

New York City Issues Guidance Clarifying New Independent Contractor Protections under Human Rights Law

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The New York City Commission on Human Rights (NYCCHR) has released a factsheet providing guidance on its view of the scope of the anti-discrimination protections provided to individuals performing services as independent contractors and freelancers under the New York City Human Rights Law (NYCHRL) that went into effect January 11, 2020.

(For more on the new law, see our article, [New York City Enacts Legislation Clarifying Independent Contractor Protection under Human Rights Law.](#))

The guidance explains who is covered, what protections have been added, and the required sexual harassment training, among other topics.

Freelancers vs. Independent Contractors

The factsheet provides that, for purposes of protections under the NYCHRL and related requirements, an “independent contractor,” “freelancer,” and, in most cases, any other individual doing work for any employer who is not an employee (collectively herein, “independent contractors”), are synonymous under the NYCHRL amendment. The terminology used by the parties is not determinative.

Expanded Protections

Independent contractors are protected against employment discrimination and harassment under the NYCHRL. Independent contractors also have a right to request and receive reasonable accommodations for disability, pregnancy, lactation, religious observances, or status as victims of domestic violence, sexual offenses, or stalking. This means that all “cooperative dialogue” obligations already in effect for New York City employees also apply to independent contractors.

Sexual Harassment Training

The annual training requirement applicable to employees applies to independent contractors.

Employers must train an independent contractor if that individual works for an employer of at least 15 employees (all of whom need not be in New York City) and works:

1. More than 80 hours in a calendar year; and
2. For at least 90 days (does not need to be consecutive).

Independent contractors do not need to be trained more than once in a given year and may provide proof of completion of one sexual harassment prevention training to multiple workplaces in lieu of additional training.

Hiring Through an App or Platform

Entities or persons that operate an app or platform that allows independent contractors to provide services also may be liable under the NYCHRL if:

1. The entity or persons operating the app or platform directly engage in discrimination against any independent contractor using their platform; or
2. Any customer using the platform to hire an independent contractor engages in unlawful discrimination and the entity or persons operating the app or platform knew or should have known about the discrimination and fails to take action.

In essence, all anti-discrimination protections applicable to recruitment of employees now apply to recruitment of independent contractors.

Notices

As independent contractors are covered by the NYCHRL's anti-discrimination protections, mandatory New York City employee notices reiterating those protections must be issued to independent contractors at retention. These include the anti-sexual harassment notice and the pregnancy rights notice.

New York City employers that utilize independent contractors must ensure their practices comply with these expanded requirements. Further, actions relevant to independent contractors in New York City should be subject to the same anti-discrimination obligations and scrutiny as actions involving employees.

For guidance on these and other workplace issues, please contact a Jackson Lewis attorney.

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