

# **EMPLOYMENT LAW FOR ARTISTS: Protections for NYC's Freelancers**

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1.5 Hour CLE Program  
Tuesday, December 15, 2020 5:00 P.M. – 6:30 P.M.

- I. Introduction
- II. General Employment Law Basics
  - a. Employee versus Independent Contractor
  - b. Employee Entitlements - Minimum wage, entitlement to overtime, etc.
- III. Protections for Freelancers
  - a. Overview of NYC Freelancers & NYC Freelancer Artists
  - b. Protection from nonpayment – Freelance Isn’t Free Act -NY Admin. Code § 20-927 – 936)
  - c. Antidiscrimination Laws- overview Federal, State and NYC
  - d. New York State Human Rights Law (NYSHRL)- New York Exec. Law § 296
  - e. New York City Human Rights Law (NYCHRL) – NYC Admin Code § 8-107
- IV. Questions and Answers



Neutral

As of: December 15, 2020 3:34 AM Z

## **Agerbrink v. Model Serv. LLC**

United States Court of Appeals for the Second Circuit

September 24, 2019, Decided

No. 18-1471

### **Reporter**

787 Fed. Appx. 22 \*; 2019 U.S. App. LEXIS 28792 \*\*; 2019 WL 4620212

EVA AGERBRINK, Plaintiff-Counter-Defendant-Appellant, v. MODEL SERVICE LLC d/b/a MSA MODELS, SUSAN LEVINE, WILLIAM IVERS, Defendants-Counter-Claimants-Appellees.

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Prior History:** **[\*\*1]** Appeal from a judgment of the United States District Court for the Southern District of New York (Oetken, J.).

[Agerbrink v. Model Serv. LLC, 293 F. Supp. 3d 470, 2018 U.S. Dist. LEXIS 42111 \(S.D.N.Y., Mar. 14, 2018\)](#)

### **Core Terms**

apparel, district court, summary judgment, appointment, negotiate, models, economic reality, asserts, genuine, disputes

### **Case Summary**

#### **Overview**

**HOLDINGS:** [1]-Granting employers' motion for summary judgment on the question of whether a worker was misclassified as an independent contractor, rather

than an employee, for purposes of the FLSA and the New York Labor Law (NYLL) was error because there were genuine, material disputes of fact as to the worker's status, and when drawing inferences in the light most favorable to the worker, a reasonable jury could have concluded that she was an employee. While no single element of the parties' relationship was dispositive to the FLSA inquiry, there were genuine disputes regarding the worker's control over her work schedule, her ability to negotiate her pay rate, and her ability to accept or decline work; [2]-Similarly, it was premature to resolve the question of whether the worker was an employee under the NYLL.

### **Outcome**

Judgment vacated and case remanded for further proceedings.

### **LexisNexis® Headnotes**

Labor & Employment Law > Employment Relationships > Independent Contractors

[HN1](#) **Employment Relationships, Independent Contractors**

An employer's self-serving label of workers as independent contractors is not controlling. That designation, however, is pertinent to the parties' beliefs about the nature of the relationship.

Civil Procedure > ... > Summary  
 Judgment > Motions for Summary  
 Judgment > Cross Motions

Civil Procedure > Judgments > Summary  
 Judgment > Entitlement as Matter of Law

Civil Procedure > ... > Summary  
 Judgment > Entitlement as Matter of Law > Genuine  
 Disputes

Civil Procedure > ... > Summary  
 Judgment > Entitlement as Matter of  
 Law > Materiality of Facts

### [HN2](#) **Motions for Summary Judgment, Cross Motions**

Summary judgment is appropriate only if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(a\)](#). Courts of appeal review a decision on cross-motions for summary judgment de novo, examining each motion on its own merits. Courts must construe the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in its favor. When considering cross-motions for summary judgment, all reasonable inferences must be drawn against the party whose motion is under consideration. Material facts are those which might affect the outcome of the suit under the governing law, and a dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

Labor & Employment Law > Wage & Hour  
 Laws > Scope & Definitions > Definition of  
 Employees

### [HN3](#) **Scope & Definitions, Definition of Employees**

The FLSA defines an "employee" as any individual employed by an employer. [29 U.S.C.S. § 203\(e\)\(1\)](#). The determination of whether an employer-employee relationship exists for purposes of the FLSA should be grounded in economic reality rather than technical concepts, determined by reference not to isolated factors, but rather upon the circumstances of the whole activity. The United States Court of Appeals for the Second Circuit focuses on the totality of the

circumstances in addressing our ultimate concern whether, as a matter of economic reality, a worker depends upon someone else's business for the opportunity to render service or is in business for herself. While courts identify several multi-factor tests related to this inquiry, they recognize that different sets of factors may be relevant based on the factual challenges posed by particular cases. Courts are clear that no single factor is dispositive and have reiterated the necessary flexibility of the economic realities test.

Labor & Employment Law > Wage & Hour  
 Laws > Scope & Definitions > Definition of  
 Employees

### [HN4](#) **Scope & Definitions, Definition of Employees**

Pursuant to the economic reality test for defining an employee under the FLSA, it is not what a plaintiff could have done that counts, but as a matter of economic reality what they actually do that is dispositive.

Labor & Employment Law > Wage & Hour  
 Laws > Scope & Definitions > Definition of  
 Employees

### [HN5](#) **Scope & Definitions, Definition of Employees**

The New York Labor Law test economic reality test for defining an employee is similar to the FLSA test, although it focuses more on degree of control than economic reality.

Civil Procedure > Discovery &  
 Disclosure > Discovery > Protective Orders

### [HN6](#) **Discovery, Protective Orders**

A district court, when considering the sealing of documents and other material are obligated to review documents individually and produce specific, on-the-record findings that sealing is necessary to preserve higher values.

**Counsel:** For Appellant: CYRUS E. DUGGER, The Dugger Law Firm, PLLC, New York, NY.

For Appellees: EVAN J. SPELFOGEL, Phillips Nizer LLP, New York, NY; Matthew S. Aibel, Jeffrey H. Ruzal (on the brief), Epstein Becker & Green, P.C., New York, NY.

**Judges:** PRESENT: ROBERT A. KATZMANN, Chief Judge, RICHARD C. WESLEY, JOSEPH F. BIANCO, Circuit Judges.

## Opinion

### SUMMARY ORDER

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, [\*22] AND DECREED** that the judgment of the district court is **VACATED** and the case **REMANDED** for further proceedings.

Eva Agerbrink appeals the judgment of the United States District Court for the Southern District of New York (Oetken, J.) granting defendants' motion for summary judgment on the question of whether Agerbrink was misclassified as an independent contractor, rather than an employee, for purposes of the [Fair Labor Standards Act \("FLSA"\)](#) and the [New York Labor Law \("NYLL"\)](#). For the following reasons, we conclude that there are genuine, material disputes of fact and so vacate that judgment and remand the case for trial on Agerbrink's misclassification claims. We assume the parties' familiarity **[\*\*2]** with the underlying facts, the procedural history of the case, and the issues on appeal.

Eva Agerbrink is a fit model. Fit models do not pose for advertising campaigns or walk in runway shows—the work one might associate with a fashion model. Instead, fit models are hired based on their body proportions: clothing designers and apparel companies rely on fit models to test the fit of their designs. Model Service LLC (a/k/a MSA Models) is a model "management" company. J. App. 586. Susan Levine is MSA Models' President and Chief Executive; William Ivers is MSA Models' Chief Operating Officer. "MSA" refers to all


Appellees.

On March 5, 2013, Agerbrink signed a three-year "management agreement" with MSA.<sup>1</sup> MSA helped Agerbrink "book" work by acting as a match-maker between Agerbrink and apparel companies seeking models with her dimensions. Generally, an apparel company would contact MSA when it needed a model, and, if Agerbrink fit the description, MSA would schedule her for an initial meeting with that company. If a company decided to engage Agerbrink for more appointments, it would contact MSA directly. Similarly, if a company decided it no longer wanted to work with Agerbrink, it would communicate **[\*\*3]** that decision to MSA, rather than to Agerbrink. The reverse was also true: if Agerbrink no longer wanted to work with an apparel company, she would inform MSA who, in turn, would relay that information to the company.

As part of its exclusive management of Agerbrink's career, MSA collected payments for Agerbrink's modeling work directly from apparel companies. After taking its commission—usually twenty percent—MSA would then pay Agerbrink. Agerbrink's contract with MSA noted that she was to consult with MSA regarding compensation or compensation rates. MSA also managed Agerbrink's **[\*23]** schedule. This management included: setting her appointment schedule for the work week ahead, emailing Agerbrink her daily schedule a day in advance, and communicating directly with an apparel company if Agerbrink was running late to an appointment.

Agerbrink asserts that MSA had near full control over her schedule. She testified that she would be told the following day's schedule less than 24 hours before she was scheduled to be at an appointment—often having to confirm the following day's schedule with an apparel company after MSA's offices were closed. J. App. 1647. MSA, meanwhile, asserts that "Agerbrink **[\*\*4]** dictated her own schedule of when she would work with [a]pparel [c]ompanies." J. App. 1580. However, Agerbrink further testified that on the occasions where

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<sup>1</sup> That agreement designates Agerbrink as an independent contractor. But [HN1](#)  "an employer's self-serving label of workers as independent contractors is not controlling." **Brock v. Superior Care, Inc.**, 840 F.2d 1054, 1059 (2d Cir. 1988). That designation, however, is "pertinent to the parties' beliefs about the nature of the relationship." [Saleem v. Corp. Transp. Grp., Ltd.](#), 854 F.3d 131, 141 (2d Cir. 2017). Unless otherwise indicated, case quotations omit all internal quotation marks, alterations, footnotes, and citations.


she communicated with apparel companies directly she was required to relay any information regarding scheduling to MSA. See J. App. 1647. MSA, meanwhile, maintains that it was a neutral third-party, simply coordinating between Agerbrink and apparel companies.


Agerbrink asserts that MSA controlled all aspects of her pay and that she was not free to directly negotiate her own hourly rate. For example, she testified that she "never talked about [her] rate or [her] pay" with QVC, an apparel company with whom she had a standing appointment. J. App. 1676. She further testified that on one occasion, when she asked QVC if it had submitted payment to MSA because she had not received her compensation, QVC followed up with MSA. Conversely, MSA contends that "Agerbrink in her sole discretion decided whether to accept or reject the rate proposed by an [a]pparel [c]ompanies [sic], or to direct MSA to attempt to negotiate a better rate with the Apparel Company, or negotiate with the Apparel Company herself." J. App. 1588.

Agerbrink and MSA ended **[\*\*5]** their relationship after Agerbrink was hired by an apparel company for an "in-house" position in June 2014. Agerbrink applied for that job directly, without going through MSA. The position involved fit modeling and office administrative work. When MSA found out that Agerbrink had been offered the position, it informed her that accepting the position would be a breach of her agreement with MSA. MSA threatened legal action but noted it would be willing to not pursue such action if Agerbrink, among other things, agreed to allow MSA to retain the nearly \$18,000 of her wages it was holding, and instructed her new employer to remit twenty percent of her salary to MSA.

Agerbrink commenced this lawsuit, originally filed as a putative class action, against MSA on September 26, 2014, asserting claims under the FLSA and the NYLL, as well as a claim for unjust enrichment. On March 14, 2018, the district court granted MSA's motion for summary judgment on the question of whether Agerbrink was MSA's employee for purposes of the FLSA and the NYLL. It also granted Agerbrink's motion for summary judgment on defendants' tortious interference claim and her motion for summary judgment as to initial damages **[\*\*6]** on her unjust enrichment claim for withheld earnings (having previously granted summary judgment for Agerbrink on her unjust enrichment claim). The district court denied Agerbrink's motion for partial summary judgment on defendants' breach of contract counterclaim. On April

12, 2018, the parties agreed to voluntarily dismiss their remaining claims with prejudice. Judgment was entered on April 30, 2018. This appeal, **[\*24]** on the misclassification issue alone, followed.

**HN2** Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We review a decision on cross-motions for summary judgment *de novo*, examining each motion "on its own merits." Chandok v. Klessig, 632 F.3d 803, 812 (2d Cir. 2011). We must "constru[e] the evidence in the light most favorable to the non-moving party and draw[] all reasonable inferences in its favor." Costello v. City of Burlington, 632 F.3d 41, 45 (2d Cir. 2011); see also Morales v. Quintel Entm't, Inc., 249 F.3d 115, 121 (2d Cir. 2001) (when considering cross-motions for summary judgment, "all reasonable inferences must be drawn against the party whose motion is under consideration"). "Material facts are those which might affect the outcome of the suit under the governing law, and a dispute is genuine if the evidence is such that a reasonable jury **[\*\*7]** could return a verdict for the nonmoving party." Coppola v. Bear Stearns & Co., 499 F.3d 144, 148 (2d Cir. 2007).

**HN3** The FLSA defines an "employee" as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). "[T]he determination of whether an employer-employee relationship exists for purposes of the FLSA should be grounded in economic reality rather than technical concepts, determined by reference not to isolated factors, but rather upon the circumstances of the whole activity." Barfield v. N.Y. City Health & Hosps. Corp., 537 F.3d 132, 141 (2d Cir. 2008). This Circuit "has focused on the totality of the circumstances in addressing our ultimate concern whether, as a matter of economic reality, [a] worker[] depend[s] upon someone else's business for the opportunity to render service or [is] in business for [herself]." Saleem, 854 F.3d at 139. While we have identified several multi-factor tests related to this inquiry, see, e.g., Barfield, 537 F.3d at 143, Zheng v. Liberty Apparel Co., 355 F.3d 61, 72 (2d Cir. 2003), Brock, 840 F.2d at 1058-59, Carter v. Dutchess Cmty. Coll., 735 F.2d 8, 12 (2d Cir. 1984), we recognize that "different sets of . . . factors" may be relevant "based on the factual challenges posed by particular cases," Barfield, 537 F.3d at 142. We have been clear that no single factor is dispositive and have "reiterate[d] the necessary flexibility of the economic realities test." Id. at 143.

There are genuine disputes of material facts presented



in this case. When drawing inferences in the light most favorable to Agerbrink, which the district court **[\*\*8]** did not do, a reasonable jury could have concluded that she was MSA's employee. While no single element of Agerbrink's and MSA's relationship is dispositive to the FLSA inquiry, see *supra*, there exist genuine disputes regarding Agerbrink's control over her work schedule, whether she had the ability to negotiate her pay rate, and, relatedly, her ability to accept or decline work. These disputes are significant as they relate both to the "degree of control" MSA exerted over Agerbrink and Agerbrink's "opportunity for profit or loss." *Brock*, 840 F.2d at 1058.

*First:* Agerbrink's schedule. MSA maintains that Agerbrink "set her own schedule and worked different weeks, days, and hours for a variety of reasons, all of which were her own." Appellees' Br. at 31; see J. App. 1791 (Deposition of Susan Levine: "whatever [Agerbrink] wanted to do, she could accept"). Meanwhile, Agerbrink asserts that MSA "coordinated all scheduling of [her] work with apparel clients and **[\*25]** maintained [her] master schedule[.]" Appellant's Br. at 19; see J. App. 1621 (Excerpts of Agerbrink Deposition: "The agent is in total control of the model. . . . We are not in charge of our schedule. They tell us we have to report everything we do to them."). **[\*\*9]** Agerbrink concedes that she would contact a company directly to confirm specifics of an appointment time, but only after it was already set by MSA and the apparel company.

At this stage, the dispute should not have been resolved in MSA's favor. The district court concluded that "Agerbrink could set her own work schedule and choose how much to work, if at all." Special App. 7; see also *id.* at 10 ("Agerbrink had significant leeway in deciding whether to work, when to work, for whom to work, and for how much to work."). In a footnote, the district court noted that Agerbrink "contends that she had to keep her scheduled standing appointments and might have been penalized if she did not show up at the scheduled time." *Id.* at 7 n.1. The district court discounted Agerbrink's contention because "she also had the freedom to end her standing appointments, as she did with QVC." *Id.* But the record reflects that ending a standing appointment was not as easily done as said: Agerbrink was instructed that she had to give MSA notice of her departure, and in turn MSA would give QVC, "3 weeks notice in order to replace [her]." J. App. 1058. Agerbrink "set forth specific facts demonstrating that there is a genuine issue for **[\*\*10]** trial," *Wright v. Goord*, 554 F.3d 255, 266 (2d Cir. 2009), on the issue of whether she was able to independently manage her work

schedule.

*Second:* Agerbrink's pay. Agerbrink asserts that she had no control over negotiating the amount an apparel company would pay for her services and that she was actively discouraged from discussing compensation with apparel companies. In fact, Agerbrink's primary manager at MSA once emailed Agerbrink to relay QVC's complaints about Agerbrink's discussion of her rate of pay, noting that "[t]hese details are private between [Agerbrink] and MSA." J. App. 1869. MSA, meanwhile, asserts that "Agerbrink alone determined her booking rates." Appellees' Br. at 42. MSA argues that, because "[t]he model has the right to say yes and the model has the right to say no," J. App. 1737, MSA does "not dictate [a model's] compensation," Appellees' Br. at 42.

The district court improperly resolved this dispute in MSA's favor. It concluded that "Agerbrink had the ultimate say about her hourly rate." Special App. 8. In support of this conclusion, the district court explained that Agerbrink could accept a lower hourly rate if "she really wanted a certain job," or, conversely, "she could hold out for her usual rate." *Id.* This **[\*\*11]** "take it or leave it" approach, taken to its logical conclusion, means that *any* person has "the ultimate say" about her pay because any person has the binary choice to either work for the amount offered or not to work for that amount. It says nothing of the power to negotiate a rate of pay. The district court recognized that only MSA, not Agerbrink, attempted to negotiate for a higher rate with QVC. Special App. 4. What's more, Agerbrink testified that the binary choice to accept or reject a booking was a choice in theory only: "You never turn down a booking. . . . It's crazy to do." J. App. 1684; see *Saleem*, 854 F.3d at 142 ("To be clear, *HN4* [↑] pursuant to the economic reality test, it is not what Plaintiffs *could* have done that counts, but as a matter of economic reality what they actually *do* that is dispositive."). Therefore, the issue of whether MSA "determined [Agerbrink's] **[\*26]** rate . . . of payment," *Carter*, 753 F.2d at 12, is disputed.

As the district court properly noted, independence to determine her schedule and income are key inquiries to determining "whether, as a matter of economic reality" Agerbrink "depended upon" MSA's "business for the opportunity to render service" or was "in business for" herself. Special App. 12 (quoting **[\*\*12]** *Brock*, 840 F.2d at 1059). These are material facts. They are in dispute. As such, summary judgment was not proper on the question of whether Agerbrink was an employee under



the FLSA.<sup>2</sup> Similarly, Agerbrink was not entitled to summary judgment on that same question.

For the foregoing reasons, we **VACATE** the judgment of the district court and **REMAND** the case for trial on the misclassification claims.<sup>3</sup>

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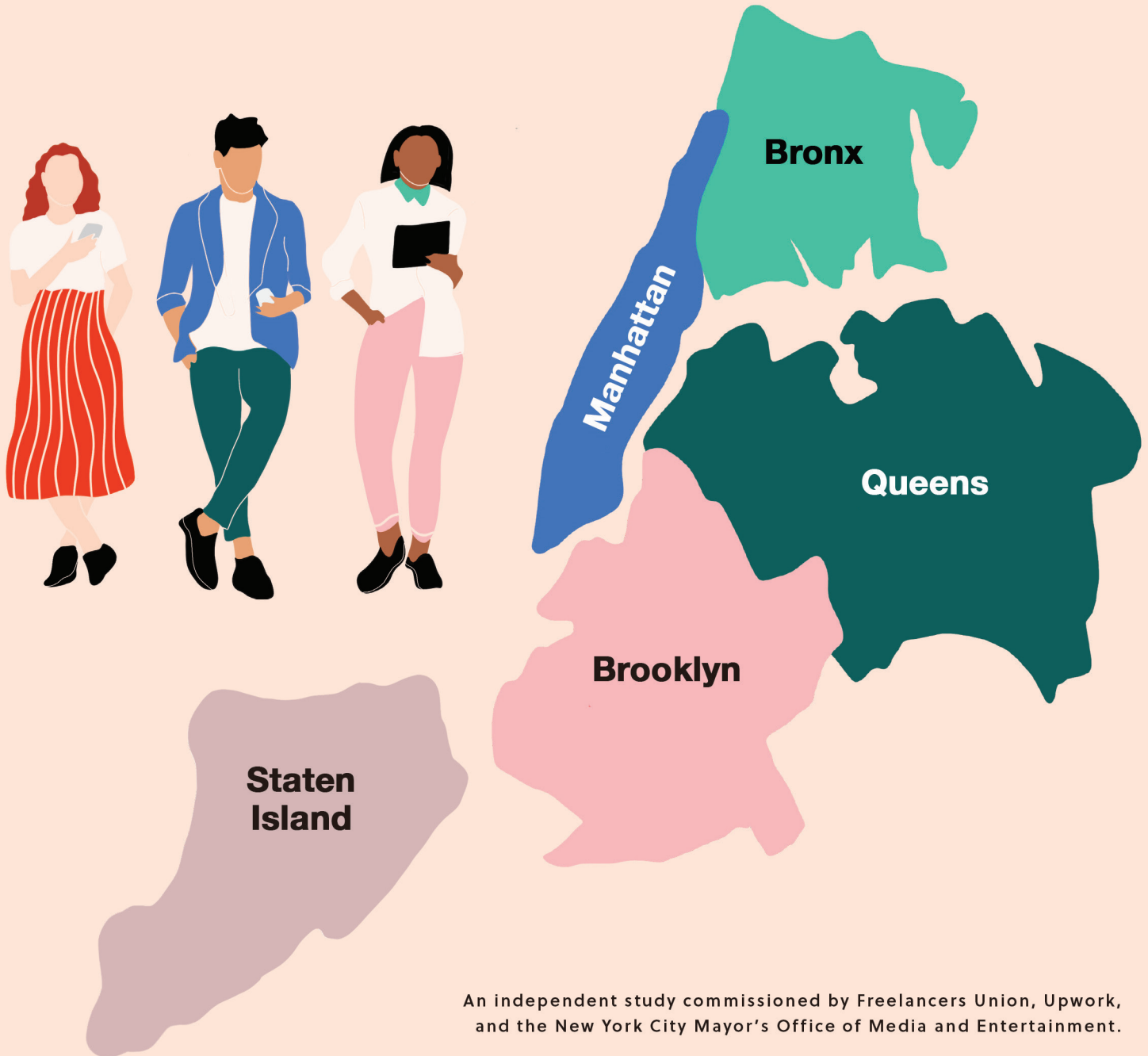
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<sup>2</sup> Similarly, it was premature to resolve the question of whether Agerbrink was an employee under the NYLL. As the district court pointed out, [HNS](#) [↑] the "NYLL test is similar to the FLSA test, although it focuses more on degree of control than economic reality." Special App. 13; see [Bynog v. Cipriani Grp.](#), 1 N.Y.3d 193, 802 N.E.2d 1090, 1093, 770 N.Y.S.2d 692 (N.Y. 2003) (laying out the factors considered for NYLL's degree of control inquiry). The disputed facts relate directly to the degree of control Agerbrink exercised and thus summary judgment should not have been granted on her NYLL claims.

<sup>3</sup> In remanding, we also instruct [HN6](#) [↑] the district court to consider whether its rulings concerning the sealing of documents and other material have satisfied its obligation to "review . . . documents individually and produce specific, on-the-record findings that sealing is necessary to preserve higher values." [Brown v. Maxwell](#), 929 F.3d 41, 48 (2d Cir. 2019); see generally [Lugosch v. Pyramid Co. of Onondaga](#), 435 F.3d 110 (2d Cir. 2006).

# Freelancing in New York City 2019



An independent study commissioned by Freelancers Union, Upwork, and the New York City Mayor's Office of Media and Entertainment.

# One-third of NYC's workforce is freelancing.

Starting in 2014, Freelancers Union and Upwork have commissioned an annual survey of the nation's independent workforce. This year, we have partnered with the NYC Mayor's Office of Media & Entertainment to look at how freelancing factors into the New York City workforce. The results will guide our work at Freelancers Hub in Brooklyn, the first City-funded effort to provide training, coworking, resources, and community to help freelancers thrive.

In order to produce a comprehensive study of who is participating in the freelance workforce, we commissioned an online survey of 5,000 adults residing in New York City who had performed paid work over the past 12 months. We found that 34% of NYC workers—roughly 1.3 million people—were freelancing.

Freelancers are a diverse group, working in every major industry and serving a wide variety of businesses. In media and entertainment sectors, the percentage of workers who have engaged in freelance work in the past 12 months jumps to 61%. Freelancers are most frequently combining multiple sources of income, combining both full- and part-time work as business owners, independent contractors, temporary workers, and moonlighters.

To freelancers, New York is a promising city in which to work. Its size and dynamism allow them

to earn more money and build a stronger client network than in other cities. Most NYC freelancers are optimistic about the future, and plan to stay in the city—at least for the short term. They tend to be more satisfied with their work than non-freelancers, and cite autonomy, flexibility, and pursuing work they are passionate about as reasons for freelancing.

Yet freelancers must deal with a number of unique challenges due to the nature of their work and its inherent lack of protections. Their primary concern is a lack of affordable healthcare, but financial uncertainties such as debt, unpredictable income, and being paid fairly also pose significant challenges.

Data from our survey highlights the value NYC freelancers place on training within a competitive job market. Freelancers update their skills to keep up with industry trends, earn more, and expand their network. However, the cost of this training is a barrier for the majority of freelancers.

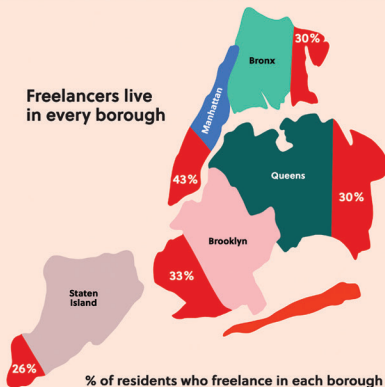
Forty-six percent of recent college grads have performed freelance work in the past 12 months, and traditional employees express an overwhelming interest in freelancing outside of their primary job. With so many workers either new to this work or looking to begin, we must work to build better resources and stronger supports.

**34%**

of New York  
City's workforce  
is freelancing



Freelancers live  
in every borough



More than two-thirds  
of freelancers say  
they freelance because  
it allows them to have  
a *flexible schedule*,  
*be their own boss*,  
and *choose their own projects*

## Key Findings:

### More than one-third of New York City workers freelance.

- 1.3 million New Yorkers have performed freelance work in the past 12 months or 34% of New York City's workforce, with an estimated annual economic impact of \$31.4 billion in earnings from freelancing.
- Those engaging in freelance work tend to be younger, and many are entering the workforce as freelancers, including 46% of recent college grads (20-26).
- Freelancers are putting together diverse income streams by accessing work in different ways: most don't have a single employer but get their work from a variety of sources such as employers, freelance, temporary, or supplemental work.

### New York City is a unique and promising place to work for freelancers, with most intending to stay in the area for at least the short term.

- A majority of people who freelance (6 in 10) say opportunities in NYC are more attractive than in other places in the United States. They particularly feel that they can earn more money (57%) and more easily build a client network in NYC (56%).
- 6 in 10 plan to remain freelancing for at least the next 3 years.

