



Demanding Rights in an On-Demand Economy

Key Findings from Year One of NYC's Freelance Isn't Free Act



Bill de Blasio
Mayor

**Consumer
Affairs**

Lorelei Salas
Commissioner

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Acknowledgments

The Department of Consumer Affairs (DCA) acknowledges the authors of this research brief: Sam Krinsky, Jill Maxwell, and Brittany Rawlinson.

We also recognize the following DCA staff who contributed to this brief: Monica Aghimien, Lisa Billups, David Hernandez, Ben Holt, Leah Obias, Alberto Roldan, Felice Segura, Liz Vladeck, as well as Hsiu Mei Cheung, Yi Seul Chun, Debra Halpin, and Abigail Lootens.

NYC's Freelance Isn't Free Act

On May 15, 2017, Local Law 140 of 2016, the Freelance Isn't Free Act, took effect in New York City. The law establishes and enhances protections for freelance workers—individuals hired or retained as independent contractors by a hiring party—regardless of immigration status. As the only law of its kind in the nation, the Freelance Isn't Free Act is intended to help solve an all too common problem: nonpayment or late payment for freelance work.

The Freelance Isn't Free Act creates a new right to a written contract for freelance work worth \$800 or more, incentivizes timely payment for services, and empowers freelancers to enforce their rights in court. This new law includes several provisions designed to make it easier for freelancers to initiate and win lawsuits alleging breach of contract for failure to pay for services. Importantly, the law requires hiring parties to pay double damages and attorneys' fees when freelancers prevail in their suits for nonpayment, making relatively small cases more viable for freelancers to pursue.

Navigation Program for Freelancers

The NYC Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) assists freelancers in exercising their rights through the Navigation Program. The Navigation Program is staffed by two full-time navigators, and is supported by OLPS's legal, outreach, and operations staff. All staff involved has received extensive training on the new law and the unique circumstances of this set of workers due to their freelancer status.

The Navigation Program assists freelancers in a number of ways:

- **Fielding general inquiries** about the law, so both freelancers and hiring parties are well-informed about their rights and obligations.
- **Conducting initial consultations with freelancers** who believe their hiring party may have violated the law. These consultations are designed to ensure freelancers are knowledgeable about how the law applies to their specific circumstances and the available options for pursuing their claim. Often, freelancers are able to use the information they gain through these initial consultations to effectively negotiate with the hiring party, resolving the dispute without needing to pursue further action.
- **Administering a complaint procedure** established by the law. If the freelancer chooses to initiate this process, OLPS will send a notice of complaint to the hiring party, receive a response to the allegations from the hiring party, and communicate the hiring party's response to the freelancer. If the hiring party fails to provide a response to OLPS, in any subsequent civil proceeding the burden will be on the hiring party to demonstrate the freelancer's allegations were false.

OLPS is NYC's Resource for Workers

DCA's OLPS is the largest municipal labor standards office in the country. OLPS enforces key NYC workplace laws, including the Paid Safe and Sick Leave Law, Fair Workweek Law, Freelance Isn't Free Act, and Commuter Benefits Law. OLPS also conducts outreach to educate workers, as well as employers, about available protections; has a dedicated Paid Care Division; helps workers access and protect their rights and get critical services through intake and referral; conducts original research and develops innovative policies to raise job standards.

- **Guiding freelancers through the process of pursuing their claims in civil court.** If the OLPS complaint procedure does not resolve freelancers’ allegations, a navigator will advise freelancers on how to pursue their claims further through the courts. This includes navigators 1) providing legal referrals to OLPS-vetted low- or no-cost attorneys who are knowledgeable about the law and 2) providing guidance on how freelancers can still pursue their claims in court even without an attorney. If freelancers decide to proceed to court, the navigator can assist them in preparing their case, advise them on what to expect at court appearances, and attend court along with freelancers.
- **Developing and distributing materials to help freelancers exercise their rights and hiring parties fulfill their obligations.** OLPS has developed a suite of tools and other materials that freelancers can use for guidance and hiring parties can use for compliance. These include an annotated model contract, FAQs about the law, and a navigation guide. Over the last year, OLPS has conducted 118 trainings about the law for a variety of audiences and industries, including arts and entertainment, advertising, publishing, construction, and fashion.

