

DEPARTMENT OF CONSUMER AFFAIRS

Notice of Adoption of Rules

Notice of Adoption of Amending of Title 6 of the Rules of the City of New York by adding chapter 12.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 2203(f) of the New York City Charter and section 3 of Local Law 140 of 2016 and in accordance with the requirements of Section 1043 of the New York City Charter, of the adoption by the Department of an amendment to Title 6 of the Rules of the City of New York by adding a chapter 12 to clarify provisions in Local Law 140 of 2016, establish requirements to implement the law and meet its goals, and provide guidance to covered hiring parties and protected freelance workers.

The rule was proposed and published on May 1, 2017. The required public hearing was held on May 31, 2017.

Statement of Basis and Purpose of Rules

In October 2016, the City Council passed Local Law 140 of 2016, which requires hiring parties to make timely payment to freelance workers for services performed pursuant to contract. The City Council determined that protecting freelance workers against non-payment would have a positive effect on the local economy, the freelance industry, and the financial security of freelance workers' families, and result in a more prosperous city.

These rules clarify provisions in the law, establish requirements to implement and meet the goals of the law, and provide guidance to covered hiring parties and protected freelance workers. Specifically, these rules:

- Define “adverse action;”
- Clarify that the provisions of law apply without regard to immigration status;
- Clarify what is included in the value of contracts between hiring parties and freelance workers for purposes of jurisdiction and damages calculation;
- Describe the scope and mechanics of anti-retaliation protections for freelance workers; and
- Clarify the law’s prohibition on waiver of rights in contracts.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Rules

Section 1. A new chapter 12 of Title 6 of the Rules of the City of New York is added to read as follows:

CHAPTER 12 FREELANCE WORKERS

§ 12-01 Definitions.

- (a) As used in this chapter, the terms “director,” “freelance worker,” and “hiring party” shall have the same meanings as set forth in section 20-927 of the Administrative Code.
- (b) As used in this chapter, the term “adverse action” means any action by a hiring party, their actual or apparent agent, or any other person acting directly or indirectly on behalf of a hiring party, that would constitute a threat, intimidation, discipline, harassment, denial of a work opportunity, or discrimination, or any other act that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed under chapter 10 of Title 20 of the Administrative Code (“the Freelance Isn’t Free Act”).

§ 12-02 Coverage.

A freelance worker is entitled to the protections of the Freelance Isn’t Free Act regardless of immigration status.

§ 12-03 Contract Value.

- (a) For purposes of section 20-928(a) of the Administrative Code, the value of a contract between a freelance worker and hiring party, either by itself or when aggregated with all other agreements for services between the same hiring party and freelance worker during the 120 days immediately preceding the agreement that constitutes the contract, shall include the reasonable value of all actual or anticipated services, costs for supplies, and any other expenses under the contract.
- (b) For purposes of section 20-933(b) of the Administrative Code, the value of the underlying contract between a freelance worker and hiring party shall include the reasonable value of all services performed and/or anticipated, and reasonable costs for supplies and any other expenses reasonably incurred by the freelance worker.

§ 12-04 Retaliation.

- (a) Retaliation shall include but is not limited to any adverse action relating to perceived immigration status or work authorization.
- (b) A freelance worker may establish a causal connection between the exercise of rights guaranteed under the Freelance Isn’t Free Act and a hiring party’s adverse action either

circumstantially, such as with evidence that the protected activity was followed closely by the adverse action, or directly, with evidence of an intention by a hiring party to retaliate against a freelance worker. For purposes of section 20-930 of the Administrative Code, retaliation may be established when a freelance worker shows that the exercise or attempt to exercise any right under the Freelance Isn't Free Act was a motivating factor for an adverse action, even if other factors also motivated the adverse action.

- (c) Any person who denies a work opportunity to a freelance worker who exercises or attempts to exercise any right guaranteed under the Freelance Isn't Free Act, or that takes any action reasonably likely to deter a freelance worker from exercising or attempting to exercise any such right, shall be liable for retaliation regardless of whether that person previously has been a party to a contract with the freelance worker or has been the subject of a complaint by the freelance worker.

§ 12-05 Waivers of Rights.

- (a) Any contract entered into by a hiring party and freelance worker shall not include any prospective waiver or limitation of rights under the Freelance Isn't Free Act. Any such waiver or limitation shall be invalid as a matter of law.
- (b) If a contract includes language that waives or limits a freelance worker's right to participate in or receive money or any other relief from any class, collective, or representative proceeding, said waiver or limitation is void.
- (c) Wherever a hiring party asks a freelance worker to waive or limit, via contract, any other procedural right normally afforded to a party in a civil or administrative action, any such contractual waivers and limitations are void under section 20-935 of the Administrative Code. Such rights include but are not limited to procedural rights of parties to a civil action established by the New York Civil Practice Law and Rules, the Federal Rules of Evidence, and the Federal Rules of Civil Procedure.
- (d) A freelance worker has the right to disclose the terms of a contract with a hiring party to the director. Any private contractual agreement that purports to waive or limit a freelance worker's right to communicate the terms of such a contract to the director is void as against public policy.