

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. 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.

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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.