

New York State Legislature Again Passes the Freelance Isn't Free Act

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The New York State Assembly and Senate have overwhelmingly passed the Freelance Isn't Free Act ([A.6040](#)). The legislation heads to Governor Kathy Hochul's office for her to sign or veto.

The State Senate passed S.5026 by a vote of 43 to 15 on June 1, 2023, and the Assembly passed A.6040 by a vote of 144 to 1 on June 8. In June 2022, a nearly identical version of this bill passed both houses of the New York State Legislature, but it was vetoed by Governor Hochul in December 2022. Governor Hochul [explained](#) that, although she "support[s] efforts to ensure that New Yorkers are paid for their hard work," she is worried about the bill's cost, which would require "at least several million dollars annually and require a significant increase in DOL staff." A legislative override of governor vetoes is rare in New York. As this bill is widely supported by members of both houses of the legislature, an override is possible if the bill is vetoed.

The state bill builds upon New York City's 2016 [Freelance Isn't Free Act](#) (Local Law 140), which took effect in May 2017 and mandates contract requirements that protect freelance workers' pay.

Like the city law, the state bill requires a business to provide any freelance worker with a written contract if the freelance work is worth at least \$800, including multiple smaller projects over a 120-day period, and sets a 30-day deadline for payment in full unless another time frame is agreed to. Additionally, the state bill prohibits retaliation against freelance workers for exercising their rights under the bill.

The state bill also provides an avenue for workers to report alleged violations to the State Department of Labor (DOL) and collect damages, including statutory and double damages, injunctive relief, and attorney's fees. Claimants may pursue civil action for damages, even if they have not exhausted the DOL's complaint and investigation process.

Under the city law, a claimant can file a complaint with the Department of Consumer and Worker Protection (DCWP). Claimants under the city law may file a civil action alleging violations of the law, without going through the DCWP's complaint and investigation process.

The city law and state bill differ slightly as follows:

- The state bill explicitly includes in the definition of freelance worker "any person who is a construction worker," as well as definitions of "construction contractor" and "construction project," whereas the city law neither includes nor excludes these terms;
- The state bill requires hiring parties to retain freelance contracts for a period of no less than six years, whereas the city law does not;

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- The state bill requires the state to conduct a “public awareness outreach campaign,” which includes informing hiring parties of the law’s provisions and establishing a live person to assist the public by phone and email, whereas the city law does not.

If signed into law, the state Freelance Isn’t Free Act will take effect 180 days after it is signed. The state law will apply only to contracts entered into on or after the effective date.

Jackson Lewis attorneys are closely monitoring the movement of this bill. If you have any questions regarding the existing city law, the potential state law, or worker classification in general, please contact the Jackson Lewis attorney with whom you regularly work.

(Law clerk Jamie Levitt contributed to this article.)

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