

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.

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 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 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, 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, 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, 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) 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 Hand¹ 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.

¹ 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)
- [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 \(CUBE\)](https://www.brooklaw.edu/intellecuallylife/CUBE/about?)
(<https://www.brooklaw.edu/intellecuallylife/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.

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 State² 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.

² Visit: https://appext20.dos.ny.gov/corp_public/corpsearch.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

<p>Small Claims Court*:</p> <ul style="list-style-type: none">• 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. <p>*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.</p> <p>New York State Supreme Court or Civil Court:</p> <ul style="list-style-type: none">• 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. <p>Federal District Court:</p> <ul style="list-style-type: none">• 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.
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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?

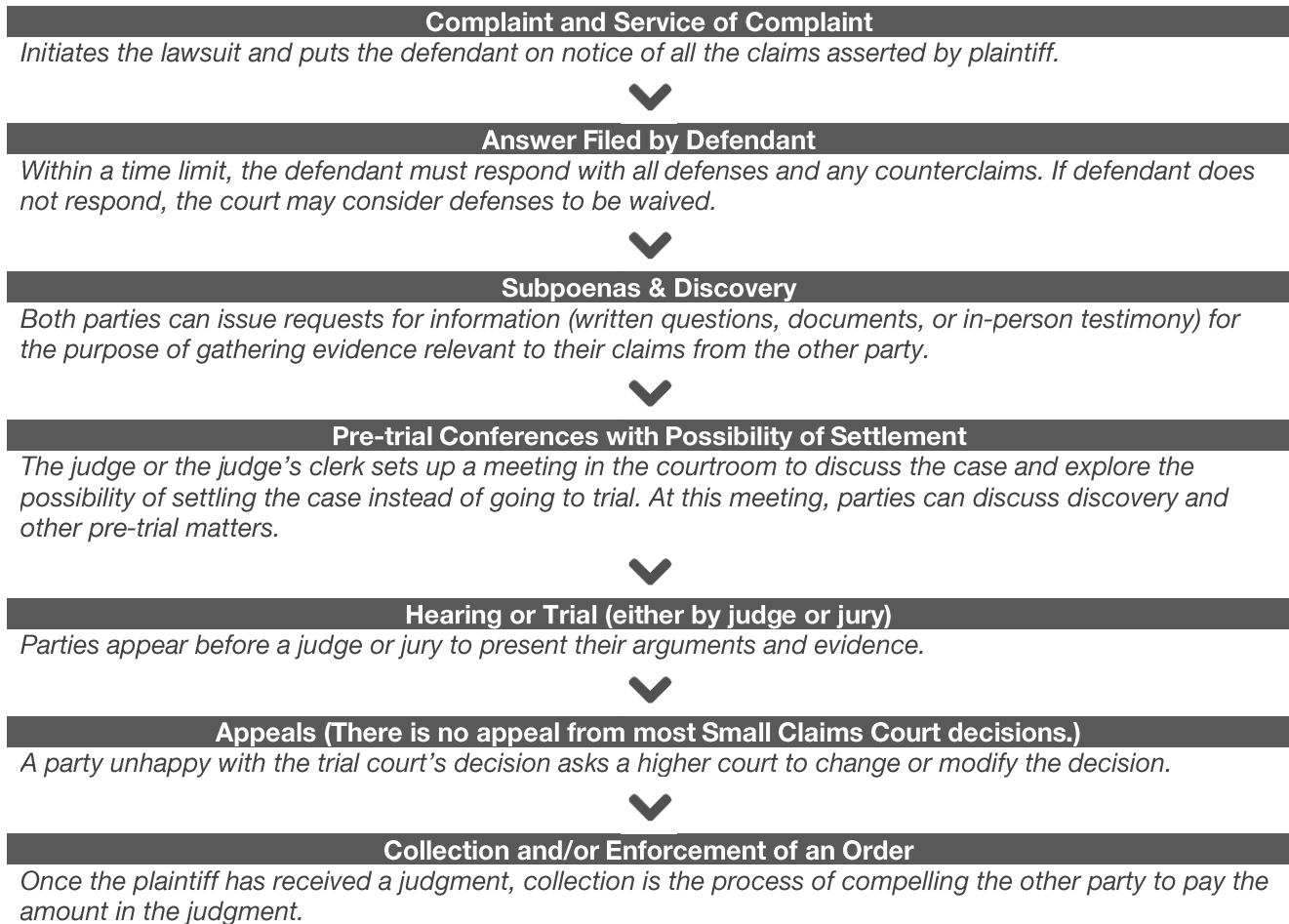
If you are eligible for free or low-cost legal services, you won't be charged by the lawyer, but you should still factor in the cost of your time to participate in the proceedings, attend conferences, and locate relevant documents.

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.³ 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 days⁴. 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.⁵ (*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.

³ 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.

⁴ 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.

⁵ <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 online⁶. 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.

⁶ 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), 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.⁷

⁷ 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 relief⁸, 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.

⁸ 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 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)
- [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**

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: | <input type="checkbox"/> automobile | <input type="checkbox"/> other personal property | <input type="checkbox"/> real property | <input type="checkbox"/> person |
| Failure to provide: | <input type="checkbox"/> proper repairs | <input type="checkbox"/> proper services | <input type="checkbox"/> proper merchandise | <input type="checkbox"/> goods paid for |
| Failure to return: | <input type="checkbox"/> security | <input type="checkbox"/> property | <input type="checkbox"/> deposit | <input type="checkbox"/> money loaned |
| Failure to pay: | <input type="checkbox"/> salary | <input type="checkbox"/> for services rendered | <input type="checkbox"/> insurance claim | |
| | <input type="checkbox"/> rent | <input type="checkbox"/> commissions | <input type="checkbox"/> for goods sold and delivered | |
| Breach of. | <input type="checkbox"/> contract | <input type="checkbox"/> lease | <input type="checkbox"/> warranty | <input type="checkbox"/> agreement |
| Loss of: | <input type="checkbox"/> luggage | <input type="checkbox"/> property | <input type="checkbox"/> time from work | <input type="checkbox"/> use of property |
| Returned: | <input type="checkbox"/> check (bounced) | <input type="checkbox"/> 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.
DEFENDANT'S ADDRESS: YOU must indicate the proper street address of the Defendant. A Post Office Box is not acceptable.

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

FREE CIVIL COURT FORM

No fee may be charged to fill in this form.

Form can be found at

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

(FOR OFFICE USE ONLY)

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

I. CLAIMANT'S INFORMATION

(Your)

BUSINESS NAME _____

OTHER INFO
(Doing Business As or In Care Of) _____

PRINCIPAL OFFICE ADDRESS _____

BOROUGH, CITY, TOWN OR VILL. _____ **STATE** N J Y **ZIP** _____

PHONE NO. () _____

II. DEFENDANT'S INFORMATION

(Their)

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 J 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

Date:

Address

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.¹ 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.

¹ **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 \$210.²

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).

² 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

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

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

SUMMONS WITH NOTICE

Index Number

Date Index Number Purchased

_____, 20__

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



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, serbio, 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

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 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 for updates. You can also contact DCA at 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.

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 and through 311. *If you have questions, email 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 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 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.*

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 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.*

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 for more information.*

Education and Training Programs

The City offers free help for jobseekers. *Visit 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 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 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

No. 140

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

