NEW YORK LAW DEVELOPMENTS – THE AGE OF THE FREELANCE WORKER

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INTRODUCTION

This Article provides a survey of recent changes to New York Law brought about by the passage of the Freelance Isn't Free Act (A.6040/S.5206)[1] ("FIFA").

We begin with a brief history of laws passed in various locales across the United States to address the situation many employees are faced with when they break away from the traditional employer-employee career model—a trend which has risen in the wake of COVID-19. Then, we analyze in detail the provisions of FIFA.

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1. Freelance Isn't Free Act, S.5206, Reg. Sess. (N.Y. 2023).

Next, we turn to an examination of case law addressing claims brought under New York City's analogous law in order to provide a baseline of expectation as to how courts will handle claims brought under FIFA.

Finally, we conclude with a summary of the implications of the passage of FIFA and the court decisions involving issues that are likely to arise when courts deal with FIFA claims.

I. FREELANCE LAWS IN NEW YORK AND THE UNITED STATES

FIFA borrows its name, and much of its substantive provisions, from a New York City law of the same name (the "NYC Act"), that took effect on May 15, 2017.[2] The NYC Act was the first of its kind in the United States, before Minneapolis followed suit in 2021.[3] Freelance workers are commonly understood to be self-employed individuals who provide services to clients on a project-by-project basis, though FIFA and the NYC Act each contain specific legal definitions of "freelance worker" which are examined in this article. The NYC Act was seen as necessary to protect freelancer workers in the city who made up approximately one third of the New York City workforce in 2018-2019.[4] According to the Freelancers Union, the independent workforce also makes up over a third of the entire country currently, and the NYC Act has "protected over 2,500 freelancers and recovered over $3 million in owed compensation for their work in New York City."[5] The Freelancers Union also reports that in 2022, 60 million Americans worked as freelancers contributing $1.35 trillion to the national economy, and 71% reported late or non-payment for their work.[6] With FIFA set to expand the class of protected workers, it is

2. Nancy Gunzenhauser, *Reminder: NYC's Freelance Isn't Free Act Take Effect on May 15*, NAT'L L. REV. (May 3, 2017), https://natlawreview.com/article/reminder-nyc-s-freelance-isn-t-free-act-takes-effect-may-15.

3. Mike LaSusa, *States Look to Boost Independent Contractor Pay Protections*, LAW360 (Apr. 8, 2021, 9:47 PM), https://www.law360.com/employment-authority/articles/1371941/states-look-to-boost-independent-contractor-pay-protections.

4. Ivan Pereira, *Freelancers Make Up One-Third of the NYC Workforce: Report*, AMNY (Sept. 11, 2019), https://www.amny.com/news/nyc-freelance-work-1-36145606/.

5. *Freelance Isn't Free Goes into Effect in New York State on August 28th*, FREELANCERS UNION (Aug. 27, 2024), https://blog.freelancersunion.org/2024/08/27/freelance-isnt-free-new-york/.

6. *Freelance Protections Were Just Signed into Law Across California State: Here's What You Need to Know*, FREELANCERS UNION (Oct. 1, 2024), https://blog.freelancersunion.org/2024/10/01/freelance-protections-california-state/.

reasonable to expect to see these numbers increase somewhat substantially.

As recognition of the amount and importance of freelance work grows, other cities and states are likely to follow suit. To start the trend, California signed into law the Freelance Worker Protection Act on September 28, 2024, taking effect in January 2025.[7] The legal framework started by the NYC Act and expanded under FIFA is likely to play an important role in how legislatures, and in turn courts, react to this evolving environment.

II. THE ESSENTIAL PROVISIONS OF FIFA

On November 22, 2023, New York Governor Kathy Hochul signed FIFA into law, codified under the New York State General Business Law, designed to expand protections for freelance workers.[8] FIFA took effect on August 28, 2024, and imposes a number of requirements on those who hire freelance workers and penalties for failure to comply. This section provides an overview of the essential provisions of FIFA.

A. Freelance Workers

Under FIFA, a freelance worker is, subject to certain exceptions,

> any natural person or organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days . . . .[9]

FIFA includes four exceptions to the definition of "freelance worker," providing that (i) sales representatives, (ii) persons lawfully engaged in the practice of law, (iii) licensed medical professionals, and (iv) construction contractors are not freelance workers despite the fact

7. Tom M. McInerney et al., *California Governor Signs Freelance Worker Protection Act*, OGLETREE DEAKINS (Oct. 8, 2024), https://ogletree.com/insights-resources/blog-posts/california-governor-signs-freelance-worker-protection-act/.