### Freelancers have a higher level of satisfaction with their work than non-freelancers.

- More than two-thirds of freelancers say they freelance because it allows them to have a flexible schedule, be their own boss, and choose their own projects.
- Freelancers are more likely than non-freelancers to say their work provides them with upward mobility (+12 ppts) and appropriate pay (+8 ppts).
- Freelance work is more likely to make them feel accomplished (+7 ppts), excited to start each day (+12 ppts), and empowered (+9 ppts) compared to non-freelancers.



### **Freelancers face complex challenges — and an uncertain income.**

- Freelancers' primary concern is access to affordable healthcare—not surprising, as 36% of them report paying more in health premiums this year than last.
- Freelancers also worry about managing their day-to-day finances (51% are anxious or concerned), collecting payments for services (74% have experienced nonpayment or late payment), and being on track for retirement (52% do not feel on track).
- Half of freelancers also feel anxious about the unpredictable nature of their work.

### **When it comes to training, freelancers are actively updating their skills and believe that freelance business skills like marketing, networking, and financial management are critical for success.**

- Most freelancers (60%) are updating their skills to ensure they are marketable as the job market evolves, and 56% have participated in skills-related training in the past 6 months (versus only 43% of non-freelancers).
- To succeed as a freelancer, 82% are looking for more training to improve business-related skills, including marketing their work, networking with prospects, or financial management.
- Unfortunately, cost is a barrier. A majority (57%) of freelancers say that cost gets in the way of obtaining the training they need.
- Three-quarters of NYC freelancers say building a network—through friends, family members, clients, or professional contacts—is critical to earning more income. And 61% would like better access to affordable coworking or workspace options in their neighborhoods.

# Key Media & Entertainment Sector Findings:

## **Freelance work is prevalent in New York City's robust media and entertainment sectors.**

- 61% of these sectors' workers have engaged in freelance work in the past 12 months, including:
  - 68% of journalism or digital media workers
  - 67% of music or performing arts workers
  - 60% of marketing or advertising workers
  - 52% of film / television workers
  - 54% of publishing workers
- On average, for an individual, freelancing accounts for 52% of their total personal income (versus 45% for all freelancers).

## **Media and entertainment freelancers are more likely to freelance as a means of following their passions, and see it as a long-term career choice.**

- 7 in 10 freelancers in this sector are motivated to freelance to pursue work they are passionate about (versus 63% for all freelancers).
- 65% view freelancing as a long-term career choice, rather than as a temporary way to earn money, compared with 53% for all freelancers.

## **They have ongoing concerns about finding enough work and managing unpredictable income.**

- Media and entertainment freelancers are significantly more likely than NYC freelancers to say they have less work than they want (+7ppts).
- More than two-thirds (78%) of media and entertainment freelance workers have experienced late or nonpayment, compared with 73% of all freelancers.
- They are more likely than other freelancers to feel anxious about their work in general (+8 ppts) and about the unpredictable nature of it (+10 ppts).



**Networking and marketing their skills are both crucial for this group to find more work and build their income.**

- Media and entertainment freelancers are more likely than freelancers overall to say they find their work through networking (+7 pts) and 81% of media and entertainment freelancers say networking is critical to earning more (versus 76% for all freelancers).
- Not surprisingly, the number one reason for them to participate in skills-related training is to expand their professional network (47%) — and networking skills are something that media and entertainment freelancers are looking for more training in (40% versus 34% of all freelancers).
- The cost of training is unfortunately a greater barrier, with 60% saying costs hinder training (compared with 57% of freelancers).



# Freelancing in New York City 2019

New York City's dynamic economy and diverse work opportunities attract a large number of freelancers. Roughly 1.3 million New Yorkers—34% of the city's total workforce—are among the 56.7 million freelancing nationwide. The \$31.4 billion they earn annually from freelancing contributes significantly to the city's economy. Freelancers reside in every borough (although Manhattan remains a central work hub), and are typically younger than the average NYC worker. Many are entering the workforce freelancing, including 46% of recent college grads (20-26). Most people freelancing in NYC provide services to small businesses. Sixty-one percent of workers in the media and entertainment sectors have freelanced in the past 12 months—this includes workers in marketing and advertising, journalism and digital media, music and the performing arts, publishing, and film and television production.

## **Freelancers in NYC work in different ways—from independent contracting to “moonlighting.”**

Freelancers have a variety of income streams, comprising both full-time (nearly one-third) and part-time (half) work, with the remainder working full-time but earning extra from freelancing. One-third of freelancers are independent contractors working on a project-to-project

basis. Another third are diversified workers with multiple sources of income, who combine part-time employment with freelance work. Twenty percent of freelancers are moonlighters who have a primary, traditional job but also take on freelance work on the side. Another 6% are freelance business owners with one or more employees who consider themselves both a freelancer and a business owner, and a further 6% of freelancers are temporary workers with a single employer or client for mostly short-term assignments.

## **Freelancing is a choice—to pursue passions and enjoy a flexible lifestyle.**

The majority of people engaging in freelance work (62%) say they started freelancing by choice, a number which holds relatively steady across age and income. They choose to freelance to earn extra money and be their own boss, and to have the autonomy to choose their own projects. Most (63%) freelance to pursue careers they are passionate about. For 53% of them, this is a long-term career choice, compared with 47% who see it as a temporary way to make money. Freelancing also helps those who, due to personal circumstances, are unable to work at a traditional job.

\*Population numbers of NYC workforce and Freelance workforce is based on a 2017 American Community Survey, conducted by the U.S. Census Bureau.

\*\*Population figures of national freelance workforce is based on the July 2017 Bureau of Labor Statistics Current

\*\*\* This study uses a definition of freelance work that may differ from other sources.

Freelancers in New York City have more opportunities to prosper than elsewhere in the country. New York City has a special appeal to freelancers: Six in ten say freelancing opportunities are more attractive in the city than in other areas of the country. They believe they can thrive in NYC, and find it easier to make connections and build a client network—two critical elements of freelancing success. What's more, 71% of freelancers say their work provides pay that is appropriate to their skill level (compared to 63% of non-freelancers), while 66% feel freelancing offers opportunities for upward mobility compared to 54% for non-freelancers. Overall, freelancers experience more positive feelings about their work—they feel more empowered, accomplished and excited to start the day—than those in traditional jobs. But they also have heightened anxieties about ongoing financial and work challenges.

**Freelancers worry about finding affordable health care and the unpredictability of their income.**

Although 89% of freelancers have health insurance, more than one-third report paying higher premiums this year than they did last year. Access to affordable healthcare is their #1 concern. Freelancers also worry about finding enough work, getting paid a fair rate, and receiving payments on time, with 73% saying they have experienced late payment or

nonpayment. Mostly, freelancers seek greater financial stability, as 40% are ill-prepared for a financial emergency, and more than half admit that they are not on track for retirement.

**Freelancers value skills training and education, but costs can be a limitation.**

In order to advance their careers and ensure they remain competitive in an evolving market, NYC freelancers recognize the importance of skills training, especially in business and finance. Fifty six percent of freelancers have participated in skills-related training within the past six months, significantly more than non-freelancers. In fact, 94% of freelancers actually find skills-related education more useful to the work they do now than a college education (76% among college-educated freelancers).

Freelancers value skills training primarily to keep up with changing technology and industry trends, to retain or gain expertise in their field, and to expand their professional network. Eighty-two percent of them are looking for more training in business- and finance-related areas, with marketing themselves, networking with prospects, and managing their financing and budgeting among the most necessary skills to succeed as a freelancer. Additionally, a majority of freelancers say building a network is key to finding work, with 76% believing it is critical in order to increase their income.

## Conclusion

New York City offers freelancers unique opportunities to further their careers and prosper, especially within the vibrant media and entertainment sectors. Despite ongoing concerns about the high cost of health insurance and the unpredictable nature of their work, freelancers in New York City are generally optimistic about the future. Fifty five percent expect to see their income increase in the coming year and forty five percent say demand for their freelance services has increased in the past year. Additionally, 81% of non-freelancers say they would be willing to do freelance work outside of their primary job. And because freelancers are more politically active (57%) than non-freelancers (36%), they will likely play a more influential role in determining policies for this evolving independent workforce.



**Freelancing in New York is a study commissioned by Freelancers Union, Upwork, and the New York City Mayor's Office of Media & Entertainment, and conducted by Edelman Intelligence, an independent research firm.**

This study surveyed 5,000 residents in NYC who work in the greater NYC metro area. Within this NYC worker population, the study looked at those who freelance (N=1728) and media and entertainment workers who freelance (N=432). The study was fielded from March 22, 2019 to April 18, 2019. Margin of error for each audience group are as follows: NYC Workers Overall:  $\pm 1.3\%$  at the 95% level of confidence. NYC Freelancers:  $\pm 2.3\%$ , NYC Non-freelancers  $\pm 1.7\%$ , Media & Entertainment freelancers  $\pm 4.7\%$ .

**Learn more at [www.FreelancersUnion.org/FreelancingInNYC2019](http://www.FreelancersUnion.org/FreelancingInNYC2019)**



**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2019**

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**No. 172**

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Introduced by Council Members Lander, Rosenthal, Rose, Chin, Brannan, Kallos, Reynoso, Powers, Van Bramer, Ayala, Menchaca, Perkins, Rivera, Richards, Levin, the Public Advocate (Mr. Williams), Ampy-Samuel, Levine, Adams, Cumbo and Espinal.

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to protections for workers under the city's human rights law**

*Be it enacted by the Council as follows:*

Section 1. Section 8-102 of the administrative code of the city of New York, as amended by local law 98 for the year 2018, is amended to read as follows:

Employer. For purposes of subdivisions 1, 2, 3, 11-a, and 22, subparagraph 1 of paragraph a of subdivision 21, [and] paragraph e of subdivision 21 *and subdivision 23* of section 8-107, the term "employer" does not include any employer [with] *that has* fewer than four persons in the employ of such employer *at all times during the period beginning twelve months before the start of an unlawful discriminatory practice and continuing through the end of such unlawful discriminatory practice*, provided however, that in an action for unlawful discriminatory practice based on a claim of gender-based harassment pursuant to subdivision one of section 8-107, the term "employer" shall include any employer, including those with fewer than four persons in their employ. For purposes of this definition, (i) natural persons [employed as independent contractors to carry out work] *working as independent contractors* in furtherance of an employer's business enterprise [who are not themselves employers] shall be counted as persons in the employ of such

employer and (ii) the employer's parent, spouse, domestic partner or child if employed by the employer are included as in the employ of such employer.

§ 2. Paragraph (f) of subdivision 1 of section 8-107 of the administrative code of the city of New York, as amended local law 63 for the year 2018, is amended to read as follows:

(f) The provisions of this subdivision [shall] *do* not govern the employment by an employer of the employer's parents, spouse, domestic partner, or children; provided, however, that such family members shall be counted as persons employed by an employer for the purposes of the definition of employer set forth in section 8-102.

§ 3. Subdivision 23 of section 8-107 of the administrative code of the city of New York, as added by local law number 9 for the year 2014, is amended to read as follows:

23. *Additional provisions relating to employment.* The [provisions]*protections* of this chapter relating to employees [shall] apply to interns, *freelancers and independent contractors*.

§ 4. This local law takes effect 90 days after it becomes law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 12, 2019 and returned unsigned by the Mayor on October 15, 2019.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 172 of 2019, Council Int. No. 136-A of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.

# FREELANCE WORK AGREEMENT

The following is a Freelance Work Agreement ("Agreement") between the Freelance Worker and Hiring Party named below.

## 1) PARTIES

Freelance Worker information:

*Both parties should include the information applicable to them. Having a specific Contact Person can help both parties. The Contact Person can make sure that work is completed and payment is made.*

<b>Name:</b>	
<b>Name of Business:</b>	
<b>Contact Person:</b>	
<b>Address:</b>	
<b>Phone:</b>	
<b>Email:</b>	

Hiring Party information:

<b>Name:</b>	
<b>Name of Business:</b>	
<b>Contact Person:</b>	
<b>Address:</b>	
<b>Phone:</b>	
<b>Email:</b>	

Hiring Party will be available and respond to Freelance Worker in a reasonable manner and within 3 days of contact.



Be clear about the work to be done; for example, writing an article, selling the right to a photo, developing a program, or working for a certain number of hours. Be sure to factor preparatory work and revisions into the price. By being specific, Freelance Workers and Hiring Parties will know what work is owed for the amount being paid.

## 2) SCOPE OF WORK

Freelance Worker will provide the following services to Hiring Party in exchange for payment:

Services to be provided by Freelance Worker (include any costs or expenses to be reimbursed)	Rate or amount of payment

## 3) PAYMENT

Total amount (\$) to be paid to Freelance Worker for work under the contract: \_\_\_\_\_

Method of payment (check one): ☐ CASH ☐ CHECK ☐ OTHER: \_\_\_\_\_

Date or timing of payment: \_\_\_\_\_

How much \$  
per

- Hour
- Part
- Draft  
or
- Piece

**Note:** If no date or mechanism for determining the payment date is provided, payment is due within 30 days of the work being completed.

**Terms 1-3 MUST be included in contracts under the Law.** The remaining terms may help preserve the parties' rights and avoid disputes, but the Agreement should not include any terms that both parties do not understand. Both parties should still sign the Agreement even though you may agree to terms in multiple documents (for example, emails, text messages, etc.). Make sure that both parties are clear about the Agreement.

**PAGE 3 ARE OTHER POSSIBLE TERMS FOR CONSIDERATION.** *Note:* The *OPTIONAL* terms are not required by the Freelance Isn't Free Act. Whether both parties include any of these or other terms may depend on the specific work situation. Only include terms that both parties understand in a contract.

*Determine if you want this term and what the late fee should be. Generally, late fees can help encourage payment, but if a late fee is too high, it may not be valid. Indicate that the late fee is separate from and does not affect any rights or remedies under the Freelance Isn't Free Act.*

### OPTIONAL: LATE PAYMENT

If Hiring Party fails to submit payment on time, Freelance Worker may impose a late fee in the amount of \_\_\_\_\_% of the total amount unpaid every month.

### OPTIONAL: RETAINER

*A retainer functions as an up-front payment for anticipated work and can be drawn upon. The specified amount (\$) from the Hiring Party also compensates a Freelance Worker who does not accept other offers of work to be available to do the Hiring Party's work.*

In consideration for Freelance Worker agreeing to provide services to Hiring Party and foregoing other work opportunities, Hiring Party agrees to pay \$\_\_\_\_\_ to Freelance Worker on [DATE]. Hiring Party understands that this payment is nonrefundable.

### OPTIONAL: PAYMENT TERMS

*If Hiring Party is to submit payments in installments, the installment amounts (\$) to be paid and dates due must be detailed in the contract.*

Hiring Party agrees to pay Freelance Worker the following amounts ("Installments") on the dates listed:

Amount due: \$ _____	Date due: _____
Amount due: \$ _____	Date due: _____
Amount due: \$ _____	Date due: _____

### OPTIONAL: DURATION, MODIFICATION, OR TERMINATION OF AGREEMENT

This Agreement begins on the date it is signed by both parties.

If both parties agree to extend, modify, or terminate this Agreement, they may do so, but only [with a written agreement signed by both parties] OR [in a writing that specifically refers to this agreement].

Upon termination, Hiring Party will pay Freelance Worker for all work completed at that time, and for any unpaid reimbursable expenses.

### OPTIONAL: CHOICE OF LAW

*Arbitration clauses requiring parties to bring a case in a private venue may be inconvenient and expensive for Freelance Workers.*

This Agreement and any disputes arising under it shall be governed by New York State and City law.

### OPTIONAL: LIMITATIONS ON LIABILITY

Either party's liability at common law under this Agreement is limited to the value of the contract.

Hiring Party will not hold Freelance Worker in breach for failure to complete work according to deadlines due to Freelance Worker's need for care or rest for mental or physical illness, injury, or health condition, or that of a Freelance Worker's family member. If the opportunity to complete work was limited to a specific time or place, Hiring Party's damages shall be limited to withholding Freelance Worker's payment for services under this Agreement.

*Permissible recovery: Only the amount due under and specified in the contract.*

*Neither party can be asked to pay for unforeseen damages.*

*This applies to common law claims and does not affect claims under the Freelance Isn't Free Act.*

### OPTIONAL: OWNERSHIP

*The Intellectual Property clause is for contracts for artistic or creative content for publication but can be considered when a Freelance Worker turns over a final product that can be copied. Unless the Freelance Worker agrees to or includes a clause to waive intellectual property rights to the Hiring Party, the Hiring Party cannot assume the rights to the Freelance Worker's intellectual property without facing penalties, such as court fees and fines.*

Freelance Worker agrees to transfer **[CHOOSE ONE]**

☐ OWNERSHIP ☐ COPYRIGHT ☐ LICENSE

of **[DESCRIPTION OF WORK PRODUCT BEING TRANSFERRED]**

to Hiring Party upon final payment. By making this transfer, Freelance Worker gives Hiring Party permission to use the final product for the following purposes:

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Hiring Party understands that it may incur penalties for using the Freelance Worker's work product improperly beyond compensating Freelance Worker for the value of the use. Penalties include \_\_\_\_\_% of the value of the use and court and attorneys' fees.

### OPTIONAL: CONFIDENTIAL INFORMATION

Both parties shall maintain as confidential any information that the parties designate as Confidential Information in their communications to each other. Both parties will limit their use of Confidential Information to fulfilling their obligations under the Agreement.

### OPTIONAL: GENERAL

This Agreement, including any attachments, represents the entire agreement between Hiring Party and Freelance Worker. Both parties' performance is limited to only those items that are listed in the Agreement.

**Hiring Party Signature:**

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Print Name

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Date

**Freelance Worker Signature:**

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Print Name

---

Date

**Note:** New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting [www.nyc.gov/dca](http://www.nyc.gov/dca). The Law and Rules are current as of May 2018.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

## **NEW YORK CITY ADMINISTRATIVE CODE TITLE**

### **20: CONSUMER AFFAIRS**

#### **CHAPTER 10: FREELANCE WORKERS**

##### **§ 20-927 Definitions.**

For purposes of this chapter, the following terms have the following meanings:

**Director.** The term “director” means the director of the office of labor standards established pursuant to section 20-a of the charter.

**Freelance worker.** The term “freelance worker” means 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. This term does not include:

1. Any person who, pursuant to the contract at issue, is a sales representative as defined in section 191-a of the labor law;
2. 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, disbaring or otherwise restricting such person in the practice of law; and
3. Any person who is a licensed medical professional.

**Hiring party.** The term “hiring party” means any person who retains a freelance worker to provide any service, other than (i) the United States government, (ii) the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary, (iii) the city, including any office, department, agency or other body of the city, (iv) any other local government, municipality or county or (v) any foreign government.

**Office.** The term “office” means the office of labor standards established pursuant to section 20-a of the charter.

##### **§ 20-928 Written contract required.**

- a. 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 party and freelance worker during the immediately preceding 120 days, the contract shall be reduced to writing. Each party to the written contract shall retain a copy thereof.
- b. The written contract shall include, at a minimum, the following information:
  1. The name and mailing address of both the hiring party and the freelance worker;
  2. 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

3. The date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined.
- c. The director may by rule require additional terms to ensure that the freelance worker and the hiring party understand their obligations under the contract.

**§ 20-929 Unlawful payment practices.**

- a. Except as otherwise provided by law, the contracted compensation shall be paid to the freelance worker either:
  1. On or before the date such compensation is due under the terms of the contract; or
  2. If the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than 30 days after the completion of the freelance worker's services under the contract.
- b. Once a freelance worker has commenced performance of the services under the contract, the hiring party shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.

**§ 20-930 Retaliation.**

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.

**§ 20-931 Complaint procedure; jurisdiction of director.**

- a. Complaint. A freelance worker who is aggrieved by a violation of this chapter may file a complaint with the director within two years after the acts alleged to have violated this chapter occurred. The director shall prescribe the form of the complaint, which shall include, at a minimum:
  1. The name and mailing address of the freelance worker and of the hiring party alleged to have violated this chapter;
  2. A statement detailing the terms of the freelance contract, including a copy of such contract if available;
  3. The freelance worker's occupation;
  4. A statement detailing the alleged violations of this chapter; and
  5. A signed affirmation that all facts alleged in the complaint are true.
- b. Referral to navigation program. At the time the director receives a complaint alleging a violation of this chapter, the director shall refer the freelance worker to the navigation program identified in section 20-932.
- c. Jurisdiction.
  1. The director does not have jurisdiction over a complaint if:
    - (a) Either party to the contract has initiated a civil action in a court of competent jurisdiction alleging a violation of this chapter or a breach of contract arising out of the contract that is the subject of the complaint filed under subdivision a of this section, unless such civil action has been dismissed without prejudice to future claims; or
    - (b) Either party to the contract has filed a claim or complaint before any administrative agency under any local, state or federal law alleging a breach of contract that is the subject of the complaint filed under subdivision a of this section, unless the administrative claim or complaint has been withdrawn or dismissed without prejudice to future claims.
  2. Where the director lacks jurisdiction over a complaint, the director shall notify the following, in writing, within 10 days of discovering the lack of jurisdiction:
    - (a) The freelance worker; and
    - (b) The hiring party, if the director discovered the lack of jurisdiction after sending a notice to the hiring party pursuant to subdivision d of this section.
- d. Notice to hiring party. Within 20 days of receiving a complaint alleging a violation of this chapter, the director shall send the hiring party named in the complaint a written notice of complaint. Such

notice shall inform the hiring party that a complaint has been filed alleging violations of this chapter, detail the remedies available to a freelance worker for violations of this chapter by a hiring party and include a copy of the complaint and notice that failure to respond to the complaint creates a rebuttable presumption in any civil action commenced pursuant to this chapter that the hiring party committed the violations alleged in the complaint. The director shall send such notice by certified mail and shall bear the cost of sending such notice.

e. Response.

1. Within 20 days of receiving the notice of complaint, the hiring party identified in the complaint shall send the director one of the following:
  - (a) A written statement that the freelance worker has been paid in full and proof of such payment; or
  - (b) A written statement that the freelance worker has not been paid in full and the reasons for the failure to provide such payment.
2. Within 20 days of receiving the written response, the director shall send the freelance worker a copy of:
  - (a) The response;
  - (b) Any enclosures submitted to the director with the response;
  - (c) Materials informing the freelance worker that he or she may bring an action in a court of competent jurisdiction;
  - (d) Any other information about the status of the complaint; and
  - (e) Information about the navigation program described in section 20-932.
3. If the director receives no response to the notice of complaint within the time provided by paragraph 1 of this subdivision, the director shall mail a notice of non-response to both the freelance worker and the hiring party by regular mail and shall include with such notice proof that the director previously mailed the notice of complaint to the hiring party by certified mail. Upon satisfying the requirements of this paragraph, the director may close the case.

**§ 20-932 Navigation program.**

- a. The director shall establish a navigation program that provides information and assistance, as set forth in subdivision c of this section, relating to the provisions of this chapter. Such program shall include assistance by a natural person by phone and e-mail and shall also include online information.
- b. The director shall make available model contracts on the website of the office for use by the general public at no cost. Such model contracts shall be made available in English and in the six languages most commonly spoken by limited English proficient individuals in the city as determined by the department of city planning.
- c. The navigation program shall provide the following:
  1. General court information and information about procedures under this chapter;
  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 pursuant to this chapter by a freelance worker.
- d. The navigation program shall include outreach and education to the public on the provisions of this chapter.
- e. The navigation program shall not provide legal advice.

**§ 20-933 Civil action.**

- a. Cause of action.

1. Except as otherwise provided by law, a freelance worker alleging a violation of this chapter may bring an action in any court of competent jurisdiction for damages as described in subdivision b of this section.
  2. Any action alleging a violation of section 20-928 shall be brought within two years after the acts alleged to have violated this chapter occurred.
  3. Any action alleging a violation of sections 20-929 or 20-930 shall be brought within six years after the acts alleged to have violated this chapter occurred.
  4. Within 10 days after having commenced a civil action pursuant to subdivision a of this section, a plaintiff shall serve a copy of the complaint upon an authorized representative of the director. Failure to so serve a complaint does not adversely affect any plaintiff's cause of action.
  5. A plaintiff who solely alleges a violation of section 20-928 must prove that such plaintiff requested a written contract before the contracted work began.
- b. Damages.
1. A plaintiff who prevails on a claim alleging a violation of this chapter shall be awarded damages as described in this subdivision and an award of reasonable attorney's fees and costs.
  2. Violation of section 20-928.
    - (a) A plaintiff who prevails on a claim alleging a violation of section 20-928 shall be awarded statutory damages of \$250.
    - (b) A plaintiff who prevails on a claim alleging a violation of section 20-928 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 for the violation of section 20-928 in addition to the remedies specified in this chapter for the other violations.
  3. Violation of section 20-929. In addition to any other damages awarded pursuant to this chapter, a plaintiff who prevails on a claim alleging a violation of section 20-929 is entitled to an award for double damages, injunctive relief and other such remedies as may be appropriate.
  4. Violation of section 20-930. In addition to any other damages awarded pursuant to this chapter, a plaintiff who prevails on a claim alleging a violation of section 20-930 is entitled to statutory damages equal to the value of the underlying contract for each violation arising under such section.

**§ 20-934 Civil action for pattern or practice of violations.**

- a. Cause of action.
  1. Where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.
  2. An action pursuant to paragraph 1 of this subdivision shall be commenced by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.
  3. Nothing in this section prohibits:
    - (a) A person alleging a violation of this chapter from filing a civil action pursuant to section 20-933 based on the same facts as a civil action commenced by the corporation counsel pursuant to this section.
    - (b) The director from sending a notice of complaint pursuant to section 20-931, unless otherwise barred from doing so.
- b. Civil penalty. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than \$25,000 for a finding that a hiring party has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city.

**§ 20-935 Application; waiver; effect on other laws.**

- a. Except as otherwise provided by law, any provision of a contract purporting to waive rights under this chapter is void as against public policy.



- b. The provisions of this chapter supplement, and do not diminish or replace, any other basis of liability or requirement established by statute or common law.
- c. Failure to comply with the provisions of this chapter does not render any contract between a hiring party and a freelance worker void or voidable or otherwise impair any obligation, claim or right related to such contract or constitute a defense to any action or proceeding to enforce, or for breach of, such contract.
- d. No provision of this chapter shall be construed as providing a determination about the legal classification of any individual as an employee or independent contractor.

**§ 20-936 Follow-up; data collection; reporting.**

- a. No later than six months after the director sends to a freelance worker either a hiring party's response and accompanying materials or a notice of non-response pursuant to paragraph 2 or 3 of subdivision e of section 20-931, the director shall send the freelance worker a survey requesting additional information about the resolution of the freelance worker's claims. Such 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. Such survey shall state clearly that response to the survey is voluntary.
- b. The director shall collect and track information about complaints alleging violations of this chapter. The information collected shall include, at minimum:
  - 1. The identity of the hiring party alleged to have violated this chapter;
  - 2. The freelance worker's occupation;
  - 3. The section of this chapter that was alleged to have been violated;
  - 4. The value of the contract;
  - 5. The response or non-response from the hiring party; and
  - 6. Information from a completed survey identified in subdivision a of this section.
- c. One year after the effective date of the local law that added this chapter, and every fifth year thereafter on November 1, the director shall submit to the council and publish on its website a report regarding the effectiveness of this chapter at improving freelance contracting and payment practices. That report shall include, at a minimum:
  - 1. The number of complaints the director has received pursuant to this chapter;
  - 2. The value of the contracts disaggregated into ranges of \$500 and by section of this chapter alleged to have been violated;
  - 3. The numbers of responses and non-responses received by the director disaggregated by contract value into ranges of \$500 and by section of this chapter alleged to have been violated;
  - 4. The proportion of surveys received from freelance workers that indicate that they pursued their claims in court and the proportion of surveys received from freelance workers that indicate that they pursued their claims through an alternative dispute resolution process and a summary of the outcomes of such cases; and
  - 5. Legislative recommendations for this chapter, including consideration of whether certain occupations should be exempted from the scope of the definition of freelance worker in section 20-927.