The Freelance Isn’t Free Act Protects Workers from Retaliation for Exercising Their Rights

OLPS takes reports of employer retaliation very seriously for all NYC workplace laws, including the Freelance Isn’t Free Act. The law prohibits hiring parties from refusing to work with freelancers because they requested a written contract; blacklisting freelancers who ask to be paid for completed work; or taking any other action to punish freelancers for exercising their rights under the law, including the right to file a complaint with OLPS.

When a freelancer reports retaliation, OLPS navigators act swiftly to inform the hiring party about the law’s prohibitions and secure relief for the freelancer as soon as possible.

For example, when a photographer reported to OLPS being denied work with a prominent retailer after requesting a written contract, an OLPS navigator sent a notice of complaint to the retailer by overnight mail and called the retailer the next day. After reaching the Human Resources Director, the navigator informed the director about the retailer’s obligations under the law and the costs it could incur if the freelancer decided to proceed to court. The retailer acknowledged its mistake and quickly agreed to pay the freelancer \$1,500, the full value of the original contract.

About This Report

This report summarizes key findings from the Freelance Isn’t Free Act’s first year. Findings are based primarily on data and case notes from the Navigation Program. Case notes reflect navigators’ communications with freelancers and hiring parties, reviews of written materials provided by the parties, and freelancer responses to a follow-up survey OLPS administers on resolution of a complaint or at six months, whichever occurs first. Key information relating to each complaint is recorded in OLPS’s case tracking system. Information about “complaint outcomes” and “complainant characteristics” is self-reported by complainants and, as a result, is not available for all complaints. Statistics presented in this report reflect only those complaints for which sufficient information was available for a given measure.

Because the law covers agreements entered into on or after May 15, 2017, OLPS received relatively few complaints during the first few months the law was in effect, given the time that usually elapses between an initial agreement and a violation. OLPS considers a complaint to be any report from a freelancer of a possible violation, whether or not OLPS, with the consent of the complainant, initiates the formal complaint procedure provided for by the law.

This report reflects all inquiries and complaints to OLPS’s Navigation Program between May 15, 2017 and April 30, 2018. Data on NYC’s freelancer workforce comes from the Census Bureau’s American Community and Current Population Surveys.

Key Findings

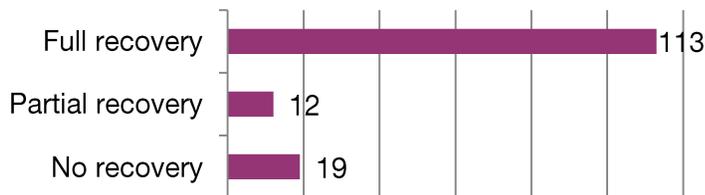
In year one, OLPS received 299 inquiries about the law and 264 complaints from freelancers alleging violations. On the whole, the Navigation Program appears to be highly effective in securing payment for complainants. After reporting payment violations to OLPS, 37 percent of freelancers received payment within 30 days, 54 percent within 60 days, and 61 percent within 90 days.¹ Of freelancers who received payment following a complaint, 90 percent received the full amount they alleged was owed. In total, freelancers were paid \$254,866 by hiring parties after engaging OLPS. The average recovery was \$2,039, equivalent to 4.3 percent of the median annual income reported by complainants (\$47,500).

Table 1. Inquiries, Complaints, and Recoveries in Year One of Freelance Isn’t Free Act

Inquiries	299
Complaints	264
Total recoveries	\$254,866
Average recovery	\$2,039

Source: Case notes from the Navigation Program.

Figure 1: Outcomes for Freelancers Alleging Nonpayment



Source: Case notes from the Navigation Program.

Notes: Outcomes are as of April 30, 2018. Excludes complaints in which a payment violation was not alleged (5) or that were still being pursued (47) or when the status and outcome were unknown (68).

¹ OLPS dates the time to recovery based on the date OLPS first learns that the freelancer received payment. As a result, the reported values overstate the length of time to recovery. All time to recovery measures include only those complaints when the full observation period elapsed prior to April 30, 2018 (e.g., the 90-day recovery rate excludes complaints made after January 30, 2018).

Freelancers who report violations to OLPS most commonly allege late payment or nonpayment for their services.

- 98 percent of complaints allege a payment violation, including not being paid at all, being paid late, and being paid less than the amount owed.
- 8 percent of complaints allege refusal to enter into written contracts.
- 7 percent of complaints allege retaliation.

Most complainants who secured payment did not need to pursue their claims in court.