8. *See* N.Y. GEN. BUS. LAW § 1410 (McKinney 2024).

9. *Id.*

that they may otherwise satisfy the statutory definition.[10] FIFA also precludes the United States government, the State of New York, any municipality, and any foreign government from its constraints, providing that such entities cannot be considered a "hiring party."[11] As discussed in Subsection II below, whether a party meets the definition of "freelance worker" under the NYC Act has been a frequently litigated issue.

B. Written Agreement and Payment Obligations

Once it is established that a contract falls under FIFA (i.e., that it is for services of at least $800, including in the aggregate scenario described above, and is between a freelance worker and a hiring party), the parties and the contract in question must satisfy certain requirements of FIFA.

FIFA requires that each freelance contract be reduced to writing, which the hiring party must furnish to the freelance worker.[12] The hiring party must retain a copy of the written contract for at least six years, which is to be made available to the attorney general upon request.[13] The written contract must contain certain minimum information, including the name and address of the hiring party and the freelance worker; an itemization of all services to be provided by the freelance worker, the value of such services, and the rate and method of compensation; the date on which compensation must be paid or the mechanism by which such date will be determined; and the date by which the freelance worker must submit a list of services rendered to the hiring party in order to meet any internal processing deadlines for the purpose of timely compensation.[14] If the parties fail to comply with these requirements, it does not make a freelance contract void or serve as a defense to a claim brought by a freelance worker against a hiring party.[15]

FIFA also requires that compensation pursuant to a freelance agreement be paid either (i) on or before the date the compensation is due under the contract, or (ii) if the contract does not specify when the hiring party must pay (or the mechanism by which such date will be determined), no later than thirty days after the completion of the

10. *Id.*
11. *See id.*
12. *See* N.Y. GEN. BUS. LAW § 1412 (McKinney 2024).
13. *See id.*
14. *See id.*
15. *See* N.Y. GEN. BUS. LAW § 1415 (McKinney 2024).

freelance worker's services under the contract.[16] Once a freelance worker has begun performance of services under a freelance contract, FIFA prohibits hiring parties from requiring that the freelance worker accept less compensation than called for under the contract as a condition of timely payment.[17]

C. Powers and Obligations of the Attorney General and the Department

FIFA also provides the New York Attorney General with certain power and obligations. Under FIFA, the attorney general is authorized to investigate complaints regarding FIFA violations "and provide appropriate remedies."[18] The attorney general is also empowered to bring actions under FIFA in the name of individual freelance workers seeking restitution of money or property owed to freelance workers "[w]henever the attorney general shall believe from evidence satisfactory to them that any hiring party has engaged or is about to engage in any of the acts" prohibited by the law.[19] In such instances, the attorney general may also seek a modest civil penalty.[20]

FIFA also provides that the commissioner of labor must make model freelance contracts available on the website of the department of labor for use by the general public at no cost.[21] As of the date of this article, the department's website has a six-page model contract available to download.[22]

D. Prohibitions on Hiring Parties

FIFA prohibits a hiring party from threatening, intimidating, disciplining, harassing, denying work opportunities to, discriminating against, or taking any other action to penalize a freelance worker from exercising their rights under FIFA.[23]

E. Complaints by Freelance Workers

As discussed in Subsection III above, in order to give FIFA teeth, the New York legislature included a provision that allows freelance

16. *See* N.Y. GEN. BUS. LAW § 1411 (McKinney 2024).
17. *See id.*
18. N.Y. GEN. BUS. LAW § 1414 (McKinney 2024).
19. *Id*.
20. *See id.*
21. *See* N.Y. GEN. BUS. LAW § 1412 (McKinney 2024).
22. *See Freelance Worker Agreement*, N.Y. STATE DEP'T OF LABOR, https://dol.ny.gov/freelance-worker-agreement (last visited Nov. 17, 2024).
23. *See* N.Y. GEN. BUS. LAW § 1413 (McKinney 2024).

workers to file a complaint with the attorney general regarding a violation of FIFA and prompting an investigation into such complaint.[24]

While the attorney general may investigate claims of freelance workers and bring suit against hiring parties, FIFA also envisions freelance workers themselves to bring an action for damages in any court of competent jurisdiction.[25]

The statute of limitations for claims that the hiring party failed to provide a copy of the written contract with the freelance worker is two years after the acts alleged occurred.[26] Other claims of FIFA violations (i.e., failure to pay a freelance worker or violation of the prohibitions of bad acts taken against freelance workers) must be brought within six years after the acts alleged occurred.[27]