**Note:** New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting [www.nyc.gov/dca](http://www.nyc.gov/dca). The Law and Rules are current as of May 2018.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

**RULES OF THE CITY OF NEW YORK**  
**TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS**  
**CHAPTER 7: OFFICE OF LABOR POLICY AND STANDARDS**

**SUBCHAPTER A: OFFICE OF LABOR POLICY AND STANDARDS**

**§ 7-101. Definitions.**

(a) As used in this subchapter, the following terms have the following meanings:

"Employee" means any person who meets the definition of "employee," as defined by section 20-912 of the Code, "eligible grocery employee," as defined by section 22-507 of the Code, "fast food employee," as defined by section 20-1201 or 20-1301 of the Code, or "retail employee," as defined by section 20-1201 of the Code.

"Employer" means any person who meets the definition of "employer," as defined by section 20-912 of the Code, "successor grocery employer" or "incumbent grocery employer," as defined by section 22-507 of the Code, "fast food employer," as defined by section 20-1201 or 20-1301 of the Code, or "retail employer," as defined by section 20-1201 of the Code.

"Freelancers Law and rules" means Chapter 10 of Title 20 of the Code and subchapter E of this chapter.

"OLPS laws and rules" means chapters 8, 12, and 13 of Title 20 and section 22-507 of the Code and subchapters A, B, D, F, and G of this chapter.

"Transportation Benefits Law and rules" means Chapter 9 of Title 20 of the Code and subchapter C of this chapter.

(b) As used in the OLPS laws and rules, the following terms have the following meanings:

"Code" means the Administrative Code of the City of New York.

"Department" means the New York City Department of Consumer Affairs.

"Director" means the director of the office of labor standards established pursuant to section 20-a of the charter.

"Joint employer" means each of two or more employers who has some control over the work or working conditions of an employee or employees. Joint employers may be separate and distinct individuals or entities with separate owners, managers and facilities. A determination of whether or not a joint employment relationship exists will not often be decided by the application of any single criterion; rather the entire relationship shall be viewed in its totality.

"Office" means the office of labor standards established pursuant to section 20-a of the New York City Charter and referred to as the Office of Labor Policy and Standards.

"Supplements" means all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not 'wages' within the meaning of the New York State Labor Law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay, life insurance, and apprenticeship training.

"Temporary help firm" means an employer that recruits and hires its own employees and assigns those employees to perform work or services for another organization to: (i) support or supplement the other organization's workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages, or seasonal workloads; or (iii) perform special assignments or projects.

"Work week" means a fixed and regularly recurring period of 168 hours or seven consecutive 24 hour periods; it may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

"Written" or "writing" means a hand-written or machine-printed or printable communication in physical or electronic format, including a communication that is maintained or transmitted electronically, such as a text message.

#### **§ 7-102. Construction.**

This chapter shall be liberally construed to permit the Office to accomplish the purposes contained in section 20-a of the New York City Charter. The provisions of this subchapter shall not be construed to supersede any other provision of the OLPS laws and rules, the Freelancers Law and rules, or the Transportation Benefits Law and rules.

#### **§ 7-103 Severability.**

The rules contained in this chapter shall be separate and severable. If any word, clause, sentence, paragraph, subdivision, section, or portion of these rules or the application thereof to any person, employer, employee, or circumstance is contrary to a local, state or federal law or held to be invalid, it shall not affect the validity of the remainder of the rules or the validity of the application of the rules to other persons or circumstances.

#### **§ 7-104 Complainants and Witnesses.**

- (a) All people, regardless of immigration status, may access resources provided by the Office.
- (b) Any person who meets the definition of employee in section 7-101 of this subchapter is entitled to the rights and protections provided by this subchapter to employees and any applicable provision of the OLPS laws and rules, regardless of immigration status.
- (c) The Office shall conduct its work without inquiring into the immigration status of complainants and witnesses.
- (d) The Office shall maintain confidential the identity of a complainant or natural person providing information relevant to enforcement of the OLPS laws and rules and the Transportation Benefits Law and rules, unless disclosure is necessary for resolution of the investigation or matter, or otherwise required by law, and the Office, to the extent practicable, notifies such complainant or natural person that the Office will be disclosing such person's identity before such disclosure.
- (e) For purposes of effectuating subdivision (d) of this section, the Office shall keep confidential any information that may be used to identify, contact, or locate a single person, or to identify an individual in context.

#### **§ 7-105 Joint Employers.**

- (a) Joint employers are individually and jointly liable for violations of all applicable OLPS laws and

rules and satisfaction of any penalties or restitution imposed on a joint employer for any violation thereof, regardless of any agreement among joint employers to the contrary.

- (b) A joint employer must count every employee it employs for hire or permits to work, whether joint or not, in determining the number of employees employed for hire or permitted to work for the employer. For example, a joint employer who employs three workers from a temporary help firm and also has three permanent employees under its sole control has six employees for purposes of the OLPS laws and rules.

#### **§ 7-106 Determining Damages Based on Lost Earnings.**

- (a) The following provisions apply to the extent necessary in circumstances described in paragraphs (1) and (2) below for the calculation of damages based on lost earnings in an administrative enforcement action:

(1) When an employer pays a flat rate of pay for work performed, regardless of the number of hours actually worked, an employee's hourly rate of pay shall be based on the most recent hourly rate paid to the employee for the applicable pay period, calculated by adding together the employee's total earnings, including tips, commissions, and supplements, for the most recent work week in which no sick time or other leave was taken and dividing that sum by the number of hours spent performing work during such work week or forty hours, whichever amount of hours is less.

(2) If an employee performs more than one job for the same employer or the employee's rate of pay fluctuates for a single job, the hourly rate of pay shall be the rate of pay that the employee would have been paid during the time that employee would have been performing work but for the employee's absence.

- (b) If the methods for calculating the hourly rate described in subdivision (a) produce an hourly rate that is below the full hourly minimum wage, then the employee's lost earnings shall be based on the full hourly minimum wage.

#### **§ 7-107 Required Notices and Postings.**

- (a) For any notice created by the Office that is made available on the City's website and that is then required by a provision of the OLPS laws and rules to be provided to an employee or posted in the workplace, an employer must provide and/or post such notice in English and in any language spoken as a primary language by at least five percent of employees at the employer's location, provided that the Director has made the notice available in such language. Employers covered by the Earned Safe and Sick Time Act, chapter 8 of Title 20 of the Code, are required to comply with this subdivision in addition to the requirement pursuant to section 20-919 of the Code that an employer provide the notice of rights in an employee's primary language.
- (b) (1) For any notice that is not created by the Office and made available on the City's website, that is required to be provided to an employee and/or posted in the workplace by a provision of the OLPS laws and rules, an employer must provide and/or post such notice in English and in any language that the employer customarily uses to communicate with the employee.
- (c) (2) For any notice that is not created by the Office and made available on the city's website, that is required to be posted in the workplace by a provision of the OLPS laws and rules, an employer must post such notice in English and in any language that the employer customarily uses to communicate with any of the employees at that location.
- (d) Any notice, policy, or other writing that is required by a provision of the OLPS laws and rules to be personally provided to an employee must be provided by a method that reasonably ensures personal receipt by the employee and that is consistent with any other applicable law or rule that specifically addresses a method of delivery.
- (e) Any notice, policy or, other writing that is required to be posted pursuant to a provision of the OLPS laws and rules must be posted in a printed format in a conspicuous place accessible to employees where notices to employees are customarily posted pursuant to state and federal laws and, except for

notices created by the Office, in a form customarily used by the employer to communicate with employees.

- (f) An employer that places employees to perform work off-site or at dispersed job-sites, such as in private homes, building security posts, or on delivery routes, must comply with any applicable requirement to post a notice, policy or other writing contained in the OLPS laws and rules by providing employees with the required notice personally upon commencement of employment, within fourteen (14) days of the effective date of any changes to the required posting, and upon request by the employee, in addition to the requirements in subdivision (c) of this section.

#### **§ 7-108 Retaliation.**

- (a) No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under the OLPS laws and rules or interfere with an employee's exercise of rights under the OLPS laws and rules.
- (b) Taking an adverse action includes, but is not limited to threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an employee, reducing the hours of pay of an employee, informing another employer than an employee has engaged in activities protected by the OLPS laws and rules, discriminating against the employee, including actions related to perceived immigration status or work authorization, and maintenance or application of an absence control policy that counts protected leave as an absence that may lead to or result in an adverse action.
- (c) An employee need not explicitly refer to a provision of the OLPS laws and rules to be protected from an adverse action.
- (d) The Office may establish a causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by the OLPS laws and rules and an employer's adverse action against an employee or a group of employees by indirect or direct evidence.
- (e) For purposes of this section, retaliation is established when the Office shows that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

#### **§ 7-109 Enforcement and Penalties.**

- (a) The Office may open an investigation to determine compliance with laws enforced by the Office on its own initiative or based on a complaint, except as otherwise provided by section 20-1309 of Chapter 13 of Title 20 of the Code.
- (b) Whether it was issued in person, via mail, or, on written consent of the employer, email, an employer must respond to a written request for information or records by providing the Office with true, accurate, and contemporaneously-made records or information within the following timeframes, except as provided in subdivision (c) of this section, subdivision (c) of section 20-924 of the Code, section 7-213 of this title or other applicable law:
  - (1) For an initial request for information or records, the employer shall
    - i. Within ten (10) days of the date that the request for information was received by the employer provide the following information, if applicable:
      - A. the employer's correct legal name and business form;
      - B. the employer's trade name or DBA;
      - C. the names and addresses of other businesses associated with the employer;
      - D. the employer's Federal Employer Identification Number;
      - E. the employer's addresses where business is conducted;
      - F. the employer's headquarters and principal place of business addresses;
      - G. the name, phone number, email address, and mailing address of the owners, officers, directors, principals, members, partners and/or stockholders of more than 10 percent of the outstanding stock of the employer business and their titles;
      - H. the name, phone number, email address, and mailing address of the individuals who have operational control over the business;

- I. the name, phone number, email address, and mailing address of the individuals who supervise employees;
      - J. the name and contact information of the individual who the office should contact regarding an investigation of the business and an affirmation granting authority to act; and
    - ii. Within fourteen (14) days of the date of that the initial request for information or records was received, provide the remaining information or records requested in that initial request.
  - (2) For all requests for information or records after the initial request, an employer must respond within the timeframe prescribed by the Office in the request, which shall not exceed fourteen (14) days from the date that the request was received by the employer, unless a longer timeframe has been agreed to by the Office.
  - (3) Upon good cause shown, the Director may extend response timeframes required pursuant to this subdivision.
- (c) An employer shall respond to a written request for information or records by providing the Office with true, accurate, and contemporaneously-made records or information in a lesser amount of time than provided in paragraphs 2 and 3 of subdivision b of this section if agreed to by the parties or the Office has reason to believe that:
- (1) The employer will destroy or falsify records;
  - (2) The employer is closing, selling, or transferring its business, disposing of assets or is about to declare bankruptcy;
  - (3) The employer is the subject of a government investigation or enforcement action or proceeding related to wages and hours, unemployment insurance, workers' compensation, discrimination, OLPS laws and rules, the Freelancers Law and rules, or the Transportation Benefits Law and rules; or
  - (4) More immediate access to records is necessary to prevent or remedy retaliation against employees.
- (d) In accordance with applicable law, the Office may resolve or attempt to resolve an investigation at any point through settlement upon terms that are satisfactory to the Office.
- (e) The Office may issue a notice of violation to an employer who fails to provide true and accurate information or records requested by the Office in connection with an investigation.
- (f) An employer who fails to timely and fully respond to the request for information or records that is the subject of a notice of violation issued under subdivision (e) of this section on or before the first scheduled appearance date is subject to a penalty of five hundred dollars, in addition to any penalties or remedies imposed as a result of the Office's investigation.
- (g) The employer may cure a notice of violation issued in accordance with subdivision (e) of this section without the penalty imposed in connection with subdivision (f) by:
- (1) producing the requested information or records on or before the first scheduled appearance date; or
  - (2) resolving, to the satisfaction of the Office on or before the first scheduled appearance date, the investigation that is the basis for the request for information or records.
- (h) A finding that an employer has an official or unofficial policy or practice that denies a right established or protected by the OLPS laws and rules shall constitute a violation of the applicable provision of the OLPS laws and rules for each and every employee subject to such policy or practice.

#### **§ 7-110 Service.**

Service of documents issued by the Office to employers, including written requests for information or records and notices of violation, shall be made in a manner reasonably calculated to achieve actual notice to the employer. The following are presumed to be reasonably calculated to achieve actual notice: (i) personal service on the employer; (ii) personal service on the employer by regular first-class mail, certified mail, return receipt requested, or private mail delivery services, such as UPS, to an employer's last known business address; or (iii) if an employer has so consented, facsimile, email, including an attachment to an email.

### **§ 7-111 Recordkeeping.**

- (a) An employer's failure to maintain, retain, or produce a record that is required to be maintained under the OLPS laws and rules that is relevant to a material fact alleged by the Office in a notice of violation issued pursuant to a provision of the OLPS laws and rules creates a reasonable inference that such fact is true, unless a rebuttable presumption or other adverse inference is provided by applicable law.
- (b) An employer that produces records to the department or Office in response to a request for information affirms that the records produced are true and accurate.

## **SUBCHAPTER E: FREELANCE WORKERS**

### **§ 7-501 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”).

### **§ 7-502 Coverage.**

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

### **§ 7-503 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.

### **§ 7-504 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.



**§ 7-505 Waiver 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.

# Navigation Program Guide

For Freelance Workers

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# I. Introduction to the Freelance Isn't Free Act and Using This Guide

The Freelance Isn't Free Act (the Law) creates new protections for Freelance Workers against unlawful payment practices and retaliation by Hiring Parties. The first of its kind, the Law was passed by the New York City Council in October 2016, and Mayor Bill de Blasio signed it in November 2016. The Law became effective May 15, 2017. The Office of Labor Policy & Standards (OLPS) within the Department of Consumer Affairs (DCA) administers the Law. For more information about the Law, including Frequently Asked Questions, visit [nyc.gov/dca](http://nyc.gov/dca).

If you are a Freelance Worker, the Law empowers you in several ways:

- You have a right to sue in court for violations of the written contract, payment, and retaliation provisions of the Law.
- You can get statutory damages, double damages, and/or reasonable attorneys' fees and costs for violations of the Law.
- You can file a complaint about a Hiring Party with OLPS, and OLPS will try to resolve the dispute.
- You have access to new resources to help you understand the court system.

Under the Law, OLPS has established a **Navigation Program** to provide assistance and information when you file complaints with OLPS; have questions about the Law; or have general questions about the court process. **Navigators** are non-attorneys specially trained to help you:

- Access the court system, court forms and templates.
- Access interpretation and translation resources.
- Access resources about work classification, i.e., employee classification versus independent contractor classification.
- Find an attorney.

OLPS created this guide to use when you are evaluating whether and how to pursue legal claims under the Law. However, **OLPS does not provide legal advice.**

This guide includes information about the court process and resources available to you. A glossary of terms is at the end of the guide. While we use plain language to the extent possible, you may need to read the Law for more detailed information about its provisions. (*See Appendix H.*) You can also visit [nyc.gov/dca](http://nyc.gov/dca) for [sample contracts](#), the [complaint form](#), and materials for [Freelance Workers](#) and [Hiring Parties](#).

**How do I contact OLPS or a Navigator?** You can email questions to OLPS at [freelancer@dca.nyc.gov](mailto:freelancer@dca.nyc.gov) or call 311 (212-639-9675 outside NYC) and ask for "Freelance Workers."

## II. Getting Started

It is important to be prepared and understand your options when considering legal action. If you believe a Hiring Party has violated the Law, you may attempt to remedy the situation in a variety of ways. For example, you might try to resolve the issue informally by speaking directly with the Hiring Party or their representative; use the OLPS administrative complaint process; file a civil action in court; or any combination of these. This section highlights some important considerations at the beginning of the process. **You are responsible for weighing different options and making decisions about how to proceed, including whether to retain an attorney to assist you.**

### Statute of Limitations

Regardless of how you choose to proceed, you must be aware of the statute of limitations for your claim(s). A **statute of limitations** is the time period within which you have the right to file a claim. Once that time has passed, your claim is considered time-barred, meaning you can no longer bring it in court or at OLPS. **It is important to determine how much time you have left to file a claim as soon as possible. See Table 1.**

**Table 1. Statute of Limitations under the Freelance Isn't Free Act**

Complaint or Claim	Time Period to File Complaint or Claim
Filing a complaint with OLPS	Within 2 years of an alleged violation
Filing a claim in court for no written contract	Within 2 years of an alleged violation
Filing a claim in court for nonpayment, underpayment, or act of retaliation	Within 6 years of an alleged violation

### Negotiating a Settlement

It is always an option—both before and after filing a civil action in court—to try to resolve a dispute through settlement. Settlement talks can happen in person, over the phone, in writing, or through any other means you use to communicate with a Hiring Party. **There are pros and cons to settling a case, which you must weigh in order to decide how you want to proceed.**

Possible benefits of settlement may include:

- Saving the time and expense of what might be a lengthy legal process.
- Removing the uncertainty of winning or losing at trial.
- Getting relief—whether money or something else—sooner.

Possible downsides of settlement may include:

- Settling for less than what you might get in court.
- Going through a lengthy settlement negotiation with no guarantee you will reach an agreement.
- Risking that the other party may not comply with the settlement agreement.

Each case is unique. If you are considering settlement at any point, it is important to assess all of the benefits and downsides of entering into a settlement agreement that will affect your legal rights.

## Filing a Complaint with OLPS

If a Hiring Party violates your rights under the Law, you have the option of either:

1. Going straight to court. OR
2. Filing a complaint with OLPS *before* initiating your complaint in court.

After OLPS receives your complaint, OLPS notifies the Hiring Party of the complaint. Hiring Parties have 20 days to respond to OLPS's notice of complaint and explain whether or not they made payment and followed other parts of the Law. As soon as OLPS receives the Hiring Party's response, OLPS will send a copy to you.

There are several key advantages to filing a complaint with OLPS first:

- **Saving time and court fees:** A Hiring Party who receives a notice of complaint from OLPS may feel additional pressure to pay because a government agency is involved. Your complaint to OLPS may help to resolve the matter, and you may avoid the time and expense of going to court.
- **Obtaining information about the Hiring Party's arguments:** If the Hiring Party responds to the notice of complaint, you will have additional information that may help you assess the strengths and weaknesses of your case and the best way to proceed. You might also avoid having to go through a lengthy court process to obtain the same information. If you choose to file in Small Claims Court, you will have some of the relevant information and/or documents in advance of a hearing.
- **Putting the burden on the Hiring Party in court:** Normally, the party who files a case in court has to prove that the other side violated the law. However, under the Freelance Isn't Free Act, if a Hiring Party does not respond to OLPS's notice of complaint, you get a "rebuttable presumption" that the Hiring Party violated the Law. This means that when you go to court, the burden is on the Hiring Party to prove that they did not violate the Law.
- **Educating Hiring Parties:** If a Hiring Party is unaware of their obligations under the Law, OLPS can help direct them to resources that will help them understand what they are required to do.



**You cannot file a complaint with OLPS if you file a claim in court first. Your claim will fall outside of OLPS's jurisdiction. See Part III of this guide. If you file a complaint in court, you must provide a copy of your complaint to OLPS.**

## Going to Court

The Freelance Isn't Free Act creates a private right of action. This means that you can file a claim in a New York State court for violations of the Law. The court process and what to expect are covered in Part IV.

## Some Common Questions

Does immigration status matter?

No. Immigration status has no bearing on the right to collect payment or to exercise other rights created by the Law. Even if you lack work authorization, the Hiring Party is under the same obligation to provide you with a written contract and pay you either within 30 days of the work being completed or according to the payment schedule agreed to in the contract.

In fact, if a Hiring Party makes threats related to perceived or actual immigration status or tries to use your immigration status against you once you have filed a complaint, the Hiring Party may be liable for retaliation under Section 20-930 of the Law. **You should consult with your attorney or contact a Court Navigator if you feel that the Hiring Party has threatened you based upon your actual or perceived immigration status.** On [nyc.gov/dca](https://nyc.gov/dca), you can find referrals to organizations that specialize in providing [immigration](#), legal, and other services.

What if I don't speak English or don't speak English well?

If you have limited English-language ability, you can call a Navigator who will get an interpreter.

Free translation services and other language resources may be available at court. Whether you decide to file your claim in Small Claims Court or in the general New York State Civil Courts, the court system may be able to provide a free interpreter if you contact the court in advance. On [nyc.gov/dca](https://nyc.gov/dca), you can find information on language resources in New York City. Interpretation also may be available in federal court. **If you need language services in the New York State Court System, contact the Office of Court Interpretation well in advance of your court date. The phone number is 646-386-5670.**

What if I was called an "independent contractor" but was really an employee?

Employees are entitled to numerous workplace protections that independent contractors are not, such as minimum wage and overtime pay, paid safe and sick leave, unemployment insurance, and workers' compensation. Workers classified as "employees" usually cost more than hiring an independent contractor. As a result, many employers have replaced employees with groups of independent contractors or misclassify employees as contractors. **Determining whether a worker is an employee or an independent contractor is a complex and fact-specific question that depends on many objective factors and not the labels used by the parties.**

On [nyc.gov/dca](https://nyc.gov/dca), you can find [Frequently Asked Questions](#) and other resources about how the Law defines the terms **employee** and **independent contractor**. However, **OLPS cannot provide legal advice to you or the Hiring Party about which classification is correct.** If you fall within the legal definition of employee, you may have additional claims under the Fair Labor Standards Act, New York Labor Law, and other laws. If you have questions about your classification as an independent contractor, you should consult an attorney about your options. Navigators can provide you with additional information to help you find an attorney, if needed.

Are there other options besides going to court?

You may decide that the amount of money involved is too small to begin a court proceeding. Or, you may want to spend the \$15 filing fee for Small Claims Court and spend one evening at the courthouse for an amount as small as \$100. Aggressively pursuing Hiring Parties who commit unlawful payment practices and violate the Law in other ways may send a message to other Hiring Parties and benefit you and the freelancer community at large in the future.

If you filed your claim in Civil Court or Supreme Court, the court may offer mediation services. Mediation is a popular form of Alternative Dispute Resolution (ADR) and is a more informal process than going through the courts. Mediation is viewed as a faster and lower-cost alternative to a lengthy litigation process. The court system provides a free mediation service, and your judge might strongly encourage mediation if parties appear close to a resolution. Mediators are trained to listen to both sides and facilitate communication. If the parties have become so angry that productive communication has become impossible, a third-party mediator may be able to get a productive discussion going and move the parties toward a reasonable settlement.

### III. Navigators & Other Resources

*"[Navigators] can provide meaningful assistance and services to litigants who are not represented by lawyer."*

- National Center for State Courts

If you evaluated your options and decided filing your case in court is an important step to getting the Hiring Party to pay you, a Navigator from OLPS can help you understand the court system and find an attorney.

Going to court for the first time can be overwhelming. Navigators provide guidance and support to help you understand the court system.

#### What Navigators Do

Navigators can:

- Provide information and background about procedures and protections under the Law.
- Direct you to resources for identifying and addressing misclassification issues.
- Connect you to forms and documents you need to file in court.
- Refer you to outside organizations for both legal and non-legal supportive services.
- Connect you to translation and interpretation resources.

**Even if you opt for the assistance of a Navigator, you are still responsible for your case or for retaining an attorney.** If you proceed without an attorney, you must file the necessary papers and appear in court; however, the Navigator can help you prepare for the process.



## What Navigators Don't Do

Navigators cannot:

- Give legal advice.
- Appear in civil court as your legal representative.
- Accompany you to a pre-trial conference as your legal representative.
- Negotiate with the Hiring Party's lawyer or draft a settlement agreement to resolve the case.



**Be extremely wary if someone who is *not* a licensed attorney offers to provide you any of these services for a low or reduced fee.**

## Resources Beyond Navigators

While Navigators are a resource for enforcing your rights under the Law, there are other local and national organizations you may contact if you need general support as a Freelance Worker.

### Professional Groups and Guilds

Whether you are a musician, a graphic designer, a home improvement contractor, or you have a one-person catering business, there may be a professional organization for people in your field. These organizations may not provide legal services, but they provide a network to exchange information. Some of these groups—for example, Freelancers Union; Graphic Artists Guild; Producers Guild of America; Society of Publication Designers; WebProfessionals.org; AIGA, the professional association for design; Coworker.org—provide other forms of mutual support, such as model contracts, news in your field, project announcements, and information on industry practices. Labor unions, such as the Directors Guild of the Americas and the Writers Guild of America East, also provide resources for Freelance Workers.

### Legal Self-Help

The New York Court System website ([www.nycourts.gov](http://www.nycourts.gov)) has a number of guides and forms that *pro se* claimants can use to prepare for court. You can also receive assistance from non-attorneys at the Legal Hand storefronts in Brownsville, Brooklyn; Crown Heights, Brooklyn; and Jamaica, Queens. Legal Hand<sup>1</sup> helps New Yorkers with court proceedings. Their storefront locations also give community members access to printers and computers.

### Legal Clinics

Legal aid organizations in New York City typically serve individuals with lower incomes. You can contact them to find out if you qualify for free legal representation.

Law school clinics may be willing to take on freelancer cases, and you can go in person to clinics. Check when their intake hours are scheduled.

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<sup>1</sup> Legal Hand is run by the Center for Court Innovation in collaboration with three legal services providers: The Legal Aid Society, Legal Services NYC, and New York Legal Assistance Group.

Law school clinics:

- [City Bar Justice Center Neighborhood Law Project](http://www.citybarjusticecenter.org/)  
(<http://www.citybarjusticecenter.org/>)
- [Fordham Law School, Community Economic Development Clinic](https://www.fordham.edu/info/23923/community_economic_development)  
([https://www.fordham.edu/info/23923/community\\_economic\\_development](https://www.fordham.edu/info/23923/community_economic_development))
- [Columbia Law School, Community Enterprise Clinic](http://www.law.columbia.edu/clinics/community-enterprise-clinic)  
(<http://www.law.columbia.edu/clinics/community-enterprise-clinic>)
- [Brooklyn Law School, The Center for Urban Business Entrepreneurship](https://www.brooklaw.edu/intellecualife/CUBE/about?) (CUBE)  
(<https://www.brooklaw.edu/intellecualife/CUBE/about?>)
- [CUNY Law School, Community and Economic Development Clinic](http://www.law.cuny.edu/index.html)  
(<http://www.law.cuny.edu/index.html>)

## Tax Assistance

If you win a civil action and receive a payment from a Hiring Party, it may affect your tax filings. OLPS works closely with DCA's Office of Financial Empowerment to help qualifying individuals prepare and file their personal income taxes for free using NYC Free Tax Prep. Information is available at: [nyc.gov/taxprep](http://nyc.gov/taxprep).

If you are paid by multiple Hiring Parties in a year and/or regularly receive 1099 forms from Hiring Parties, preparing your taxes may be more complicated than someone who has a single employer. Free and low-cost tax clinics are also available to help you figure out how to maximize your tax rebate and report income lawfully.

## IV. Going to Court

Below are some of the procedures for both Small Claims Court and New York Civil Court. But there are some important steps to consider before starting a lawsuit in court.

