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Res. No. 10

Resolution calling on the Governor to sign S.5026/A.6040 enacting the "Freelance Isn't Free Act" in New York State

By Council Members Abreu, De La Rosa, Ossé and Louis

Whereas, Approximately 60 million Americans, or 39 percent of the U.S. workforce, performed freelance work in the past year, according to Upwork's 2022 Freelance Forward survey; and

Whereas, New York State's Labor Law prohibits wage theft for employees directly hired by an employer but does not cover freelancers such as writers, editors, graphic designers, videographers, consultants, and those who are otherwise self-employed; and

Whereas, New York City's Local Law 140 of 2016, known as the "Freelance Isn't Free Act" (FIFA) established labor protections for freelance workers such as the right to a written contract, timely and full payment, protection from retaliation for exercising their rights, and the ability to collect double the amount owed plus attorney's fees for violations; and

Whereas, Freelance workers alleging FIFA violations may file a complaint with the Department of Consumer and Worker Protection (DCWP) and sue the hiring party; and

Whereas, From March 2017, when FIFA went into effect, through December 2021, DCWP handled more than 2,100 complaints and secured more than $2.4 million in restitution and penalties for 702 freelance workers, according to DCWP's 2022 "State of Workers' Rights in New York City" report; and

Whereas, If there is evidence of a pattern or practice of FIFA violations by an entity, the City can bring a civil action against the hiring party; and

Whereas, In December 2021, the City filed its first lawsuit under the "pattern and practice" provisions

of FIFA against L'Officiel USA after receiving more than 20 complaints alleging that the company failed to pay contractors, did not provide a written contract, and retaliated against freelancers for exercising their rights, according to DCWP's 2022 "State of Workers' Rights in New York City" report; and

Whereas, Since New York City passed FIFA, cities including Los Angeles, Minneapolis, Seattle, and Columbus have enacted similar legislation to protect freelance workers from non-payment; and

Whereas, A 2022 survey by the Authors Guild, Freelancers Union, Graphic Artist Guild, American Society of Media Photographers, National Press Photographers Association, American Photographic Artists, and National Writers Union found that 62 percent of freelance workers based in New York State have lost wages at least once over an employer's refusal to pay them and 76 percent spend one-to-two hours per week trying to recoup payment for late or overdue wages; and

Whereas, S.5026, introduced by Senator Andrew Gounardes and passed by the New York State Senate, and its companion bill A.6040, introduced by Assembly Member Harry Bronson and passed by the New York State Assembly, would replicate FIFA in state Labor Law, adding administrative oversight and support from the Department of Labor to respond to complaints; and

Whereas, In December 2022, Governor Kathy Hochul vetoed a version of S.5026/A.6040 that had passed both houses of the New York State Legislature; now, therefore, be it,

Resolved, That the Council of the City of New York calls on the Governor to sign S.5026/A.6040 enacting the "Freelance Isn't Free Act" in New York State.

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