



## Legislation Text

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**File #:** Int 0108-2018, **Version:** \*

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Int. No. 108

By Council Members Lander, Constantinides and Perkins

A Local Law to amend the administrative code of the city of New York, in relation to regulating covenants not to compete for freelance workers

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. The council finds and declares that covenants not to compete are increasingly becoming common in contracts between hiring parties and freelance workers. Restrictive covenants not to compete are in some ways antithetical to the freelance work employment model. The practice of requiring freelance workers to enter into covenants not to compete in the fashion modelling industry is especially concerning to the council and often represents unequal bargaining power between freelance fashion models and hiring parties such as model management agencies. The council, therefore, finds it necessary and appropriate to create a requirement that hiring parties wishing to require freelance workers to agree to a covenant not to compete must guarantee a bi-weekly or monthly payment of a reasonable monetary sum that is mutually acceptable to both the hiring party and the freelance worker.

§2. Chapter 5 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-510 to read as follows:

§ 22-510 Covenants not to compete. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Covenant not to compete. The term “covenant not to compete” means an agreement, or a clause contained in an agreement, which is entered into between a hiring party and a freelance worker after the effective date of the local law that added this section, and which restricts such freelance worker from

performing work for another party not subject to such agreement for a specified period of time or in a specified geographical area, that is similar to such freelance worker's work for the hiring party.

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, which 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; 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 such person in the practice of law;

3. Any person who is a licensed medical professional; and

4. Any individual, partnership, corporation or other legal entity admitted to membership in the Financial Industry Regulatory Authority.

Hiring party. The term "hiring party" means any person who contracts with 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.

b. Prohibition; freelance workers. 1. No hiring party shall enter into a covenant not to compete with a freelance worker unless such covenant also contains a requirement for the hiring party to provide payment of a reasonable and mutually agreed upon sum to the freelance worker on either a bi-weekly or monthly basis for the duration of time during which the covenant not to compete is in effect.

2. A failure on the part of the hiring party to provide payment of the mutually agreed upon sum to the freelance worker in accordance with the terms of the covenant not to compete, will immediately render such covenant null and void.

c. Right of action. Except as otherwise provided by law, any freelance worker claiming to be aggrieved by a violation of this section may bring an action in any court of competent jurisdiction seeking a declaratory judgment that the covenant not to compete at issue is void. The court, in its discretion, may award the prevailing party reasonable attorney's fees.

d. Damages. A plaintiff who prevails on a claim alleging a violation of paragraph 1 of subdivision b of this section shall be awarded statutory damages of \$1,000.

e. Any person who violates paragraph 1 of subdivision b of this section is subject to a civil penalty of \$500 per violation. The director of labor standards shall enforce the requirements of this section pursuant to rules promulgated by such director.

f. Civil action for pattern or practice of violations. Where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violations of this section, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction. 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 section. Any civil penalty so recovered shall be paid into the general fund of the city.

§ 2. This local law takes effect 120 days after it becomes law, except that the director of labor standards shall take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties necessary to effectuate this section, before such date.

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