- **Determining the right court in which to bring your claim.** Table 2 on Page 10 describes some of the basic requirements for the various courts in New York City that you may use when pursuing violations of the Law. These courts may have multiple locations within New York City. Generally, you may have to file in the county or borough where you live or where the Hiring Party is located.
- **Identifying the opposing party's legal name and address.** The New York State Secretary of State maintains a database of all business entities registered in New York State<sup>2</sup> and may help you identify a Hiring Party's legal name and address. There are also a number of private databases of business records that require a subscription or usage fee. The address listed by the New York State database may be different from the place of business.

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<sup>2</sup> Visit: [https://appext20.dos.ny.gov/corp\\_public/corpssearch.entity\\_search\\_entry](https://appext20.dos.ny.gov/corp_public/corpssearch.entity_search_entry)

In general, you will use:

- **Small Claims Court** for claims under \$5,000
- **New York Civil Court** for claims up to \$25,000
- **New York State Supreme Court** for claims above \$25,000 or for complex matters that involve other kinds of civil actions (e.g., trademark infringement, wage/hour violations, and claims for an injury that occurred on the Hiring Party’s premises or that were otherwise caused by the Hiring Party)

**Table 2. Court Overview**

**Small Claims Court\*:**

- There is one in every borough.
- \*Filing fee is \$15 to \$20.
- \$5,000 cap for disputes.
- There is no pre-hearing discovery.
- Most claims are heard by an arbitrator. An arbitrator is a lawyer appointed by the court to decide how to apply the law. Arbitrator decisions are final. You cannot appeal.
- Much less formal than Supreme and Civil Court.

\*If your freelance business was incorporated in New York and you were working under the corporate identity, you use a different form (see Appendix B) and have to pay a slightly higher filing fee of \$25. These “Commercial Claims” are limited to a maximum value of \$5,000. The procedure for a Commercial Claim is substantially the same.

**New York State Supreme Court or Civil Court:**

- Civil Court can hear claims for nonpayment up to \$25,000.
- Supreme Court is a court of general jurisdiction, and there is no monetary limit.

**Federal District Court:**

- Hear cases when the claim is above \$75,000 and parties are from different states.
- Southern District of New York (SDNY) covers Manhattan and the Bronx.
- Eastern District of New York (EDNY) covers Brooklyn, Queens, and Staten Island.

## Do I Need a Lawyer to Go to Court?

No, you do not need a lawyer to go to court. Many people have successfully represented themselves *pro se* in court. (*Pro se* is a legal term meaning “for oneself” or “on one’s own behalf” and refers to a party representing themselves without an attorney.) OLPS’s Navigation Program and other self-help resources available through the New York Court System have been established to help people interact with the courts without an attorney.

When you communicate with the court clerk or a judge, they expect you to know the Law and to be ready to present your case. A judge can take time to explain the process to you, but the judge is not

required or expected to take extra time to provide this service to a *pro se* claimant. This means that you have to be prepared. See Part IV for what to expect when you go to court.

Whether or not you can afford to pay a lawyer, keep in mind that the court has a responsibility to treat all parties equally and to apply the law fairly, regardless of whether or not you have a lawyer representing you. Under Section 20-933(b) of the Law, if you win your case in court, you are entitled to have the Hiring Party pay for your attorneys' fees and court costs.

### **How much will it cost to have a lawyer represent me?**

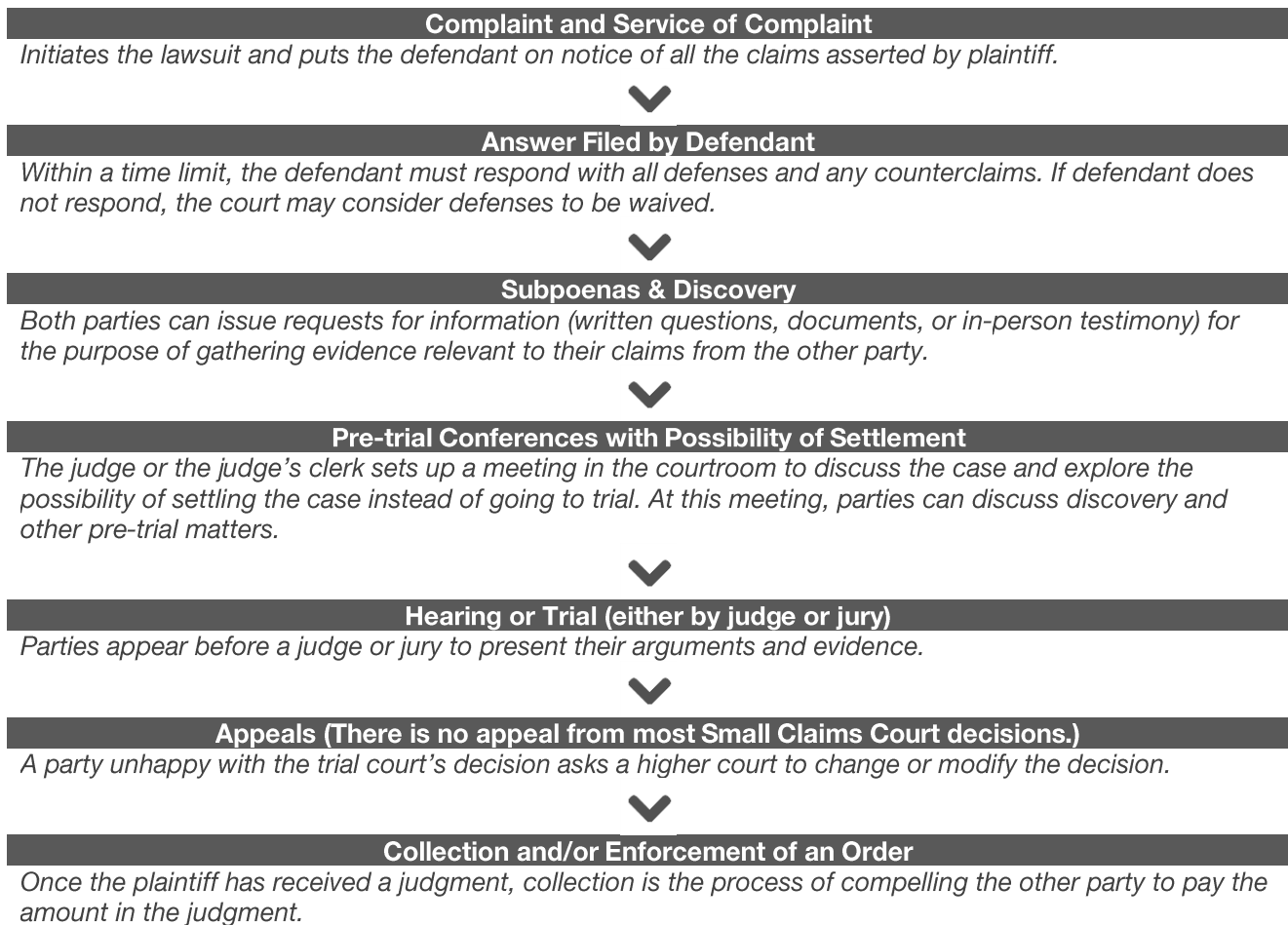
If you are eligible for free or low-cost legal services, you won't be charged by the lawyer, but you should still factor in the cost of your time to participate in the proceedings, attend conferences, and locate relevant documents.

If you are *not* eligible for low-cost or free legal services, you should discuss the fees with your lawyer at the first meeting. Many legal practitioners will charge a flat fee for an initial 1-hour consultation session, but some will consult with you in person or over the phone for free. At this first consultation meeting, you should expect the lawyer to clearly explain the rates and ask for a rough estimate of how much the legal fees will cost in total. Legal fees can add up, so it is a good practice to request regular billing statements showing how much you owe to the lawyer. Most attorneys will charge their clients an hourly fee plus expenses, but some attorneys may agree to handle an entire small case for a fixed fee. At the outset of your relationship, the attorney should give you a retainer agreement. The retainer spells out what is expected of the client and attorney.

## **Stages of Litigation**

The Figure on Page 12 shows the course of an ordinary civil lawsuit. Small Claims Court does not usually allow or require all of the steps described in Figure 1.

**Figure 1. Stages of Litigation**



## Small Claims Court Guide

For the entire Small Claims Court process, from filing a claim to enforcing a judgment, refer to the Small Claims Court Guide published by the New York State Court System available [online](#). The New York City Bar Association also provides an overview of the Small Claims Court process on its [website](#).

Here are some essential facts you need to know about Small Claims Court:

- The court procedures are generally informal.
- There is no record or transcript of the proceedings.
- You have the option of having your case heard by an arbitrator or a judge. Most choose an arbitrator because of the speed of the proceedings.
- Arbitrators are lawyers trained to hear small claims.
- Arbitrators will usually give a decision on the spot.
- You cannot appeal a decision by an arbitrator.
- If you request a judge, you may have to come back at another date, and the judge may schedule a pretrial conference to encourage the parties to settle.

**Table 3. Court Locations**

County	Small Claims	Civil Court	Supreme Court
Bronx	851 Grand Concourse Bronx, NY 10451 646-386-5484	851 Grand Concourse Bronx, NY 10451 Clerk: 718-618-2500	851 Grand Concourse Bronx, NY 10451 Clerk: 718-618-1400
Brooklyn	141 Livingston Street Brooklyn, NY 11201 347-404-9021	141 Livingston Street Brooklyn, NY 11201 Clerk: 347-404-9123	360 Adams Street Brooklyn, NY 11021 Clerk: 718-675-7699
New York	111 Centre Street New York, NY 10013 646-386-5484	111 Centre Street New York, NY 10013 Clerk: 646-386-5600	60 Centre Street New York, NY 10007 Clerk: 646-386-3600
New York (Harlem)	170 East 121 Street New York, NY 10035 212-360-4113	170 East 121 Street New York, NY 10035 Clerk: 646-386-5600	
Queens	89-17 Sutphin Blvd. Jamaica, NY 11435 718-268-7123	89-17 Sutphin Blvd. Jamaica, NY 11435 718-262-7100 Clerk: 718-262-7138	88-11 Sutphin Blvd. Room 106 Jamaica, NY 11435 Clerk: 718-262-7300
Richmond	Richmond County Civil Court 927 Castleton Avenue Staten Island, NY 10310 718-675-8460	927 Castleton Avenue Staten Island, NY 10310 646-386-5750	26 Central Avenue Staten Island, NY 10310 718-675-8700

## Starting the Lawsuit and Serving Notice on the Hiring Party

This section walks you through the early stages of a lawsuit. Aspects of litigation, such as discovery, motions for summary judgment, and subpoenas are beyond the scope of this guide. However, the information provided below can get you started.

### Serving the Summons Complaint

Whether you go to Small Claims Court or Civil Court or Supreme Court, the legal process begins when you **file a complaint** and **serve** it on the other party.<sup>3</sup> In doing so, you perform “proper service,” which ensures that the party you are suing receives notice and has an opportunity to respond to your claims.

In Small Claims Court, the clerk will serve the notice by certified mail and regular U.S. mail. Even if the certified mail was not delivered, the Court will find service adequate if the Post Office does not return the notice within 21 days<sup>4</sup>. If you file a complaint in Civil Court, you are responsible for serving legal papers on the defendant. A full guide to this process is available on [nycourts.gov](https://www.nycourts.gov).<sup>5</sup> (*Also see Appendix E.*)

In Civil Court or Supreme Court, you start the claim by drafting a **summons** and **complaint**. A **Summons** form that you can fill out is included in Appendix E. You can also find a **Sample Complaint** in Appendix E. The complaint details your allegations for the court. It is important to correctly identify the other party in a complaint.

<sup>3</sup> Most lawsuits by Freelance Workers under the Law will be filed in New York State Supreme Court or Civil Court if the amount exceeds \$5,000.

<sup>4</sup> If the Small Claims Court is unable to serve the defendant by mail, you may have to arrange in-person service. Consult the Small Claims Court Guide for instructions on serving the defendant.

<sup>5</sup> <https://www.nycourts.gov/courthelp/GoingToCourt/service.shtml>

You may have multiple claims against the Hiring Party based upon several parts of the Law (retaliation, written contract requirement, etc.). You may also allege in court that there have been several instances when the same Hiring Party entered into a work arrangement and failed to pay you in full. For the sake of efficiency, courts generally prefer that you include in one civil action the multiple, related allegations and/or counterclaims, and sometimes it is required to bring all related claims together.

**How long will it take from the date I file my complaint until the date when I receive a response judgment from the court?**

It is hard to predict how long the judicial process will take. Once the defendant has been served with the complaint, they only have 20 to 30 days to respond or they risk losing by default. But further stages are subject to negotiation and delay. The next stage may be a pre-trial conference or discovery, but those timelines are dependent on the parties and the judge assigned to your case. We expect it will be rare to receive a judgment from the court in less than 1 year from filing the complaint in the New York State Courts. In Small Claims Court, the whole process could take just a few months. Keep these general timelines in mind as you pursue the Hiring Party for nonpayment.

**What Happens after You Serve and File the Complaint?**

In Small Claims Court, the defendant is not required to file any response before the trial date. They simply have to appear on the trial date and present their defense. If the defendant wants to file a counterclaim, the defendant must do so within five (5) days of receiving notice of your claim. If the defendant fails to appear, the arbitrator will usually conduct an **inquest**. The purpose of an inquest is to collect the facts from you that support your claim. The arbitrator then can make a decision on your award.

In Supreme Court or Civil Court, the defendant generally is required to answer the summons and complaint within 20 to 30 days. If the defendant does not respond to an allegation, the court will consider that non-response an admission that the allegation is true. Judges will make exceptions for parties, depending on the facts surrounding their non-response. If the defendant wants to make any **counterclaims**, the defendant will include those in the answer they file with the court and serve on you.

**What is Jurisdiction?**

Jurisdiction is a concept used by courts to decide whether or not they have the authority to hear a case. Generally, jurisdiction limits the lawsuits that a court can hear by **geography** and **subject matter**.

- **Geographic Jurisdiction:** The Law does not specifically limit the geographic scope of you or the Hiring Party. It will be up to the courts to decide the geographic scope. If one of the two parties is located in New York City, then it will be arguable that the case is within the jurisdiction of the New York City courts.
- **Subject Matter Jurisdiction:** The three court systems of New York State (Small Claims, Civil, and Supreme) generally have the authority to hear disputes about failure to pay money for services and to hear claims under the Law. In some cases where the parties live in different states and the amount in dispute is over \$75,000, you can file your civil lawsuit in federal courts.



Federal courts located in New York City include the Southern District (Manhattan and the Bronx) and the Eastern District (Brooklyn, Queens, and Staten Island). Similar to the State Courts, there are help centers at the federal courthouses that assist *pro se* claimants with filing a lawsuit.

You may have a choice of counties when you file your suit in state court. The appropriate county depends upon the location of your home or workspace and the location of the Hiring Party's home or place of business. For example, if you live and work in Staten Island but the Hiring Party's business is located in Brooklyn, you may have the choice of filing your civil suit in either Richmond County or Kings County.

## Doing Your Homework and Getting Ready to Present Your Case

Once you have filed your case and served the other party, it's time to get yourself ready to go to court. Before you go to a pre-trial conference or make an oral presentation to the magistrate, arbitrator, or judge, consider taking the following steps to prepare.

### Researching the Law

Your first point of research is reading the Law closely. The full text of the Freelance Isn't Free Act is available in the appendices to this guide. (*See Appendix H.*) The Law will tell you whether it applies to you and your claim, and what relief is available to you.

When it went into effect in May 2017, the Freelance Isn't Free Act was the first law of its kind in the country. Because it is an entirely new area of the law, many attorneys and judges will be unfamiliar with what the Law says. Because the Law opens up new areas, there is very little **case law** on the subject and it may be helpful to have copies of the Law with you whenever you go to court.

There are some free legal resources online<sup>6</sup>. If you prefer to talk to a law librarian and research at a public facility, the New York Court system operates free public libraries in every county and borough in the state. See Table 4 on Page 16.

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<sup>6</sup> There are many free online resources for legal research. Examples include Cornell University Law School Legal Information Institute (<https://www.law.cornell.edu>), FindLaw ([lp.findlaw.com](https://www.findlaw.com)), and Justia (<https://www.justia.com>).



**Table 4. Locations of Borough Law Libraries**

Bronx 851 Grand Concourse, Room 817 Bronx, NY 10451 718-618-3710	Brooklyn 360 Adams Street, 3rd floor Brooklyn, NY 11201 347-296-1144
Queens 88-11 Sutphin Blvd., Room 65 Jamaica, NY 11435 718-298-1206	Staten Island 25 Hyatt Street, Room 515 Staten Island, NY 10301 718-675-8711
Manhattan 80 Centre Street, Room 242 New York, NY 10013 646-386-3715	

## Collecting Documents

When a judge meets with you at trial or in a pre-trial conference, the judge will be guided principally by:

1. The law that governs your case AND
2. The evidence each side can produce that supports their claims and defenses

For this reason, collecting and organizing evidence to support your claims is key to persuading the judge.

Your documents should be well organized and legible, and you should have copies for all parties, including the judge. Either side can ask the judge to exclude documents that are undated and/or of questionable authenticity. If either side wins a motion to **exclude** documents, they will not be considered by the judge or decision maker. It is important to identify which documents support your case, such as:

- A written contract.
- Emails or other written correspondence between you and the Hiring Party discussing the timeline, scope of work, and the payment terms.
- Notes of oral conversations with the Hiring Party about the timeline, scope of work, and the payment terms.
- Evidence showing that the work has been completed (photos or screenshots showing the work product; correspondence affirming that the work was completed, etc.).
- If the Hiring Party refused to provide a written contract, evidence showing that you requested the use of a written contract before work began.
- If you are trying to show that the Hiring Party engaged in unlawful payment practices, evidence showing the Hiring Party asked you to accept a reduced payment.<sup>7</sup>

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<sup>7</sup> See Section 20-929 of the Law, which details the “Unlawful payment practices.”

## Preparing Your Case

Whether you keep this information on notecards, in a computer file, or on a note pad, outlining and summarizing the arguments on both sides can be helpful. You may be convinced that the Hiring Party has “no case” but, to be fully prepared, it helps to think about what kind of defenses they will present to the judge during a trial or pre-trial conference. A short, written summary of your strongest arguments will help you appear more polished before both the judge and the other party. Some judges may allow you to orally deliver a short opening statement or closing statement. If you are asked to give a statement, you may be able to use your summary as a guide.

## Deciding What Relief You Are Seeking

An initial complaint requires you to state what you are asking for from the court. You will have to list out each violation and what you are asking for to remedy each violation. If you want the judge to provide double damages, statutory damages, interest, or some form of injunctive relief<sup>8</sup>, you should state that clearly in your initial complaint.

## Settling a Court Case

People going to court for the first time may assume that by filing their claim in court, they will end up presenting their case before a judge or jury, which will result in either “winning” or “losing” a court judgment. In fact, the vast majority of claims filed in court are settled before they reach trial. The judge assigned to your case has a responsibility to explore the path to settlement during the **pre-trial conference**. And the parties on their own can explore settlement and withdraw their case at any stage of the process. Statistically, your claim is more likely to be settled than decided by a judge, so you should be prepared for settlement negotiations.

Effectively reaching a settlement of your claims requires basic negotiation skills and a clear understanding of what you want. Remember that neither you *nor* the opposing party is likely to get exactly what you initially demand while keeping your bottom line and rights in mind when responding to offers. Consider learning about negotiation. Negotiation is an important tool whether you are asking your boss for a raise or trying to win a better freelance contract deal. *Getting to Yes*, a guide to negotiation styles, is one resource to start learning negotiation skills.

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<sup>8</sup> The Law states that injunctive relief is a possible remedy to restrain a Hiring Party. In addition to or instead of other types of relief, a court can grant the Freelance Worker’s request for an **injunction**. An injunction orders the party to stop a harmful or unlawful behavior.

## V. Protecting Yourself against Nonpayment

### Have a Written Contract

The Law requires a written contract for work valued in excess of \$800. At minimum, a contract must include:

- The Hiring Party and Freelance Worker's names and mailing addresses
- An itemized list of services
- The value of those services
- The rate and method for compensation for services
- The date for payment for services under the contract or the mechanism for determining payment

If you and the Hiring Party are in different locations, you might be able to use email, fax, smartphones, or other technology to negotiate and finalize an agreement.

A party to a contract does not have to consent to all the terms of an agreement, even with a big organization that has a standard freelancer agreement. You may not get exactly what you want, but you can protect your rights and attempt to negotiate what a Hiring Party is initially offering. Visit [nyc.gov/dca](http://nyc.gov/dca) for model contracts. **Because a contract can affect your legal rights, it is important to make sure you understand all of the terms in a contract you are signing.**

### Keep Records

Keeping records of conversations, correspondence, expenses, work performed, services provided, etc. may help you stay on top of payment and prove a violation, if needed.

### Research

You can ask people who work in the same industry about the Hiring Party or search the Internet. You may find out about past practices of the Hiring Party or the business that could affect whether you get paid in full for your work.

### Other Resources

- [Freelancers Union, 12 Tips for Contract Negotiation](https://blog.freelancersunion.org/2015/10/06/12-tips-contract-negotiation/)  
(<https://blog.freelancersunion.org/2015/10/06/12-tips-contract-negotiation/>)
- [Graphic Artists Guild, Contract Glossary](https://graphicartistsguild.org/tools_resources/contract-glossary)  
([https://graphicartistsguild.org/tools\\_resources/contract-glossary](https://graphicartistsguild.org/tools_resources/contract-glossary))
- [Columbia Law School, Keep Your Copyrights](http://www.law.columbia.edu/keep-your-copyrights)  
(<http://www.law.columbia.edu/keep-your-copyrights>)

## VI. Glossary of Terms

These are brief definitions of terms that you might encounter while pursuing payment from a delinquent Hiring Party.

**Affidavit:** A sworn statement signed by a person, usually a party or a witness.

**Alternative Dispute Resolution (ADR):** Commonly refers to MEDIATION, ARBITRATION or other means of resolving a dispute without going through the court process. It generally is more informal than going to court and involves having a neutral third party hear arguments from both sides and then make a decision.

**Appeal:** If a party believes the decision or judgment from the court is wrong, the party can file for an appeal to a higher court. Appeals are not available in Small Claims Court if you chose to have your case heard by an arbitrator.

**Appearance:** When a party is required to be present before the judge or “make an appearance.” Consult the clerk of the court or the judge’s chambers if you have any questions about the exact time and location of the required appearance.

**Arbitration:** This is a form of alternative dispute resolution.

**Arbitrator:** The third party appointed or agreed upon by the parties to hear the dispute and make a decision in arbitration.

**Civil Action:** An action brought to enforce a private or civil right in court. (ACTION is used interchangeably with SUIT.)

**Complaint:** Document that begins a civil action after it is filed with the court and SERVED on the RESPONDENT. A complaint must identify who the respondent is, where the respondent is located, and how the respondent breached a contract or violated the Law. (*See Appendix E for guidance on how to file a complaint in New York State courts.*)

**Damages:** In a suit for a breach of contract, the court can assess damages based on contract law. Under the Freelance Isn’t Free Act, a Hiring Party may be liable for statutory or double damages as described under the Law.

**Demand Letter:** This is also known as a COLLECTION LETTER. It is written correspondence to Hiring Parties notifying them that they are in noncompliance with the Freelance Isn’t Free Act; demanding prompt payment; and stating your intention to file a suit in court if payment is not made.

**Deposition:** Sworn testimony of a party or witness in a case that is obtained during discovery for later use at trial.

**Discovery:** Process whereby parties ask each other for information and seek to compel the other party to produce evidence relevant to the SUIT.

**Electronic Filing:** Rather than file papers in person or via mail, the New York State court system allows parties to file or submit papers through an online process.

**Jurisdiction:** It is the court's authority to hear a case. For example, the Small Claims Court can only hear claims valued up to \$5,000, and the Supreme Court is a court of general jurisdiction, meaning that it can hear any civil claims. The Freelance Isn't Free Act gives you a right to file in the New York City court of your choice or "any court of competent jurisdiction."

**Index Number:** The number assigned by the clerk of the court to a lawsuit once it has been filed. (*For more information on INDEX NUMBERS, see Appendix E.*)

**Injunction:** An order from a judge to do or not do something specific (for example, to stop contacting someone or to deliver goods that have been paid for).

**Inquest:** If you file a claim in Small Claims Court and the defendant does not appear, the arbitrator is authorized to conduct an "inquest." The purpose of this proceeding is to collect enough facts from you, the claimant, so the court can make a determination about the merits of your claim and how much money you are owed.

**Interpretation (vs. Translation):** A court interpreter orally translates into another language when a judge, witness, or attorney is speaking. The term translation is limited to work with written documents. If you need an interpreter to assist you at court, **contact the Office of Court Interpreting Services at 646-386-5670. You can also contact the Office via email at: [courtinterpreter@courts.state.ny.us](mailto:courtinterpreter@courts.state.ny.us)**

**Marshal:** Enforcement officers appointed by the Mayor. They do not work for the county or City. They can enforce a judgment for a fee if the Hiring Party is unwilling to comply with the judgment voluntarily. For a list of NYC Marshals: <http://www1.nyc.gov/site/doi/offices/marshals-list.page>

**Mediation:** A method of dispute resolution involving a neutral third party tasked with helping parties reach a mutually agreeable resolution.

**Motion for Summary Judgment:** During a Civil Court proceeding, either party can make a motion for summary judgment. They are asking the judge to decide that based on facts that are not disputed, a claim either does or does not have merit and that a full trial is not needed to decide the case.

**Poor Person Order:** When a party to a lawsuit cannot afford the costs of a lawsuit, the Court may permit that party to proceed without having to pay for court costs.

**Pro Se:** A *pro se* party in court is someone who chooses to represent themselves (because they do not want or cannot afford to retain an attorney).

**Sheriff:** Enforcement officer of the local court who can help you collect money or property from the Hiring Party if the Hiring Party will not voluntarily comply with the court judgment. For Sheriff's contact information, ask the clerk of the court.

**Small Claims Court:** A forum that requires less formality than Civil Court or Supreme Court. The filing fees are lower than the other New York State courts, but the claims are limited to a maximum value of \$5,000. When you file in Small Claims Court, you have the choice of having your case heard by

a judge or by a volunteer arbitrator. An arbitrator will usually issue a decision more quickly, but you cannot appeal an arbitrator's decision.

**Suit:** See CIVIL ACTION. Synonymous with lawsuit.

**Supreme Court:** A New York State trial court of general jurisdiction that hears civil claims. The Supreme Court can hear a wide variety of disputes, and there is no limit on the maximum dollar value of the claims.

