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Labor & Employment Alert

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New York and California grant broad protections to freelance workers

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Businesses in both New York and California must be aware of the written contract, recordkeeping, and payment requirements when hiring independent contractors.



What's the impact?

- New York businesses must memorialize the terms of their relationship with freelance workers in a written contract if the value of services provided **exceeds \$800**.
- In California, businesses hiring freelance workers for a contract **exceeding \$250** must also provide a signed copy of the agreement, either physically or electronically, and keep a copy of the agreement for at least four years.

Two states—New York and California—have recently enacted legislation implementing protections for independent contractors. Here, we compare and contrast these statutes and offer practical strategies for employers to comply with these regulations.

The New York State Freelance Isn't Free Act

On November 22, 2023, New York Governor Kathy Hochul signed into law the Freelance Isn't Free Act (NYS FIFA), a statute that provides protections and recourses for "freelance workers," also known as independent contractors, compensated on an IRS 1099 form. New York City has had a similar law in effect since 2017 (NYC's Freelance Isn't Free Act), but the NYS FIFA is broader in scope and aims to protect freelance workers across the state.

The California Freelance Worker Protection Act

On September 28, 2024, Governor Newsom of California signed the Freelance Worker Protection Act (FWPA), which expands protections for freelance workers.

Beginning January 1, 2025, private California employers hiring certain independent contractors must provide a written agreement specifying certain terms and pay their compensation by certain deadlines.

Who is subject to these acts?

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Under the NYS FIFA, a **freelance worker** is (1) *any* person or organization (of no more than one person), (2) hired or retained as an independent contractor, (3) to provide services valued at \$800 or more. The \$800 threshold requirement can be met by either a single contract for services or the aggregate of all contracts between the hiring party and the freelance worker in the preceding 120 days.

The NYS FIFA contains four exemptions to the definition of "freelance worker"—(1) attorneys, (2) licensed medical professionals, (3) sales representatives, and (4) construction contractors.

The NYS FIFA defines "**hiring party**" broadly as any person who retains a freelance worker to provide any service. Accordingly, all natural persons and companies are covered under the NYS FIFA. The NYS FIFA does not include any size threshold, so all companies will be subject to these requirements. However, the NYS FIFA does not apply to the local, state, and federal governments.

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The FWPA applies to private companies in California with contracts entered into between a "hiring party" and "freelance worker" providing "professional services." The FWPA *does not* apply to federal, state, local, or foreign governments or individuals hiring services for their own, their family members, or their homestead's benefit.

A **hiring party** means a person or organization in the State of California that retains a freelance worker to provide professional services, except for the federal, state, local, or foreign governments or individuals hiring services for the personal benefit of themselves, their family members, or their homestead.

A **freelance worker** is a person hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for \$250 or more, either by itself or aggregated with all contracts for services between the same hiring party and independent contractor during the past 120 days. **Professional services** are defined to include services such as marketing, human resources, travel agent services, graphic design, grant writing, fine artistry, photography, videography, photo editing, freelance writing, translating, editing, copy editing, illustrating, content contributing, advising, producing, narrating, and others.

Requirements under the NYS FIFA and CA FWPA:

Both acts contain four major requirements for every “hiring party” (defined above) that retains the service of a freelance worker:

WRITTEN CONTRACT REQUIREMENTS

Both the NYS FIFA and CA FWPA require the hiring party and freelance worker to memorialize the terms of their relationship in a written contract if the value of the services provided exceeds a certain threshold amount. In New York, this applies to contracts exceeding \$800; in California, the threshold is \$250. The written contract must contain the following information:

- / Parties’ names and mailing addresses
- / Itemization of all services the freelance worker will provide to the hiring party
- / Value of those services
- / Rate and method of compensation for the services
- / Date on which the hiring party will issue payment to the freelance worker or the mechanism by which such date will be determined
- / Date by which the freelance worker must submit to the hiring party a list of services rendered under the contract (for purposes of timely compensation)

PAYMENT OF COMPENSATION TO FREELANCE WORKERS

Both acts require the hiring party to pay freelance workers on or before the date specified in the contract. If the contract does not specify the timing of payment or the mechanism by which such date will be determined, the hiring party must pay the freelance worker no later than 30 days after the completion of the freelance worker’s services. Both acts prohibit the hiring party from

requiring, as a condition of timely payment, that the freelance worker accept less compensation than the amount in the contract.

RECORDKEEPING

In New York, the hiring party must maintain written contracts entered into with freelance workers for a minimum of six years.

In California, records must be kept for a minimum of four years.

A hiring party's failure to maintain these documents creates a presumption that the terms the freelance worker presents as true and accurate are in fact the agreed-upon terms between the parties.

ANTI-DISCRIMINATION

Finally, both acts explicitly prevent any hiring party from harassing, discriminating, threatening, intimidating, disciplining, or denying work opportunities to a freelance worker for exercising or attempting to exercise any rights under the act.

Risk of non-compliance

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Freelance workers who believe a hiring party has committed violations under the NYS FIFA may file a complaint with the NYSDOL. The NYSDOL will investigate complaints and may award relief, including civil and criminal penalties. Alternatively, a freelance worker may bring a claim in any court of competent jurisdiction. The NYS FIFA permits recovery by freelance workers of double damages, injunctive relief, attorneys' fees and costs, and other remedies as may be appropriate. The NYS FIFA also sets \$250 in statutory damages for violating the written contract requirements and statutory damages equal to the contract price for violating the NYS FIFA. Finally, if reasonable cause exists to believe that a business has engaged in a pattern or practice of violations of NYS FIFA, the hiring party may be liable for fines of up to \$25,000.

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The FWPA gives freelancers strong enforcement rights if the law is not complied with. A freelancer may bring a lawsuit and recover any of the following remedies:

- / An additional \$1,000 if a requested written contract was refused by the hiring party prior to beginning the work in violation of Section 18103
- / Damages up to twice the amount that remained unpaid at the time payment was due if the

hiring party failed to pay freelance worker compensation within the required timeframe

- / Amount unpaid shall be determined by the rate the freelance worker reasonably understood to apply to the work if the freelance worker requested a written contract prior to commencing the work under the contract and the hiring party refused to provide one in violation of Section 18103
- / Damages equal to the value of the contract or the value of the work performed, whichever is greater, if the hiring party violates any provision of this law and reasonable attorney's fees and costs, as well as injunctive relief

Additionally, a waiver of any provision is void and unenforceable as it would go against public policy.

Navigating employment contracts

A standard employment contract in compliance with the NY FIFA would necessarily be compliant with the CA FWPA. The only differences are threshold amounts—New York's is greater than California's (\$800 vs. \$250)—and the time required to keep a written copy, four years in New York, as opposed to California's six years.

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