HB 1226-FN - AS INTRODUCED

2024 SESSION

24-2651
12/10

HOUSE BILL ***1226-FN***

AN ACT relative to employment protections for freelance employees.

SPONSORS: Rep. Grassie, Straf. 8

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill provides comprehensive rights and responsibilities relative to freelance employees and hiring parties.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

24-2651
12/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to employment protections for freelance employees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Labor; Freelance Workers; Protection. Amend RSA by inserting after chapter 275-I the following new e following new chapter :

CHAPTER 275-J

FREELANCE WORKERS; PROTECTION

275-J:1 Definitions. In this chapter

I. "Commissioner" means the labor commissioner.

II. "Construction contractor" means any person, sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake a construction project.

III. "Construction project" means the providing of any labor or services, and the use of any materials or equipment in order to alter, build, excavate, add to, subtract from, improve, repair, maintain, renovate, move, wreck or demolish any bridge, building, highway, road, railroad, land, tunnel, sewer, drainage or other structure, project, development, or improvement, or the doing of any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

IV. "Freelance worker" means 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, but does not include:

(a) any person who, pursuant to the contract at issue, is a sales representative placing orders for their own resale.

(b) any person engaged in the practice of law pursuant to the contract at issue and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or the District of Columbia and who is not under any order of court suspending, enjoining, restraining, disbarring or otherwise restricting such person in the practices of law;

(c) any person who is a licensed medical professional; or

(d) any person who is a construction contractor.

V. "Hiring party" means any person who retains a freelance worker to provide any service, other than:

(a) the United States government;

(b) the state of New Hampshire, including any office, department, agency, authority or other body of the state including the legislature and the judiciary;

(c) a municipality, including any office, department, agency or other body of a municipality; or

(d) any foreign government.

275-J:2 Contract Required.

I. Whenever a hiring party retains the services of a freelance worker the contract between such party and freelance worker shall be reduced to writing. The hiring party must furnish a copy of such written contract, either physically or electronically, to the freelance worker and each party to the written contract shall retain a copy thereof.

II. The written contract shall include, at a minimum, the following information:

(a) the name and mailing address of both the hiring party and the freelance worker;

(b) an itemization of all services to be provided by the freelance worker, the value of the services to be provided pursuant to the contract, and the rate and method of compensation;

(c) the date on which the hiring party must pay the contracted compensation or the mechanism by which such date will be determined; and

(d) the date by which a freelance worker must submit a list of services rendered under such contract to the hiring party in order to meet any internal processing deadlines of such hiring party for the purposes of compensation being timely rendered by the agreed-upon date as stipulated in subparagraph (iii) of this paragraph.

275-J:3 Payment Required.

I. Except as otherwise provided by law, the contracted compensation shall be paid to a freelance worker either on or before the date such compensation is due under the terms of the contract; or, if the contract does not specify, when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than 30 days after the completion of the freelance worker's services under the contract.

II. Once a freelance worker has commenced performance of the services under the contract, the hiring party shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation.

275-J:4 Non-Retaliation Provision. No hiring party shall threaten, intimidate, discipline, harass, deny a work opportunity to, or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed under this article, or from obtaining any future work opportunity because the freelance worker has done so.

275-J:4 Contract Record Required. The hiring party shall be required to keep all freelance worker contracts for a period of no less than 6 years and shall make such contract available to the commissioner upon request. The failure of a hiring party to produce such a contract to the commissioner or at any hearings under this title shall give rise to a presumption that the terms that the freelance worker has presented are the agreed upon terms.

275-J:6 Procedures for Hearings and Appeals. Notwithstanding any other provision of law, a freelance worker shall have standing to file a claim under this chapter with the commissioner. The commissioner shall notify the hiring party by serving a copy of such claim and an order to file with the commissioner within 30 days from the receipt of such notice any objections to such claim specifying the grounds therefor. Service may be by certified mail with return receipt. If an objection is not made within 30 days, the commissioner may order that payment be made in accordance with the claim. If requested, a hearing shall be afforded at which time any party may appear, with counsel if desired, and present evidence and cross examine opposing witnesses. Any party, at the party's own expense, may cause a record to be made of the hearing. A written decision shall be made within 30 days after the hearing stating the decision and specifying the facts and conclusions upon which the decision is based. If payment is found to be due, an order for payment shall be issued. Any party aggrieved by the decision may appeal to the superior court not later than 20 days thereof by petition, setting forth that the decision is erroneous, in whole or in part, and specifying the grounds upon which the decision is claimed to be in error. Upon the filing of an appeal, the commissioner shall transfer to the court the record of the proceeding or a certified copy thereof. The scope of review by the superior court shall be limited to questions of law. After hearing and upon consideration of the record, the court may affirm, vacate, or modify in whole or in part the decision of the commissioner, or may remand the matter to the commissioner for further findings. In the absence of a timely appeal, the decision and order shall be final, shall be entered upon the docket of the superior court at the request of the prevailing party, may be enforced as judgment of said court, and shall be a lien upon the property of the employer situated in the state for a period of 3 years from the time of the decision. It is a requirement for the purposes of this chapter that a final order be immediately satisfied by the employer.

275-J:7 Rulemaking. The commissioner, shall adopt rules, pursuant to RSA 541-A, to implement and enforce this chapter.

275-J:8 Penalty. Any employer violating any provision of this chapter shall be subject to a civil penalty, to be imposed by the labor commissioner in accordance with the procedures established in RSA 273:11-a. An employer aggrieved by the commissioner's assessment of such penalty may appeal in accordance with RSA 273:11-c.

2 Effective Date. This act shall take effect January 1, 2025.

LBA
24-2651
10/23/23

HB 1226-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to employment protections for freelance employees.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue Fund(s)	Department of Labor Restricted Fund (RSA 273:1-b)			
Expenditures	$0	$0	$0	$0
Funding Source(s)	None			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] See Below
- Does this bill authorize new positions to implement this bill? [X] No

METHODOLOGY:

This bill provides comprehensive rights and responsibilities relative to freelance employees and hiring parties. The Department of Labor indicates it is unlikely that the bill would have significant impact on revenues or expenditure at the state, county or local level, as the State and municipalities are exempt from the definition of hiring party. It is possible that some qualifying hiring parties may violate the law resulting in civil penalty following applicable warning under RSA 273:11-a. Funds collected under RSA 273:11-a are deposited into the department of labor restricted fund established in RSA 273:1-b. However, the Department is unable to credibly estimate any increase in revenue based on these requirements.

AGENCIES CONTACTED:

Department of Labor