

ORDINANCE

By Fletcher, Palmisano, and Cunningham

Amending Title 2, Chapter 40 of the Minneapolis Code of Ordinances relating to Administration: Workplace Regulations.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Chapter 40 of the Minneapolis Code of Ordinances be amended by adding thereto a new Article VI to read as follows:

CHAPTER 40, ARTICLE VI. – FREELANCE WORKER PROTECTIONS

40.700. – Short Title. This Article VI shall be known and may be cited as the Minneapolis Freelance Worker Protections Ordinance.

40.710. - Findings; Purpose. The City Council makes the following findings:

(a) As a home rule charter city, Minneapolis has broad authority through its police powers to enact regulations to further the public health, safety, and general welfare.

(b) [Reserved for Factual Findings, to be drafted at a future date].

40.720. - Definitions. The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of Minneapolis.

Commercial Hiring Party means any person or entity regularly engaged in business or commercial activity, including a digital network-based entity, who retains a freelance worker to provide any service as part of that business or commercial activity. A person or entity is regularly engaged in business or commercial activity if such person or entity owns or operates any trade, occupation, or business, including a not for profit business, or holds itself out as engaging in any trade, occupation, or business. For purposes of this Article, "hiring party" does not include any of the following:

(1) The United States government.

(2) The State of Minnesota, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.

(3) Any county or local government, except the city.

Department means the Minneapolis Department of Civil Rights.

Director means the Director of the Department of Civil Rights, or the Director's designee.

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 retained as an independent contractor by a hiring party to provide services in exchange for compensation. However, this term does not include:

- (1) Any person who, pursuant to the contract at issue, is a sales representative as defined in Minn. Stat. § 325E.37;
- (2) Any person who, pursuant to the contract at issue, is a commission salesperson as defined in Minn. Stat. § 181.145, subd. 1;
- (3) Any person duly authorized to practice law, who is engaged in the practice of law pursuant to the contract at issue; and
- (4) Any person who is a licensed medical professional, acting within the scope of that license.

Hiring party means any commercial hiring party or individual hiring party.

Individual Hiring Party means any person who retains a freelance worker to provide any service when the person is acting in a personal capacity and not as part of or on behalf of a business or commercial activity.

Retain means to enter into a contract through which the freelance worker provides services either to the hiring party or to a third party. This includes, but is not limited to, contracts where a commercial hiring party facilitates through a digital network the freelance worker's provision of services to a third party and the third party's payment for those services.

40.730. Contract with Commercial Hiring Parties. (a) Whenever a commercial hiring party retains the services of a freelance worker to perform services within the City of Minneapolis, and the agreed-upon compensation for such services is eight hundred dollars (\$800) or more, or is reasonably expected to be eight hundred dollars (\$800) or more, either by itself or when aggregated with all contracts for services between the same commercial hiring party and freelance worker during the immediately preceding one hundred twenty (120) days, the contract shall be reduced to writing.

- (b) Each party to the written contract shall receive a copy of the contract.
- (c) The written contract shall include at least the following information:
 - (1) The name and address of both the commercial hiring party and the freelance worker;
 - (2) An itemization of all services provided by the freelance worker;
 - (3) The compensation for the services, including the rate or rates and method of compensation; and
 - (4) The date on which the commercial hiring party must pay the agreed upon compensation or the mechanism by which the date will be determined.
- (d) If the parties are not able to specifically state the total compensation before the contract has been performed, the written contract shall also include a detailed statement of the method by which the total

compensation will be determined and an agreement regarding which party will be responsible for tracking the information necessary to determine the total compensation (i.e. hours worked or pieces completed).

(1) If the freelance worker is responsible for tracking the information necessary to determine the total compensation, the freelance worker shall provide the commercial hiring party with an invoice setting forth the total compensation due and a detailed calculation by which the amount was determined.

(2) If the commercial hiring party is responsible for tracking the information necessary to determine the total compensation, the commercial hiring party shall provide the freelance worker with an earnings statement setting forth the total compensation being paid and a detailed calculation by which the amount was determined.

(3) If the work is tracked using a commercial hiring party's digital network, the commercial hiring party shall be responsible for the tracking of the information necessary to determine the total compensation and shall not shift this responsibility to the freelance worker. The commercial hiring party shall provide the freelance worker with an earnings statement including sufficient detail to allow the freelance worker to verify the calculations by which the total compensation was determined.

40.740. – Contract with Individual Hiring Parties. (a) Whenever an individual hiring party retains the services of a freelance worker to perform services within the City of Minneapolis, and the agreed-upon compensation for such services is eight hundred dollars (\$800) or more, or is reasonably expected to be eight hundred dollars (\$800) or more, either by itself or when aggregated with all contracts for services between the same individual hiring party and freelance worker during the immediately preceding one hundred twenty (120) days, the freelance worker shall have the right to have the contract reduced to writing upon the freelance worker's request.