A freelance worker who prevails on a claim of failure to pay compensation is entitled to receive damages as well as reasonable attorneys' fees and costs.[28] One who prevails on a claim involving the prohibitions on bad acts against freelance workers is entitled to statutory damages of $250, and also to double damages, injunctive relief, and such other remedies as may be appropriate.[29] If the trier of fact finds that a hiring party has engaged in a pattern or practice of violations of FIFA, then it may impose a civil penalty of not more than $25,000.[30]

F. Waiver of Rights

FIFA contains some other provisions which might easily be overlooked, but are important to take stock of. Chief among these is a provision stating that "any provision of a contract purporting to waive rights under this article is void as against public policy."[31] As discussed in Section III below, this provision is particularly important in instances where a freelance contract contains an arbitration clause.

G. FIFA Compared with the NYC Act

FIFA mirrors the NYC Act in many ways and their respective provisions overlap significantly. However, there are some key differences. The most obvious is that the class of protected workers is

24. *See* N.Y. GEN. BUS. LAW § 1414 (McKinney 2024).
25. *See id.* § 1414(1)–(2)(a).
26. *See id.* § 1414(2)(b).
27. *See id.* § 1414(2)(c).
28. *See id.* § 1414(3)(a).
29. *See* GEN. BUS. § 1414(3)(b)(i)–(3)(c).
30. *See id.* § 1414(5).
31. N.Y. GEN. BUS. LAW § 1415(1) (McKinney 2024).

substantially increased by virtue of FIFA covering the entire state. Another key difference is the exclusion of construction contractors from the definition of "freelance worker" under FIFA.[32] The NYC Act does not contain this exclusion, and construction contractors working in New York State but outside of New York City are unable to avail themselves of the protections of FIFA.[33] Notably, FIFA provides that its provisions "shall not be construed or interpreted to overrise or supplant any of the provisions of" the NYC Act. [34]

Because the similarities between the NYC Act and FIFA greatly outweigh their differences, the case law that has been built by courts addressing claims under the NYC Act is particularly illuminating, and likely indicative of how courts will handle those same issues that are sure to arise under FIFA. New York case law analyzing issues under the NYC Act is examined in detail in the following Section.

III. FIFA IN THE COURTS

Due to FIFA's recent enactment, as of the date of this article, there is little in the way of case law dealing with the rights and remedies under the newly enacted New York State FIFA. However, as noted above, the New York State FIFA drew directly from the NYC Act.[35] Due to the similarities between FIFA and its New York City predecessor, New York courts have grappled with decisions concerning substantially similar issues as what can be expected to arise when dealing with FIFA claims. These decisions can potentially be predictive of forthcoming decisions from the courts at the New York State level. The more interesting decisions regarding the analogous New York City law are examined in this Section, with certain implications and analysis noted throughout. This will likely continue to be an evolving area of law as more cases arise at the New York State level.

As an initial note, a few common themes running through the examples below bear highlighting. First, defendants will move to dismiss plaintiffs' claims that defendants violated the NYC Act by arguing plaintiffs have not shown they meet a definitional category of the statute. For example, the NYC Act defines "freelance worker" as: "any natural person or any organization composed of no more than one

32. *See* Joshua Zuckerberg, LaKeisha Caton & Vanessa P. Avello, *New York State's "Freelance Isn't Free Act" Is Effective as of August 28, 2024*, PRYOR CASHMAN (Sep. 3, 2024), https://www.pryorcashman.com/publications/new-york-states-freelance-isnt-free-act-is-effective-as-of-august-28-2024.

33. *See id.*

34. GEN. BUS. § 1415.

35. *See, e.g.*, LaSusa, *supra* note 3.

natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for" compensation.[36] Defendants will argue that plaintiffs do not meet the category of freelance worker by making arguments including that plaintiff was an actual employee of the defendant, or not a freelance worker at all.

In doing so, a second theme is worth highlighting—the evidence that defendants submit to show that plaintiffs do not meet the requirements of the statute. As is generally true in all categories of litigation, what evidence is presented as which stage of the case can have a large impact on the outcome of the proceedings. For example, at the motion to dismiss stage, a defendant can defeat a plaintiffs claim by providing documentary evidence that cannot be controverted by other evidence.[37] In these NYC Act cases, the types of evidence defendants select at a motion to dismiss stage seems critical—a LinkedIn profile listing an individual's position at a company may suffice, but a print out from a company website may not.