## VII. List of Appendices

Appendix A:	Small Claims Court – Statement of Claim
Appendix B:	Commercial Small Claims Court
Appendix C:	Demand Letter (Commercial Small Claims Court)
Appendix D:	Filing Small Claims if You Live Outside NYC
Appendix E:	Supreme Court, Civil Branch, New York County – How to Commence a Civil Action
Appendix F:	Recursos en Español de las Cortes de Nueva York
Appendix G:	Protecting NYC’s Freelance Workers
Appendix H:	Full Text of the Freelance Isn’t Free Act

# Appendix A -- Court Navigation Packet

**INSTRUCTIONS:**  
Place only **ONE** letter or number in each space  
and leave a blank space between words.

## CIVIL COURT OF THE CITY OF NEW YORK SMALL CLAIMS PART STATEMENT OF CLAIM

(FOR OFFICE USE ONLY)

### (Your) I. CLAIMANT'S INFORMATION

LAST NAME \_\_\_\_\_

FIRST NAME \_\_\_\_\_ MIDDLE INITIAL \_\_\_\_\_

ADDRESS \_\_\_\_\_

(NO P.O. BOX) \_\_\_\_\_

BOROUGH, CITY, \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
TOWN OR VILL. \_\_\_\_\_

OTHER INFO \_\_\_\_\_

[Doing Business As] [In Care Of]

[Attention To] **Circle One**

PHONE NO. \_\_\_\_\_

### II. DEFENDANT'S INFORMATION\*

(Their)

LAST NAME \_\_\_\_\_

(or Full Business Name)

FIRST NAME \_\_\_\_\_ MIDDLE INITIAL \_\_\_\_\_

ADDRESS \_\_\_\_\_

(NO P.O. BOX) \_\_\_\_\_

BOROUGH CITY, \_\_\_\_\_ STATE N Y ZIP \_\_\_\_\_  
TOWN OR VILL. \_\_\_\_\_

OTHER INFO \_\_\_\_\_

[Doing Business As] [In Care Of]

[Attention To] **Circle One**

PHONE NO. \_\_\_\_\_

### III. CLAIM

Amount Claimed: \$ \_\_\_\_\_ (Maximum \$5, 000) Date of Occurrence or Transaction: \_\_\_\_\_

#### Place of occurrence, if Auto Accident

#### PRIMARY REASON FOR CLAIM (Check One):

**Damage caused to:** ☐ automobile ☐ other personal property ☐ real property ☐ person

**Failure to provide:** ☐ proper repairs ☐ proper services ☐ proper merchandise ☐ goods paid for

**Failure to return:** ☐ security ☐ property ☐ deposit ☐ money loaned

**Failure to pay:** ☐ salary ☐ for services rendered ☐ insurance claim

☐ rent ☐ commissions ☐ for goods sold and delivered

**Breach of.** ☐ contract ☐ lease ☐ warranty ☐ agreement

**Loss of:** ☐ luggage ☐ property ☐ time from work ☐ use of property

**Returned:** ☐ check (bounced) ☐ check (stopped)

**Other:** (Be brief) \_\_\_\_\_

**IDENTIFYING NUMBER(S) - (Receipt #, Claim #, Account #, Policy #, Ticket #, License #, Plate #'(s))** \_\_\_\_\_

**Today's Date** \_\_\_\_\_

**Signature of Claimant or Agent** \_\_\_\_\_

\* DEFENDANT'S NAME: The **legal** name will be required in order to obtain an enforceable judgment. If the Defendant is a **business**, its full and correct **business name** should be obtained from the

Office of the County Clerk in the county in which the business is located or check on the following website: [www.dos.state.ny.us](http://www.dos.state.ny.us).

DEFENDANT'S ADDRESS: YOU must indicate the proper street address of the Defendant. A Post Office Box is not acceptable.

**FREE CIVIL COURT FORM**

No fee may be charged to fill in this form.

Form can be found at

CERT'D # \_\_\_\_\_

COA CODE \_\_\_\_\_

CLAIM AMT. \_\_\_\_\_

\$ \_\_\_\_\_

FEE \_\_\_\_\_

STANDARD FEE

☐ CLAIMANT V. DEFENDANT

NO FEE

☐ DEFENDANT V. THIRD PARTY

☐ CLAIMANT V. ADD'L DEFENDANT

POSTAGE ONLY

☐ WAGE CLAIM TO \$300

LANGUAGE \_\_\_\_\_

DATE DATA ENTERED \_\_\_\_\_

DATE NOTICES MAILED \_\_\_\_\_

CASE TYPE:

MULTI DFT ☐ CTR/CLM ☐

3 PARTY ☐ CRS/CMPLT ☐

FIRST DATE \_\_\_\_\_

DAY COURT

☐ STATUTORY ☐ OTHER



**INSTRUCTIONS:**  
Place only ONE letter or number in each space  
and leave a blank space between words.

**CIVIL COURT OF THE CITY OF NEW YORK  
COMMERCIAL CLAIMS PART  
STATEMENT OF CLAIM**

(FOR OFFICE USE ONLY)

(Your)

**I. CLAIMANT'S INFORMATION**

BUSINESS NAME

OTHER INFO

(Doing Business As  
or In Care Of)

PRINCIPAL  
OFFICE ADDRESS

BOROUGH, CITY,  
TOWN OR VILL.

STATE N Y

ZIP

PHONE NO. ( )

(Their)

**II. DEFENDANT'S INFORMATION**

LAST NAME

or business name)

FIRST NAME

MIDDLE INITIAL

ADDRESS  
(of Residence or Place of  
Business or Employment)

BOROUGH, CITY,  
TOWN OR VILL.

STATE N Y

ZIP

OTHER INFO  
(Doing Business As  
or In Care Of)

PHONE NO. ( )

**III. CLAIM**

Amount Claimed: \$ (Maximum \$5,000)

Date of Occurrence or Transaction:

Briefly state your claim here: (Include Identifying Number(s) — Receipt #, Claim #, Account #, Policy #, Ticket #, License #)

Today's Date

Signature of Claimant or Agent

YOU MUST COMPLETE ONE OF THE CERTIFICATIONS ON THE REVERSE SIDE

(FOR OFFICE USE ONLY)

CERT'D #

COA CODE

CLAIM AMT.

\$

FEE

STANDARD FEE PLUS POSTAGE

☐ CLAIMANT V. DEFENDANT

NO FEE; POSTAGE ONLY

☐ DEFENDANT V. THIRD PARTY

☐ CLAIMANT V. ADD'L DEFENDANT

☐ WAGE CLAIM TO \$300

LANGUAGE

DATE DATA ENTERED

DATE NOTICES MAILED

CASE TYPE:

MULTI DFT ☐ CTR/CLM ☐

3 PARTY ☐ CRS/CMPLT ☐

FIRST DATE

DAY COURT

☐ STATUTORY ☐ OTHER

☐ CONSUMER TRANSACTION

☐ OTHER COMMERCIAL CLAIMS

**COMPLETE THIS SECTION FOR A COMMERCIAL CLAIM**

**\*CERTIFICATION:** (NYCCCA 1803-A)

I hereby certify that no more than five (5) actions or proceedings (including the instant action or proceeding) pursuant to the commercial claims procedure have been initiated in the courts of this State during the present calendar month.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Signature of Notary/Clerk/Judge

**\*NOTE:** The Commercial Claims Part will **dismiss** any case where this certification is not made.

---

**COMPLETE THIS SECTION FOR A COMMERCIAL CLAIM  
ARISING OUT OF A CONSUMER TRANSACTION**

**†CERTIFICATION:** (NYCCCA 1803-A)

I hereby certify that I have mailed a demand letter by ordinary first class mail to the party complained against, no less than ten (10) days and no more than one hundred eighty (180) days before I commenced this claim.

I hereby certify, based upon information and belief, that no more than five (5) actions or proceedings (including the instant action or proceeding) pursuant to the commercial claims procedure have been initiated in the courts of this State during the present calendar month.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Signature of Notary/Clerk/Judge

**†NOTE:** The Commercial Claims Part will **not** allow your action to proceed if this certification is not made and properly completed.

**APPENDIX C-- Demand Letter (Commercial Small Claims Court)**

Commercial Claim Arising Out of a Consumer Transaction

DEMAND LETTER

To: \_\_\_\_\_  
Name of Defendant  
\_\_\_\_\_  
\_\_\_\_\_  
Address

Date:

You have not paid a debt owed \_\_\_\_\_,  
which you incurred on \_\_\_\_\_, 20\_\_\_\_. The amount  
remaining unpaid on this debt is \$\_\_\_\_\_. Demand is hereby made  
that this money be paid. Unless payment of this amount is received by the undersigned no later  
than \_\_\_\_\_, 20\_\_\_\_, a lawsuit will be brought against you in the  
Commercial Claims Part of the Court.

If a lawsuit is brought, you will be notified of the hearing date, and you will be entitled to  
appear at the hearing and present any defense you may have to this claim.

(If applicable) Our records show that you have made the following payment in partial  
satisfaction of this debt (fill in dates and amounts paid) \_\_\_\_\_.

A copy of the original debt instrument — your agreement to pay — is attached.  
[The names and addresses of the parties to that original debt instrument are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(to be completed if claimant was not a party to the original transaction)]*.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Typed or Printed Name and Address of Claimant

# APPENDIX D-- Filing Small Claims if You Live Outside NYC

## Instructions for Filing a Small Claims Action By Mail

In order to commence a Small Claims action by mail, at least one of the following conditions must apply:

- 1) You must reside outside of New York City
- 2) You must be 65 or older with *proof of age*.
- 3) You must be disabled with *proof of disability*.

In addition, you can only be an individual or sole proprietor, not a corporation or any other type of business. The party you are taking to court must either reside, have an office location, or be regularly employed at a location within the five boroughs of New York. You can't sue someone outside of New York City in NYC Small Claims court.

To commence your claim, use form CIV-SC-50. If you don't have a copy, it may be downloaded at:

<http://www.nycourts.gov/courts/nyc/smallclaims/forms.shtml>

### FEES:

The filing fee is currently

\$15 for a claim up to and including \$1000

\$20 for a claim over \$1000, to the maximum Small Claim of \$5000.

**SPECIAL WAGE CLAIM:** If you're claiming for wages only, to a maximum of \$300, you may file a wage claim, for which the fee is \$5.58 for postage.

If your case has multiple defendants (you believe more than one party is responsible, such as husband and wife), you must completely fill out a separate form for each defendant. However, you will not be charged a fee for the additional defendants. Note: Do not use the OTHER INFO field to add more defendants. Leave it blank except when needed for additional necessary information such as "Attention to" or "Doing business as." Also, be sure to provide the full, correct name and address of the person or business that you are suing. If you are uncertain of a legal business name, you may examine the County Clerk's records in the County where the business is located. Note that the County Clerk generally requires you to appear in person to do so. Most businesses may also be found by a "search for corporations or business entities" at the NY State Department of State website:

<http://www.dos.state.ny.us/>

### PAYMENT:

You may pay your claim by Bank Check, Teller's Check, Certified Check, or Money Order. You may also submit an attorney's check which indicates "attorney-at-law" or a comparable marking on the preprinted check. Checks should be made payable to "Clerk, Civil Court." We do not accept non-certified personal or company checks. Do not send cash by mail.

Your hearing will be scheduled for an evening approximately six weeks from the date that we receive your Statement of Claim form. You may request a daytime hearing *if you submit proof* that you are 65 or older, disabled, or you work evenings. We will also send you an "Instructions to Claimant" form containing your Index Number, Court Date, and time to appear. Be sure not to lose this form, and bring it with you whenever you appear in court. Finally you will receive a "Guide to Small Claims Court." This booklet may also be downloaded at: <http://www.nycourts.gov/courts/nyc/smallclaims/pdfs/smallclaims.pdf>

Note: If you do not qualify to send your claim by mail, there are private vendors online through which you may file your claim on the internet for an additional fee. A list of court-approved vendors is located at:

<http://www.nycourts.gov/courts/nyc/smallclaims/startingcase.shtml#electronic>

### MAIL:

- 1) Your completed and signed SC-50 Statement of Claim form,
- 2) Your check for payment
- 3) If needed (see above) a photocopy of your proof of age, disability or nighttime employment.
- 4) A self addressed 6"x9" envelope with 89 cents postage (3 ounces) to the appropriate Small Claims Court. A list of addresses and phone numbers is at: <http://www.nycourts.gov/courts/nyc/smallclaims/locations.shtml>

## APPENDIX E -- Court Navigation Packet

SUPREME COURT, CIVIL BRANCH  
New York County  
60 Centre Street, New York, N.Y. 10007

HELP CENTER  
Room 116  
646-386-3025

### How to Commence a Civil Action

**Note:** All persons involved in a lawsuit should consult an attorney. The Help Center gives you information, forms and instructions on court procedures. As an office of the New York State Supreme Court, we cannot give legal advice or act as your advocate.

In general, a person who wishes to file a lawsuit in Manhattan (New York County) to obtain money damages of more than \$25,000 may commence a civil action in this court. Cases where a party seeks to stop certain actions by another party may also be heard in this court. An unrepresented person should refer to the Civil Practice Law and Rules (CPLR) Article 5 to determine in which county a lawsuit may be commenced (known as **venue**). Every lawsuit must be brought within one of various deadlines spelled out in the law, which are known as **statutes of limitations**. CPLR Article 2. Legal research may be done at the Public Access Law Library, 80 Centre Street, Room 468, New York, N.Y., Monday to Friday, 9:30 A.M. to 4:30 P.M.

The complaining party is the **plaintiff**, and the alleged wrongdoer is the **defendant**. The basic procedures for starting an action are explained in this pamphlet. Either a **summons and complaint** or a **summons with notice** are prepared to start an action. If a summons with notice is used, you will have to file and serve a complaint later in the case. These are known as **initiating papers**.

### **Electronic Filing**

New cases in this court (except for matrimonial, Election Law and two other types) must be commenced and pursued by means of electronic filing through the New York State Courts Electronic Filing System ("NYSCEF"). Documents to be filed with the court must be e-filed through NYSCEF.

Unrepresented persons may, however, opt out of e-filing if they wish to do so. This is done by filing an opt-out form. For further information, consult the Help Center.

The discussion that follows assumes that the case is a paper case. In an e-filed case, the steps to be followed would be the same, but filings with the County Clerk and the court would be made via NYSCEF.

## **Prepare the Initiating Papers**

### **The Summons**

A **summons** contains the name of the court, the caption of the case (a box at the top left side of the page with the names of the parties), an Index Number (every lawsuit filed has its own identifying case number) and the date the initiating papers are filed with the County Clerk's Office. The **name, address and telephone number** of the **plaintiff's attorney** or the **unrepresented plaintiff** are stated on the summons. The plaintiff or attorney also signs his/her name on the summons. See N.Y. Code of Rules and Regulations, Section 130-1.1-a. The defendant should be the person (or entity) the plaintiff claims is legally responsible for the breach of some duty or obligation owed the plaintiff.<sup>1</sup> A sample of a summons is attached.

A summons is served with a **complaint** and requires the **defendant** to answer the allegations and claims of the plaintiff. The complaint describes the plaintiff's case.

A summons with notice is a type of summons. The summons with notice is not served with the complaint. It contains all of the information described above for the summons, plus a brief description of the type of case and the relief the plaintiff is asking the court to grant. After a summons with notice is served, the defendant will **demand** that the plaintiff serve a complaint. The plaintiff must then have the complaint served within 20 days after being served with the **demand**, or the case may be dismissed. CPLR 3012(b). A sample of a summons with notice is attached.

Each type of summons requires the defendant to serve a **notice of appearance** in the lawsuit. The notice of appearance informs the plaintiff that the defendant will respond to the lawsuit.

### **The Complaint**

A **complaint** (and every other document served in a case in this court) shall be typed, double spaced, or legibly printed, in English, using black ink. It must be on 8½ x 11 inch paper, using only one side of the paper. Papers should be stapled or otherwise bound securely. CPLR 2101.

The **complaint** describes plaintiff's charges against the defendant and must include certain essential allegations in order to add up to a legally sufficient claim. Each defendant must have taken part in the wrongdoing which allegedly damaged the plaintiff. It is not enough to state that a plaintiff feels he or she has been wronged by the conduct of someone else. The wrongdoing must also have resulted in some form of damages to plaintiff. A person, for instance, ordinarily may not sue for damages just because a supermarket clerk spoke rudely to him or her.

---

<sup>1</sup> **Important:** A person who wishes to bring a claim against a municipality may be required to file a **Notice of Claim** before starting the lawsuit and within a deadline that may be very short. **Failure to file a Notice of Claim on time may result in dismissal of the action.** For more information, consult an attorney. See, Notice of Claim, available in Room 116, for general information on this subject.

The complaint should begin with a brief identification of the plaintiff, followed by an identification of the defendant. The complaint should set forth the plaintiff's charges in separate, numbered paragraphs. Each paragraph should be short and contain only one allegation.

The complaint should next set forth a brief description of the events upon which the claim is based: what each defendant did or failed to do, how plaintiff was harmed as a result, and the type and extent of damages suffered. The facts should be stated in chronological order, including specific dates. The plaintiff should write the complaint in a clear, understandable and organized fashion. Although a plaintiff is familiar with the essential facts, he or she should keep in mind that the court will not know them unless they are presented in the complaint. The complaint is a document that sets out the essential claims of the plaintiff's case. It frames what the case is about. The complaint is not, however, a vehicle for presenting to the court all of the plaintiff's proof and thus should not be overly lengthy or verbose.

The complaint should conclude with a paragraph in which the plaintiff sets forth all the relief against the defendant that he or she is seeking from the court. In certain circumstances, the complaint must be verified, which means signed in a certain format under oath, before a notary. CPLR 3020. An unrepresented plaintiff will have to draft a complaint suited to the circumstances of his or her case. An example of a complaint is attached.

The court has the power to grant a variety of remedies depending upon the circumstances. The court, may, for example, order a defendant to compensate a plaintiff by paying a sum of money, known as **damages**. In certain circumstances, the court may order a party to do, or to refrain from doing, certain acts. This is known as **injunctive relief**. The court may decide the rights of parties to a dispute. This is known as **declaratory relief**.

## Commencing the Action

Make one copy of the initiating papers for each defendant and a copy for your own records.

**The action is started only after getting the Index Number.** The original initiating papers must be filed in the County Clerk's Office, 60 Centre Street, Room 141B, in the basement. Fill out an Index Number Application form, available at the counter (see page 5). Submit all of these items to the Cashier and pay the filing fee of \$210.<sup>2</sup>

You must write the Index Number and the date the summons was filed on the copies of initiating papers before they are served. Someone over the age of 18, not a party to the case, can serve the papers on each defendant in the manner provided by law. **You cannot serve your own papers.** CPLR 2103(a).

---

<sup>2</sup> If the plaintiff claims to be financially unable to proceed with the action, he/she may apply for a court order that will waive payment of the court filing fees. This is known as a poor person order. See, How to Apply for Poor Person Status, Room 116.

## **Service of the Summons with Notice or the Summons and Complaint**

Basic notions of fairness require that before the plaintiff may succeed in obtaining the relief demanded in the summons with notice or summons and complaint, the defendant be formally notified of the lawsuit and given an opportunity to put a defense before the court. The notification is known as **service of process**. This notification is also a mechanism formally to bring the defendant before the court. Proof of service of the initiating papers must be timely filed with the County Clerk's Office, Room 141B, at the Law and Equity counter or the case may be dismissed. See How to Serve Legal Papers, available in Room 116 for information on service.

## **The Defendant's Response**

If the steps described here are performed properly, a case now exists. The defendant now has approximately 20 or 30 days (see CPLR 320) within which to serve the plaintiff or plaintiff's attorney with a written response, depending on how the defendant was served. Defendant's response will take the form of an **answer**, or a **motion to dismiss the complaint**, with the notice of appearance.

The answer is the defendant's position regarding the essential claims of plaintiff's case.

If the complaint contains allegations that the defendant believes to be legally unsound, or if a defendant challenges service or the court's power over the defendant in the case, defendant may make an application to the court to end the case promptly (a motion to dismiss). If the plaintiff's case survives this motion, the case will continue. Plaintiff must then prove the truth of the allegations contained in the complaint. For more on the response process, see How to Respond to a Summons and Complaint, available in Room 116.

## **Request for Judicial Intervention (RJI)**

Although a lawsuit is in existence upon the filing and service of a summons with notice or summons and complaint, the case has not yet entered the court system and is not known to the court. A civil action may proceed for a long time before the parties go before a Judge. The complaint and the answer set the frame of the dispute; additional action is required to bring the dispute to a head, or to put the plaintiff to his or her proof before the court or a jury. This will happen only when a party files a Request for Judicial Intervention (RJI) form and pays the \$95 court filing fee. Filing an RJI assigns the case to a Judge and asks the court to take some action in regard to the dispute.

A case may come before a judge when a motion is made or a preliminary conference is requested. The plaintiff may, at an appropriate time, have the case placed on the trial calendar. Until the case is placed on the trial calendar, it can never be called for trial. See, How to File a Request for Judicial Intervention, available in Room 116.



**Application for Index Number** - This form is needed to get a case number (Index Number). The form brings about the assignment of the Index Number, which identifies your case from that point on.

Application for the Index Number

- [1] Your name(s) as Plaintiff(s) and the name(s) of party(ies) - Defendant(s) you are suing.
- [2] Check the box that describes your lawsuit.
- [3] Your name(s), address(es), and telephone number(s).
- [4] Name(s), address(es), telephone number(s) of Defendant(s).
- [5] Describe the lawsuit you are filing.
- [6] Check "Plaintiff" box.
- [7] Check "No" box.
- [8] Your name(s) and name(s) of party(ies) you are suing.

**[Print in black ink all areas in bold letters. This summons must be served with a complaint.]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

-----,

**[your name(s)]** Plaintiff(s),

- against -

-----,

**[name(s) of party being sued]** Defendant(s).

-----X

**SUMMONS**

**Index Number**

-----

**Date Index Number Purchased**

-----, 20\_\_

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: \_\_\_\_\_, 20\_\_  
**[date of summons]**

-----  
**[sign your name]**

-----  
**[print your name]**

-----  
**[your address(es), telephone number(s)]**

Defendant(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[address(es) of party being sued]**

Venue: Plaintiff(s) designate(s) New York County as the place of trial. The basis of this designation is:

**[check box that applies]**

- ☐ Plaintiff's(s') residence in New York County
- ☐ Defendant's(s') residence in New York County
- ☐ Other **[See CPLR Article 5]:** \_\_\_\_\_

**[Print in black ink all areas in bold letters. A complaint must be served in response to a demand or notice of appearance (CPLR 3012(b))]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

SUMMONS WITH NOTICE

\_\_\_\_\_

**Index Number**

**[your name(s)]** Plaintiff(s),  
- against -

**Date Index Number Purchased**

\_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

**[name(s) of party being sued]** Defendant(s).  
-----X

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED and required to serve upon plaintiff, at the address stated below, a notice of appearance or demand for a complaint within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to serve a notice of appearance or demand for a complaint, a judgment will be entered against you by default for the relief demanded herein.

Dated: \_\_\_\_\_, 20\_\_\_\_  
**[date of summons]**

\_\_\_\_\_  
**[sign your name]**

\_\_\_\_\_  
**[print your name]**

\_\_\_\_\_  
**[your address(es), telephone number(s)]**

Defendant(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**[address(es) of party being sued]**

Notice: The nature of this action is **[briefly describe the nature of your case against the defendant(s), such as, breach of contract, negligence]:**

---

---

---

---

The relief sought is **[briefly describe the kind of relief you are asking for, such as money damages of \$25,000]** \_\_\_\_\_

---

---

---

---

Should defendant(s) fail to appear herein or demand a complaint, judgment will be entered by default for the sum of \_\_\_\_\_ **[amount of money demanded]** with interest from the date of \_\_\_\_\_ **[date from which interest on the amount demanded is claimed]** and the costs of this action.

Venue:

Plaintiff(s) designate New York County as the place of trial. The basis of this delegation is

**[check box that applies]:**

- ☐ Plaintiff's(s') residence in New York County
- ☐ Defendant's(s') residence in New York County
- ☐ Other **[See CPLR Article 5]:** \_\_\_\_\_

[This is only an example of a complaint. Anyone seeking to file and serve a summons and complaint must state the facts of his/her own case. Print or type, double spaced, using black ink only.]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JOHN JONES,

Plaintiff,

Index No. 123456/2014

- against-

COMPLAINT

GEORGE SMITH,

Defendant.  
-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, John Jones, respectfully shows and alleges as follows:

1. The plaintiff herein, John Jones, is a resident of the State of New York. Mr. Jones resides at 32 Barbary Coast Place, New York, New York.

2. The defendant herein, George Smith, has a principal place of business at 522A Fifth Avenue, New York, New York. Defendant is engaged in the business of building sailboats.

3. Plaintiff Jones desired to have a small sail boat built pursuant to a design prepared by him. He and defendant discussed his needs and specifications for this project.

4. On March 1, 2012, plaintiff and defendant entered into a written agreement. Pursuant thereto, plaintiff agreed to pay the sum of \$90,000 for the sailboat. Plaintiff was obligated to make a down payment of \$10,000 on or before April 1, 2012, with the balance to be due upon delivery of the boat. The defendant agreed to build the boat in accordance with plaintiff's design for the aforesaid price and to complete the work and deliver the boat to a fixed place on or before July 15, 2012.

5. On March 8, 2012, plaintiff delivered to defendant a certified check in the sum of \$10,000, which defendant cashed.

6. Defendant failed to deliver the boat on or before July 15, 2012, as agreed. Plaintiff made numerous phone calls and sent several letters to defendant about the contract, but received no response.

7. By reason of the facts and circumstances stated above, defendant has breached the contract.

8. By reason of the facts and circumstances stated above, plaintiff has been damaged by defendant in the sum of \$40,000.

WHEREFORE, plaintiff demands judgment against defendant in the sum of \$40,000, plus interest from July 15, 2012, costs and disbursements, together with any other relief the Court finds to be just and proper.

Dated: January 4, 2013

---

[sign name]

---

John Jones

[print name]

32 Barbary Coast Place  
New York, New York 11010  
212-473-5151

---

[address and telephone no.]

SAMPLE

VERIFICATION

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_ ss:

\_\_\_\_\_, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

\_\_\_\_\_  
[sign your name in front of a Notary]

\_\_\_\_\_  
[print your name]

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

Spanish



**EL SISTEMA UNIFICADO DE LOS TRIBUNALES DE NUEVA YORK** se compromete a asegurar que todos los procedimientos legales que se ventilen en los tribunales de Nueva York y sus agencias sean accesibles a todos, aún cuando la persona no pueda comunicarse eficientemente en inglés, sea en forma verbal o por escrito.

### **¿Cuáles son los idiomas en que el Sistema de Tribunales ofrece servicios de interpretación?**

**EL SISTEMA DE TRIBUNALES** tiene como parte de su personal, intérpretes de tiempo completo o medio tiempo en los siguientes idiomas: albanés, árabe, bengalí, cantonés, coreano, croata, de señas, español, francés, griego, gujarati, haitiano criollo, hebreo, hindí, holandés, italiano, japonés, mandarín, polaco, punjabí, rumano, ruso, servio, urdu y wolof.

**SI EL TRIBUNAL NO TIENE INTERPRETES DISPONIBLES EN SU PERSONAL**, el sistema de tribunales provee intérpretes de señas o de cualquier idioma a través de contratistas independientes u otras agencias de servicios de interpretación.

### **¿A dónde puedo dirigir mis preguntas o comentarios sobre los servicios de interpretación en el tribunal?**

**EL SISTEMA DE TRIBUNALES** incorpora un departamento dedicado a los servicios de interpretación jurídica (The Office of Court Interpreting Services), el cual es responsable de ayudar a los tribunales en proveer, de manera rápida, precisa y consistente, servicios de interpretación en forma oral, por escrito, o de señas. Esta oficina supervisa y evalúa el cumplimiento de las reglas y directrices de dicha interpretación, coordina el entrenamiento de los intérpretes y se encarga de otros asuntos relacionados con la interpretación jurídica.

**CUALQUIER PREGUNTA O COMENTARIO** tocante a los servicios de interpretación en el tribunal puede ser dirigido a la oficina de los servicios de interpretación jurídica (The Office of Court Interpreting Services) para su debida respuesta o para ser referido al personal apropiado del tribunal correspondiente.

