

INDEPENDENT WORKFORCE ISSUE BRIEF

Unpaid Wages



Overview

The issue of unpaid wages is of particular concern to the independent workforce. Because of the nature of freelance work, independent workers often find themselves with clients who are either unable or unwilling to pay the balance due. For a group that already deals with unstable incomes, unpaid wages make freelancing even more financially challenging. Unfortunately, despite independent workers' exceptional vulnerability to unpaid wages, they lack the state-sponsored mechanisms for collecting wages that help traditional employees confront recalcitrant employers. The independent workforce—freelancers, consultants, independent contractors, temps, part-timers, contingent employees, and the self-employed—makes up one-third of the nation's workforce, but many are on their own when it comes to dealing with deadbeat clients.

Independent workers are especially vulnerable to deadbeat clients and unpaid wages

A 2007 survey of over 2,000 independent workers conducted by Freelancers Union found that 77% of respondents reported having trouble getting paid while working as freelancers. Of those, 85% were paid late, 42% were never paid at all, and 34% were paid less than the agreed-upon amount. In the last year alone, 40% of independent workers had trouble getting paid, according to a Freelancers Union 2009 survey of over 3,000 individuals, costing these individuals over \$3 million, in addition to spending nearly 18,000 hours pursuing client nonpayment. This represents just one fraction of the entire population that is affected by nonpayment. As these numbers show, independent workers are at considerable risk of not receiving agreed-upon payments by clients.

Independent workers are excluded from existing unpaid wage compensation protections

While payment troubles are significant and widespread for independent workers, U.S. labor laws do not specifically protect them from this type of workplace violation. For most traditional full-time employees, unpaid wage complaints are handled by the state's Department of Labor. At no charge to the employee, the Department of Labor will assist workers to collect their pay by investigating claims and recovering the owed wages. Without the support of the Department of Labor, independent workers are left with few options for recovering the money owed them.

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In addition, independent workers are specifically excluded from protections afforded under the Fair Labor Standards Act (FLSA) and most state and local labor laws. The FLSA is the federal law that establishes minimum wage, overtime pay, recordkeeping, and other standards affecting employees in the private sector and in federal, state, and local governments. While the FLSA does not provide collection procedures for an employee's usual or agreed-upon wages, independent workers could still benefit from the other protections afforded by the law. Exempted from these laws, independent workers lack access to the basic protections that other workers enjoy.

Options available to independent workers pursuing unpaid wages

Since independent workers are not protected by federal or state labor laws, they must use different tactics against clients who refuse to pay. Without the weight of the law behind them, they resort to often-ineffective collection methods, such as repeated phone calls and written demands. Freelancers can attempt to charge late fees, but if a client is unwilling to pay to begin with, late fees are unlikely to have any compelling effect.

For traditional employees, there is help navigating the judicial system: the Commissioner of Labor is authorized to institute criminal proceedings against an employer, as well as institute a civil suit to recover unpaid wages. In the case of a civil suit, the employer may be required to pay an additional amount of 25% of the claim in liquidated damages if he or she is found to have willfully failed to pay wages due.

While freelancers do not have the benefit of a Department of Labor to enforce labor laws, they can still utilize elements of the legal system to protect themselves from violations. One option available to freelancers is to hire an attorney to pursue owed wages. Though costly, attorneys can be effective. Another option, if the amount owed is small enough (usually a few thousand dollars or less), is to take the client to small claims court. While hiring an attorney or going to small claims court may get a client to pay, the amount of time and money required means these modes of recourse may not ultimately be cost-effective. Unfortunately, when repeated emails and calls do not work, and an attorney is too expensive or not worth the trouble, many freelancers find themselves left simply writing off their unpaid work as a loss.

Obstacles to pursuing unpaid wages: Why independent workers don't always pursue owed wages

A dispute over unpaid wages can quickly turn into a "your word over mine" situation, with the employer or client having the decided advantage. After all, when a worker is not paid, it is up to him or her to initiate action to recover the wages. Hiring an attorney is, of course, often deemed too costly, but there are also other reasons that a freelancer may not pursue deadbeat clients.