(b) The freelance worker shall have the responsibility of presenting a proposed written contract to the individual hiring party before the commencement of the work under the contract. The proposed written contract shall include at least the following information:

(1) The name and address of both the individual hiring party and the freelance worker;

(2) An itemization of all services provided by the freelance worker;

(3) The compensation for the services, including the rate or rates and method of compensation; and

(4) The date on which the individual hiring party must pay the agreed upon compensation or the mechanism by which the date will be determined.

(c) If the freelance worker presents the individual hiring party with a proposed written contract, the individual hiring party shall not require or permit the work to begin, and the freelance worker shall not begin the work, unless the parties have agreed upon written terms and both parties have signed or given their written assent.

(d) When the contract is reduced to writing, the freelance worker shall provide the individual hiring party with a copy of the written contract.

(e) This section shall not create any obligation for an individual hiring party to retain the services of a freelance worker who has requested that the contract be reduced to writing, nor shall it create any obligation for either an individual hiring party or a freelance worker to enter into a contract if the parties are unable to agree upon the terms.

40.750. – Services Performed in the City. (a) This Article shall apply to services performed by the freelance worker within the geographical boundaries of the City of Minneapolis.

(b) A freelance worker may establish that services under the contract were performed in the City by demonstrating:

(1) That the hiring party specified where the services were performed; or

(2) That the hiring party provided a location within the City at which the freelance worker was permitted though not required to perform the services; or

(3) That the freelance worker maintained a regular place of business at an address within the City and that the hiring party was aware of this place of business. It shall be rebuttably presumed that the hiring party was aware that the freelance worker maintained a regular place of business within the City if the written contract includes an address for the freelance worker located within the City; or

(4) Where a freelance worker performs transportation or delivery services, that the contract included a transportation or delivery service area wholly or partially within the City and that the services in fact required travel within the City.

(c) This Article shall not be enforced as to any freelance worker or hiring party unless the freelance worker has performed services for the hiring party within the geographic boundaries of the City.

40.760. – Timely payment required. (a) Except as otherwise provided by law, when the parties have entered into a written contract pursuant to Section 40.730 or Section 40.740 it is a violation of this ordinance for a hiring party to:

(1) Fail or refuse to pay the agreed-upon compensation to a freelance worker on or before the time specified in the parties' contract. If the contract does not specify the date for payment of compensation or the mechanism by which such date shall be determined, payment shall be made no later than thirty (30) days after the completion of the freelancer's services under the contract, provided that this thirty (30) day period shall begin to run when the freelancer notifies the hiring party that the services have been completed. This notification may be provided by any reasonable means including, but not limited to, the provision of a final invoice.

(2) Demand, after a freelancer has commenced work under the contract, that the freelancer accept as a condition of timely payment less compensation than the amount of the agreed-upon compensation.

(b) Except as otherwise provided by law, when a commercial hiring party and a freelance worker have entered into an agreement but the agreement is not in writing, it is a violation of this ordinance for the commercial hiring party to:

(1) Fail or refuse to pay the agreed-upon compensation to the freelance worker on or before the time agreed upon by the parties. If there was no agreement as to the time by which payment shall be made, payment shall be made no later than thirty (30) days after the completion of the freelancer's services under the contract, provided that this thirty (30) day period shall begin to run when the freelancer notifies the hiring party that the services have been completed. This notification may be provided by any reasonable means including, but not limited to, the provision of a final invoice.

(2) Demand, after the freelancer has commenced work under the agreement, that the freelancer accept as a condition of timely payment less compensation than the amount of the agreed-upon compensation.

(c) It shall be a defense to any violation charged under this section that the freelance worker has not completed the services contracted for, unless the failure to complete such services was caused by the hiring party's failure to cooperate in good faith with the freelance worker. However, the hiring party may not withhold timely payments for completed services because of a dispute over whether other services have been completed.

40.770. – Retaliation. It shall be unlawful for a hiring party, or any person acting on behalf of a hiring party, to deny or threaten to deny a current or future work opportunity to, or discriminate against, a freelance worker, or to take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed under this Article.

40.780. – No Effect on Contract Validity; No Effect on Worker Classification Under Other Laws. (a) Failure to comply with this Article does not render any otherwise valid contract void or voidable or otherwise impair any obligation, claim or right related to such contract.

(b) This Article shall not be construed as providing a determination, for the purposes of any other law, of the legal classification of any individual as an employee or independent contractor.

40.790. – Enforcement. (a) *Authority.* The Director has broad authority to implement, administer and enforce this Article. The Director shall have broad authority to investigate possible violations of this Article whenever there is cause to believe that any violation of this Article has occurred, either on the basis of a report of a suspected violation or on the basis of any other credible information, including violations found during the course of an investigation.

(b) *Report of Violations.* A freelance worker may report to the Department any suspected violation of this Article. A report of a suspected violation may be filed only if the matter complained of occurred after the effective date of this Article and within two (2) years prior to the filing of the report or, if the violation was willful and not the result of mistake or inadvertence, within three (3) years prior to the filing of the report.