The following cases in this Section note these and other themes surrounding how courts interpret the application of the NYC Act. Again, while courts have not yet addressed the application of the New York State FIFA due to its recent enactment, these cases are based on the NYC Act which is substantively similar to the New York State FIFA to serve as an analogue.

First, in *Frisch v. Likeopedia, LLC*, the court denied the defendant's motion to dismiss a claim under the NYC Act, finding that the plaintiff had sufficiently pleaded freelance worker status and the impact of work within New York City.[38] The plaintiff entered into a consulting agreement with defendant Likeopedia to provide services in exchange for compensation. The plaintiff alleged that he performed the work but was not paid as promised under the agreement.[39] The plaintiff brought claims for breach of contract, unjust enrichment, fraud in the inducement, securities violations, and violation of the NYC Act.[40] The defendant challenged the NYC Act claims, arguing that "plaintiff's work had no impact on New York City as [the NYC Act] requires."[41] Specifically, the defendant relied on *Turner v.*

36. N.Y. Senate Bill No. 5206, 247th Sess. (2024).

37. *See* N.Y. C.P.L.R. 3211(a)(1) (McKinney 2024).

38. *See* Frisch v. Likeopedia, LLC, No. 651876/2021, 2023 N.Y. Misc. LEXIS 2392, at *9 (Sup. Ct. N.Y. Cty. May 8, 2023).

39. *See id.* at *1–2.

40. *See id.* at *2

41. *Id.* at *3.

Sheppard Grains Enterprises, where the court "applied an 'impact standard' approach requiring that those seeking the protections of [the NYC Act] demonstrate that their work had an 'impact within the city.'"[42]

The court found that the plaintiff sufficiently pleaded a claim under the NYC Act because the plaintiff qualified as a freelancer under the statute. In so finding, the court reviewed the consulting agreement and found that the plaintiff "clearly" qualified as an independent contractor based on the agreement as the agreement specified he would provide his expertise in exchange for compensation.[43] Because plaintiff also resided in New York City, the court dismissed defendant's motion to dismiss.[44] Essentially, the *Frisch* court held that the "impact standard" was satisfied simply by virtue of the plaintiff alleging that he resided in New York City when he provided the services and the services were performed "in whole or in part" in New York City.[45]

In *Alison's Bright Ideas, Inc. v. Urbandaddy, Inc.*, the court found that the NYC Act did not apply to a foreign corporation performing work outside New York City, also relying on the impact requirement established in *Hoffman v. Parade Publications*.[46] The *Urbandaddy* plaintiff was a recruitment firm with its principal place of business in San Antonio, Texas, that placed candidates with the defendant media company which was based in New York City.[47] The plaintiff placed Mankuta and Konter with the defendant, who worked for defendant for 114 days and several months, respectively.[48] However, the work was not performed in New York City.[49] The plaintiff sent invoices to the defendant for fees related to the placements, and the defendant failed to pay the invoices.[50] The court found plaintiff failed to establish its entitlement to relief under the NYC Act, because the court found plaintiff did not show it was impacted by nonpayment in New York City.[51]

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42. *Id.* at *9 (citing Turner v. Sheppard Grain Enters., 127 N.Y.S.3d 260, 263 (Sup. Ct. N.Y. Cty. 2020)).

43. *Frisch*, 2023 N.Y. Misc. LEXIS 2392, at *9.

44. *See id.* at *9–10.

45. *Id.*

46. Alison's Bright Ideas, Inc. v. Urbandaddy, Inc., No. 650532/2019, 2021 N.Y. Misc. LEXIS 6740, at *8 (Sup. Ct. N.Y. Cty. Dec. 20, 2021) (citing Hoffman v. Parade Publ'ns, 933 N.E.2d 744, 746 (N.Y. 2010)).

47. *See id.* at *7.

48. *See id.* at *5.

49. *See id.* at *8.

50. *Id.* at *5–6.

51. *Alison's Bright Ideas*, 2021 N.Y. Misc. LEXIS 6740, at *3.