Reputation can be a freelancer's most valued asset. Clients hire based not just on a freelancer's past performance, but on word-of-mouth reviews and credibility. Regardless of whether or not a client paid the amount owed, a damaging reference from a dissatisfied customer can spell the end of a freelancer's career. Some freelancers decide not to aggressively pursue owed wages out of fear that the deadbeat client will smear them to other, potential clients.

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Similarly, some freelancers will avoid pressing for payment because they do not want to jeopardize their relationship with the client in question. For example, if a client provides a steady stream of work and generally pays on time, it may not make good business sense to aggressively pursue wages when that client underpays or fails to pay. This type of dilemma is deeply unfair, however; a traditional employee would not accept a similar situation, in which an employer refused to pay a full month's wage merely because previous months were paid in full and on time.

Another reason that freelancers avoid pursuing owed wages is that they simply do not know what to do. Without a formal legal procedure for pursuing wages, independent workers are left to their own devices.

The cost of unpaid wages

The cost of unpaid wages hits freelancers in several ways. For one, pursuing unpaid wages takes away valuable time that could be spent doing something else, including paid work. According to Freelancers Union's 2007 survey of over 2,000 independent workers, on average, freelancers spend four hours per month pursuing late or unpaid wages. Freelancers spend time doing a job and then spend time fighting to collect the wages they deserve.

Client nonpayment is a hassle for someone trying to run a business, but it is even worse for a freelancer's personal finances. By necessity, business expenses are taken care of first, so unpaid wages often eat into more easily deferred expenses, such as saving for retirement. But client nonpayment can also cause an independent worker to dip into existing retirement savings simply to make ends meet. This jeopardizes long-term retirement plans, as freelancers are sometimes forced to live off of existing retirement savings long before they actually retire. Nonpayment also makes it much more difficult for freelancers to pay their taxes. In extreme cases, nonpayment can even lead to personal bankruptcy as business and personal expenses outstrip income.

Results from the 2007 Freelancers Union report showed that 55% of respondents were hindered from growing their business as a result of nonpayment by clients. Unless a freelancer can count on receiving the income he or she has earned, it is almost impossible to expand and improve one's business. No business can be expected to run at a loss, and freelancing is no different. Nonpayment can also damage a freelancer's relationship with vendors. Regardless of whether a client pays, vendors expect full payments on time. Failure to pay one's bills can result in late charges and the termination of services. While individual freelancers may not be to blame in such situations, they are the ones to suffer, not their delinquent clients.

Strategies and solutions for ensuring independent workers collect the wages they deserve

Independent workers in every state should have access to their department of labor wage and hour claims system, which investigates and helps collect claims for unpaid wages made by employees. Additionally, they should be able to access the same services offered through their state office of the attorney general, which conducts investigations into repeated violations of labor laws, including wage and hour laws. Such offices should be equipped to sue not just employers who persistently do not pay their employees but also clients who do not pay their consultants.

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Additionally, independent workers need access to affordable legal help and improved communication among their fellow freelancers. They would benefit from help in developing contracts. Also, independent workers need an effective and efficient way to exchange information about clients who pay late or pay less than the agreed-upon amount. Online forums and bulletin boards can serve as channels of communication for freelancers wishing to warn others about deadbeat clients and at the same time refer reputable ones. Habitually nonpaying clients could be put on a freelancers' blacklist and refused services.

Conclusion

The independent workforce needs greater protection against nonpayment by clients. The way that independent workers deal with nonpayment—with their own time and resources—is not only inequitable, it is harmful to the national economy, as it destabilizes a crucial segment of the workforce. Independent workers are at greater risk of nonpayment than traditional workers, but the law does not reflect this reality. As such, independent workers need greater access to legal remedies to deal with nonpayment issues and easy channels of communication for sharing information about potential clients. Instead of having to deal with deadbeat clients on their own, freelancers need access to worker protections similar to those extended to traditional employees, including Department of Labor support.

¹ U.S. Department of Labor. <http://www.dol.gov/esa/whd/flsa/>.

² New York State Department of Labor; Labor Protections. http://www.labor.state.ny.us/workerprotection/wp_index.shtm