BOARD OF PUBLIC WORKS MEMBERS

VACANT
PRESIDENT

AURA GARCIA
VICE PRESIDENT

DR. MICHAEL R. DAVIS
PRESIDENT PRO TEMPORE

JESSICA CALOZA
COMMISSIONER

M. TERESA VILLEGAS
COMMISSIONER
———
DR. FERNANDO CAMPOS
EXECUTIVE OFFICER

CITY OF LOS ANGELES
CALIFORNIA

ERIC GARCETTI
MAYOR

JOHN L. REAMER, JR.
Inspector of Public Works
and
Director
**BUREAU OF
CONTRACT ADMINISTRATION**

1149 S. BROADWAY, SUITE 300
LOS ANGELES, CA 90015
(213) 847-1922

http://bca.lacity.org

Honorable Members of the City Council   March 15, 2022
c/o Office of the City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Honorable Members:

BUREAU OF CONTRACT ADMINISTRATION – LOS ANGELES FREELANCE WORKER PROTECTIONS LAW IMPLEMENTATION RECOMMENDATIONS (CF 21-0107)

BACKGROUND

In response to instruction from the City Council (C.F. 21-0107), the Office of Wage Standards (OWS) in the Bureau of Contract Administration (BCA) submits for your consideration a report on recommendations for a Los Angeles Freelance Worker Protections law. Freelance workers are an essential part of today's economy and one of the fastest growing sectors of the workforce. According to a study by the Freelancers Union and Upwork, 57 million Americans, or 35% of the workforce, performed freelance work in 2019, an increase of 5 million since 2014. The study states that freelance work contributes almost $1 trillion, or 5% of GDP to the economy.

However, late or non-payment continues to be a challenge for many freelancers whose work does not receive the same protection against wage theft that Employees receive under the City's Minimum Wage Ordinance. The Freelancers Union states that 60% of freelancers are 'very/somewhat concerned' about late or non-payment for work. The Freelancers Union also reports that some 71% of freelancers have faced difficulty getting paid, and that the average loss per freelancer totaled almost $6,000 in 2014. More specifically, over 75% of freelancers in the film and television, construction and building, and communications industries reported issues with getting paid on time. In 2018, a Gallup, Inc. survey reported that 39 percent of independent contractors reported problems with timely and accurate payment as compared to 18 percent of employees in traditional employment.

In 2016, the City of New York enacted the "Freelance Isn't Free Act," and in 2021, the City of Seattle passed the "Independent Contractor Protections Ordinance" which will take effect later this year. Without laws such as these, freelance workers' main legal remedy is to file a lawsuit for breach of contract, which can be expensive, time consuming, and challenging if there is no written contract. The City of Los Angeles can provide protections similar to these other cities' laws which will strengthen the ability for freelancers to collect full payment.

The BCA performed a review of these laws (comparison matrix attached) to help inform its recommendations. The set of recommendations below is designed to ensure that freelance workers are treated fairly and receive the compensation they are due by providing additional protections regarding written contracts, timely payment, and retaliation.

RECOMMENDATIONS

That the City Council:

1. **Request the Office of the City Attorney prepare and present a Freelance Worker Protections Ordinance consistent with the recommendations made in #3-11 of this report.**

PARAMETERS FOR IMPLEMENTATION

2. **Procedure**

The Office of Wage Standards should be authorized to promulgate and enforce Rules and Regulations to implement this policy. In a manner consistent with the Minimum Wage Ordinance, the Rules and Regulations should have the force and effect of law, and may be relied upon by Freelance Workers, Hiring Parties, and other parties to determine their rights and responsibilities.

3. **Hiring Party**

The definition of a covered Hiring Party should include the following elements:

- any person, group of persons, partnership, corporation, association, business, trust, or any entity who hires or retains a Freelance Worker to provide any service in exchange for compensation.

Exceptions shall include federal, state, local, or foreign government entities.

4. **Freelance Worker**

The definition of a covered Freelance Worker should include the following elements:

- any individual or entity composed of no more than one person, regardless of corporate form or method of organizing the person's business, that is hired by a Hiring Party to provide services in exchange for compensation;
- an individual that is a bona fide independent contractor under California law; and
- an individual or entity that earns 1099 income.

