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The Freelance Worker Protection Act

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On September 30, 2024, Governor Gavin Newsom signed SB 988 into law. [The new state law, known as the Freelance Worker Protection Act \("FWPA"\)](#), goes into effect on January 1, 2025. The FWPA provides various protections to freelance workers and imposes minimum requirements on any **contracts entered into or renewed on or after January 1, 2025** between freelance workers and hiring parties.

Following in the wake of California's adoption of the 3-part "ABC" test used to determine whether a worker should properly be classified as an employee or independent contractor, the FWPA provides additional requirements and protections for "freelance workers."

Under the FWPA, a "**freelance worker**" is defined as a person (whether an individual or a one-person organization) who is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount **equal to or greater than \$250**, either by itself or when combined with all contracts for services between the same hiring party and independent contractor during the immediately preceding 120 days.

A "**hiring party**" is defined as an individual or private organization in California that retains a freelance worker to provide professional services—other than individuals hiring services for the personal benefit of themselves, their family, or their homestead.

Under the FWPA, the hiring entity must provide a copy of a **signed written contract to the freelance worker and keep a copy of the contract for at least four years**. At a minimum, the contract must include:

- The name and address of the hiring party and freelance worker;
- An itemized list of services to be provided;
- The rate and method of compensation for the services;
- The date of payment or how the date will be determined, which cannot be more than 30 days after the services rendered if the contract is silent as to when the hiring party shall pay; and
- The date by which the freelance worker will submit a list of services rendered.

The FWPA also **prohibits discrimination and retaliation** related to efforts to comply with or enforce its terms. Specifically, it prohibits a hiring party from discriminating or taking any adverse action against a freelance worker for:

1. Opposing any practice prohibited by the FWPA.
2. Participating in any proceedings related to enforcing the FWPA.
3. Seeking to or attempting to enforce, or seeking or attempting to assert, rights under the FWPA.



In addition, and consistent with basic contract principles, this new law states that once a freelance worker has started to perform under the terms of the contract, the hiring party may not, as a condition of timely payment, require that the freelance worker (1) accept less compensation than provided under the contract, or (2) provide more services than agreed to under the contract.

The penalties for failure to comply with the requirements of the FWPA are steep, and freelance workers may bring a civil action against a hiring party for failing to comply with these requirements. For example, suppose a freelance worker requests a written contract for work that triggers the FWPA, and the hiring entity refuses. In that case, the freelance worker can seek damages equal to the unpaid amount under the contract at the rate the freelance worker reasonably understood to apply for their services plus an additional \$1,000 penalty. In the event the hiring entity fails to remit timely payment for the freelance worker's services, the freelance worker can seek damages of twice the amount owed when payment was due. Moreover, any other violation by the hiring entity may result in an award of damages equal to the value of the contract or the value of the freelance worker's services, whichever is greater.

What this means for hiring parties: California hiring parties must review their agreements with third parties that may qualify as "freelance workers" under the FWPA to ensure compliance with this new law. This is especially true for contracts that might renew automatically annually or monthly, as the FWPA applies to contracts entered into or renewed on or after January 1, 2025. It is also crucial for hiring parties to review their handbooks and written policies and to train their hiring personnel to ensure that they follow the FWPA's new provisions.

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