**PARA MAS INFORMACION**, favor de comunicarse con esta oficina por correo electrónico, por teléfono o por escrito a:

### **OFFICE OF COURT INTERPRETING SERVICES**

**OCA DIVISION OF COURT OPERATIONS**

**25 Beaver Street, 8th Floor, New York, New York 10004**

**(646) 386-5670 • [courtinterpreter@courts.state.ny.us](mailto:courtinterpreter@courts.state.ny.us)**

**[InterpreterComplaints@courts.state.ny.us](mailto:InterpreterComplaints@courts.state.ny.us)**



## Appendix G -- Protecting NYC's Freelance Workers



### Consumer Affairs

Lorelei Salas  
Commissioner

## Protecting NYC's Freelance Workers

If you are a freelance worker in NYC, starting May 15, 2017, you have legal rights and a dedicated City resource for workplace questions and complaints: the Office of Labor Policy & Standards within the Department of Consumer Affairs (DCA).

DCA created this overview to inform you about important rights and resources. Please monitor [nyc.gov/dca](http://nyc.gov/dca) for updates and additional information.

### Who is Covered by the Law?

Under the Freelance Isn't Free Act, a **freelance worker** is any individual hired or retained as an independent contractor by a hiring party to provide services for compensation.

Freelancers work in many different industries, generally run their own business, and have specialized skills, capital investment, and the ability to negotiate job terms. Some of the most common industries for freelance workers include:

- film and video
- graphic and web design
- home contracting and repair
- media
- photography
- translation

Certain sales representatives, attorneys, and licensed medical professionals are excluded from the definition of freelance worker.

Whether or not you are an "independent contractor" depends on a variety of factors and the nature of your work arrangement. DCA is developing resources to help workers understand if they have the correct work classification. Please monitor [nyc.gov/dca](http://nyc.gov/dca) for updates. You can also contact DCA at [freelancer@dca.nyc.gov](mailto:freelancer@dca.nyc.gov) if you have questions about your classification as a freelance worker, independent contractor, or employee.

A **hiring party** is anyone, other than a government entity, who hires a freelance worker.

### Your Rights

**You have rights regardless of your immigration status.**

#### Written Contract

All contracts worth \$800 or more must be in writing. This includes all agreements between you and the hiring party that total \$800 in any 120-day period. The written contract must spell out the work you will perform; the pay for the work; and the date you get paid. You and the hiring party must keep a copy of the written contract.

#### Timely Payment

The hiring party must pay you for all completed work. You must receive payment on or before the date that is in the contract. If the contract does not include a payment date, the hiring party must pay you within 30 days after you complete the work.

#### Freedom from Retaliation

It is illegal for a hiring party to penalize, threaten, or blacklist you because you exercised your rights.

Continued on back >

## **Freedom from Discrimination**

The NYC Human Rights Law protects New Yorkers against many kinds of discrimination. *If you experience discrimination, call the NYC Commission on Human Rights Infoline at 1-718-722-3131.*

## **Right to File a Complaint**

You can file a complaint with DCA's Office of Labor Policy & Standards. DCA will notify the hiring party who must respond to the complaint within 20 days. DCA will also provide information to help you find a lawyer, understand the court process, and more. DCA will make a complaint form available by May 15 on [nyc.gov/dca](http://nyc.gov/dca) and through 311. *If you have questions, email [freelancer@dca.nyc.gov](mailto:freelancer@dca.nyc.gov).*

## **Right to Sue**

You can sue the hiring party in court to seek damages. If you are not timely paid for your work, you have a right to collect double the amount you weren't paid, damages for retaliation, and payment of attorneys' fees and costs.

## **Resources**

### **Sample Contracts**

DCA will create model contracts that comply with the law that hiring parties and freelance workers can review. *Please monitor [nyc.gov/dca](http://nyc.gov/dca) for updates.*

### **Low-Cost Health Insurance**

The NYC Human Resources Administration can help you find health insurance and care that meets your needs and budget. *Call 311, text CoveredNYC (or SeguroNYC) to 877877, visit [nyc.gov/health](http://nyc.gov/health) to find a Health Department Certified Application Counselor for free in-person help, or visit the NY State of Health website at [nystateofhealth.ny.gov](http://nystateofhealth.ny.gov).*

### **Public Benefits**

ACCESS NYC is a free service that helps you find out if you may qualify for more than 30 City, state, and federal benefit programs. You can apply online for certain programs through ACCESS NYC. *Visit [nyc.gov/accessnyc](http://nyc.gov/accessnyc) or contact 311 for ACCESS NYC information.*

### **Free Financial Counseling**

NYC Financial Empowerment Centers offer free one-on-one professional financial counseling. The service is confidential, and our professional counselors speak multiple languages. *Call 311 to schedule an appointment or visit [nyc.gov/dca](http://nyc.gov/dca).*

### **Free Tax Preparation**

You may qualify for NYC Free Tax Prep services, which include online filing and in-person filing with an IRS certified VITA/TCE volunteer preparer. *Call 311 or visit [nyc.gov/taxprep](http://nyc.gov/taxprep) for more information.*

### **Education and Training Programs**

The City offers free help for jobseekers. *Visit [nyc.gov/workforce1](http://nyc.gov/workforce1) or call 311 and ask to find a Workforce1 Career Center.*

### **Immigration Assistance**

ActionNYC provides safe, free immigration legal screenings in your community, in your own language. *Visit [nyc.gov/actionnyc](http://nyc.gov/actionnyc) or call 311 and say "ActionNYC."*

### **English Classes**

The NYC Department of Youth and Community Development's English Language Program is designed to help the newest New Yorkers learn English. *Visit [nyc.gov/dycd](http://nyc.gov/dycd) for more information.*

### **About DCA's Office of Labor Policy & Standards**

DCA's Office of Labor Policy & Standards serves as the City's focal point for labor issues and workers in New York City, giving a dedicated voice in City government to the issues facing workers in New York City. The Office enforces key municipal workplace laws, conducts original research, and develops policies that are responsive to an evolving economy and issues affecting workers in New York City, particularly people of color, women, and immigrants.

# **Appendix H -- Full text of the Freelance Isn't Free Act**

## **LOCAL LAWS OF THE CITY OF NEW YORK FOR THE YEAR 2016**

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### **No. 140**

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Introduced by Council Members Lander, Levin, Johnson, Cumbo, Espinal, Chin, Mendez, Ferreras-Copeland, Constantinides, Richards, Rose, Torres, Kallos, Reynoso, Rodriguez, Levine, Treyger, Van Bramer, Gentile, Cabrera, Menchaca, Dickens, Rosenthal, Koslowitz, Miller, Palma, Salamanca, Williams, Cornegy, Gibson, Cohen, Ulrich and the Public Advocate (Ms. James).

### **A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to protections for freelance workers**

*Be it enacted by the Council as follows:*

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 10 to read as follows:

#### *CHAPTER 10*

#### *FREELANCE WORKERS*

*§ 20-927 Definitions.*

*§ 20-928 Written contract required.*

*§ 20-929 Unlawful payment practices.*

*§ 20-930 Retaliation.*

*§ 20-931 Complaint procedure; jurisdiction of director.*

*§ 20-932 Navigation program.*

*§ 20-933 Civil action.*

*§ 20-934 Civil action for pattern or practice of violations.*

*§ 20-935 Application; waiver; effect on other laws.*

*§ 20-936 Follow-up; data collection; reporting.*

*§ 20-927 Definitions. For purposes of this chapter, the following terms have the following meanings:*

*Director. The term “director” means the director of the office of labor standards established pursuant to section 20-a of the charter.*

*Freelance worker. The term “freelance worker” means 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. This term does not include:*

*1. Any person who, pursuant to the contract at issue, is a sales representative as defined in section 191-a of the labor law;*

*2. 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, disbaring or otherwise restricting such person in the practice of law; and*

*3. Any person who is a licensed medical professional.*

*Hiring party. The term “hiring party” means any person who retains a freelance worker to provide any service, other than (i) the United States government, (ii) the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary, (iii) the city, including any office, department, agency or other body of the city, (iv) any other local government, municipality or county or (v) any foreign government.*

*Office. The term “office” means the office of labor standards established pursuant to section 20-a of the charter.*

*§ 20-928 Written contract required. a. 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 party and freelance worker during the immediately preceding 120 days, the contract shall be reduced to writing. Each party to the written contract shall retain a copy thereof.*

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

- 1. The name and mailing address of both the hiring party and the freelance worker;*
- 2. 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*
- 3. The date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined.*

*c. The director may by rule require additional terms to ensure that the freelance worker and the hiring party understand their obligations under the contract.*

*§ 20-929 Unlawful payment practices. a. Except as otherwise provided by law, the contracted compensation shall be paid to the freelance worker either:*

- 1. On or before the date such compensation is due under the terms of the contract; or*
- 2. If the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than 30 days after the completion of the freelance worker's services under the contract.*

*b. Once a freelance worker has commenced performance of the services under the contract, the hiring party shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.*

*§ 20-930 Retaliation. 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.*

*§ 20-931 Complaint procedure; jurisdiction of director. a. Complaint. A freelance worker who is aggrieved by a violation of this chapter may file a complaint with the director within two years after the acts alleged to have violated this chapter occurred. The director shall prescribe the form of the complaint, which shall include, at a minimum:*

*1. The name and mailing address of the freelance worker and of the hiring party alleged to have violated this chapter;*

*2. A statement detailing the terms of the freelance contract, including a copy of such contract if available;*

*3. The freelance worker's occupation;*

*4. A statement detailing the alleged violations of this chapter; and*

*5. A signed affirmation that all facts alleged in the complaint are true.*

*b. Referral to navigation program. At the time the director receives a complaint alleging a violation of this chapter, the director shall refer the freelance worker to the navigation program identified in section 20-932.*

*c. Jurisdiction. 1. The director does not have jurisdiction over a complaint if:*

*(a) Either party to the contract has initiated a civil action in a court of competent jurisdiction alleging a violation of this chapter or a breach of contract arising out of the contract that is the subject of the complaint filed under subdivision a of this section, unless such civil action has been dismissed without prejudice to future claims; or*

*(b) Either party to the contract has filed a claim or complaint before any administrative agency under any local, state or federal law alleging a breach of contract that is the subject of the complaint filed under subdivision a of this section, unless the administrative claim or complaint has been withdrawn or dismissed without prejudice to future claims.*

*2. Where the director lacks jurisdiction over a complaint, the director shall notify the following, in writing, within 10 days of discovering the lack of jurisdiction:*

*(a) The freelance worker; and*

*(b) The hiring party, if the director discovered the lack of jurisdiction after sending a notice to the hiring party pursuant to subdivision d of this section.*

*d. Notice to hiring party. Within 20 days of receiving a complaint alleging a violation of this chapter, the director shall send the hiring party named in the complaint a written notice of complaint. Such notice shall inform the hiring party that a complaint has been filed alleging violations of this chapter, detail the remedies available to a freelance worker for violations of this chapter by a hiring party and include a copy of the complaint and notice that failure to respond to the complaint creates a rebuttable presumption in any civil action commenced pursuant to this chapter that the hiring party committed the violations alleged in the complaint. The director shall send such notice by certified mail and shall bear the cost of sending such notice.*

*e. Response. 1. Within 20 days of receiving the notice of complaint, the hiring party identified in the complaint shall send the director one of the following:*

*(a) A written statement that the freelance worker has been paid in full and proof of such payment;*

*or*

*(b) A written statement that the freelance worker has not been paid in full and the reasons for the failure to provide such payment.*

*2. Within 20 days of receiving the written response, the director shall send the freelance worker a copy of:*

*(a) The response;*

*(b) Any enclosures submitted to the director with the response;*

*(c) Materials informing the freelance worker that he or she may bring an action in a court of competent jurisdiction;*

*(d) Any other information about the status of the complaint; and*

*(e) Information about the navigation program described in section 20-932.*

*3. If the director receives no response to the notice of complaint within the time provided by paragraph 1 of this subdivision, the director shall mail a notice of non-response to both the freelance worker and the hiring party by regular mail and shall include with such notice proof that the director previously mailed the notice of complaint to the hiring party by certified mail. Upon satisfying the requirements of this paragraph, the director may close the case.*

*§ 20-932 Navigation program. a. The director shall establish a navigation program that provides information and assistance, as set forth in subdivision c of this section, relating to the provisions of this chapter. Such program shall include assistance by a natural person by phone and e-mail and shall also include online information.*



*b. The director shall make available model contracts on the website of the office for use by the general public at no cost. Such model contracts shall be made available in English and in the six languages most commonly spoken by limited English proficient individuals in the city as determined by the department of city planning.*

*c. The navigation program shall provide the following:*

- 1. General court information and information about procedures under this chapter;*
- 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 pursuant to this chapter by a freelance worker.*

*d. The navigation program shall include outreach and education to the public on the provisions of this chapter.*

*e. The navigation program shall not provide legal advice.*

*§ 20-933 Civil action. a. Cause of action. 1. Except as otherwise provided by law, a freelance worker alleging a violation of this chapter may bring an action in any court of competent jurisdiction for damages as described in subdivision b of this section.*

*2. Any action alleging a violation of section 20-928 shall be brought within two years after the acts alleged to have violated this chapter occurred.*

*3. Any action alleging a violation of sections 20-929 or 20-930 shall be brought within six years after the acts alleged to have violated this chapter occurred.*

*4. Within 10 days after having commenced a civil action pursuant to subdivision a of this section, a plaintiff shall serve a copy of the complaint upon an authorized representative of the director. Failure to so serve a complaint does not adversely affect any plaintiff's cause of action.*

*5. A plaintiff who solely alleges a violation of section 20-928 must prove that such plaintiff requested a written contract before the contracted work began.*

*b. Damages. 1. A plaintiff who prevails on a claim alleging a violation of this chapter shall be awarded damages as described in this subdivision and an award of reasonable attorney's fees and costs.*

*2. Violation of section 20-928. (a) A plaintiff who prevails on a claim alleging a violation of section 20-928 shall be awarded statutory damages of \$250.*

*(b) A plaintiff who prevails on a claim alleging a violation of section 20-928 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 for the violation of section 20-928 in addition to the remedies specified in this chapter for the other violations.*

*3. Violation of section 20-929. In addition to any other damages awarded pursuant to this chapter, a plaintiff who prevails on a claim alleging a violation of section 20-929 is entitled to an award for double damages, injunctive relief and other such remedies as may be appropriate.*

*4. Violation of section 20-930. In addition to any other damages awarded pursuant to this chapter, a plaintiff who prevails on a claim alleging a violation of section 20-930 is entitled to statutory damages equal to the value of the underlying contract for each violation arising under such section.*

*§ 20-934 Civil action for pattern or practice of violations. a. Cause of action. 1. Where reasonable cause exists to believe that a hiring party is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.*

*2. An action pursuant to paragraph 1 of this subdivision shall be commenced by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.*

*3. Nothing in this section prohibits:*

*(a) A person alleging a violation of this chapter from filing a civil action pursuant to section 20-933 based on the same facts as a civil action commenced by the corporation counsel pursuant to this section.*

*(b) The director from sending a notice of complaint pursuant to section 20-931, unless otherwise barred from doing so.*

*b. Civil penalty. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than \$25,000 for a finding that a hiring party has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city.*

*§ 20-935 Application; waiver; effect on other laws. a. Except as otherwise provided by law, any provision of a contract purporting to waive rights under this chapter is void as against public policy.*

*b. The provisions of this chapter supplement, and do not diminish or replace, any other basis of liability or requirement established by statute or common law.*

*c. Failure to comply with the provisions of this chapter does not render any contract between a hiring party and a freelance worker void or voidable or otherwise impair any obligation, claim or right related to such contract or constitute a defense to any action or proceeding to enforce, or for breach of, such contract.*

*d. No provision of this chapter shall be construed as providing a determination about the legal classification of any individual as an employee or independent contractor.*

*§ 20-936 Follow-up; data collection; reporting. a. No later than six months after the director sends to a freelance worker either a hiring party's response and accompanying materials or a notice of non-response pursuant to paragraph 2 or 3 of subdivision e of section 20-931, the director shall send the freelance worker a survey requesting additional information about the resolution of the freelance worker's claims. Such 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. Such survey shall state clearly that response to the survey is voluntary.*

*b. The director shall collect and track information about complaints alleging violations of this chapter. The information collected shall include, at minimum:*

- 1. The identity of the hiring party alleged to have violated this chapter;*
- 2. The freelance worker's occupation;*
- 3. The section of this chapter that was alleged to have been violated;*
- 4. The value of the contract;*
- 5. The response or non-response from the hiring party; and*

*6. Information from a completed survey identified in subdivision a of this section.*

*c. One year after the effective date of the local law that added this chapter, and every fifth year thereafter on November 1, the director shall submit to the council and publish on its website a report regarding the effectiveness of this chapter at improving freelance contracting and payment practices. That report shall include, at a minimum:*

*1. The number of complaints the director has received pursuant to this chapter;*

*2. The value of the contracts disaggregated into ranges of \$500 and by section of this chapter alleged to have been violated;*

*3. The numbers of responses and non-responses received by the director disaggregated by contract value into ranges of \$500 and by section of this chapter alleged to have been violated;*

*4. The proportion of surveys received from freelance workers that indicate that they pursued their claims in court and the proportion of surveys received from freelance workers that indicate that they pursued their claims through an alternative dispute resolution process and a summary of the outcomes of such cases; and*

*5. Legislative recommendations for this chapter, including consideration of whether certain occupations should be exempted from the scope of the definition of freelance worker in section 20-927.*

§ 3. This local law takes effect 180 days after it becomes law and applies only to contracts entered into on or after the effective date of this local law, except that the director shall take any actions necessary for the implementation of this local law, including the promulgation of rules, before such date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on October 27, 2016 and approved by the Mayor on November 16, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 140 of 2016, Council Int. No. 1017-C of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS

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February 29, 2016

Start: 1:14 p.m.

Recess: 4:05 p.m.

HELD AT: Council Chambers - City Hall

B E F O R E: RAFAEL L. ESPINAL, JR.  
Chairperson

COUNCIL MEMBERS: Vincent J. Gentile  
Julissa Ferreras-Copeland  
Karen Koslowitz  
Rory I. Lancman

## A P P E A R A N C E S (CONTINUED)

Latifa Harmon

Freelance Professional Development Consultant

Just Ramona

Freelance Pattern and Sample Maker

Chris Malley

Freelance Video Editor & Motion Picture Animator

Amit Bagga, Deputy Commissioner

Department of Cultural Affairs, DCA

Nick Smithberg, Executive Director

Paid Sick Leave Division

Department of Cultural Affairs, DCA

Alba Pico, Acting Commissioner

Department of Cultural Affairs, DCA

Steven Kelly, Legal Director

Department of Cultural Affairs, DCA

Jill Maxwell, Deputy Director

Legal and Investigations

Paid Sick Leave Division

Department of Cultural Affairs, DCA

Sarah Horowitz, Founder and Executive Director

Freelancers Union

Mary Rosario, Member of 32BJ

Appearing for: Shirley Aldebol

Vice President of 32BJ SIEU

Deborah Axt, Co-Executive Director

Make the Road new York

Haeyoung Yoon, Executive Director

Strategic Partnership

National Employment Law Project, NELP



Andrew Rasiej, Chairman  
New York Tech Meetup

Adriana Scotti, Vice President  
Economic Development  
Appearing for: Carlos Scissura, President & CEO  
Brooklyn Chamber of Commerce

David Levine, CEO & Co-Founder  
American Sustainable Business Council

Jeff Wald, Founder & President  
Work Market

Morisha Mebla  
Freelance Writer

Kati Sipp, Director  
National Guest Workers Alliance

Dr. Ruth Milkman, Professor of Sociology  
CUNY Graduate Center

Lucy Reading  
Freelance Designer and Illustrator

Jessica Perez  
Freelance Fashion Model and Founder and CEO  
Tycoon App

Deborah Cowell  
Freelance Book Editor & Writer

Ellen Sandles  
Freelance Court Reporter

Steven Lowell  
Freelance Voice Actor

Tatiana Potts  
Professional Linguist

Randy Jenner  
Freelance Writer/Editor

Haroon Simbaragan (sp?), Economist/Professor  
New York University

Alex Abelin, CEO  
Liquid Talent

Paul Kombolka (sp?)

Jessie Strauss, Lawyer and Founder  
IndePayment.com

Saraf Sadap Lagiwadi, Musician & Founder  
Musicians for Musicians

[background comments, sound check, pause]

[gavel]

CHAIRPERSON ESPINAL: Good morning. My name is Rafael Espinal. I am the Chair of the Consumer Affairs Committee. I am joined by Brad Lander who is not a member of the committee, but a sponsor--one of the--the main sponsor of this bill. Today, we will be conducting a hearing on a bill, Intro 1017-A, which will establish protections for freelance workers. The nature of employment in America has been undergoing significant changes in recent decades. One of these changes is an increase in the number of freelance workers, workers who perform work on a contractual basis rather than within the traditional and typical employer/employee context. According to the Freelancers Union, there are almost 53 million freelances across the nation and 1.3 million freelances in New York City. For many workers self-employment is a choice while for others it is a matter of economic reality. Regardless of whether freelancing is a choice or a necessity, freelance workers do not have the same protections as regular employees, and this is a problem. A Freelancers Union Survey of its 22--

280,000 members found that over 70% of their members had lost money due to delinquent clients, averaging nearly \$6,000 in 2014. I'm sure we all know someone who has been in this situation. I know a graphic designer who lost \$3,000 in unpaid earnings. Government protections exist to enforce wage theft for traditional employees. The New York State Department of Labor recovered \$30 million for 27,000 employees in 2014, but freelancers must take their case to Small Claims or Civil Court. Some clients resist giving freelancers a contract further complicating collection of payment for self-employed workers. Intro No. 1017-A seeks to normalize and standardize contract procedures for--for freelancers by requiring a written contract written in a language understood by both parties for work valued at more \$200. The contract must include an itemization of services, the rate of pay and the date of which payment will be made. The bill will make it a violation of City law to fail to pay your freelancer within 30 days of the date agreed to in the contract, and it would prohibit retaliation against a freelancer for exercising these rights. The bill provides for agency enforcement empowering the

Department of Consumer Affairs to receive complaints for violations of the requirement to contract in writing and to pay compensation within 30 days. When DCA receives a complaint, the agency may attempt to mediate a mutually agreeable resolution. The agency is also empowered to investigate complaints--to investigate complaints, and upon a finding of violation, it may impose penalties including equitable relief, double damages and attorney fees. The agency may also impose a civil penalty of up to \$5,000 for violation of this law. Agency enforcement will shift to the Office of Labor Standards once that office is established by the Mayor. The bill also creates a private right of action to allow freelancers to bring action in court for violation of its provisions and provides for double damages and attorney's fees. As a freelance, you can already bring an action into court for breach of contract, but most freelancers fail to take this course of action because it is time consuming and expensive. According to the Freelancers Union Survey, only 5% of freelancers who were not paid for their work actually pursue their rights in court.

This is important because it will make it much easier for freelancers to hire an attorney, and sue in court to recover against companies that hire freelancers, and think they can get away with later payment or non-payment. According to the Freelancers Union, 34% of America's workers have done some freelance work. By all indications, this is a sector of work that will continue to grow, and that is in need of regulation. The self-employed are important economic contributors. They need and deserve protections to ensure that they are treated fairly in our marketplace. All workers are entitled to a fair and just workplace, and as the nature of work continues to change, it is our job as legislators to think creatively about how to broaden our laws to ensure all people are protected. I'd like to invite the bill's sponsor, Council Member Brad Lander to say a few words.

COUNCIL MEMBER LANDER: Thank you very much, Chair Espinal for moving this hearing along so quickly and for a co-sponsor in support of this bill. I want to thank the 27 members of the Council that have already signed on in support of this bill as well as the Public Advocate. I want to thank the

staff who have worked so hard on it Katelyn Caruso and Lami(sp?) Rafman for their work getting us here today, and I do want to give a special shout out to the Freelancers Union who have really brought freelancers together to help us see what's going on in the new economy and write new rules for the new economy to make sure that all workers are protected and can thrive in New York City. The principle here is very simple. Everybody deserves to get paid for the work they do on time and in full, and even as our economy evolves and there's more freelance work, and more independent work, those workers deserve to get paid on time and in full for the work they do. And while we have protections for traditional W-2 workers, not always perfect, but protections in place where government works to make sure that if your wages are stolen you have recourse. We have to add that kind of recourse, those kinds of protections for independent workers, for freelancers, for a growing sector of our economy. The Chair did a good job of-- of saying that for some people freelance work is a choice. People are choosing flexibility. For some people there's really--and it's not a choice. That's the way that their work is organized, and they have

to do it if they want to do it, but it doesn't matter whether you're choosing it or whether you're--whether you come to it, and how you get there, you've got to have recourse. We want this sector of the economy in New York City, what independent workers mean here, what freelancing means here is extremely valuable to New York's creativity, to our economy. For those people that are traditional W-2 workers, we want to make sure they're properly classified. But for those people who are doing independent work and freelancing, we want you to thrive here in New York City, and we want the relationships you build, the contracts you sign, the work you do to be recognized, to be protected, to be valued. So, that's what we're doing here today. Now, we've got our work cut out for us because this isn't being done yet anywhere in the country. So we're blazing a new trail. We're the ones trying to write new rules for the new economy. I'm thrilled with the bill as it is 1017-A, and I appreciate all the work that has gone in, and the feedback we've gotten to develop it here. But we are having a genuine hearing today in the real sense of the word hearing. We are listening, and I'm excited. We're first going to listen to some



freelancers who have been stiffed to make sure that experience is what's front and center, and I appreciate the Department of Cultural Affairs being willing to listen first to--to those experiences. That's appreciated by all of us, but then we're going to listen to what everybody has got to say about how this bill is drafted, about the protections we're trying to provide, about amendments that might make it better or more effective and stronger. And then, we're going to work together to gather additional co-sponsors to bring this forward and to implement real worker protections in New York City. So thank you very much, Mr. Chair and to all my colleagues.

CHAIRPERSON ESPINAL: Thank you, Brad. I just want to make note that we've been joined by one of the bill's sponsors Margaret Chin, and we also have a committee member Karen Koslowitz from Queens. This is again an important piece of legislation that seeks to respond to the changing nature of work. To frame the issue and set the stage, the Committee will first hear from a panel of freelancers about their experience in today's big economy. We will then hear testimony from the Administration, advocates and the public. With that, I'd like to invite the first

panel, and please excuse me if I mis--mispronounce your name. We have Justice Raymond, Ramona or Raymond. We have Latifa Harmon and Chris Malley. [pause] Just come up and take a seat. [background noise, pause] When you're ready to testify, just press the button and then state your name.

