

The 12 Days of California Labor and Employment Series – Day 5 “Protections for Freelance Workers”

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By: Mellissa A. Schafer

In the spirit of the season, we are using our annual “12 Days of California Labor and Employment” blog series to address new California laws and their impact on employers. On the fifth day of the holidays, my labor and employment attorney gave to me five golden rings and SB 988.

Freelance Worker Protection Act (FWPA)

On July 1, 2023, the Los Angeles Freelance Worker Protections Ordinance went into effect. It was designed to ensure that freelance workers were treated fairly and received the compensation that was due. Adopted in 2024, SB 988, also known as the Freelance Worker Protection Act (“FWPA”), was designed to protect freelance workers at the state level in California with these same basic protections.

Who Does SB 988 Apply to?

SB 988 applies to freelance workers and hiring parties:

- A **freelance worker** is defined as a person or organization composed of no more than one person, whether or not incorporated or employing a tradename. This individual or individual’s tradename is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than \$250 either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the preceding 120 days.
- A **hiring party** is defined as a person or organization in the state of California that retains a freelance worker to provide professional services. Exclusions from the definition of hiring party include:
 - the U.S. government,



- the state of California or any subdivision thereof,
- a foreign government; and
- an individual hiring services for the personal benefit of themselves, their family members, or their homestead.

What is Required?

The following elements are required under the FWPA:

1. A contract:

- The contract is required to be in writing, whether in paper format or electronic, and be kept for a minimum of four years.
- At a minimum, the contract must include the name and mailing address of each party, an itemized list of all services to be provided by the freelance worker, including the value of the services and the rate and method of compensation, the date on which the hiring party shall pay the contracted compensation or the mechanism by which the date shall be determined, and the date by which freelance worker shall submit a list of services rendered under the contract to the hiring party to meet the hiring party's internal processing deadlines for purposes of timely payment of compensation.
- Despite the written contract requirement, SB 988 does not limit existing contract law which can enforce an oral contract providing the freelance worker with another outlet to receive payment.

2. Payment requirements:

- Under SB 988, payment to the freelance worker must be made on or before the date compensation is due pursuant to the contract, or if the contract does not specify when the hiring party shall pay, no later than 30 days after the completion of the freelance worker services under the contract.
- It is illegal for a hiring party to require the freelance worker to accept less compensation than the amount of compensation specified by the contract or to require the freelance worker to provide more goods or services or grant more intellectual property rights and agreed to in the contract as a condition of timely payment.

What is Prohibited?

Similar to individuals who are considered employees rather than freelance workers, a hiring party is prohibited from discriminating or taking any adverse action against the freelance worker that penalizes the freelance worker for, or is reasonably likely to deter a freelance worker from, taking any of the following actions:

- opposing any practice prohibited by the FWPA;
- participating in proceedings related to the enforcement of the FWPA;
- seeking to enforce rights provided by the FWPA; or

- otherwise asserting or attempting to assert rights under the FWPA.

When Does SB 988 Take Effect?

The FWPA will apply to eligible agreements between a hiring party and a freelance worker entered into or renewed on or after **January 1, 2025**.

Penalties for Noncompliance With SB 988

Under the FWPA, a freelance worker is able to bring a civil action against the hiring party. If the freelance worker prevails in their civil action, they are entitled to reasonable attorney fees and costs from the hiring party, injunctive relief, or any other remedies deemed appropriate by the court. Additional penalties that may be awarded against the hiring party include:

- \$1,000 for refusing to provide a written contract prior to the freelance worker commencing work;
- up to twice the amount of the unpaid amount at the time payment was due when the hiring party pays late;
- in the case where a written contract was requested but not given, the unpaid amount shall be determined by the rate the freelance worker reasonably understood to apply to the work; or
- damages equal to the value of the contract or the work performed, whichever is greater.

Key Takeaways for California Employers

It is recommended that any hiring party that intends to use freelance workers should take the following steps:

1. Prepare a draft contract compliant with the FWPA that can be amended/updated for each freelance worker.
2. Initiate a process to ensure that timely payment to the freelance worker is done timely.
3. Pay freelance workers timely.
4. Update discrimination policies to include freelance workers.
5. Ensure the necessary employees are trained in the FWPA requirements.

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