The court reasoned that its holding was intended to avoid "improperly expanding [the NYC Act] 'exponentially to cover every person hired to do freelance work for a New York city company regardless of where the work is performed,' when there is no indication that the legislature intended such broad protections."[52] Summarizing the impact standard in this context, the court stated "the relevant inquiry is whether the plaintiff demonstrates sufficient connections to New York City such that the defendant's failure to pay had an impact in New York City."[53]

Next, in *Chen v. Romona Keveza Collection LLC*, the court again addressed whether the plaintiff could be considered within the NYC Act's definition of a freelance worker, dealing with cross motions for summary judgment on the issue.[54] This is related to the highlighted theme of the importance of considering these definitions in the context of these statutory claims. In *Chen*, Plaintiffs Joseph Chen, Inc. and Dina Kozlovska filed administrative complaints with the New York City Office of Labor Policy Standards.[55] They alleged NYC Act violations by defendant Romona Keveza Collection LLC for failure to pay amounts due relating to photography services contracted for by the defendant.[56] The defendant did not respond to the plaintiffs' complaints, which created a rebuttable presumption under the NYC Act that the alleged violations occurred by the terms of the statute.[57]

The plaintiffs in *Chen* then brought legal action seeking payment under the NYC Act.[58] At cross-motions for summary judgment, the defendant argued plaintiffs did not qualify as "freelance workers" under the definition in the NYC Act.[59] The court denied cross-motions for summary judgment due to unresolved factual issues as to plaintiff's status as "freelance" workers under the NYC Act.

Chen provides a detailed analysis of how courts look at the definition of "freelance worker" under the NYC Act which provides important insight as to the scope of that definition. As relevant to the case, the NYC Act defines a "freelance worker" as: "any natural

52. *Id.* at *9 (quoting Turner v. Sheppard Grain Enters., 127 N.Y.S.3d 260, 264 (Sup. Ct. N.Y. Cty. 2020)).

53. *Id.*

54. Chen v. Romona Keveza Collection LLC, No. 153413/2020, 2024 N.Y. Misc. LEXIS 2163, at *16 (Sup. Ct. N.Y. Cty. May 6, 2024).

55. *See id.* at *5.

56. *See id.* at *16.

57. *See id.*

58. *See id.*

59. *Chen*, 2024 N.Y. Misc. LEXIS 2163, at *16.

person or any organization *composed of no more than one natural person*, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation."[60]

Plaintiff Joseph Chen, Inc. was hired by the defendant to provide photography services for the defendant.[61] The contract between the parties made reference to services to be provided by the plaintiff "and its employees, if any," and it described the relationship of the parties as an "Independent Contractor Relationship."[62] Nevertheless, the defendant argued that the working relationship established at plaintiff Joseph Chen, Inc. did not meet the requirements for employees to be considered freelance workers, because (1) the services were provide by a group of people, and (2) the plaintiff corporation functioned as a typical corporation with non-freelance employees.[63] For its first argument, the defendant proffered that it hired Joseph Chen, Inc. as a "group of two or more," and alleged that at least four workers performed the services.[64] Thus, the defendant asked the court to hold that the NYC Act's definition of "freelance worker" should not apply, as it requires a corporation to be composed of no more than one natural person. For the defendant's second argument, it presented plaintiff Joseph Chen, Inc.'s employees LinkedIn profiles as evidence showing that they had positions at "J. Chen, Inc." to bolster the defendant's claim that Joseph Chen, Inc. was a typical corporation with non-freelance employees and should not be considered a freelance worker.[65] Such evidence included specific titles that each employee claimed at "J. Chen, Inc."—including intern, assistant, photo retoucher, producer, head photographer, and production assistant.[66]

The court refused to grant summary judgment in favor of defendants on either ground. With respect to the defendant's first argument, the Court reasoned that "working in a group does not, without more, preclude 'any natural person or any organization from being composed of no more than one natural person.'"[67] With respect to the defendant's second argument, the court held that evidence of the

60. *Id.* (quoting N.Y.C. ADMIN. CODE § 20-927 (McKinney 2025)) (emphasis added).

61. *See id.* at *3.

62. *Id.*

63. *Id.* at *16.

64. *Chen*, 2024 N.Y. Misc. LEXIS 2163, at *16–17.

65. *Id*. at *18.