- Among complainants who received payment after engaging OLPS, 21 percent received payment following the initial consultation with a navigator, 77 percent received payment after a navigator sent a notice of complaint to the hiring party, and 2 percent were paid after the freelancer filed a suit in civil court.
- Of the five suits filed in civil court by freelancers, in three cases the freelancer and hiring party reached settlement before the parties' first court appearance. In two cases, the freelancers received judgments in their favor and are currently awaiting payment.²

Complainants come from a wide range of industries and occupations, though workers in the arts and entertainment industry are overrepresented.

- The most common occupations among complainants were photographers (11%), film and video editors (9%), and journalists (8%). These occupations were overrepresented among OLPS complainants in comparison to the NYC freelance workforce as a whole. Photographers comprise only 2 percent of NYC freelancers, and film and video editors and journalists comprise less than 0.5 percent and 0.3 percent, respectively.
- Overall, 72 percent of complainants work in the arts and entertainment industry. Other common occupations among complainants in this industry include audio and video technicians (7%), producers and directors (7%), and camera operators (5%).
- OLPS also has assisted with complaints from freelancers in personal care and service occupations (4%, typically hair and makeup artists) and computer occupations (4%, typically IT specialists or computer programmers), among others.

Compared to all NYC freelancers, complainants to OLPS were more likely to be young, English-speaking, highly educated, and had higher incomes.

- Forty-six percent (46%) of complainants to OLPS were aged 18-29, compared to 9 percent for the NYC freelancer population as a whole.
- Complainants tended to have higher levels of education (86% bachelor's degree or higher compared to 49%), greater incomes (\$47,500 median annual income compared to \$30,000), and were far more likely to report English as their primary language (97% compared to 50%).

Complainants who responded to an OLPS survey reported high levels of satisfaction with the Navigation Program.

- Respondents highlighted navigators' quick responsiveness, their high level of knowledge about the law, and the sense of caring and support they provided.

² The two cases, *Avis v. Artmedia Antiques, LLC*, Index No. 667/2018 and *Leone v. Peart*, Index No. 406/18 were filed in Civil Court of the City of New York.

The Freelance Isn't Free Act is underused by NYC's freelance workers.

- OLPS estimates that more than 150,000 NYC freelancers experience late payment or nonpayment on an annual basis.³
- Based on this estimate, OLPS extrapolates that fewer than two out of every 1,000 workers who could have engaged OLPS for assistance in the past year did so.

Freelancers Helped Under the Freelance Isn't Free Act

Adam, Gaffer

The [navigator] that worked with me was incredibly helpful. After more than 6 months of the company not returning email or calls I filed with OLPS. Within 2 weeks the company called me back and scheduled a payment. I would not have been paid without OLPS and I am exceedingly grateful. Thank you.

After filing a complaint with OLPS, Adam received \$688.75 from a marketing agency that had hired him to prepare lighting for video shoots.

Clare, Journalist

Just my informing [the hiring party] that I was filing a formal complaint with your office ... prompted a payment. I'm so grateful that you guys exist. Thank you!

After contacting OLPS, Clare received \$1,170 from a publishing company for the article she had written but had not received payment.

Cristina, Writer and Editor

I think my [navigator] was wonderful at explaining the process to me and giving me all the information and steps. He made a potentially daunting situation a lot clearer and logical.

After filing a complaint with OLPS, Cristina received \$2,400 that was overdue from the publishing company that had hired her to manage its website. She is planning to file a suit in small claims court to recover the remaining \$4,800 she believes she's still owed, plus damages.

³ OLPS estimates the number of violations by applying a published national estimate of the frequency with which freelancers experience late payment and nonpayment to OLPS's original coverage estimate of the number of freelancers covered by the Freelance Isn't Free Act (*see* Discussion for estimates and further detail).

Discussion

In an economy increasingly marked by alternative employment arrangements, freelancers—sometimes referred to as independent contractors—are not afforded the basic protections that come with traditional employment. Legal protections for these workers are sorely needed. Frequently, freelancers are not even paid for their work. In a recent national survey, 36 percent of freelancers reported experiencing late payment in the past year, and 27 percent reported being paid less than they were owed.⁴ Additionally, freelancers do not have access to employer-sponsored health benefit plans, retirement funds, or other fringe benefits that contribute toward overall compensation.

