

California Compliant: Don't Forget the Freelancers: Los Angeles' Expanded Protections for Freelance Workers

October 09, 2023 | (Time to read: 4 minutes)

This summer, Los Angeles freelancers in the entertainment sector arguably fared far better than their union counterparts with respect to workers' rights. While Hollywood was gripped and paralyzed by the Writers Guild and Screen Actors Guild strikes over concessions sought from large studios, freelance workers gained protection by local legislative action. The City of Los Angeles Freelance Worker Protections Ordinance (the "Ordinance") went into effect on July 1st. As a result, the rapidly growing freelance worker sector enjoys more protections than ever in the city. Businesses that frequently engage freelancers should be aware of these protections and the new requirements for freelance workers in Los Angeles.

Who is Covered? Hiring Entities and Freelance Workers

The Ordinance applies to "hiring entities," which are entities regularly engaged in business or commercial activity. Specifically, a hiring entity "owns or operates any trade or business, **including a not for profit business**, or represents itself as engaging in any trade, or business." The Ordinance carves out entities that hire "app-based transportation and delivery drivers to provide prearranged services" (e.g., Uber, Lyft, Door Dash).

The Ordinance does not apply to workers who are employees – rather, it covers "freelance workers." Under the Ordinance, a freelance worker is an individual or entity composed of no more than one person that is hired by a hiring entity as a bona fide independent contractor to provide services in exchange for compensation. As defined, a freelance worker is an individual or entity having no employees. Professionals who are already required to have a written agreement to provide services in exchange for compensation, such as attorneys, architects, and engineers, are excepted from the definition. The Ordinance also excludes those who agree to perform services for a hiring entity **without pay**.

Covered Work

The protections under the Ordinance apply to agreements between freelance workers and hiring entities entered into on or after July 1, 2023, for work in the City of Los Angeles and valued at \$600 or more (either by an individual job or cumulative jobs in a calendar year). Implementing regulations for the Ordinance provide that covered work is "performed **in** the City of Los Angeles," regardless of the location of the hiring entity or the freelance worker.

Protections Under the Ordinance

Agreements Must Be in Writing

Essentially, the Ordinance requires that hiring entities provide freelance workers with a basic written contract for all agreements valued at \$600 or more. A verbal agreement is insufficient. In addition to identifying the hiring entity and the freelance worker, the contract must: (i) itemize all services to be provided by the freelance worker, the value of the services, and the rate and method of compensation; (ii) state the date by which the hiring entity must pay the freelance worker or the manner by which such date will be determined; and (iii) include the name, address, phone number and, if available, e-mail address of both parties.

Requirement of Timely Payment

The Ordinance ensures that freelance workers won't wait long to get paid. Hiring entities must make full payment by the date specified in the contract, or no later than 30 days after work is completed if no date is specified.



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The Ordinance imposes record retention requirements on both the hiring entity and the freelance worker; each party must retain contracts, payment records, and anything else showing compliance with the contract (specifically including “electronic records”), for four years.

Prohibition of Retaliation

The Ordinance prohibits retaliation with respect to freelance workers asserting the above protections. Hiring entities cannot punish or take any adverse employment action against them for invoking their rights under the Ordinance. Further, hiring entities cannot take any action that “is reasonably likely to deter” a freelance worker from opposing a violation of the Ordinance or exercising their rights under the Ordinance.

Exercise of Rights and Remedies Available to Freelance Workers

To enforce their rights under the Ordinance, freelance workers can file a civil lawsuit seeking damages for violations. Alternatively, they can file a complaint with the Bureau of Contract Administration, Office of Wage Standards (OWS) within one year of the alleged violation. Filing an administrative complaint is not a prerequisite to filing a lawsuit, and filing an administrative complaint with the OWS does not prevent a freelance worker from proceeding with a civil lawsuit.

If a freelance worker files an administrative complaint, the OWS will notify the hiring entity and may request relevant documents and information, which the OWS would provide to the freelance worker. Hiring entities must respond to OWS requests within 20 calendar days. A hiring entity's failure to respond within the time permitted will result in a rebuttable presumption in any civil action that the hiring entity committed the violations alleged by the freelance worker.

If a freelance worker prevails in a civil action, the damages that may be recovered depends on the nature of the violation. A failure to timely pay a freelance worker in full results in monetary damages. The amount of damages will be determined by the court, in its discretion; however, the Ordinance caps such damages at twice the amount remaining unpaid under the contract. Other violations result in monetary damages equal to the value of the contract or the work performed, whichever is greater. Damages for other types of violations are **not capped**, which means potentially large damages for hiring entities. For all violations of the Ordinance, a freelance worker who prevails in a civil action is entitled to (i) their reasonable attorneys' fees and costs, (ii) injunctive relief if applicable, and (iii) any other damages deemed appropriate.

In addition, if a hiring entity fails to comply with a freelance worker's request for a written contract prior to the commencement of work, it must pay a civil penalty of \$250.

Takeaways

Hiring entities who regularly engage freelance workers, whether in entertainment or other industries, should be mindful of the protections set forth in the Ordinance because violations potentially come at a steep price. The city and economy of Los Angeles is built not only on employees busily occupied in Hollywood, but also the work of freelancers. Accordingly, businesses should be careful to abide by the requirements of the Ordinance and not forget the protections of freelance workers amid a historic summer focused on union strikes.

Resources

The Ordinance (no. 187782) added Article 10 to Chapter XVIII of the Los Angeles Municipal Code. Rules and Regulations implementing the Ordinance were published August 3, 2023, and can be found here:

<https://wagesla.lacity.org/sites/g/files/wph1941/files/2023-08/Freelance%20Worker%20Protections%20Ordinance%20Rules%20and%20Regulations.pdf>

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