66. *Id.*

67. *Id.* at *17 (citing N.Y.C. ADMIN. CODE § 20-927 (McKinney 2025)).

employer-employee relationship between Joseph Chen, Inc. and its employees created a genuine dispute of material fact as that "preclud[ed] summary judgement for either side of this conflict."[68]

Like the *Chen* case, *MJ Lilly Associates, LLC v. Ovis Creative, LLC* also dealt with the issues of whether a plaintiff meets the statutory definition of "freelance worker," and what level of evidence is needed to support a conclusion on this issue. There, the court found that the plaintiff sufficiently alleged freelance worker status under the NYC Act and denied the defendant's motion to dismiss.[69] A worker had brought an action against defendant customer for violations of the NYC Act, specifically that the customer failed to offer the freelance worker written contracts for certain work performed and also failed to timely remit payment due.[70] The defendant submitted certain documentary evidence to attempt to show that the plaintiff was not a "freelance worker" within meaning of the NYC Act.[71] As in *Chen*, the defendant attempted to dismiss plaintiffs claim due to a failure to meet the definitions of the NYC Act as a statute.[72] The defendant submitted email communications between the two parties and also printouts from the plaintiff's website as evidence to support its argument.[73] The court found that this did not constitute "documentary evidence" within the meaning of CPLR 3211(a) as the contents could "be controverted by other evidence."[74] Given the procedural requirement that the court accept the allegations in the amended complaint as true and also accord "the plaintiff every favorable inference," this documentary evidence was not sufficient to establish facts that could not be contravened by other evidence.[75] The court therefore could not find that plaintiff was not a freelance worker within the meaning of the NYC Act, and did not dismiss the claim.[76]

In *Snazzi Reporting, Inc. v. Veritext, LLC*, a New York court dealt with issues regarding the location of freelance plaintiffs and the interactions between the provisions of the NYC Act and arbitration clauses.

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68. *Id.* at *18.

69. MJ Lilly Assocs., LLC v. Ovis Creative, LLC, 200 N.Y.S.3d 403, 405–06 (App. Div. 2d Dep't 2023).

70. *See id*. at 405.

71. *See id*. at 405–06.

72. *See id*. at 405.

73. *See id.*

74. *MJ Lilly Assoc., LLC*, 200 N.Y.S.3d at 405–06 (citing Yan Ping Xu v. Van Zwienen, 183 N.Y.S.3d 475, 479 (App. Div. 2d Dep't 2023)).

75. *Id.* at 406 (quoting Delric Constr. Co., Inc. v. N.Y.C. Sch. Constr. Auth., 166 N.Y.S.3d 656, 659 (App. Div. 2d Dep't 2022)).

76. *See id.*

There, the court denied the defendant's motion to dismiss a claim brought pursuant to the NYC Act, emphasizing the requirement for a written contract and timely payment under the NYC Act.[77] Snazzi, a court reporting company composed of only one other employee in addition to the plaintiff (the "principal"), entered into a contract with Veritext, a New Jersey company, to provide court reporting services. She performed these services in New York City.[78] The contract at issue contained an arbitration clause.[79] Snazzi ultimately sued Veritext for violations of the NYC Act.[80]

Defendant Veritext argued that because Snazzi was a corporation incorporated outside of New York city, it was not entitled to the protections of the NYC Act. The court rejected this argument and held that the NYC Act applied to the contract between Snazzi and Veritext because Snazzi's principal is based in New York City and actually performed work in New York City. Even though Snazzi was incorporated outside of New York City itself, the location of the Snazzi's principal and the location of performance of the contract was enough for the court to hold that the provisions of the NYC Act applied to the contract.[81] The court explained this is the exact intent of the NYC Act, which had previously been explained in prior cases.[82] In *Turner v. Sheppard Grain Enterprises, LLC*, the court espoused this precise rationale: "the intention is clear: [the NYC Act] was passed to ensure that people working in the City are afforded protection in an economy where workers are increasingly hired for discrete or short-term tasks rather than for full-time employment."[83]

Defendant Veritext also argued that an arbitration clause in its contract with Snazzi should apply to prohibit Snazzi from bringing legal action in a New York court. The court also rejected this argument, holding that the arbitration clause in the contract did not preclude Snazzi from bringing its claims under the NYC Act in court.[84] The contract's arbitration clause did not preclude Snazzi's NYC Act

77. *See* Snazzi Reporting, Inc. v. Veritext, LLC, No. 650680/2022, 2023 N.Y. Misc. LEXIS 3463, at *1 (Sup. Ct. N.Y. Cty. July 10, 2023).

78. *See id.* at *2.

79. *See id.* at *3.

80. *See id.* at *4.

81. *See id.* at *6.

82. *See Snazzi Reporting, Inc.*, 2023 N.Y. Misc. LEXIS 3463, at *6–7 (quoting Turner v. Sheppard Grain Enters., LLC, 127 N.Y.S.3d 260, 264 (Sup. Ct. N.Y. Cty. 2020)).