The Freelance Isn't Free Act is the first law of its kind in the nation, providing enhanced protections to the approximately 400,000 freelancers who work or live in New York City:⁵

- The requirement to provide a freelancer with a written contract ensures that both parties have clear expectations at the outset about the arrangement.
- The default 30-day payment term means there is no ambiguity about when payment is due.
- The requirement that hiring parties pay double damages for nonpayment deters hiring parties from failing to pay on time and in full.
- The provision of attorneys' fees makes it more likely that freelancers will be able to obtain representation should they need to proceed to court.

The Freelance Isn't Free Act is also a step toward remedying a loophole in the law that facilitates and encourages employers to hire independent contractors or to misclassify employees as independent contractors as a means to skirt obligations employers have in traditional employment arrangements. A 2007 study estimated that more than 700,000 workers in New York State are misclassified as independent contractors annually.⁶

OLPS's experience implementing the Freelance Isn't Free Act reveals that the assistance OLPS provides to freelancers under the law is a powerful tool with great potential for helping New Yorkers get paid what they're owed. Indeed, in year one of the law's implementation, OLPS has achieved positive results for freelancers. And freelancers who filed complaints with OLPS report a high level of satisfaction with the Navigation Program.

However, because the law is in its early stages, there is still very little experience with how courts will adjudicate violations. Also, OLPS has not been advised of any freelancer who filed a complaint with the Office and proceeded to arbitration or mediation, which are options available under the law.

Over the past year, OLPS has sought to ensure that workers know their rights under the new law and that hiring parties are aware of their obligations. OLPS has established partnerships with worker organizations in industries where freelance work is common, conducted in-person trainings and webinars, spread awareness through social media, and distributed printed materials widely. OLPS is currently exploring

⁴ Krueger, Alan B. "Independent Workers: What Role for Public Policy." Princeton University Industrial Relations Section Working Paper 615, September 2017.

⁵ OLPS estimates the law's coverage based on a count of self-employed workers who work or reside in NYC (obtained from the American Community Survey) adjusted by the share of self-employed NYC residents who report no paid employees (obtained from the Current Population Survey). Separate estimates were generated for unincorporated and incorporated self-employment, then summed. Estimate only includes persons 18 or older who were employed at the time of the interviews. The resulting figure (384,465) does not capture workers who perform freelance work as a supplement to regular employment or work remotely for hiring parties based in NYC, though both types of workers are covered by the Freelance Isn't Free Act. Further, this figure is a point-time estimate for the average of 2016 and, therefore, understates the cumulative number of people who perform covered work during at least some part of a year. Though no exact figure for coverage is available, OLPS believes 400,000 is a conservative estimate.

⁶ Donahue, Linda, James Lamare, and Fred Kotler. "The Cost of Worker Misclassification in New York State." Cornell University, School of Industrial and Labor Relations Research Studies and Reports, February 1, 2007.

additional strategies to reach more workers who could benefit from the law's protections, including through new paid advertising campaigns and greater use of social media. A particular emphasis will be on targeting outreach to freelancer populations that were under-represented among users of the Navigation Program, in particular low-income, immigrant, and other vulnerable workers. OLPS will continue to assess what it learns through the Navigation Program and, in consideration of all available data, make recommendations about how to improve upon the Freelance Isn't Free Act to strengthen protections for this growing workforce more broadly.

Appendix: Freelance Isn't Free Act by the Numbers

Table A1. Complaints to OLPS by value of contract and section of law alleged to have been violated

	Written Contract Required (§ 20-928)	Unlawful Payment Practices (§ 20-929)	Retaliation (§ 20-930)	Total
<\$500	0	46	0	46
\$500-\$1K	4	42	1	42
>\$1K-\$1.5K	2	28	2	28
>\$1.5K-\$2K	1	28	2	28
>\$2K-\$2.5K	1	18	0	18
>\$2.5K-\$3K	3	18	1	18
>\$3K-\$3.5K	2	9	4	10
>\$3.5K-\$4K	1	12	0	12
>\$4K-\$4.5K	2	6	0	6
>\$4.5K-\$5K	1	10	0	10
>\$5K-\$5.5K	0	4	0	4
>\$5.5K-\$6K	0	2	1	2
>\$6K-\$6.5K	0	1	0	1
>\$6.5K-\$7K	1	5	0	5
>\$7K-\$7.5K	0	3	0	4
>\$7.5K-\$8K	0	5	1	5
>\$8K-\$8.5K	1	2	0	2
>\$8.5K-\$9K	1	1	0	1
>\$9K-\$9.5K	0	2	1	2
>\$9.5K-\$10K	0	3	0	3
>\$10.5K-\$11K	0	2	1	2
>\$11K-\$11.5K	0	1	0	1
>\$12.5K-\$13K	0	1	1	1
>\$13K-\$13.5K	0	1	0	1
>\$14.5K-\$15K	0	1	0	1
>\$16K-\$16.5K	0	1	0	1
>\$19K-\$19.5K	0	1	0	1
>\$19.5K-\$20K	0	2	0	2
>\$21K-\$21.5K	0	1	0	1
>\$24.5K-\$25K	0	2	0	2
>\$26K-\$26.5K	0	1	1	1
Unknown	1	0	2	3
Total	21	259	18	264