LATIFA HARMON: I'll go first. My name is Latifa Harmon. Thank you for the opportunity to speak with you today. I work with businesses as professional development consultant. I've been working as a freelancer since 2008 and full time since 2010. I live and work in Brooklyn, New York. Since--since I began freelance, I have consistently had a variety of different issues with non-payment. I routinely work with clients who provide only partial payments on work delivered months after the agreed upon date. [coughs] Last year, I was stiffed 5,000 hours by a client who has yet to pay me. This particular client hired me for a package of training and development services to improve their business performance. I prepared a scope of work with all the details about my costs, services, and how their business would benefit. In order to secure the job, I even offered them a discounted flat rate of 10,000

hours for the whole project. We signed a contract, which stipulated a retainer and deposit of \$2,700 to be paid up front. The client did pay that. They also paid a subsequent installment of \$2,300 just before the completion of the project, but despite the fact that my work was approved at every milestone, they refused to pay the balance of 5,000 hours at the end of the project after three months of work completed. I invoiced this client many times follow up on countless emails and phone calls with no response. To this day I am reaching out, and haven't really gotten any response as far as when the payment will be received or if it's actually in the mail or anything. Meanwhile, they have implemented my services and their business is actually profiting from my work. On too many other occasions, I have worked with clients who lagged in payment, and frequently accept a lower amount in order to be paid at all. I currently have another client at a very large corporation who after two months of work is just paying off her initial retainer. The amount I am typically able to collect often represents a steep difference from the agreed upon rate. However, I often take the reduced amount because I know this

will be my best chance of getting paid at all. I only pursue projects with larger clients and companies who can easily afford to pay me as their contractor, but even with larger corporations they can sometimes take up to six months to produce a check, which has--which is con--really consistent honestly with larger corporations. In my opinion, companies will play hardball with freelancers because they are aware that there aren't any real legal protections for us. Currently, the penalties for being non-compliant only lie within the realm of an actual lawsuit, which many of us don't pursue because if we aren't getting paid, and can barely pay our bills, how can we afford to take someone to court? This makes it easier for clients who refuse to pay a contract off. We are now--we are the new cheap labor because we aren't legally protected. For us--for many of us freelancers this is our livelihood, and it makes it difficult for us to make ends meet. As a freelancing woman of color I have to sell my services for half as much and pitch twice as hard to gain a contract sometimes. In many cases, I have to drastically reduce prices for a company to even consider my services, and then I have to endure many

challenges on a company's behalf to nurture a revolving ongoing relationship. This is a lot in intellectual costs, and if ever calculated properly could result in millions if not billions of unpaid services for free--freelancers as a whole. In my opinion, the Freelance Isn't Free will allow us the immediate protections for our work. Freelances are becoming more of the norm in a modernized workforce. We bring value to companies of all sizes, and many of us provide one-of-a-kind services. It's important for us to step up to created needed payment protections for freelancers now before this becomes a never ending battle in the future. There are currently 1.3 freelances in New York City and the numbers are increasing daily. We should be paid for our work. We deserve the right to a decent living just as any other industry. Thank you.

CHAIRPERSON ESPINAL: [off mic] Thank you. [applause]

JUST RAMONA: I'm Just Ramona. Good afternoon, honorable council members, guests and other freelancers. I first want to thank you for your time and opportunity to speak with you today. For the past 20 years I've been working as a

freelancer in the fashion industry as a pattern maker and sample maker. As a freelancer it's always tough actually trying to make ends meet, and make a living. As a pattern maker, I'm paid more for my time and expertise as well. So it gets a little tricky when it comes to being paid actually because it's not a tangible item that you can just pick up and walk out with. I've encountered non-payment at many points throughout my career, and late payments even more often. Just recently, New York Fashion Week 2015, I was asked to make patterns and samples for a collection, a 14-piece collection showing September 21st. On August 24, 2015, my client and I signed off on a contract. Normally, I'm paid half up front and then half on delivery. [laughs] Unfortunately, she shows up with a quarter of that first payment. And so during Fashion Week, which is the busiest time of the year, freelancers like myself are under tons of pressure trying to kind deal with--juggle five or six clients. It's crazy when you're trying to get paid what you should be getting paid, and they're coming back and forth at you. By September 10th, which was 11 days before her show, I--actually she only submitted another quarter of the balance, the actual

first payment. This partial payment totally sent me in the red. As a result, I was unable to pay my sample maker, and my pattern tech that worked with me, and as a freelance business, I count on accounts receivable every week to make my ends meet. Because of this, I ended up having to do most of the work myself because I couldn't pay my people that were helping me.

COUNCIL MEMBER LANDER: [off mic] Right.

JUST RAMONA: Finally, after staying awake for quite a few 18-hour days, I completed the last pieces the morning of the fashion show. The next day after her showing, my client was supposed to pay me the balance, she hands me a check for \$355 [laughs] which left a balance of about \$2,300. Now, honestly, as angry as I was, what could I really do? I paid some of the people that I--that worked with me out of my own pocket. So, therefore, it kind of left me holding the bag with my rent, my rent on the studio space and my own personal bills. Over that time, believe it or not, I did get paid, but it took her until January 11th of 2016 because she was sending me payments of \$120 one week, two weeks later \$250. This was a four-month process. It is totally

unacceptable to treat freelancers like we are a bank. We do not have excess funds to cover for clients' poor management of business finances. The Freelance Isn't Free Bill would have made this client aware that she was obligated by law to pay me in full within 30 days, and there will be--will be a consequence that she would have had to face. Passing this bill will give freelancers a leg to stand on when just trying to make an honest living doing what we love. We are here asking for a fair shake. That's all. I thank you very much for your time, and the opportunity again to tell my story. [applause]

CHAIRPERSON ESPINAL: We usually don't allow applause, but [laughter] I--I think I'm cool with that. So you can clap there. [laughter]

CHRIS MALLEY: Hi. My name is Chris Malley. Thanks for the opportunity to speak with you today. I've worked in the film and video industry as a video editor and motion graphics animator for eight years. I moved to New York five years ago because this is the center of my industry. In the time I've been working here every year I've had to face non-payment of some significant amount of money. In 2016, I started with over \$10,000 of outstanding



payments from my clients. Most of this was from a client who hadn't paid me since November of last year, but over \$2,000 was from a client who hadn't-- who I hadn't worked with since 2014. In both cases, the contract was never signed. In my field, asking for a contract is usually a way to get over for a gig. So you're conditioned not to ask for them. Additionally, in both instances, I was one of over a dozen contractors who had to chase down payments from unresponsive clients. I'm here today with another colleague of mine who can attest to non-payment and with both of these clients. In the case of the larger sum, almost \$8,000, my client hired me on retainer and agreed a traditional 15 pay--15-day payment terms. I worked with them under these terms for four months, and at the end of November I didn't receive payment. I began asking questions, and my client offered various reasons to avoid paying me what was due. In December, they told me to stop coming into their office indefinitely. In January, I finally managed to get some payment, less than a third of what was owed to me. My client presented this partial payment as doing me a favor. I was then asked along with some of the other contractors to

return to finish old projects and to begin new ones with no timelines or terms set for repaying me--for payment of the remaining amount. In my case, this was over \$5,000. After three months, I was finally paid in full, but this only came after repeatedly refusing to come--come in to complete further work until repayment was made. Going three months without receiving expected in that much money put me in a terrible financial position especially since it was over the holidays. I wish I could say these were out of the ordinary experiences, but my colleagues and I routinely spend days if not weeks in hours along chasing down unresponsive and deadbeat clients. We're often told that we have to settle for less, and in some extreme cases, this ends up being--failing to meet the minimum wage in terms of hours put in for the work alone. In mandating contracts, the Freelance Isn't Free Act has the potential to enact a major change from freelancers in the city--video and film industry. By getting payments and timelines in writing before beginning a project, clients will be able to treat--they will not be able to treat those terms as negotiable after the work has been completed. For the multiple instances of late, short

2 JUST ROMAN: [interposing] Which is  
3 prompting more companies --

4 LATIFA HARMON: More corporations have  
5 caught onto it.

6 JUST RAMONA: --have started to doing  
7 that.

8 LATIFA HARMON: They start--caught--they  
9 caught onto the fact that this type--

10 JUST RAMONA: [interposing] When the  
11 economy was--

12 LATIFA HARMON: --of work is out there.  
13 So they've used us since then, and they've built  
14 their companies up since then, and yet many of us--I--  
15 -I can even name payments that I haven't received  
16 since 2008.

17 JUST RAMONA: A lot of times they get  
18 around because usually, especially in the fashion  
19 industry if you're with major corporations they'll  
20 usually hire you through headhunters.

21 LATIFA HARMON: Uh-huh.

22 JUST RAMONA: And so it's usually the  
23 headhunter that you are actually going after to get  
24 your money and, therefore, and they have the  
25 attorneys. If you don't have an attorney to go after

**Employment Discrimination Complaint Form**  
**(Includes Licensing, Contract Work, Internships, Volunteer Position, Discrimination by a Union)**

**Instructions**

1) Please fill out the complaint form, answering all of the questions. If you are filling out the form on a computer, please print it immediately when you are finished. **You may not be able to save the completed form.** If possible, please type. If you are filling out the form by hand, please print. ***Please do not write in the margins or on the back of this form.***

**Please note: A delay could occur in the filing and the investigation of your complaint if the form is not filled out properly or if the information you provide is not legible.**

2) After you fill out the form, please have this complaint form notarized. Please contact our office if you have questions about notarization (see below). Notary services are available at the Division free of charge. If you are unable to come to one of our offices, and are otherwise unable to obtain notarization, please contact one of our offices for further information.

3) Attach copies of any documents that you think will help the Division investigate your case (pay stubs, letter of termination, performance evaluations, disciplinary notices, etc.).

4) Return the complaint form to the office closest to you. See below for the list of office locations. You may return the complaint by postal mail or personal delivery. You may also email your complaint to [complaints@dhr.ny.gov](mailto:complaints@dhr.ny.gov) or fax it to (718) 741-8322.

5) Keep a copy of your complaint, and copies of any documents that you attach, for your own records.

6) The completed and notarized complaint must be returned to the Division promptly. After the Division accepts your complaint, this form will be sent to the company or person(s) whom you are charging with discrimination.

**Time Limit for Filing**

Please note: You must file your complaint within **one year** of the most recent act of alleged discrimination. If you were terminated, you must file within one year of the date you were first informed you would be terminated.

***If you need further assistance or require an accommodation for a disability, please call one of our offices, make an appointment for a personal meeting or visit our website at [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint). Interpreter services are also available at no cost upon request.***

**NYS Division of Human Rights Offices**

**Albany**

Agency Building 1, 2nd Floor  
Empire State Plaza  
Albany, New York 12220  
Telephone No. (518) 474-2705

**Buffalo**

Walter J. Mahoney State Office Bldg.  
65 Court Street, Suite 506  
Buffalo, New York 14202  
Telephone No. (716) 847-7632

**Office of Sexual Harassment  
Issues/Queens**

55 Hanson Place, Room 900  
Brooklyn, New York 11217  
Telephone No. (718) 722-2060

**Binghamton**

44 Hawley Street, Room 603  
Binghamton, New York 13901  
Telephone No. (607) 721-8467

**Long Island (Nassau)**

50 Clinton Street, Suite 301  
Hempstead, New York 11550  
Telephone No. (516) 539-6848

**Rochester**

One Monroe Square  
259 Monroe Avenue, Suite 308  
Rochester, New York 14607  
Telephone No. (585) 238-8250

**Bronx Central Office**

One Fordham Plaza, 4<sup>th</sup> Floor  
Bronx, NY 10458  
Telephone No. (718) 741-8400

**Long Island (Suffolk)**

250 Veterans Memorial Highway,  
Suite 2B-49  
Hauppauge, New York 11788  
Telephone No. (631) 952-6434

**Syracuse**

John J. Hughes State Office Building  
333 E. Washington Street, Room 543  
Syracuse, New York 13202  
Telephone No. (315) 428-4633

**Brooklyn**

55 Hanson Place, Room 304  
Brooklyn, New York 11217  
Telephone No. (718) 722-2385

**Manhattan**

Adam Clayton Powell Jr. State Off. Bldg.  
163 West 125th Street, 4<sup>th</sup> Floor  
New York, New York 10027  
Telephone No. (212) 961-8650

**White Plains**

7-11 South Broadway, Suite 314  
White Plains, New York 10601  
Telephone No. (914) 989-3120

## **What is Covered by the Human Rights Law?**

The Division of Human Rights investigates complaints of employment discrimination based on:
<b>Age</b> (if you are at least 18 years of age; those under 18 are protected for all other characteristics listed below)
<b>Arrest Record</b> (that was resolved in your favor or adjourned in contemplation of dismissal or youthful offender record or sealed conviction record)
<b>Conviction Record</b> (only for private employers; against public employers, you must file directly in state court)
<b>Creed / Religion</b> (religious membership, belief, practice, or observance, including sabbath or holy day observance, or wearing of attire, clothing or facial hair in accordance with your religion; or discrimination because you do not have a religious belief)
<b>Disability</b> (a physical or mental condition; includes denial of reasonable accommodation)
<b>Victim of Domestic Violence</b> (you or your child was a victim of domestic violence; including reasonable accommodation in the form of leave time needed because of the domestic violence including medical, psychological, legal or other services, or for safety)
<b>Familial Status</b> (if you are pregnant, have a child, or are in the process of obtaining custody of a child, or have a child or children under age 18 in your household)
<b>Gender Identity or Expression</b> (actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender; complaints involving the need for accommodation of gender dysphoria or other related medical condition can also be filed under disability)
<b>Marital Status</b> (single, married, separated, divorced, widowed)
<b>Military Status</b> (including military reserves or being a veteran)
<b>National Origin</b> (the country where you or your ancestors were born)
<b>Predisposing Genetic Characteristics</b> (information from a genetic test)
<b>Pregnancy-Related Condition</b> (a medical condition related to pregnancy or childbirth, including lactation, or denial of reasonable accommodation of such condition)
<b>Race/Color</b> (because you are Asian, Black, White, etc.; includes ethnicity; includes traits historically associated with race such as hair texture or hairstyle)
<b>Retaliation</b> (if you filed a discrimination case before, were a witness or helped someone else with a discrimination case, or opposed or reported discrimination due to category listed on this page)
<b>Sex</b> (because of your gender, includes sexual stereotyping, sexual harassment, pregnancy)
<b>Sexual Orientation</b> (heterosexual, homosexual, bisexual, asexual, whether actual or perceived)
<b>Use of Guide Dog, Hearing Dog, or Service Dog</b> (use of a professionally trained dog for a disability)
<b>Relationship or Association</b> (with a member or members of a protected category(ies) listed above)
The Division investigates complaints only if the discrimination is based on one or more of the above reasons. The Division cannot investigate unfair treatment that does not involve one of these reasons. If you do not see anything in this list that applies to your situation, please contact the Division of Human Rights to speak to a staff member.

# Employment Complaint Form

Although workers, interns and volunteers of all ages are protected, you must be 18 years or older to file a complaint. A parent, guardian or other person having legal authority to act in the minor's interests must file on behalf of a person under the age of 18.

1. Your contact information:					
First Name			Middle Initial/Name		
Last Name					
Street Address/ PO Box			Apt or Floor #:		
City			State		Zip Code
If you are filing on behalf of another, provide the name of that person:			Date of birth:		Relationship:
2. Regulated Areas: Check the area where the discrimination occurred: (If you wish to file against multiple entities, for example employer and temp agency, please file a separate complaint against each.) <div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Employment (<i>including paid internship</i>) <input type="checkbox"/> Internship (<i>unpaid</i>) <input type="checkbox"/> Contract Work (<i>independent contractor, or work for a contractor</i>) <input type="checkbox"/> Volunteer Position</div><div><input type="checkbox"/> by a Labor Organization <input type="checkbox"/> Apprenticeship Training <input type="checkbox"/> by a Temp or Employment Agency <input type="checkbox"/> Licensing</div></div>					
3. You are filing a complaint against:					
Employer, Worksite, Agency or Union Name					
Street Address/ PO Box					
City			State		Zip Code
Telephone Number: (        )                                  Ext.					
In what county or borough did the violation take place?					
Individual people who discriminated against you: Name: _____ Title: _____ Name: _____ Title: _____ If you need more space, please list them on a separate piece of paper.					
4. Date of alleged discrimination ( <i>must be within one year of filing</i> ): The most recent act of discrimination happened on:      _____ month      day      year					
5. For employment and internships, how many employees does this company have? <div style="display: flex; justify-content: space-around;"><span><input type="checkbox"/> 1-14</span><span><input type="checkbox"/> 15-19</span><span><input type="checkbox"/> 20 or more</span><span><input type="checkbox"/> Don't know</span></div>					

<b>6. Are you currently working for this company?</b>	
<input type="checkbox"/> Yes. Date of hire: _____ <div style="text-align: center; margin-left: 100px;">             _____ month    _____ day    _____ year           </div>	What is your position?
<input type="checkbox"/> No. Last day of work: _____ <div style="text-align: center; margin-left: 100px;">             _____ month    _____ day    _____ year           </div>	What was your position?
<input type="checkbox"/> I was never hired. Date of application: _____ <div style="text-align: center; margin-left: 100px;">             _____ month    _____ day    _____ year           </div>	What position did you apply for?

<b>7. Basis of alleged discrimination:</b> Check <b>ONLY</b> the boxes that you believe were the reasons for discrimination, and fill in specifics only for those reasons. Please look at page 2 of "Instructions" for an explanation of each type of discrimination.	
<input type="checkbox"/> <b>Age:</b> Date of Birth: _____	<input type="checkbox"/> <b>Familial Status:</b>
<input type="checkbox"/> <b>Arrest Record</b>	<input type="checkbox"/> <b>Military Status:</b> <input type="checkbox"/> Active Duty <input type="checkbox"/> Reserves <input type="checkbox"/> Veteran
<input type="checkbox"/> <b>Conviction Record</b>	<input type="checkbox"/> <b>Marital Status</b> <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed
<input type="checkbox"/> <b>Creed/ Religion:</b> Please specify: _____	<input type="checkbox"/> <b>National Origin:</b> Please specify: _____
<input type="checkbox"/> <b>Disability:</b> Please specify: _____	<input type="checkbox"/> <b>Predisposing Genetic Characteristic:</b>
<input type="checkbox"/> <b>Domestic Violence Victim Status</b>	<input type="checkbox"/> <b>Pregnancy-Related Condition:</b> Please specify: _____
<input type="checkbox"/> <b>Gender Identity or Expression, Including the Status of Being Transgender</b>	<input type="checkbox"/> <b>Sexual Orientation:</b> Please specify: _____
<input type="checkbox"/> <b>Race/Color or Ethnicity:</b> Please specify: _____ <input type="checkbox"/> Trait historically associated with race such as hair texture or hairstyle	<input type="checkbox"/> <b>Sex:</b> Please specify: _____ Specify if the discrimination involved: <input type="checkbox"/> Pregnancy <input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> <b>Use of Guide Dog, Hearing Dog, or Service Dog</b>	
If you believe you were treated differently after you filed or helped someone file a discrimination complaint, participated as a witness to a discrimination complaint, or opposed or reported discrimination due to any category above, check below: <input type="checkbox"/> <b>Retaliation:</b> How did you oppose discrimination: _____	
If you believe you were discriminated against because of your relationship or association with a member or members of a protected category listed above, indicate the relevant category(ies) above, and check below. <input type="checkbox"/> <b>Relationship or association</b>	

**8. Acts of alleged discrimination:** *What did the person/company you are complaining against do? Check all that apply*

<input type="checkbox"/> Refused to hire me	<input type="checkbox"/> Gave me a disciplinary notice or negative performance review	<input type="checkbox"/> Denied my request for an accommodation for my disability, or pregnancy-related condition	<input type="checkbox"/> Sexual harassment
<input type="checkbox"/> Fired me/laid me off	<input type="checkbox"/> Suspended me	<input type="checkbox"/> Denied me an accommodation for domestic violence	<input type="checkbox"/> Harassed or intimidated me on any basis indicated above
<input type="checkbox"/> Demoted me	<input type="checkbox"/> Did not call back after lay-off	<input type="checkbox"/> Denied me an accommodation for my religious practices	<input type="checkbox"/> Denied services or treated differently by a temp or employment agency
<input type="checkbox"/> Denied me promotion/ pay raise	<input type="checkbox"/> Paid me a lower salary than other co-workers doing the same job	<input type="checkbox"/> Denied me leave time or other benefits	<input type="checkbox"/> Denied a license by a licensing agency
<input type="checkbox"/> Denied me training	<input type="checkbox"/> Gave me different or worse job duties than other workers doing the same job	<input type="checkbox"/> Discriminatory advertisement or inquiry or job application	<input type="checkbox"/> Other:



## 9. Description of alleged discrimination

***Tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory. TYPE OR PRINT CLEARLY.***

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

*If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. **DO NOT WRITE IN THE MARGINS OR ON THE BACK OF THIS FORM.***

## Notarization of Complaint

Based on the information contained in this form, I charge the herein named respondent(s) with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment). This complaint will protect my rights under federal law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice. (If you have another action pending and still wish to file, please contact our office to discuss.)

**PLEASE INITIAL** \_\_\_\_\_

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.

\_\_\_\_\_  
Sign your full legal name

Subscribed and sworn before me  
This      day of      , 20

\_\_\_\_\_  
Signature of Notary Public

County:      Commission expires:

***Please note: Once this form is completed, notarized, and returned to the New York State Division of Human Rights, it becomes a legal document and an official complaint with the Division.***

**Additional Information, Page 1:** *This page is for the Division's records and **will not be sent to the company or person(s) whom you are filing against.***

**1. Contact information**

**My primary telephone number:**

**My secondary telephone number:**

**My date of birth:**

**(Required) My email address:**

*The Division uses email, whenever possible, to communicate with the parties to complaints. This avoids delays and lost mail, and increases the efficiency of Division case processing. Therefore, you are required to provide an email address, if you have one, and to keep us advised of any change of your email address. The Division will not use your email address for any non-case related matters.*

Contact person (Someone who does not live with you but will know how to contact you if we cannot reach you)

**Contact person's name:**

**Contact person's telephone number:**

**Contact person's address**

**Contact person's email address:**

**Contact person's relationship to me:**

**2. Special needs:** I am in need of:

- ☐ Interpretation (if so what language?): \_\_\_\_\_
- ☐ Accommodations for a disability: \_\_\_\_\_
- ☐ Privacy. Keep my contact information confidential as I am a victim of domestic violence
- ☐ Other: \_\_\_\_\_

**3. Settlement / Conciliation:** To settle this complaint, I would accept:

*(Explain what you want to happen as a result of this complaint. Do you want a letter of apology, job offer, return to the job, an end to the harassment, compensation, etc.?)*

**4. Witnesses (information about witnesses may be shared with the parties as necessary for the investigation)** The following people saw or heard the discrimination and can act as witnesses:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: (     ) \_\_\_\_\_ - \_\_\_\_\_

Relationship to me: \_\_\_\_\_

What did this person witness?

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: (     ) \_\_\_\_\_ - \_\_\_\_\_

Relationship to me: \_\_\_\_\_

What did this person witness?

## Additional Information, Page Two

5. Did you report or complain about the discrimination to someone else? ☐ Yes ☐ No

If yes, how exactly did you complain about the discrimination? (To whom did you complain?)

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Date you reported or complained about discrimination:

\_\_\_\_\_  
month

\_\_\_\_\_  
day

\_\_\_\_\_  
year

What happened after you complained?

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If you did not report the discrimination, please explain why:

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6. Were other people treated the same as you? How?

*(For example, people who were harassed by the same manager, disciplined or terminated for the same reasons, did not receive an accommodation for the same reasons, etc.).*

*If you are complaining about discrimination relating to race, national origin, age, religion, etc. please describe their races, national origins, religions, etc.*

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7. Were other people treated better than you? How?

*(For example, people who were not fired for doing the same thing you were fired for, people who were doing the same job but making more money, etc.).*

*If you are complaining about discrimination relating to race, national origin, age, religion, etc. please describe their races, national origins, religions, etc.*

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## PROTECTIONS FOR INDEPENDENT CONTRACTORS & FREELANCERS FROM DISCRIMINATION AND HARASSMENT

Starting January 11, 2020, all independent contractors and freelancers are protected from employment discrimination and harassment under the City Human Rights Law.<sup>1</sup> This also means that independent contractors and freelancers have the right to receive reasonable accommodations for needs related to disabilities, pregnancy, lactation, religious observances, and status as victims of domestic violence, sexual offenses, or stalking. For more information about all of the protections under the City Human Rights Law, visit [NYC.gov/HumanRights](https://nyc.gov/HumanRights).

### **Is there a difference between the classification of “freelancer” and “independent contractor” for the purposes of protections under the City Human Rights Law?**

No, all of these workers enjoy the same protections under the City Human Rights Law. It does not matter what word you, or the person or entity that hired you, use to refer to you.

### **How do I know if I’m an independent contractor or freelancer?**

In most cases, if you are doing work for an employer and are not an employee, you are an independent contractor or freelancer. You enjoy the same rights under the City Human Rights Law regardless of whether you have a formal contract, regardless of how often, if ever, the work requires you to be on-site, and whether it is a short-term or long-term relationship.

### **Are employers required to have their independent contractors complete annual sexual harassment prevention training?**

Yes. Similar to employees and interns, if an independent contractor works for an employer of 15 or more people<sup>2</sup> and works:

- more than 80 hours in a calendar year *and*
- for at least 90 days (does not need to be consecutive),

then the individual *must* be trained. If an independent contractor worked less than 90 days or less than 80 hours in a calendar year, they do not need to be trained.

Individuals who must be trained do not need to take the training at each workplace where they work over the course of a year. Independent contractors and freelancers may provide proof of completion of one sexual harassment prevention training to multiple workplaces and need not repeat the training at multiple workplaces.

### **What is an employer’s liability for the acts of an independent contractor or freelancer?**

Employers will be liable for discriminatory acts committed by independent contractors and freelancers if the conduct occurred in the course of the independent contractor’s or freelancer’s work for the employer *and* the employer had actual knowledge of the discriminatory behavior and acquiesced in such conduct, by, for example, failing to take steps to stop the conduct.

<sup>1</sup> Amending N.Y.C. Admin. Code § 8-107(23) (“The protections of this chapter relating to employees apply to interns, freelancers and independent contractors.”).

<sup>2</sup> Other training requirements exist under New York State Law.

**Where a person hires an independent contractor through an app or platform to provide services (e.g., cleaning or driving services), does the app or platform have legal obligations under the City Human Rights Law?**

Yes. Apps and platforms may be liable if they directly engage in discrimination against an independent contractor who uses their platform. They may also be liable if a customer who uses their platform to hire an independent contractor engages in unlawful discrimination if the app or platform knew or should have known about the discrimination and fails to take any action to address it, by, for example, failing to prohibit a customer who is known to harass independent contractors from using the platform.

If you believe you have been subjected to unlawful discrimination as an independent contractor or freelancer, please contact the Commission at 311 and ask for “Human Rights.”

# **NYC Commission on Human Rights**

## **Legal Enforcement Guidance**

### **on Race Discrimination**

### **on the Basis of Hair**

February 2019

Anti-Black racism is an invidious and persistent form of discrimination across the nation and in New York City. Anti-Black racism can be explicit and implicit, individual and structural, and it can manifest through entrenched stereotypes and biases, conscious and unconscious. Anti-Black bias also includes discrimination based on characteristics and cultural practices associated with being Black, including prohibitions on natural hair or hairstyles most closely associated with Black people.<sup>1</sup> Bans or restrictions on natural hair or hairstyles associated with Black people are often rooted in white standards of appearance and perpetuate racist stereotypes that Black hairstyles are unprofessional. Such policies exacerbate anti-Black bias in employment, at school, while playing sports, and in other areas of daily living.

The New York City Human Rights Law (“NYCHRL”) protects the rights of New Yorkers to maintain natural hair or hairstyles that are closely associated with their racial, ethnic, or cultural identities.<sup>2</sup> For Black people, this includes the right to maintain natural hair,<sup>3</sup> treated or untreated hairstyles<sup>4</sup> such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed<sup>5</sup> state.<sup>6</sup>

<sup>1</sup> The phrase “Black people” includes those who identify as African, African American, Afro-Caribbean, Afro-Latin-x/a/o or otherwise having African or Black ancestry.