Exceptions shall include:
- Workers hired as employees (the law would generally not apply to work done under a collective bargaining agreement that defines workers as employees).
- Freelance Workers who agree to perform services for a Hiring Party for no pay.

- Freelance Workers regulated by other laws and regulations governing requirements of written agreements.
- an individual or entity that has employees.

Some common industries for freelance workers include film and video, graphic and web design, home contracting and repair, media, photography, and translation services.

5. Geographic Boundaries

The provisions of this Ordinance will apply when over $800 of work is performed by the Freelance Worker in the City of Los Angeles. This includes, but is not limited to, working on location, working at the Hiring Party's location, or working in a home office, so long as the location is within the City. Passing through the City from one location to another, if no work is performed in the City, is not covered.

Compliance Requirements

6. Written Contract

Contracts between Hiring Parties and Freelance Workers worth $800 or more are required to be in writing, prior to the start of work[1].

This includes all agreements - single contract or multiple contracts - between the Freelance Worker and Hiring Party that total $800 per calendar year. The requirement becomes effective when the $800 threshold is achieved. For example, if two parties enter into a verbal agreement for a logo design project in Los Angeles totaling $500, a written contract is not required. However, if six months later in the same calendar year, the same parties agree on a second project valued at $500, that second contract must be in writing because the value of contracted work has now exceeded $800 per calendar year due to the second agreement.

The written contract shall include, at a minimum, the following information:

- The name, mailing address, phone number, and email address of both the hiring party and the freelance worker;
- An itemization of all services to be provided by the freelance worker, the value of the services to be provided pursuant to the contract and the rate and method of compensation; and
- The date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined.

Terms of a contract attempting to waive a Freelance Worker's right under this law are invalid.

7. Timely Payment

Hiring Parties are required to provide timely payment for any services completed.

Payment to the Freelance Worker is due:

---

[1] Consistent with other OWS Ordinances, electronic communication is acceptable.

- on or before the date specified in the written contract; or
- no later than 30 calendar days after services are completed, if the contract does not specify a due date.

8. Recordkeeping

Both parties must retain written records related to the transaction for no less than 4 years, including contracts, payment records, and any other records to demonstrate compliance.

The OWS may provide a sample Record of Payment form on the OWS's website that could serve as a record the Hiring Party completed payment to a Freelance Worker. This may include date of payment, names of both parties, description of services, amount paid, and payment method.

The OWS may provide sample contracts in different languages on its website.

9. Retaliation

Hiring Parties may not punish, penalize, or retaliate against any Freelance Worker for exercising their rights under the Ordinance.

No person shall take any adverse action against a Freelance Worker that penalizes a Freelance Worker for, or is reasonably likely to deter a Freelance Worker from, exercising or attempting to exercise rights under the law or interfere with a Freelance Worker's exercise of rights under the Ordinance. Violations may result in penalties payable to the Freelance Worker.

Enforcement

10. Complaint Process

Freelance Workers may file a complaint with the OWS for a violation of the requirements of the Ordinance.

- A Freelance Worker may file a complaint within 1 year of a violation.
- The OWS will complete intake and review of all valid complaints.
- The option to file a complaint with the OWS is available to workers before filing a civil action, but not after.
- A Freelance Worker is not required to file a complaint with the OWS and may file directly with a court.
- The OWS will attempt to contact the Hiring Party to inform them of the alleged violation, educate them on the requirements, and obtain information to help the Freelance Worker pursue resolution through a civil action, if necessary. All relevant documentation obtained by the OWS will be provided to the Freelance Worker.
- A Hiring Party has 20 calendar days to submit all requested documentation to the OWS. If the Hiring Party does not respond in writing, with the requested documentation, to the notice of complaint within the given timeframe, Freelance Workers shall receive a "rebuttable presumption" in a civil action that the Hiring Party committed the alleged violations. This means a trier of fact will presume the Hiring Party committed the

alleged violations in the complaint and the Hiring Party will bear the burden of proving there was no violation.
- The OWS cannot file lawsuits against Hiring Parties on behalf of Freelance Workers.