Source: Case notes from the Navigation Program.

Notes: Complaints may allege violations of more than one section of the law. For work worth less than \$800 a written contract is not required. Contract values for which no violation was alleged have been excluded.

Table A2. Hiring party responses and nonresponses to OLPS notice of complaint by value of contract and section of law alleged to have been violated

	Hiring Party Responded			Hiring Party Did Not Respond		
	Written Contract Required (§ 20-928)	Unlawful Payment Practices (§ 20-929)	Retaliation (§ 20-930)	Written Contract Required (§ 20-928)	Unlawful Payment Practices (§ 20-929)	Retaliation (§ 20-930)
<\$500	0	14	0	0	19	0
\$500-\$1K	2	11	0	2	21	1
>\$1K-\$1.5K	2	11	1	0	9	1
>\$1.5K-\$2K	0	8	2	0	12	0
>\$2K-\$2.5K	1	4	0	0	6	0
>\$2.5K-\$3K	0	6	0	2	9	1
>\$3K-\$3.5K	2	4	3	0	3	1
>\$3.5K-\$4K	0	4	0	1	4	0
>\$4K-\$4.5K	0	2	0	2	3	0
>\$4.5K-\$5K	0	2	0	1	5	0
>\$5K-\$5.5K	0	2	0	0	1	0
>\$5.5K-\$6K	0	1	0	0	1	1
>\$6.5K-\$7K	0	2	0	1	3	0
>\$7K-\$7.5K	0	1	0	0	2	0
>\$7.5K-\$8K	0	1	0	0	3	1
>\$8K-\$8.5K	0	0	0	1	1	0
>\$9K-\$9.5K	0	1	1	0	0	0
>\$9.5K-\$10K	0	0	0	0	2	0
>\$10.5K-\$11K	0	1	1	0	0	0
>\$11K-\$11.5K	0	1	0	0	0	0
>\$19K-\$19.5K	0	1	0	0	0	0
>\$19.5K-\$20K	0	1	0	0	0	0
>\$24.5K-\$25K	0	1	0	0	0	0
>\$26K-\$26.5K	0	1	1	0	0	0
Unknown	1	0	1	0	0	0
Total	8	80	10	10	104	6

Source: Case notes from the Navigation Program.

Notes: Based on notices of complaint sent between May 1, 2017 and March 31, 2018. For work worth less than \$800 a written contract is not required. Contract values for which no violation was alleged have been excluded.

Table A3. Characteristics of NYC employees, freelancers, and complainants to OLPS alleging violations of the Freelance Isn't Free Act

	Wage & Salary Workers (n=4,646,711)	Freelance Workers (n=384,465)	All NYC Workers (n=5,031,176)	OLPS Complaints (n=264)
Female (%)	48%	39%	48%	50%
Primary language (%)				
English	55%	50%	55%	97%
Spanish	21%	23%	21%	0%
Median Annual Income (\$)	\$45,500	\$30,000	\$45,500	\$47,500
Education (%)				
Less than High School	10%	14%	10%	0%
High School Diploma/ General Educational Development (GED)	20%	20%	20%	1%
Some College or Associate's Degree	23%	18%	23%	13%
Bachelor's Degree	28%	27%	28%	79%
Graduate Degree	19%	22%	19%	6%
Age (%)				
18-29	23%	9%	23%	46%
30-39	26%	22%	26%	29%
40-49	22%	24%	22%	18%
50-59	19%	24%	19%	7%
60-69	9%	15%	9%	0%
70-79	1%	4%	1%	0%
80+	0%	1%	0%	0%

Sources: Case notes from the Navigation Program and the Census Bureau's American Community and Current Population Surveys.

Notes: Wage and salary worker, freelance worker, and all NYC worker estimates are for employed persons age 18 or older who live or work in New York City.