<sup>2</sup> Hair-based discrimination implicates many areas of the NYCHRL, including prohibitions against race, religion, disability, age, or gender based discrimination. This legal enforcement guidance seeks to highlight the protections available under the NYCHRL for people who maintain particular hairstyles as part of a racial or ethnic identity, or as part of a cultural practice, regardless of the mutable nature of such characteristics. Covered entities with policies prohibiting hairstyles associated with a particular racial, ethnic, or cultural group would, with very few exceptions, run afoul of the NYCHRL’s protections against race and related forms of discrimination. While this legal enforcement guidance focuses on Black communities, these protections broadly extend to other impacted groups including but not limited to those who identify as Latin-x/a/o, Indo-Caribbean, or Native American, and also face barriers in maintaining “natural hair” or specific cultural hairstyles.

<sup>3</sup> “Natural hair” is generally understood as the natural texture and/or length of hair; it is defined as hair that is untreated by chemicals or heat and can be styled with or without extensions. The term “natural hair,” which has specific and significant cultural meaning within Black communities, is used throughout this guidance in reference to hair textures most commonly associated with Black people. However, the legal protections available under the NYCHRL extend beyond natural hair, including treated hair styled into twists, braids, cornrows, Afros, Bantu knots, fades, and/or locs.

<sup>4</sup> Hairstyles most commonly associated with Black people include hairstyles that involve some form of heat or chemical treatment or none at all (*i.e.*, “natural hair”).

<sup>5</sup> For communities that have a religious or cultural connection with uncut hair, including Native Americans, Sikhs, Muslims, Jews, Nazirites, or Rastafarians, some of whom may also identify as Black, natural hair may include maintaining hair in an uncut or untrimmed state.

<sup>6</sup> This is not an exhaustive list of hairstyles most closely associated with Black people. For more background, see Section II of this legal enforcement guidance.

While grooming and appearance policies adversely impact many communities, this legal enforcement guidance focuses on policies addressing natural hair or hairstyles most commonly associated with Black people, who are frequent targets of race discrimination based on hair. Accordingly, the New York City Commission on Human Rights (the “Commission”) affirms that grooming or appearance policies that ban, limit, or otherwise restrict natural hair or hairstyles associated with Black people<sup>7</sup> generally violate the NYCHRL’s anti-discrimination provisions.

## **I. The New York City Human Rights Law**

The NYCHRL prohibits discrimination by most employers,<sup>8</sup> housing providers,<sup>9</sup> and providers of public accommodations.<sup>10</sup> The NYCHRL also prohibits discriminatory

<sup>7</sup> Grooming or appearance policies that generally target communities of color, religious minorities, or other communities protected under the NYCHRL are also unlawful. Examples of religious, disability, age, or gender based discrimination with respect to hair include: a Sikh applicant denied employment because of his religiously-maintained uncut hair and turban; an Orthodox Jewish employee ordered to shave his beard and cut his payot (sidelocks or sideburns) to keep his job; a Black salesperson forced to shave his beard despite a medical condition that makes it painful to shave; a 60 year-old employee with gray hair told to color their hair or lose their job; or a male server ordered to cut his ponytail while similar grooming policies are not imposed on female servers.

<sup>8</sup> The NYCHRL prohibits unlawful discriminatory practices in employment and covers entities including employers, labor organizations, employment agencies, joint labor-management committee controlling apprentice training programs, or any employee or agent thereof. N.Y.C. Admin. Code § 8-107(1). Under the NYCHRL:

“The term ‘employer’ does not include any employer with fewer than four persons in his or her employ ... [N]atural persons employed as independent contractors to carry out work in furtherance of an employer’s business enterprise who are not themselves employers shall be counted as persons in the employ of such employer.”

N.Y.C. Admin. Code § 8-102.

“The term ‘employment agency’ includes any person undertaking to procure employees or opportunities to work.” *Id.*

“The term ‘labor organization’ includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection in connection with employment.” *Id.*

<sup>9</sup> The NYCHRL prohibits unlawful discriminatory practices in housing, and covers entities including the “owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof.” N.Y.C. Admin. Code § 8-107(5). Covered entities also include real estate brokers, real estate salespersons, or employees or agents thereof. *Id.* The NYCHRL defines the term “housing accommodation” to include “any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings. Except as otherwise specifically provided, such term shall include a publicly-assisted housing accommodation.” N.Y.C. Admin. Code § 8-102. However, the NYCHRL exempts from coverage: “the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which contains housing accommodations for not more than two families living independently of each other, if the owner [or] members of the owner’s family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or (2) to the rental of a room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the



harassment<sup>11</sup> and bias-based profiling by law enforcement.<sup>12</sup> Pursuant to Local Law No. 85 (2005) (“Local Civil Rights Restoration Act of 2005”), the NYCHRL must be construed “independently from similar or identical provisions of New York State or federal statutes,” such that “similarly worded provisions of federal and state civil rights laws [are] a floor below which the City’s Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.”<sup>13</sup> In addition, exemptions to the NYCHRL must be construed “narrowly in order to maximize deterrence of discriminatory conduct.”<sup>14</sup>

The Commission is the City agency charged with enforcing the NYCHRL. Individuals interested in vindicating their rights under the NYCHRL can choose to file a complaint with the Commission’s Law Enforcement Bureau within one (1) year of the discriminatory act and within (3) years for claims of gender-based harassment, or file a complaint in court within three (3) years of the discriminatory act.

## **II. Background on Natural Hair Textures and Hairstyles Associated with Black People**

While a range of hair textures are common among people of African descent, natural hair texture that is tightly-coiled or tightly-curved as well as hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, and Afros are those most closely associated with Black people.<sup>15</sup> The decision to wear one’s hair in a particular style is highly personal, and reasons behind that decision may differ for each individual. Some wearers may embrace a certain hairstyle as a “protective style,” intended to maintain

owner or members of the owner’s family reside in such housing accommodation.” N.Y.C. Admin. Code § 8-107(5)(4).

<sup>10</sup> The NYCHRL prohibits unlawful discriminatory practices in public accommodations, and covers entities including any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation. N.Y.C. Admin. Code § 8-107(4). The NYCHRL defines the term “place or provider of public accommodation” to include: “providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. Such term shall not include any club which proves that it is in its nature distinctly private . . . [or] a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a religious corporation incorporated under the education law or the religious corporation law [which] shall be deemed to be in its nature distinctly private.” N.Y.C. Admin. Code § 8-102.

<sup>11</sup> N.Y.C. Admin. Code §§ 8-602 – 604.

<sup>12</sup> N.Y.C. Admin. Code § 14-151.

<sup>13</sup> Local Law No. 85 § 1 (2005); see N.Y.C. Admin. Code § 8-130(a) (“The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed.”).

<sup>14</sup> Local Law No. 35 (2016); N.Y.C. Admin. Code § 8-130(b).

<sup>15</sup> See D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair in EEOC v. Catastrophe Management Solutions*, 71 U. MIAMI L. REV. 987, 999-1000 (2017).

hair health; as part of a cultural identity associated with being Black; and/or for a myriad of other personal, financial, medical, religious, or spiritual reasons.<sup>16</sup>

Hair may naturally form into locs, known as freeform locs, which are grown without manipulation.<sup>17</sup> Hair may also be manipulated into locs, known as “cultivated locs,” a cultural hairstyle predominantly worn by people of African descent.<sup>18</sup> Whether hair naturally forms or is manipulated into locs, this and other protective or cultural hairstyles often have great personal significance for the wearer. Black hair may also be styled into cornrows – hair that is rolled or closely braided to the scalp – or in twists, Afros, and other formations, with or without chemical or heat treatment.<sup>19</sup> Hair may also be worn in a manner that showcases its natural texture with little additional styling. In addition, protective styles may include braids, locs or extensions of various types that are integrated into an individual’s hair (e.g. box braids or weaves), wigs, or covering one’s hair with a headscarf or wrap.<sup>20</sup>

There is a widespread and fundamentally racist belief that Black hairstyles are not suited for formal settings, and may be unhygienic, messy, disruptive, or unkempt.<sup>21</sup> Indeed, white slave traders initially described African hair and locs as “dreadful,” which led to the commonly-used term “dreadlocks.”<sup>22</sup> Black children and adults, from schools to places of employment, have routinely been targeted by discriminatory hair policies.<sup>23</sup>

<sup>16</sup> Locs may also be worn by some Black people for religious purposes, such as Rastafarians. See generally Brief for NAACP Legal Defense and Educational Fund, Inc. *et al.*, as Amici Curiae Supporting Appellants, *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482 (11th Cir. Dec. 28, 2016), [https://www.naacpldf.org/files/about-us/EEOC\\_v\\_CMS\\_Final.pdf](https://www.naacpldf.org/files/about-us/EEOC_v_CMS_Final.pdf).

<sup>17</sup> Petition for Writ of Certiorari, *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482, at 5-6 (Apr. 4, 2018), <https://www.naacpldf.org/files/about-us/CMS%20-%20Cert%20Petition%20FINAL.PDF>.

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See generally, Greene, *supra* note 15 at 1000-01; see also Perrie Samotin, *A Banana Republic Employee Says She Was Told Her Box Braids Looked Too “Urban”*, *Glamour* (Oct. 7, 2017), <https://www.glamour.com/story/banana-republic-employee-destiny-tompkins-says-she-was-told-box-braids-looked-too-urban>.

<sup>21</sup> Petition for Writ of Certiorari, *supra* note 17, at \*6-7; see also NAACP Legal Defense and Educational Fund, Inc. & American Civil Liberties Union, *Letter to Florida Department of Education*, ACLU (Nov. 29, 2018), <https://www.aclu.org/legal-document/florida-department-education-complaint-charge-race-discrimination>.

<sup>22</sup> Because of this history, the Commission is utilizing the term “locs” in this guidance but recognizes that some members of Black communities, including Rastafarians, may still use the term “dreadlocks” or “dreads.” The term “locks” is an alternative term. See Shauntae Brown White, *Releasing the Pursuit of Bouncin’ and Behavin’ Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty*, 1 INT’L J. MEDIA & CULTURAL POL. 295, 965 n.3 (2005).

<sup>23</sup> For examples in employment, see, e.g., Complaint, *Tompkins v. The Gap, Inc.*, No. 17 Civ. 09759 (S.D.N.Y. 2017) (Black employee claimed that her white manager had refused to assign her shifts because of her hairstyle and allegedly told her that her box braids were too “unkempt,” “urban,” and not “Banana Republic appropriate.”); *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482, 2016 WL 7210059 (11th Cir. 2016) (holding that employer did not engage in race discrimination under Title VII when it refused to hire a Black customer service representative who styled her hair into locks, a violation of the company’s grooming policy.); *Pitts v. Wild Adventures*, No. 7:06-CV-HL, 2008 WL 1899306 (M.D. Ga. Apr. 25, 2008) (Black employee terminated for styling her hair into twists; employer not liable for race

For example, in 2014, the U.S. Department of Defense, the nation's largest employer, enacted a general ban on Black hairstyles, including Afros, twists, cornrows, and braids, which was later reversed after Black service members expressed wide outrage.<sup>24</sup> In 2017, the Army lifted its ban on female soldiers wearing locs, citing feasibility for Black soldiers, and noting that "[f]emales have been asking for a while, especially females of African-American descent, to be able to wear dreadlocks and locks because it's easier to maintain that hairstyle."<sup>25</sup> The Army also removed the terms "matted and unkempt" from its description of Black hairstyles in its appearance regulations.<sup>26</sup> These changes reflect a shift in American society in re-evaluating the basis for longstanding appearance norms, in light of their discriminatory nature, and the harm and burden placed on Black people who maintain prohibited hairstyles.

Race discrimination based on hair and hairstyles most closely associated with Black people has caused significant physical and psychological harm to those who wish to maintain natural hair or specific hairstyles but are forced to choose between their livelihood or education and their cultural identity and/or hair health.<sup>27</sup> Due to repeat manipulation or chemically-based styling (i.e., using straighteners or relaxing hair from its natural state), Black hair may become vulnerable to breakage and loss, and the development of conditions such as trichorrhhexis nodosa and traction alopecia.<sup>28</sup> Trichorrhhexis nodosa is a medical issue where thickened or weakened points of hair break off easily.<sup>29</sup> Traction alopecia is defined as gradual hair loss, occurring from applying tension to hair.<sup>30</sup> In some cases, altering hair from its natural form by way of

discrimination under Title VII even though its grooming policy only prohibited Afrocentric hairstyles); For examples in schools, see, e.g., Michael Gold & Jeffrey Mays, *Civil Rights Investigation Opened After Black Wrestler Had to Cut His Dreadlocks*, N.Y. TIMES (Dec. 21, 2018), <https://www.nytimes.com/2018/12/21/nyregion/andrew-johnson-wrestler-dreadlocks.html>; Mandy Velez, 'Discriminatory': ACLU, NAACP Go After Florida School That Banned Child for Dreadlocks, THE DAILY BEAST (Nov. 29, 2018), <https://www.thedailybeast.com/aclu-naACP-take-on-florida-schools-discriminatory-hair-policy-after-boy-banned-for-having-locs>; Amira Rasool, *A Black Student's Elementary School Reportedly Sent Her Home for Wearing Box Braids*, ALLURE (Aug. 22, 2018), <https://www.allure.com/story/black-student-sent-home-for-box-braids>; Kaitlin McCulley, *Waller high school [Black] student suspended for having long hair [and locs]*, ABC (Mar. 28, 2017), <https://abc13.com/education/waller-hs-student-suspended-for-haircut-/1823098/>.

<sup>24</sup> Maya Rodan, *U.S. Military Rolls Back Restrictions on Black Hairstyles*, TIME (Aug. 13, 2014), <http://time.com/3107647/military-black-hairstyles/>.

<sup>25</sup> See Christopher Mele, *Army Lifts Ban on Dreadlocks, and Black Servicewomen Rejoice*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/army-ban-on-dreadlocks-black-servicewomen.html>; Other military branches, including the Air Force and the Navy, have also lifted bans on locs for service members.

<sup>26</sup> See *id.*

<sup>27</sup> See generally Dr. Gillian Scott-Ward, *Moving Past Racist Grooming Standards Terrorizing our Children*, MEDIUM (Jan. 10, 2018), <https://medium.com/@gillianscottward/moving-past-racist-grooming-standards-terrorizing-our-children-40df73b9ecb3>.

<sup>28</sup> See Venessa Simpson, *What's Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 SW L. REV. 265, 289 (2017) (citing Ana Maria Pinheiro, *Acquired Trichorrhhexis Nodosa in a Girl: The Use of Trichoscopy for Diagnosis*, 4 (1) J. DERMATOLOGY & CLINICAL RESEARCH, 1064, 65 (2016)).

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

repeat manipulation or chemically-based styling may also expose individuals to risk of severe skin and scalp damage.<sup>31</sup> Medical harm may also extend beyond the skin or scalp; for instance, a 2012 study published in the American Journal of Epidemiology linked the use of hair relaxers to an increase in uterine fibroids, which disproportionately impact Black women.<sup>32</sup>

Black people with tightly-coiled or tightly-curled hair textures face significant socio-economic pressure to straighten or relax their hair to conform to white and European standards of beauty, which can cause emotional distress, including dignitary and stigmatic harms.<sup>33</sup> Because of these expectations, in addition to the physical harms noted above, Black people are more likely than white people to spend more time on their hair, spend more money on professional styling appointments and products, and experience anxiety related to hair.<sup>34</sup> These experiences highlight the unique and heavy burden and personal investment involved in decision-making around hair for Black communities, and the consequences of being compelled to style one's hair according to white and European beauty standards or be stigmatized for wearing one's hair in a natural style.

### III. Employment

The NYCHRL prohibits discrimination in employment, which in most circumstances covers employers with four (4) or more employees.<sup>35</sup> Disparate treatment occurs when a covered entity treats an individual less favorably than others because of a protected characteristic.<sup>36</sup> Treating an individual less well than others because of their actual or perceived race violates the NYCHRL. To establish disparate treatment under the NYCHRL, an individual must show they were treated less well or subjected to an adverse action, motivated, at least in part, by their membership in a protected class.<sup>37</sup> An individual may demonstrate this through direct evidence of discrimination or indirect evidence that gives rise to an inference of discrimination.

Black hairstyles are protected racial characteristics under the NYCHRL because they are an inherent part of Black identity. There is a strong, commonly-known racial association between Black people and hair styled into twists, braids, cornrows, Afros,

<sup>31</sup> Taylor Mioko Dewberry, *Title VII and African American Hair: A Clash of Cultures*, 54 WASH. U. J.L. & POL'Y 329, 351 (2017).

<sup>32</sup> See Lauren Wise, *Hair Relaxer Use and Risk of Uterine Leiomyomata in African-American Women*, AMER. JOURNAL OF EPIDEMIOLOGY, Vol. 175, Issue 5, 432–440 (2012), available at <https://doi.org/10.1093/aje/kwr351>.

<sup>33</sup> Greene, *supra* note 15 at 1013.

<sup>34</sup> See *id.*

<sup>35</sup> N.Y.C. Admin. Code § 8-102.

<sup>36</sup> *Williams v. N.Y.C. Hous. Auth.*, 872 N.Y.S.2d 27, 39 (1st Dep't 2009).

<sup>37</sup> *Id.*

Bantu knots, fades, and/or locs,<sup>38</sup> and employers are assumed to know of this association.

Covered employers that enact grooming or appearance policies that ban or require the alteration of natural hair or hair styled into twists, braids, cornrows, Afros, Bantu knots, fades, and/or locs may face liability under the NYCHRL because these policies subject Black employees to disparate treatment. Covered employers are engaging in unlawful race discrimination when they target natural hair or hairstyles associated with Black people, and/or harass Black employees based on their hair.<sup>39</sup>

By way of example, while an employer can impose requirements around maintaining a work appropriate appearance, they cannot enforce such policies in a discriminatory manner and/or target specific hair textures or hairstyles. Therefore, a grooming policy to maintain a “neat and orderly” appearance that prohibits locs or cornrows is discriminatory against Black people because it presumes that these hairstyles, which are commonly associated with Black people, are inherently messy or disorderly. This type of policy is also rooted in racially discriminatory stereotypes about Black people, and racial stereotyping is unlawful discrimination under the NYCHRL.<sup>40</sup>

Consequently, employers may not enact discriminatory policies that force Black employees to straighten, relax, or otherwise manipulate their hair to conform to employer expectations. The existence of such policies constitutes direct evidence of disparate treatment based on race and/or other relevant protected classes under the NYCHRL. Notably, employers that enact these types of grooming or appearance policies do not typically target hair characteristics associated with individuals with white, European ancestry.

Examples of violations of include:

- A grooming policy prohibiting twists, locs, braids, cornrows, Afros, Bantu knots, or fades which are commonly associated with Black people.
- A grooming policy requiring employees to alter the state of their hair to conform to the company’s appearance standards, including having to straighten or relax hair (*i.e.*, use chemicals or heat).<sup>41</sup>

<sup>38</sup> This is not an exhaustive list of hairstyles most commonly associated with Black people. See *supra* pg. 3.

<sup>39</sup> See *Williams*, 872 N.Y.S.2d at 39.

<sup>40</sup> See, e.g., *Jenkins v. Blue Cross Mut. Hosp. Ins.*, 538 F.2d 164 (7th Cir. 1976) (en banc) (holding that a Black employee had sufficiently charged race discrimination under Title VII after she was denied a promotion for wearing an Afro; the employer was engaging in racially discriminatory stereotyping that Black hair was inappropriate when it told her that she could “never represent them” because of her Afro.).

<sup>41</sup> This is not an exhaustive list of violations and they are not limited to employment. Such policies are also prohibited when enacted by housing providers and places of public accommodation. Additionally, related violations that implicate religious groups, and other protected classes include: a grooming policy prohibiting employees from maintaining uncut hair or wearing untrimmed beards, which may impact Rastafarians, Native Americans, Sikhs, Muslims, Jews, and other religious or cultural minorities; or a

- A grooming policy banning hair that extends a certain number of inches from the scalp, thereby limiting Afros.

Discrimination can also come in the form of facially neutral grooming policies related to characteristics that may not necessarily be associated with a protected class but that are discriminatorily applied. For instance, an employer violates the NYCHRL when it enforces a grooming policy banning the use of color/dye, extensions, and/or patterned or shaved hairstyles against Black employees only.<sup>42</sup>

The NYCHRL also prohibits covered employees from harassing, imposing unfair conditions, or otherwise discriminating against employees based on aspects of their appearance associated with their race. Examples of discrimination include:

- Forcing Black people to obtain supervisory approval prior to changing hairstyles, but not imposing the same requirement on other people.<sup>43</sup>
- Requiring only Black employees to alter or cut their hair or risk losing their jobs.
- Telling a Black employee with locs that they cannot be in a customer-facing role unless they change their hairstyle.
- Refusing to hire a Black applicant with cornrows because her hairstyle does not fit the “image” the employer is trying to project for sales representatives.
- Mandating that Black employees hide their hair or hairstyle with a hat or visor.<sup>44</sup>

Finally, employers may not ban, limit, or otherwise restrict natural hair or hairstyles associated with Black communities to promote a certain corporate image, because of customer preference, or under the guise of speculative health or safety concerns. An employee’s hair texture or hairstyle generally has no bearing on their ability to perform the essential functions of a job.

Where an employer does have a legitimate health or safety concern, it must consider alternative ways to meet that concern prior to imposing a ban or restriction on employees’ hairstyles. There exist a number of options that may address such concerns related to hair, including the use of hair ties, hair nets, head coverings, as well as alternative safety equipment that can accommodate various hair textures and hairstyles. Alternative options may not be offered or imposed to address concerns unrelated to actual and legitimate health or safety concerns.

grooming policy requiring male employees to cut their hair, but allowing female employees to maintain long hair.

<sup>42</sup> See generally *Santee v. Windsor Court Hotel Ltd. P’ship*, No. Civ. A. 99-3891, 2000 WL 1610775, at \*3-4 (E.D. La. Oct. 26, 2000) (Black woman with dyed blonde hair denied employment at a hotel because her hair violated the hotel’s grooming policy banning “extreme” hairstyles).

<sup>43</sup> *Hollins v. Atl. Co.*, 188 F.3d 652 (6th Cir. 1999).

<sup>44</sup> See, e.g., *Eatman v. UPS*, 194 F. Supp. 2d 256, 259, 262 (S.D.N.Y. 2002) (UPS’s policy required Black male drivers to wear hats to cover “dreadlocks,” “braids,” “corn rolls,” a “do rag,” and a “ponytail”). Such a policy would violate the NYCHRL.

#### IV. Public Accommodations

The NYCHRL prohibits discrimination in places of public accommodation, defined as “providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available.”<sup>45</sup> This guidance focuses on schools because reports of racially discriminatory policies on grooming and appearance have proliferated in educational settings.<sup>46</sup>

The NYCHRL prohibits discrimination in most public, private, and charter schools.<sup>47</sup> The United States Supreme Court has established that students in public schools do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>48</sup> Schools may not infringe on students’ free expression rights “unless school authorities have reason to believe that such expression will ‘substantially interfere with the work of the school or impinge upon the rights of other students.’”<sup>49</sup>

Schools may not, intentionally or unintentionally, target students of a particular protected category, including in after school activities or programs. Because natural hair and locs, cornrows, twists, braids, Bantu knots, fades, and Afros are a form of hair maintenance and cultural identity and expression most closely associated with Black people, no school covered under the NYCHRL may prohibit such styles in New York City.<sup>50</sup> No sound pedagogical rationale justifies this disparate treatment of Black students, nor would students’ free expression to wear their hair in natural, protective, or other styles commonly associated with Black people ever “interfere with the work of the school or impinge upon the rights of other students.”<sup>51</sup>

<sup>45</sup> N.Y.C. Admin. Code § 8-107(4).

<sup>46</sup> Michael Gold and Jeffrey Mays, *Civil Rights Investigation Opened After Black Wrestler Had to Cut His Dreadlocks*, N.Y. TIMES (Dec. 21, 2018), <https://www.nytimes.com/2018/12/21/nyregion/andrew-johnson-wrestler-dreadlocks.html>; see also NAACP Legal Defense and Educational Fund, Inc. & American Civil Liberties Union, *Letter to Florida Department of Education*, ACLU (Nov. 29, 2018), at 6, n.22 (collecting cases), <https://www.aclu.org/legal-document/florida-department-education-complaint-charge-race-discrimination>.

<sup>47</sup> N.Y.C. Admin. Code § 8-107(4). Certain religious schools may be exempt from coverage under the NYCHRL. See N.Y.C. Admin. Code § 8-107(2).

<sup>48</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

<sup>49</sup> *Id.* at 509 (citing *Burnside v. Byars*, 363 F.2d 744, 749 (1966)).

<sup>50</sup> Similarly, banning characteristics associated with other cultures, including Native Americans, may violate the NYCHRL. Native Americans, who maintain long hair, wear braids, or wear other hairstyles for cultural reasons have also routinely faced discriminatory hair policies and practices in educational settings. See, e.g., Cat Schuknecht, *School District Apologizes for Teacher Who Allegedly Cut Native American Child’s Hair*, NPR (Dec. 6, 2018), [https://www.npr.org/2018/12/06/673837893/school-district-apologizes-for-teacher-who-allegedly-cut-native-american-childs-\(last-visited-Jan.-29,-2019\)](https://www.npr.org/2018/12/06/673837893/school-district-apologizes-for-teacher-who-allegedly-cut-native-american-childs-(last-visited-Jan.-29,-2019)); Zac Whitney, *Dress Code Collides With Culture as Native American Student With Mohawk Sent to Principal’s Office*, Fox (Sept. 17, 2015), <https://fox13now.com/2015/09/17/dress-code-collides-with-culture-as-native-american-student-with-mohawk-sent-to-principals-office/>.

<sup>51</sup> *Tinker*, 393 U.S. at 506.

Similarly, it is unlawful under the NYCHRL to harass, subject to adverse treatment, or otherwise discipline any student because they choose to wear their hair in a style commonly associated with Black people. Further, it is no justification to prohibit natural hair or hairstyles because they are perceived to be a distraction or because of speculative health or safety concerns. These protections extend to all users of public accommodations, including businesses such as restaurants, fitness clubs, stores, and nightclubs, and other public spaces, like parks, libraries, healthcare providers, and cultural institutions.<sup>52</sup>

Examples of discrimination include:

- A private school has a policy prohibiting locs or braids.
- A public school athletic association prohibits a Black student athlete with locs from participating in an athletic competition because his hair is below his shoulders but allows white student-athletes with long hair to tie their hair up.
- A charter school informs a Black student that she must change her Afro because it is a “distraction” in the classroom.
- A children’s dance company requires girls to remove their braids, alter their Afro, and only wear a “smooth bun” to participate in classes.
- A nightclub tells a patron she is not welcome because her natural hairstyle does not meet their dress code.

\* \* \* \* \*

As a best practice, the Commission encourages employers and other covered entities to evaluate any existing grooming or appearance policies, standards, or norms relating to professionalism to ensure they are inclusive of the racial, ethnic, and cultural identities and practices associated with Black and historically marginalized communities. The Commission further recommends that public and private schools assess any workplace preparation programs geared toward helping students find employment to ensure that they do not intentionally or inadvertently send the message that natural hair or hairstyles associated with Black communities are “unprofessional,” “messy,” or “unkempt.”

The Commission is committed to eradicating anti-Black and other forms of discrimination in New York City. If you believe you have been subjected to unlawful discrimination on the basis of your race or membership in another protected class, please contact the Commission at 311 or at 718-722-3131 to file a complaint of discrimination with our Law Enforcement Bureau.

<sup>52</sup> See, e.g., *Comm’n on Human Rights ex rel. Spencer v. Kings Plaza Unisex Palace of Hair Design, Inc.*, Complaint No. FH82030990DN-PA, Dec. & Order, 1991 WL 790573 (Nov. 8, 1991).