11. Remedies

Any Freelance Worker aggrieved by a violation can seek remedies as described in the table below.

	If a Hiring Party:	A judge may order the Hiring Party to:
Failure to enter into a written contract	Refused to enter into a written contract, but did not violate any other provision of the Ordinance	Pay the Freelance Worker $250
	Failed to enter into a written contract **AND** violated any other provision of the Ordinance	Pay the Freelance Worker damages equal to the value of the contract
Nonpayment or underpayment	Failed to pay a Freelance Worker the amount agreed to under the contract 1. on the payment due date under the contract; **OR** 2. within 30 calendar days after the Freelance Worker completed work on the contract (if the contract does not specify a due date)	Pay the Freelance Worker double damages, injunctive relief, and other appropriate remedies
Retaliation	Retaliated against a Freelance Worker	Pay the Freelance Worker damages equal to the value of the contract for each retaliation violation

- "Double damages" means that Freelance Workers can recover twice the amount that is owed under the contract by the Hiring Party.
- If a judge finds that a Hiring Party violated the law, a judge may award the Freelance Worker reasonable attorneys' fees and costs.
- If the alleged violation is a failure to enter into a written contract, a Freelance Worker must be able to demonstrate that a written contract was requested before contracted work began. There is no such requirement if the Freelance Worker alleges a violation other than failure to enter into a written contract.

The City Attorney or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Hiring Party violating this law. The City may also file a lawsuit against a Hiring Party when a Hiring Party has repeated violations of the law. If a trier of fact finds the Hiring Party

violated the law with a pattern or practice, a trier of fact could impose additional civil penalties up to $25,000 payable to the City, injunctive relief, and other appropriate remedies.

12. Navigation Program

The OWS may establish a navigation program that provides information and resources to freelance workers who may be aggrieved. The navigation program may provide general court information, including but not limited to:

- Information on court procedures for filing claims in small claims court;
- Information on obtaining translation and interpretation services, and other courtroom services;
- A list of organizations that can be used to identify attorneys; and
- Organizations providing outreach and education, and/or legal assistance to independent contractors.

The navigation program shall not include legal advice from the OWS. However, if the OWS refers a Freelance Worker to a community organization through the navigation program, the community organization is not precluded from providing legal advice.

Reporting

13. Tracking Program

The OWS may establish a tracking program to collect and track information about complaints alleging violations of the Ordinance.

The OWS will send a survey 6 months after a Freelance Worker was referred to the navigation program to track the results of the resolution of the Freelance Worker's claims. The survey shall ask whether or not the Freelance Worker pursued any such claims in court or through an alternative dispute resolution process, and whether or not the Hiring Party ultimately paid any or all of the compensation the Freelance Worker alleged was due, or if the matter was resolved in a different manner. The survey will state clearly that response to the survey is voluntary.

The information collected will include, at minimum:

1. The identity of the Hiring Party alleged to have violated the Ordinance;
2. The Freelance Worker's occupation;
3. The section of the Ordinance that was alleged to have been violated;
4. The value of the contract; and
5. The response or non-response from the Hiring Party.

Data gathered will enable the OWS and the City to evaluate program effectiveness.

14. Annual Report to the City Council

Beginning a year after the law takes effect, the Office of Wage Standards shall submit a report to the City Council every year describing the status of the implementation of this policy. The

OWS shall report data regarding the value of contracts associated with complaints received, so the City Council may evaluate whether the minimum threshold for applicability shall be changed.

Resource Requirements

15. Office of Wage Standards Staff Request

The Office of Wage Standards does not currently have the staff resources to absorb and implement this program. To determine a conservative request for resources required to launch the program, the OWS evaluated staffing resources for New York City and Seattle's programs. Both programs have two staff positions authorized to perform this work. New York City's budget includes funding for 1 attorney and 1 Management Analyst level staff; the classification of Seattle's positions has not yet been identified.

This program will generate a heavy workload immediately including outreach to affected industry groups, workers, and businesses to educate them about the new requirements. Other work that will need to begin immediately includes drafting Rules and Regulations, developing and translating sample forms and contracts, and researching legal proceedings such as small claims court to provide resources for alleged victims.