83. *Id.* (quoting *Turner*, 127 N.YS.3d at 264).

84. *See id.* at *7.

claims because the NYC Act explicitly allows claims to be brought in court and prohibits contract provisions that waive rights under the NYC Act.[85]

The implications of the *Snazzi* decision as applied to FIFA are illuminating. If New York courts follow the *Snazzi* rules when analyzing FIFA claims, then corporate plaintiffs outside of New York will be able to bring FIFA actions in New York so long as the location of the corporation's principal is in New York and the performance of services is also within state lines. Further, arbitration clauses in freelance contracts covered by FIFA would not prevent New York freelance workers from bringing legal action in court.

In *Tan v. Breathing.AI LLC*, the court partially granted and partially denied the defendant's motion to dismiss plaintiff's claims under the NYC Act, addressing issues of timely payment and the statute of limitations.[86] Plaintiff worked for defendants from December 2020 to May 2022 without a written contract.[87] The parties were "affiliated entities underlying a technology start-up company."[88] In August 2021, the parties signed agreements allowing plaintiff to buy defendants' stock. Plaintiff was then not compensated from December 2020 to August 2021. In January 2022, the defendants agreed to pay the plaintiff a monthly fee. However, the defendants then failed to pay the plaintiff that fee from April and May 2022. The defendants disputed that the January 2022 agreement was ever made.

The defendants first argued that documentary evidence, pursuant to CPLR 3211(a)(1) precluded the NYC Act claims because based on the explicit agreements between the parties between 2021 and 2022.[89] Because, however, much of the dispute was centered around backpay, and none of the agreements could be read as contemplating such retroactive back-pay, these agreements could not provide a documentary evidence based ground for dismissing the NYC Act claims.[90]

The defendants then argued that the plaintiffs failed to state a claim and that the NYC Act does not apply to this action to begin with. The defendants argued that the NYC Act's central purpose was "ensuring that people working in the City are afforded protection in an economy where workers are increasingly hired for discrete or short-

85. *See id.* at *7–8 (citing N.Y.C. ADMIN. CODE §§ 20-933(a)(1), 20-935(a)).

86. *See* Tan v. Breathing.AI LLC, 190 N.Y.S.3d 271, 271 (Sup. Ct. N.Y. Cty. 2023).

87. *See id.*

88. *Id.*

89. *See id.*

90. *See id.*

term tasks rather than for full-time employment."[91] The defendants implied with this argument that plaintiff's "voluntary investment of time in a start-up in the hopes of getting a larger payoff in the future" did not qualify as a discrete or short-term task and was therefore not protected by the NYC Act.[92]

In response to this argument, the court explained that the NYC Act is not so narrow. Instead, it covers "any natural person . . . that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation."[93] The court reasoned that "protecting gig workers may be a central purpose of [the NYC Act]; but [the NYC Act]'s reach is not limited to affording those protections."[94]

The court in *Tan* also found that the plaintiff stated a valid claim under the NYC Act for defendants' alleged failure to provide a written contract, but plaintiff's claim under the NYC Act was partially time-barred.[95] The August 2021 agreements did not preclude plaintiff's claims under the NYC Act because they did not expressly provide retroactive compensation.[96]

The *Tan* decision is an early indicator that New York courts will be skeptical of defendants' attempts to narrow the scope of FIFA. Instead, New York courts are likely to view the policy reasons for passing FIFA as indicative of a need for broad protections of those who qualify as "freelance workers" under the statute.

In *Hartman v. Pilata Inc*., New York courts addressed the requirement that a freelance contract be in writing, and clarified that a failure to meet this requirement does not preclude a freelance worker from bringing a claim under the NYC Act. There, the lower court had initially dismissed the plaintiff's claim under the NYC Act due to the lack of a written contract for services worth more than $800.[97] The plaintiff had performed services for the defendant corporation for several months but was never compensated.[98] The parties did not have a written contract, and the court held that the plaintiff failed to allege the

91. *Tan*, 190 N.Y.S.3d at 271 (quoting Turner v. Sheppard Grain Enters., LLC, 127 N.Y.S.3d 260, 264 (Sup. Ct. N.Y. Cty. 2020)).

92. *Id.*

93. *Id.* (quoting N.Y.C. ADMIN. CODE § 20-927 (McKinney 2025)).

94. *Id.*

95. *See id.*

96. *See Tan*, 190 N.Y.S.3d at 271.

97. *See* Hartman v. Pilata Inc., No. 650961/2022, 2023 N.Y. Misc. LEXIS 2766, at *3 (Sup. Ct. N.Y. Cty. Dec. 1, 2023).

