

Freelance Worker Protections Ordinance

Council Members Fletcher, Palmisano, and Cunningham
February 2020

Why Freelance Worker protections?

We are dedicated to making sure that everyone gets paid for the work they do, regardless of their employment arrangement. Freelance work is growing in our economy: more than 1 in 3 Americans freelanced in 2018¹ and Minneapolis is the 13th-largest freelance City.²

We know from the experiences of independent contractors that like employees, they too can have difficulty getting paid for their work because of insufficient protection against such exploitation when operating alone.

What would the ordinance do?

Freelance Work for Businesses / Commercial Hiring Parties

- The ordinance requires that businesses (i.e. “commercial hiring parties”), including digital/app platforms, create a written contract for independent contractors hired to perform work in the City of Minneapolis when the agreed-upon compensation is, or is expected to be, \$600 or more in a calendar year.
- This written contract is required to include:
 - the name and address of both the freelancer and the hiring party,
 - an itemization of all material services to be provided,
 - the compensation for the services, including the rate or rates and method of compensation, and
 - the date on which the hiring party must pay the agreed-upon compensation or how that date will be determined.
- To ensure fair compensation, the ordinance is written to flexibly allow for arrangements where the total compensation cannot be specified before the contract work is begun.
 - In such cases, the written contract needs to include a description of how the total compensation will be determined and who will be responsible for tracking the information needed to determine it (e.g. the hiring party or the freelancer tracking hours worked or pieces completed)

¹ Freelancing in America 2018, Upwork and Freelancers Union. <https://www.upwork.com/i/freelancing-in-america/2018/>

² The Economic Impact of The Freelance Economy, Fiverr. <https://www.fiverr.com/freelance-impact>

- If the **freelancer** is responsible for tracking the information needed to determine the total compensation, they will need to provide the commercial hiring party with an **invoice** detailing the total compensation and how it was determined.
- If the **commercial hiring party** is responsible for tracking the information needed to determine the total compensation, they will need to provide the freelancer with an **earnings statement** detailing the total compensation and how it was determined.
- If the work is tracked using a commercial hiring party's **digital network**, the commercial hiring party will be responsible for the tracking of the information needed to determine the total compensation. They will need to provide the freelancer with an **earnings statement** with enough detail to allow the freelancer to verify the calculations by which the total compensation was determined.

Freelance Work for Individual Hiring Parties

- When retained by individuals not acting in a business capacity, the ordinance allows freelancers hired to perform work in the City of Minneapolis to seek the protection of this ordinance by getting a written contract for their work when the agreed-upon compensation is, or is expected to be, \$600 or more in a calendar year.
- A freelancer who wants a written contract must present a proposed written contract to the individual hiring party before the work begins, and shall not begin the work, and the hiring party not require that the work begin, unless both parties have signed off on written terms.
- This written contract is required to include:
 - the name and address of both the freelancer and the hiring party,
 - an itemization of all material services to be provided,
 - the compensation for the services, including the rate or rates and method of compensation, and
 - the date on which the hiring party must pay the agreed-upon compensation or how that date will be determined.
- If the individual hiring party does not want a written contract, or if the parties are unable to agree to written terms, there is no obligation on either party.

Timely Payment Required

- It is considered a violation of this ordinance for any hiring party to:
 - Fail or refuse to pay at least the agreed-upon compensation to a freelance worker on or before the time specified in a written contract.
 - Demand, after a freelancer has started work under a written contract, that the freelancer accept less compensation than the agreed-upon amount as a condition of timely payment.
- It is also considered a violation of this ordinance for a commercial hiring party to do either of the above when an *unwritten* agreement is in place.

- If the contract does not specify a due date for payment or how that date will be determined, payment shall be made no later than 30 days after the completion of services under the contract. This 30-day period would begin when the freelancer notifies the hiring party that the services have been completed.

Disputes

- A hiring party that is charged with a violation can defend itself by showing 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.
- This ordinance establishes an administrative process and is not intended or designed to take the place of civil court if that level of adjudication is desired.

Retaliation Prohibited

- It is a violation of this ordinance for a hiring party to take adverse action against a freelance worker for exercising their rights under this Article.

Frequently Asked Questions

Who is and is not covered by this ordinance?

- "Freelance Worker" means any natural person or any organization composed of no more than one natural person, that works as an independent contractor, whether incorporated or employing a trade name.
- Certain sales representatives, commission salespeople, lawyers, and licensed medical professionals acting within the scope of their license are exempt.
- Work performed within the geographical boundaries of the City of Minneapolis is covered.
- Other units of government (federal, state, county, or other local governments) are not covered as commercial hiring parties.

Does this ordinance mean that independent contractors are now employees?

- No – this ordinance does not seek to reclassify anyone's employment status or impact that status under any other law.

Why \$600 in a calendar year as the threshold for coverage?

- The IRS already requires businesses to issue IRS Form 1099-MISC for tax purposes to each non-employee to whom they have paid at least \$600 for services during the year. The \$600 in a

calendar year threshold aligns with this requirement, although on a prospective (forward-looking) basis.

How will this ordinance be enforced?

- The Labor Standards division of the Civil Rights Department will be empowered to investigate claims and seek compliance, and impose remedies up to and including damages and penalties, as appropriate for the violation.
- Violations of the requirement of timely payment will result in compensatory damages (i.e. freelance workers will be made whole) and may also result in additional damages.
- Multiple violations within a three-year period may result in fines.
- If the only ordinance violation found in a complaint to the Civil Rights Department is a failure by a commercial hiring party to provide a written contract, that violation will only result in a fine if the freelance worker requested a written contract and made the hiring party aware of the ordinance requirement, and the commercial hiring party refused to do so.
- If a hiring party or freelance worker chooses to bring a private action (i.e. file a suit in civil court) in a contract dispute, any active investigation regarding that contract will be closed by the Civil Rights Department.

What has been the process so far?

- Council Members Fletcher, Palmisano, and Cunningham introduced this ordinance subject matter in June 2019.
- A first draft of the ordinance was published in September 2019.
- A revised draft was published in January 2020 after the authors received feedback from freelance workers, businesses, the Minneapolis Workplace Advisory Committee, and others.
- The legislative file page is at: <https://lims.minneapolismn.gov/File/2019-00699>.
- The authors have solicited input and experiential data from freelancer workers in this survey: <https://bit.ly/mplsfreelance>.

What are the next steps in the ordinance process?

- After further public engagement, this ordinance will be heard at a public hearing of the Public Health, Environment, Civil Rights, & Engagement Committee before going to the full City Council for debate and approval.
- You can share feedback on this ordinance by emailing WageTheftOrdinance@minneapolismn.gov, which is received by all of the authors' offices.