Therefore, the OWS requests two (2) positions, including one (1) Senior Management Analyst and one (1) Management Analyst. In addition to performing the work above, the two positions will perform intake of complaints, request and evaluate information received from Hiring Parties, provide information and resources to complainants, and track the outcome of cases for reporting purposes.

The BCA looks forward to your instruction on the development and implementation of the Los Angeles Freelance Worker Protections policy.

Sincerely,

JOHN L. REAMER, JR., Director
Bureau of Contract Administration

JLR:lg

Attachment

Freelance Worker Protections Implementation Recommendation Report 3-15-22-final

Freelance Worker Protections Laws – Comparison of Other Jurisdictions' Policies

Key Components	Los Angeles (Recommended)	New York City	Seattle
Name	Freelance Worker Protection Ordinance	Freelance Isn't Free Act	Independent Contractor Protections Ordinance
Effective Date	—	Introduced 2016 Effective May 15, 2017	Introduced 2021 Effective September 1, 2022
Hiring Parties Covered	Any **person**, group of persons, partnership, corporation, association, business, trust, or any entity who hires or retains a Freelance Worker to provide any service in exchange for compensation	Any **person** who retains a freelance worker to provide any service	A hiring **entity** regularly engaged in business or commercial activity - if the hiring entity owns or operates any trade, occupation, or business, including a not for profit business, or holds itself out as engaging in any trade, occupation, or business.
Exceptions:	Federal, state, local, or foreign government entities	Federal, state, local, or foreign government entities	Third parties purchasing services from hiring entities that hire platform gig workers to provide prearranged services
Freelance Workers Covered	Any **individual** or entity composed of no more than one person, regardless of corporate form or method of organizing the person's business, that is hired by a Hiring Party to provide services in exchange for compensation	Any natural **person** or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation	A **person** or entity composed of no more than one person, regardless of corporate form or method of organizing the person's business, that is hired by a hiring entity as a self-employed person or entity to provide services in exchange for compensation
Exceptions:	● Freelance Workers hired as employees (the law would generally not apply to work done under a collective bargaining agreement that defines workers as employees). ● Freelance Workers who agree to perform services for a Hiring Party for no pay. ● Certain sales representatives, attorneys, licensed medical professionals, and other professions governed by other regulations in this area.	● Any person who, pursuant to the contract at issue, is a sales representative; ● Any person engaged in the practice of law pursuant to the contract at issue and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia and who is not under any order of any court suspending, enjoining, restraining, disbarring or otherwise restricting such person in the practice of law; and ● Any person who is a licensed medical professional.	● Any person duly authorized to practice law and who is engaged in the practice of law for the services at issue
Written Contract Requirements	Hiring Parties are required to provide Freelance Workers with a written contract for all contracts worth **$800 or more**, prior to the start of work.	Whenever a hiring party retains the services of a freelance worker and the contract between them has a value of **$800 or more**, either by itself or when aggregated with all contracts for services between the same hiring	Prior to an independent contractor beginning work for the hiring entity, the hiring entity shall provide the independent contractor with a **written "pre-contract disclosure"** that provides itemized information on the proposed

