulation promulgated thereunder is liable for a civil penalty of not more than \$5,000.

2. Violation of order. Any person found to have violated an order pursuant to this subchapter is liable for a civil penalty not to exceed \$5,000 and an additional civil penalty of not more than \$100 for each day that the violation continues.

§ 20-832 Enforcement; civil action. a. Except as otherwise provided by law, the city or any person claiming to be aggrieved by a violation of this subchapter has a cause of action in any court of competent jurisdiction for double damages, injunctive relief and such other remedies as may be appropriate. Such action may be brought by the aggrieved person or such person's authorized representative. A prevailing plaintiff in any such action shall be entitled to an award of reasonable attorney's fees, court costs and disbursements. Any claim alleging a violation of section 20-826 shall be brought within two years of the date the person knew or should have known of the alleged violation.

b. Notwithstanding subdivision a of this section, no person claiming to be aggrieved by a violation of this subchapter may bring an action in court alleging such violation if that person, or that person's designated representative, has filed a complaint with the department pursuant to section 20-829 based upon the same conduct, unless that complaint has been terminated without prejudice to a subsequent civil action.

c. The commissioner and the corporation counsel each shall designate a representative authorized to receive copies of civil complaints in actions commenced in whole or in part pursuant to subdivision a of this section. Within 10 days after having commenced a civil action pursuant to subdivision a of this section, any plaintiff other than the city shall serve a copy of the complaint upon such authorized representatives. Failure to so serve a complaint shall not bar or adversely affect any plaintiff's cause of action.

§ 20-833 Criminal penalty. Any person who knowingly and willfully violates the provisions of section

20-827 shall be guilty of a misdemeanor punishable by a fine of not more than \$500, or by imprisonment for not more than three months or by both.

§ 20-834 Application; waiver; effect on other laws. a. Except as otherwise provided by law, any provision of any contract or agreement purporting to waive rights under this subchapter is void as against public policy.

b. The provisions of this section supplement, but do not otherwise affect or replace, any other basis of liability or requirement established by statute or common law.

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

d. This subchapter applies only to contracts or agreements entered into on or after the effective date of the local law that added this subchapter.

§ 20-835 One year after the local law that added this section becomes effective, and every fifth year thereafter, the commissioner shall submit a report to the speaker of the council regarding the effectiveness of these provisions at improving freelance contracting and payment practices. That report shall include, at a minimum, how many complaints the department has received pursuant to this subchapter, how many of such complaints were settled by mediation or conciliation, how many investigations of alleged violations of this subchapter the department initiated, and how many notices of violation of this subchapter the department issued.

§ 5. This local law takes effect one year after it becomes law.

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