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Proliferating Pay Protection Laws Favoring Independent Contractors Create Perils for Businesses

Labor & Employment Workforce Watch

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Companies using independent contractors have been worried that class action lawyers or a workforce agency will challenge their classification of workers as independent contractors. For the past dozen years, we have advised companies on our [blog](#) how they can enhance their compliance with the array of federal and state laws governing independent contractors. Now there is a new concern: laws are cropping up at the state and local levels requiring companies using so-called “freelancers” to enter into specific written agreements with the contractors and pay all contractor fees upon completion of a project within a prescribed time period. These laws not only impose inflexible contract requirements and short payment periods on companies, but also double damages for late payments and other harsh penalties for violations of these new contractor pay protection laws. Some of these laws also expressly permit class actions to be filed in court. Regrettably, these laws are not uniform, so a single contract used on a nationwide basis by companies engaging independent contractors across the U.S. may create liabilities in multiple jurisdictions.

What States and Cities Have Passed These Contractor Payment Protection Laws?

On August 4, 2023, Illinois Governor Pritzker signed into [law](#) the first statewide measure in the nation providing freelance independent contractors with protection against non-payment of their fees once services are rendered. The effective date of the Illinois Freelance Worker Protection Act is July 1, 2024. The New York State legislature passed a similar bill last year, which was vetoed by that state’s governor, but the legislature has passed the same [bill](#) once again in 2023 and awaits action by the governor.

New York City adopted the first such freelance independent contractor [law](#) in 2017 called the Freelance Isn’t Free Act. Minneapolis passed its version of a freelance protection [ordinance](#) effective in 2021. Seattle passed an independent contractor protections [ordinance](#) in 2021, and most recently, Los Angeles enacted a freelance pay protection [law](#) as did Columbus, Ohio.

These Laws Are Not Uniform and Present Challenges to Companies Operating with Independent Contractors on a Nationwide Basis.

These laws vary considerably in their application. For example, most apply only to independent contractors that perform services entirely on their own for a “hiring party.” Such laws, therefore, do not apply if the freelancer engages other workers for any part of the work, while other freelancer laws may still apply even if some services are delegated to other workers.

Certain of the laws only cover independent contractors acting as sole proprietorships, while others cover individuals regardless of the nature of their business entity, including those operating as limited liability companies or corporations. Some only cover work performed exclusively in the jurisdiction that enacted the law. Some of the laws exclude app-based delivery workers but others include such workers.

The principal purpose of these laws is to ensure that independent contractors are paid the fees that they are owed on a timely basis, but the laws unfortunately impose varying requirements upon hiring parties. The Seattle ordinance requires the hiring party to provide the independent contractor with a pre-contract disclosure statement covering 13 items about the parties' proposed terms and conditions related to the services. Some of the other laws only require a written contract upon request by the independent contractor; others require a written contract even if the contractor does not make a request.

Additionally, the contract provisions required by these laws often differ from one jurisdiction to the next. The Illinois law, for example, states that the contract must itemize the products or services to be provided, the rate and method of compensation, and the contract value of the products or services. Unfortunately, the contract value may not be feasible to specify where the freelancer is hired on an hourly basis. The Illinois law also mandates that the contract include the date by which the freelancer will be paid, which, unless otherwise specified in the contract, must be no later than 30 days *after the products or services are provided*. This 30-day provision can create an unworkable accounts payable situation for businesses with internal processing systems that only pay invoices 30 or more days *following receipt of an invoice*, which typically arrives days or weeks *after* "the products or services are provided."

In contrast, the New York City law does not require any reference to "contract value," and the Minneapolis ordinance does not require payment until after the freelancer *notifies* the hiring party that services have been completed including by providing a "final invoice."

What happens if the hiring party does not pay the independent contractor the full amount of fees owed by the date specified in the contract or, if no date is specified, within 30 days after the products or services were rendered? Most of the laws provide that the contractor is entitled to bring a lawsuit and is entitled to double damages, as well as the contractor's legal fees.

The new laws' double damages feature is particularly perilous for businesses that choose not to pay some or all of an agreed upon fee if they have a *bona fide* reason to dispute whether the goods or services provided by the freelancer meet any quality or other standards specified in or implied under the contract. Significantly, these laws do not include an exception or defense to the double damages provision for a good faith belief that services or goods provided were unsatisfactory.

Certain of the laws also provide an additional damages provision that is even more extreme. If a contracting entity fails to provide the freelancer with a written contract that contains *all* of the required information, some of the laws provide that a freelancer is entitled to an award of statutory damages equal to the "value of the underlying contract," in addition to the other remedies provided. Thus, even in the event that payment is delayed briefly or is not paid due to a *bona fide* dispute over the quality of the services or goods provided, certain of these laws provide that the independent contractor may be entitled to the full value of the contract *plus* double damages.

Takeaway

The disparate requirements in these laws in terms of required contract provisions makes it hazardous for a company to use a one-size-fits-all independent contractor agreement. A single agreement used for all freelancers presents its own risks in view of state law differences in the classification tests for independent contractors. Artful drafting of independent contractor agreements, therefore, can minimize exposure not only to claims of independent contractor misclassification but also to the damages provisions in these new freelancer pay protection laws. Many of the suggestions we offered in a [blog post](#) to businesses seeking to comply with the New York City freelancer ordinance are equally applicable to companies seeking to comply with these emerging contractor payment protection laws.

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