Key Components	Los Angeles (Recommended)	New York City	Seattle
	This includes cumulative agreements - a single contract or multiple contracts - between the Freelance Worker and Hiring Party that total $800 in **any 1 calendar year**.	party and freelance worker during the immediately **preceding 120 days**, the contract shall be reduced to writing.	terms and conditions of work - limited to those with proposed or actual compensation of **$600 or more** either by itself or when aggregated for services between the same hiring entity and independent contractor **during the calendar year**
Payment Requirements	Payment to the Freelance Worker is due: ● **on or before the date** specified in the written contract; or ● **no later than 30 calendar days** after services are completed, if the contract does not specify a due date.	The contracted compensation shall be paid to the freelance worker either: ● **On or before the date** such compensation is due under the terms of the contract; or ● If the contract does not specify when the hiring party must pay the contracted compensation, **no later than 30 days** after the completion of the freelance worker's services.	The hiring entity shall provide the compensation as follows: ● **On or before the date** the compensation is due under the terms and conditions of the contract; or ● **no later than 30 days** after the completion of the independent contractor's services under the contract.
Record-Keeping Requirement	Both parties must retain written records related to the transaction for **no less than 4 years**, including contracts, payment records, and any other records to demonstrate compliance.	● An employer's failure to maintain, retain, or produce a record that is required to be maintained that is relevant to a material fact alleged by the Office in a notice of violation creates a reasonable inference that such fact is true, unless a rebuttable presumption or other adverse inference is provided by applicable law. ● An employer that produces records in response to a request for information affirms that the records produced are true and accurate.	● Hiring entities shall retain records that document compliance for each independent contractor for a period of **3 years**. ● If a hiring entity fails to retain adequate records, there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity violated this Chapter 14.34 for the periods and for each independent contractor for whom records were not retained.
Geographic Boundary	The law will apply when over $800 of work is performed in the City of Los Angeles. This includes working on location, working at the client's location, or working in a home office, so long at the location is within the City. Passing through the City from one location to another, if no work is performed in the City, is not covered.	The law applies to work performed inside NYC and may apply to work performed outside NYC depending on overall circumstances. For example, whether the law applies may depend on whether some, but not all, of the work is performed in NYC, the freelance worker is hired or retained in NYC, or the hiring party has significant operations in NYC. Judges will decide how the Law applies in each case.	Covered independent contractors are limited to those who perform work for a covered hiring entity, where 1. The work is performed in whole or part in Seattle, 2. The hiring entity knows or has reason to know that the work is performed in whole or part in Seattle, and 3. The hiring entity hires the independent contractor for services in the course of the hiring entity's business or commercial activity. B. The determination of whether a hiring entity

Key Components	Los Angeles (Recommended)	New York City	Seattle
			knows or has reason to know that work is performed in whole or part in Seattle, may be demonstrated by any number of factors, including but not limited to: 1. The hiring entity specifies the location of the work to be performed, including a service area that is wholly or partially within Seattle; 2. The hiring entity provides a location within Seattle at which the independent contractor is permitted or required to perform the work; 3. The independent contractor maintains a regular place of business at an address in Seattle and the hiring entity is aware of this regular place of business as indicated by inclusion of the independent contractor's address in Seattle in a pre-contract disclosure, written contract, payment, or other means; 4. The independent contractor provides information to the hiring entity indicating that work will be performed in whole or part in Seattle; 5. The independent contractor provides services that in fact include a work-related or commercial stop in Seattle;
Protection from Retaliation	No person shall take any adverse action against a Freelance Worker that penalizes a Freelance Worker for, or is reasonably likely to deter a Freelance Worker from, exercising or attempting to exercise rights under the law or interfere with a Freelance Worker's exercise of rights under the Ordinance. Violations may result in penalties payable to the Freelance Worker.	No hiring party shall threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelancer worker from, exercising or attempting to exercise any right guaranteed under this chapter, or from obtaining future work opportunity because the freelance worker has done so.	No hiring entity or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this law
Complaint Process	A Freelance Worker may file a complaint **within 1 year** of a violation. The OWS will complete intake and review of all valid complaints. The OWS will attempt to contact the Hiring Party to inform them of the alleged violation, educate them on the requirements, and obtain information to help the Freelance Worker pursue resolution in Court, if necessary. The Hiring Party will have	A freelance worker who is aggrieved by a violation of this chapter may file a complaint with the director **within 2 years** after the acts alleged to have violated this chapter occurred. **Referral to navigation program**. At the time the director receives a complaint alleging a violation of this chapter, the director shall	The **Agency shall have the power to respond to any violations** with a complaint procedure. The Agency may initiate a complaint procedure as an alternative enforcement method to an investigation for responding to a report or complaint by any person of a violation. The Director may issue rules for the complaint procedure, including but not limited

