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Senate Bill No. 988

CHAPTER 870

An act to add Part 5 (commencing with Section 18100) to Division 7 of the Business and Professions Code, relating to independent contractors.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 988, Wiener. Freelance Worker Protection Act.

Existing law generally regulates employment and, with certain exceptions, requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission.

This bill would impose minimum requirements, commencing January 1, 2025, relating to contracts between a hiring party and a freelance worker, defined as a person, as specified, that is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than \$250, as specified. Specifically, the bill would require a hiring party to pay a freelance worker the compensation specified by a contract for professional services on or before the date specified by the contract or, if the contract does not specify a date, no later than 30 days after completion of the freelance worker's services. The bill would require a contract between a hiring party and a freelance worker to be in writing and would require a hiring party to retain the contract for no less than 4 years. The bill would prohibit a hiring party from discriminating or taking adverse action against a freelance worker for taking specified actions relating to the enforcement of these provisions. The bill would authorize an aggrieved freelance worker or a public prosecutor to bring a civil action to enforce these provisions, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 5 (commencing with Section 18100) is added to Division 7 of the Business and Professions Code, to read:

PART 5. Independent Contractors

18100. This part shall be known, and may be cited, as the Freelance Worker Protection Act.

18101. For purposes of this part, the following definitions apply:

(a) "Freelance worker" means a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than two hundred and fifty dollars (\$250), either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the immediately preceding 120 days.

(b) "Hiring party" means a person or organization in the State of California that retains a freelance worker to provide professional services, except any of the following:

(1) The United States government.

(2) The State of California or any subdivision thereof.

(3) A foreign government.

(4) An individual hiring services for the personal benefit of themselves, their family members, or their homestead.

(c) "Professional services" has the same meaning as paragraph (2) of subdivision (b) of Section 2778 of the Labor Code.

(d) "Public prosecutor" has the same meaning as Section 180 of the Labor Code.

18102. (a) Except as otherwise provided by law, a hiring party shall pay a freelance worker the compensation specified by a contract for professional services:

(1) On or before the date compensation is due pursuant to the contract.

(2) If the contract does not specify when the hiring party shall pay, no later than 30 days after the completion of the freelance worker's services under the contract.

(b) Once a freelance worker has commenced performance of services under a contract, a hiring party shall not require as a condition of timely payment that the freelance worker do either of the following:

(1) Accept less compensation than the amount of compensation specified by the contract.

(2) Provide more goods or services or grant more intellectual property rights than agreed to in the contract.

18103. (a) Whenever a hiring party retains the services of a freelance worker, the contract between the hiring party and the freelance worker shall be in writing. The hiring party shall furnish a signed copy of the written contract, either physically or electronically, to the freelance worker. The hiring party shall retain the contract for no less than four years.

(b) The contract shall include, at minimum, all of the following information:

(1) The name and mailing address of each party.

(2) An itemized list of all services to be provided by the freelance worker, including the value of those services and the rate and method of compensation.

(3) The date on which the hiring party shall pay the contracted compensation or the mechanism by which the date shall be determined.

(4) The date by which a freelance worker shall submit a list of services rendered under the contract to the hiring party to meet the hiring party's internal processing deadlines for purposes of timely payment of compensation.

(c) This section does not limit existing contract law, including, but not limited to, that it does not prevent a freelance worker from enforcing an oral contract or recovering under the doctrine of promissory estoppel. Notwithstanding a refusal by the hiring party to provide a written contract as required by subdivision (a), the following may be evidence that a contract was formed between the parties:

(1) The hiring party made representations to the freelance worker regarding the rate for services to be performed.

(2) The freelance worker provided in writing any document to the hiring party, including email, text message, or other electronic communication, a summary of the rate and work to be performed prior to performing the work.

(3) The freelance worker performed the work that the freelance worker understood was to be performed.

18104. A waiver of any provision in this part shall be deemed contrary to public policy and is void and unenforceable.

18105. A hiring party shall not discriminate or take any adverse action against a freelance worker that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, taking any of the following actions:

- (a) Opposing any practice prohibited by this part.
- (b) Participating in proceedings related to the enforcement of this part.
- (c) Seeking to enforce rights provided by this part.
- (d) Otherwise asserting or attempting to assert rights provided by this part.

18106. (a) An aggrieved freelance worker or a public prosecutor may bring a civil action to enforce this part.

(b) A prevailing plaintiff in an action alleging a violation of this part is entitled to reasonable attorney's fees and costs, injunctive relief, and any other remedies deemed appropriate by the court. Damages shall be awarded to an aggrieved freelance worker as follows:

(1) If the freelance worker requested a written contract prior to commencing work under the contract and the hiring party refused in violation of Section 18103, the freelance worker shall be awarded an additional one thousand dollars (\$1,000).

(2) If the hiring party failed to pay the freelance worker the contracted compensation by the time required under Section 18102, the freelance worker shall be awarded damages up to twice the amount that remained unpaid at the time payment was due. If the freelance worker requested a written contract prior to commencing work under the contract and the hiring party refused in violation of Section 18103, the amount unpaid shall be determined by the rate the freelance worker reasonably understood to apply to the work.

(3) If the hiring party violates any other provision of this part, the freelance worker may be awarded damages equal to the value of the contract or the work performed, whichever is greater.

18107. This part applies only to contracts entered into or renewed on or after January 1, 2025.