(c) *Enforcement process.* The Department shall investigate and enforce this Article pursuant to the process of Chapter 40, Article II, Sections 40.120 through 40.160, except for subsections 40.120 (a) and (d). These sections are incorporated herein by reference, except that for purposes of enforcement of this Article only all references to "employers" shall be deemed to refer to hiring parties and all references to "employees" shall be deemed to refer to freelance workers.

(d) *Relief and Administrative Fines.* If any party is found to have violated this Article, the Director shall order that party to cease and desist from engaging in the violative practice and may order appropriate relief, including but not limited to:

(1) A freelance worker who establishes a violation of Section 40.760 shall recover compensatory damages in the amount due but unpaid under the contract;

(2) A freelance worker who establishes a violation of Section 40.760 may be awarded liquidated damages in an amount up to double the compensatory damages awarded, or five hundred dollars (\$500), whichever is greater. In determining the amount of the liquidated damages, the size of the hiring party and the gravity of the violation shall be considered;

(3) A freelance worker who establishes a violation of Section 40.730 may be awarded damages of up to two hundred and fifty dollars (\$250) per violation. However, a freelance worker who prevails solely on a violation of Section 40.730 may not recover these damages unless the freelance worker also establishes that such worker requested a written contract and made the hiring party aware of the requirements of Section 40.730 before the contracted work began;

(4) A freelance worker who establishes a violation of Section 40.770 may recover compensatory damages for the retaliatory conduct in the amount due but unpaid under the contract, up to one thousand dollars (\$1,000). In determining the amount of the damages, the size of the hiring party and the gravity of the violation shall be considered;

(5) For a second or subsequent violation by the hiring party of Section 40.760 within a three (3) year period from the date on which the first violation occurred, payment by the hiring party to the Department of a civil fine of up to one thousand dollars (\$1,000) for each violation. In determining the amount of the penalty, the size of the hiring party and the gravity of the violation shall be considered;

(6) For a second or subsequent violation by the hiring party of Section 40.730 within a three (3) year period from the date on which the first violation occurred, payment by the hiring party to the Department of a civil fine of up to two hundred and fifty dollars (\$250) for each violation. In determining the amount of the penalty, the size of the hiring party and the gravity of the violation shall be considered. This fine shall be imposed only upon clear and convincing evidence that the hiring party had knowledge of the written contract requirements of this Article at the time that the second or subsequent violation occurred;

(7) For a violation of Section 40.770, payment to the Department of a civil fine of not less than seven hundred dollars (\$700) nor more than three thousand dollars (\$3,000) for each violation. In determining the amount of the penalty, the size of the hiring party and the gravity of the violation shall be considered;

(8) Reimbursement of the Department for reasonable costs of investigation expended in enforcing this Article, unless the payment of costs would impose an extreme financial hardship on the hiring party, in which case the Director may order the payment of a percentage of costs expended which will not cause extreme financial hardship; and

(9) Payment to the Department of a civil fine of up to two thousand dollars (\$2,000) for failure to cooperate with the Department's investigation into a report of violation.

(e) If, during the pendency of a Department investigation, a freelance worker brings a private action in any court seeking to recover unpaid or underpaid compensation due under the same contract that is the subject of the Department investigation, that freelance worker's report of violation shall be deemed withdrawn and the investigation shall be closed. If, during the pendency of a Department investigation, a hiring party brings a private action in any court seeking a judicial declaration regarding the compensation due under the same contract, the Department may decline to continue the investigation. This section shall be interpreted narrowly to leave unaffected any rights not asserted in the private action and any rights of other freelance workers.

(f) The Director shall, in conjunction with other appropriate City departments, develop and implement a multilingual and culturally specific outreach and community engagement program to educate hiring parties and freelance workers about their rights and obligations under this chapter. This outreach program shall include media, trainings and materials accessible to the diversity of hiring parties and freelance workers in the city.

40.800. – Preemption. Nothing in this Article shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. No provision of this Article shall apply to any hiring party that is operating under the protection of the bankruptcy court or under receivership or under a trustee appointed by a court of competent jurisdiction.

40.810. - No assumption of liability. In undertaking the adoption and enforcement of this Article, the City is undertaking only to preserve and protect safety, health, and general welfare. The City is not assuming liability, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Article does not create a legally enforceable right against the City.

40.820. – Severability. If any of the parts or provisions of this Article or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this Article, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Article are severable.

40.830. – Rule making. The Director may make appropriate rules to implement, administer and enforce this Article. Such rules shall be consistent with this Article and may be relied upon by hiring parties and freelance workers in determining their rights and responsibilities under this Article. Rules shall be published and made available to the public at least ninety (90) days prior to their effective date. Any revisions to such rules shall be published and made available to the public at least thirty (30) days prior to their effective date.

40.840. - Annual Report. Beginning in 2021, and each year thereafter, the Director shall by March 31st provide a written report to the appropriate committee of the city council regarding this Article. The report shall include, but not be limited to, a discussion of the implementation and enforcement of this Article, including the number and nature of violations, specific violations, industries and occupations with high rates of violations, and the penalties assessed in the prior year. The report may also include recommendations for possible improvements to this Article.

40.850. – Effective Date. This Article shall be effective on [Reserved for date].