98. *See id.* at *1.

necessary prerequisites to avail herself of the NYC Act – specifically that there be a contract in writing.[99]

Then, on appeal, the court reversed this finding.[100] The appellate court held that the lower court erred in its previous interpretation that the NYC Act requires a written contract between the parties as a prerequisite for its applicability.[101] The NYC Act provides a cause of action for freelancers where the employer has failed to provide a written contract, despite not having a written contract. The NYC Act is not limited to only protecting gig workers, but covers any natural person hired or retained as an independent contractor to provide services in exchange for compensation.[102] The court reasoned that it would be illogical for the NYC Act to simultaneously provide a cause of action for failure to provide a written contract while also barring plaintiffs from asserting their rights under the NYC Act due to the lack of a written contract.[103] The court agreed with the reasoning in *Tan v. Breathing AI LLC*, *supra*, that the NYC Act covers any natural person hired or retained as an independent contractor, not just gig workers.[104]

In *Paolitto v. Ladders, Inc.*, the court again addressed the issue of whether a party met the definition of "freelance worker."[105] There, the plaintiff was the sole employee of Cognitive Recruiting Solutions LLC ("Cognitive").[106] Cognitive entered into a contract with the defendant to provide recruiting services, and the defendant failed to pay several of Cognitive's invoices and terminated the contract without notice.[107] The court found that the plaintiff could not state a claim under the NYC Act in her individual capacity.[108] The court reasoned that the plaintiff could not invoke the NYC Act in her individual capacity because the contract was between Cognitive and defendant, not the plaintiff and the defendant.[109] The NYC Act protects freelance workers, which it defines in relevant part as a natural persons or

99. *See id.* at *3.
100. *See id.* at *4.
101. *See id.* at *3.
102. *See Hartman*, 2023 N.Y. Misc. LEXIS 2766, at *3.
103. *See id.*
104. *See id.*
105. *See* Paolitto v. Ladders, Inc., No. 655289/2020, 2022 N.Y. Misc. LEXIS 1048, at *4–5 (Sup. Ct. N.Y. Cty. Mar. 3, 2022).
106. *See id.* at *1.
107. *See id*. at *1–2.
108. *See id.* at *4 (citing Sealy v. Clifton, LLC, 890 N.Y.S.2d 598, 600 (App. Div. 2d Dep't 2009)).
109. *See id.* at *5.

organizations composed of one natural person.[110] Although the plaintiff individual was a natural person, she was not a party to the contract.[111] Because Cognitive was an entity with more than one "member," the NYC Act claim could not stand.[112] Notably, though the court did not permit the plaintiff's NYC Act claims to proceed, it found that the plaintiff had sufficiently alleged a typical breach of contract claim, as the complaint alleges the existence of a contract, plaintiff's performance, defendant's breach by failing to pay invoices, and resulting damages.[113]

CONCLUSION

It is a good time to be a freelance worker in New York, at least relatively speaking. The NYC Act was the first of its kind to bolster protections for freelance workers who have too often been the victim of non-payment and related issues stemming from their relationship with hiring parties, and it seems to have sparked a nation-wide campaign to broaden these protections.

With the enactment of FIFA, all freelance workers in New York are now afforded the added protection that freelance workers in New York City have enjoyed for years. Further, because FIFA is modeled so closely on the NYC Act, freelance worker who find they need to avail themselves of the protections of FIFA will have the benefit of looking to how courts have dealt with issues arising under the NYC Act to ensure that they are well informed and properly pleading their FIFA claims.

FIFA is not an exact analogue to the NYC Act, and it remains to be seen whether the courts arrive at meaningfully different conclusions on similar issues. However, because the similarities between the laws greatly outweigh their differences, the authors believe that case law built around FIFA issues are likely to look a lot like the cases dealing with the NYC Act that are analyzed above. This is particularly so for the cases dealing with who can be considered a "freelance worker" and the types of evidence that support such conclusions.

As protections for freelance workers grow, it will be important for hiring parties and their counsel to pay careful attention to FIFA and the NYC Act. Because of the subtle differences in the laws, such

110. *See Paolitto*, 2022 N.Y. Misc. LEXIS 1048, at *4 (citing N.Y.C. ADMIN. CODE § 20-927 (McKinney 2025)).

111. *Id.* at *5.

112. *See id.*

113. *See id.*

hiring parties in New York City will need to ensure compliance with both.