Key Components	Los Angeles (Recommended)	New York City	Seattle
	20 days to respond in writing and provide the requested documentation. If the Hiring Party does not respond in writing with the requested documentation within 20 days, Freelance Workers shall receive a "rebuttable presumption" in a civil action that the Hiring Party committed the alleged violations. This means a trier of fact will presume the Hiring Party committed the alleged violations in the complaint and the Hiring Party will bear the burden of proving there was no violation. All relevant documentation obtained by the OWS will be provided to the Freelance Worker to file in court if they choose.	refer the freelance worker to the navigation program.	to rules to establish the timeline for sending the information and to indicate when the Agency may prioritize use of a complaint procedure prior to an investigation or in lieu of an investigation. The Director may also establish other enforcement methods to efficiently resolve violations.
Navigation Program	The OWS may establish a navigation program that provides information and resources to freelance workers who may be aggrieved. The navigation program may provide general court information, including but not limited to: 1. Information on court procedures for filing claims in small claims court; 2. Information on obtaining translation and interpretation services, and other courtroom services; 3. Organizations providing outreach and education, and/or legal assistance to independent contractors The navigation program shall not include legal advice from the OWS. However, if the OWS refers a Freelance Worker to a community organization through the navigation program, the community organization is not precluded from providing legal advice.	The navigation program shall provide the following: 1. General court information and information about procedures; 2. Information about available templates and relevant court forms; 3. General information about classifying persons as employees or independent contractors; 4. Information about obtaining translation and interpretation services and other courtroom services; 5. A list of organizations that can be used for the identification of attorneys; and 6. Other information, as determined by the director, related to the submission of a complaint by a freelance worker or the commencement of a civil action The navigation program shall include outreach and education to the public on the provisions of this chapter. The navigation program shall not provide legal advice.	1. The navigation program may provide a range of information, including but not limited to: a. Information on the provisions and procedures b. Model notices of the pre-contract disclosure, payment disclosure, and notice of rights; c. General court information d. A list of organizations that can be used to identify attorneys; e. Organizations providing outreach and education, and/or legal assistance to independent contractors; f. Information about classifying workers as employees or independent contractors 2. The navigation program may include outreach and education to the public on the provisions and procedures 3. The navigation program shall not include legal advice from the Agency. However, if the Agency refers an independent contractor to a community organization through the navigation program, the community organization is not precluded from providing legal advice.
Private Right of Action	Any Freelance Worker aggrieved by a violation, the City Attorney or any other person or entity acting on behalf of the public as provided for	Except as otherwise provided by law, a freelance worker alleging a violation of this	Any person or class of persons that suffers an injury as a result of a violation, or is the subject of prohibited retaliation, may bring a civil

Key Components	Los Angeles (Recommended)	New York City	Seattle
	under applicable state law, may bring a civil action in a court of competent jurisdiction against the Hiring Party violating this law.	chapter may bring an action in any court of competent jurisdiction for damages	action in a court of competent jurisdiction against the hiring entity or other person violating this law and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief
Damages	Same as New York City	1.A plaintiff who prevails on a claim alleging a violation of written contract shall be awarded **statutory damages of $250**. 2.A plaintiff who prevails on a claim alleging a violation of written contract and on one or more claims under other provisions of this chapter shall be awarded **statutory damages equal to the value** of the underlying contract in addition to the remedies specified in this chapter for the other violations. 3. In addition to any other damages, a plaintiff who prevails on a claim alleging a violation of nonpayment/underpayment is entitled to an award for **double damages**, injunctive relief and other such remedies as may be appropriate. 4. In addition to any other damages awarded pursuant to this chapter, a plaintiff who prevails on a claim alleging a violation of retaliation is entitled to **statutory damages equal to the value** of the underlying contract for each violation arising under such section.	The Director is authorized to assess civil penalties for a violation and may specify that civil penalties are due to the aggrieved party rather than due to the Agency. 1. For a first violation, the Director may assess a **civil penalty of up to $556.30** per aggrieved party. 2. For a second violation, the Director shall assess a **civil penalty of up to $1,112.60** per aggrieved party, or an **amount equal to ten percent of the total amount** of unpaid compensation, whichever is greater. 3. For a third or any subsequent violation, the Director shall assess a **civil penalty of up to $5,565.10** per aggrieved party, or an **amount equal to ten percent of the total amount** of unpaid compensation, whichever is greater