

New York Legislative Update: Freelancer Protections, Discrimination Claims, Settlement Agreements

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November 30, 2023

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New York Governor Kathy Hochul has signed bills enacting the Freelance Isn't Free Act, extending the statute of limitations to file a lawsuit alleging unlawful discriminatory practices, and barring the inclusion of liquidated damages provisions in settlement agreements for claims of harassment, discrimination, or retaliation. These are among the hundreds of bills passed during the busy 2023 New York legislative session. A bill barring non-compete agreements for all workers, regardless of their salary level or job function, was passed in June, but it has yet to be sent to Governor Hochul for signature.

Freelance Isn't Free Act

Governor Hochul signed into law the [Freelance Isn't Free Act](#) (S5026/A6040), which provides certain protections to freelance workers in New York State. The Act will take effect on May 20, 2024, 180 days after signing. The Act creates a new Section 191-d of the Labor Law and is modeled on existing New York City law.

The Act requires a business to provide any freelance worker with a written contract if the freelance work is worth at least \$800, inclusive of multiple projects over a 120-day period. The Act sets a 30-day deadline for payment in full unless another time frame is agreed to by the parties. The written contract, a physical or electronic copy of which must be furnished to the freelancer, also must include the name and mailing address of both parties, an itemization of all services to be provided by the worker, the value of services to be provided, and the rate and method of compensation.

Under the law, the hiring party may not retaliate or take any action that is reasonably likely to deter a freelance worker from exercising or attempting to exercise any right under the law. Freelance workers may file a complaint with the State Department of Labor for violations of the law. Additionally, a freelance worker may file a civil action in any court of competent jurisdiction for damages. Actions for non-payment of the contracted compensation or for retaliation are subject to a six-year statute of limitations.

For more information on this legislation, see [New York State Legislature Again Passes the Freelance Isn't Free Act](#).

Statute of Limitations Under New York State Human Rights Law

Governor Hochul signed a [bill](#) (S3255/A501) amending the N.Y. Executive Law § 297 to extend the statute of limitations for filing complaints of discrimination with the State Division of Human Rights from one year to three years. This extension makes the statute of limitations for such filing consistent with the current three-

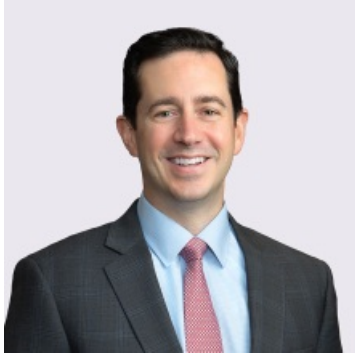


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year statute of limitations for sexual harassment complaints.

This law will take effect on Feb. 15, 2024, 90 days after signing. It will apply to all unlawful discriminatory practice claims arising on or after that date.

Liquidated Damages in Settlement Agreements

Governor Hochul signed into law [a bill](#) (S4516/A581) banning clauses in settlement agreements for discrimination, retaliation, or harassment claims from requiring a complainant to pay liquidated damages or forfeit consideration for breaches of non-disparagement or confidentiality provisions.

The new law, which amends N.Y. Gen. Obligations Law § 5-336, also prohibits settlement agreements for discrimination, retaliation, or harassment claims from requiring an affirmative statement by the complainant that they were “not in fact subject to unlawful discrimination.”

As an aside, the enactment also amends existing N.Y. Gen. Obligations Law § 5-336 to provide that a complainant must be given up to 21 days to consider a term of confidentiality, but they can sign in less than 21 days if they choose. Previously, the law required a complainant to take the full 21 days to consider the agreement before signing. The required non-waivable revocation period for such agreements remains applicable. With that said, there is a lack of clarity as when 5-336 was enacted a similar provision was enacted in the Civil Practice Law and Rules (CPLR) which was not modified. Employers must consider both provisions in analyzing whether to provide a full 21 days, especially if there is a filed matter in a forum in which the CPLR is applicable. The safest course of action remains to provide a full, non-waivable 21 days in any situation in which there is an underlying claim of discrimination, harassment, or retaliation and the standalone confidentiality agreement is being utilized to keep the underlying facts confidential.

This law took effect immediately and applies to all agreements entered into on or after Nov. 17, 2023.

For more on other legislation signed by Governor Hochul this term, see:

- [New York Clean Slate Act Will Seal Certain Old Criminal Records, Affecting Employers' Hiring Processes](#)
- [More New York Legislative Enactments](#)
- [New York Enacts Laws on Captive Audience Meetings, Wage Theft, Gender Identity](#)
- [With Increased New York Minimum Wage Come Modified Obligations Under State Wage Orders](#)

If you have any questions about these or any other legislative developments, please contact the Jackson Lewis attorney with whom you regularly work.

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