

Net-7: Fairness for Freelancers

A Policy Proposal by Tristan Kneschke

Overview

This document proposes a new plan for freelancers to receive payment for completed work from employers within seven days of invoice submission, a “Net-7” schedule. Using a portal powered by an existing payroll company and hosted through New York City’s Department of Consumer and Worker Protection’s (DCWP) website, this new system establishes a standard work-for-hire contract before the onset of work that is overseen by the DCWP. This contract mandates that freelancers be paid every two weeks during the course of a lengthy contract, or upon the job’s conclusion within seven days via a range of familiar and secure digital payment methods from which the employer can choose. The portal’s transparency, along with oversight by the DCWP, will enable resolutions in the event of lapsed payment. The goal is for New York City, and eventually all of America, to approach a more equitable and just working environment between freelancers and the companies that hire them, supporting a critical segment of the economy in a greater effort to heal the country’s economy in the wake of a global pandemic.

Today’s Imbalance

The Freelancers Union has tracked freelance growth for over half a decade, and in a 2019 survey reported that 35 million people had freelanced in the United States, fully 35% of the workforce.¹ The number of full-time freelancers has also increased from 17% in 2014 to 28% in 2019. Half of the freelancers surveyed regarded their freelancing as a long-term career choice as opposed to a temporary situation until they could find staff employment. The study further found younger generations are more likely to freelance, indicating that the freelance pool has not yet reached its full demographic size.

Each year, freelancing generates \$1 trillion dollars (or 5% of America’s Gross Domestic Product) to the national economy, more than the entire construction industry. These workers provide unique and specialized services (particularly in the creative fields) and enable employers to expand and contract their businesses according to industry demand. It is crucial that payment terms be fair in order for freelance workers to thrive.

Today, when freelancers are hired, they’re often met with policies mandating that invoices will be paid only after 30, 60, or even 90 days have elapsed. Since there are no federal or state schedules outlining independent worker payment, companies are free to create their own policies to hold onto funds for as long as possible. “Trade credit” is the concept at the core of this imbalance, defined as:

A business-to-business agreement in which a customer can purchase goods on account without paying cash up front, paying the supplier at a later scheduled date. Usually businesses that operate with trade credits will give buyers 30, 60, or 90 days to pay, with the transaction recorded through an invoice. Trade credit can be thought of as a type of 0% financing, increasing a company’s assets while deferring payment for a specified

¹ <https://www.slideshare.net/upwork/freelancing-in-america-2019/1>

value of goods or services to some time in the future and requiring no interest to be paid in relation to the repayment period.²

When applied to the freelancer-client relationship, “trade credit” effectively sanctions worker exploitation. The employer is able to leverage the freelancer’s position by holding an attractive zero percent financing line of credit for up to three months, while the freelance worker carries the full liability of this delayed payment and can only protest at the risk of losing future opportunities with that client/firm. This imbues companies with additional unwarranted fiscal power while reducing the freelancer’s Time Value of Money.³ These lengthy payment terms exist as the normal state of affairs that have continued unchallenged for decades without scrutiny or accountability.

Trade credit applies to businesses that produce and sell goods. However, the same Freelancers Union report found that skilled services – as opposed to trade services – encompassed the most common freelance work. This means that this sector of workers are erroneously being subject to the constraints of merchants. While sellers typically need time to sell goods purchased from suppliers, this mentality has seeped its way into the professional services sector, where invoices might still take a month to get paid due to the inefficiencies of accounting departments and the United States mail system.⁴ Today, digital payment methods render both of these inefficiencies arcane, and there is simply little reason that a service-based worker should not get paid at their “point of sale,” soon after a project is delivered.

Finally, in the most egregious examples, companies will sometimes declare bankruptcy, leaving the freelancer without pay and recourse other than to go through bankruptcy court, a timely and often fruitless endeavor. At the time of this writing, the SWEAT bill, reintroduced to the New York Senate after being vetoed by Governor Cuomo, is trying to address this specific issue.⁵

Freelancing After Covid

While a certain degree of uncertainty is normal in any freelancer’s schedule, the Covid-19 pandemic has intensified the precarity of freelancing and the likelihood of unjust workplace practices. A global study conducted by Australian firm 99designs found that up to 70% of freelancers had taken pro bono work since the pandemic began, a third reported difficulty finding steady work in 2020, a quarter had at least one project canceled or put on hold, 27% of freelancers had clients experience budget cuts, and 22% of respondents had a client simply vanish on them, presumably after they’d put in some work.⁶ The freelancer pool has actually grown since the start of the pandemic, with the Freelancers Union reporting roughly 50,000 freelancers joining the workforce since the first days of 2020. This places further onus upon employers to pay their workers on time.

Despite the above, some steps toward fair treatment of freelancers have been instituted. In 2016, New York City’s Freelancers Union enacted the Freelance Isn’t Free Act into law, allowing freelancers to pursue litigation against employers who retaliate against freelancers, fail

² <https://www.investopedia.com/terms/t/trade-credit.asp>

³ <https://www.investopedia.com/terms/t/timevalueofmoney.asp>

⁴ <https://www.lifeworkonline.com/blog/net30-good-business-bad-freelancers>

⁵ <https://legislation.nysenate.gov/pdf/bills/2019/S2844B>

⁶ <https://www.fastcompany.com/90579364/too-many-designers-worked-for-free-in-2020>

to provide a contract for work, or otherwise neglect to pay the freelancer on time or at all.⁷ While this law is an important step toward equitable treatment for freelancers, it is often a freelancer's last resort for extracting payment from stubborn clients and can't realistically be exercised every time a client is late on payment, a "bottom-up" approach that is ultimately the freelancer's responsibility. This document advocates for a "top-down" approach of regulations as a more useful mandate for employer compliance. It sees the Fair Labor Standards Act,⁸ which ensures minimum wage, overtime pay standards, regular staff salary payments, and institutes penalties if not adhered, as one such model to follow.

Proposed Changes

With the number of freelancers increasing, it follows that, under a system of delayed payments, a greater number of American workers will be pushed to make financial ends meet, particularly as a study reported that 69% of all workers hold less than \$1,000 in savings in 2019.⁹ If monthly bills were on a similar payment schedule, freelancers could be moved to accept the current state of affairs. However, credit card, phone, and internet bills, not to mention rent and mortgage payments, must be paid on time each month under the duress of financial penalties and credit score diminishment. It is in the spirit of fairness and equitability, as well as to alleviate financial strain, that this policy is proposed. It comprises three sections:

1. The mandatory institution of contracts.
2. Creating accountability through a portal via the DCWP's website.
3. Enforcing a surcharge for clients who do not comply or are otherwise unable to amend their current payment systems.

1. Mandatory Contracts

Employers and freelancers must agree upon acceptable methods of payment as delineated in a contract prior to the commencement of work. However, we are still living in a world where a contract is not standard practice. If this proposal achieves nothing else, let its legacy get closer to instating a standardized contract for freelancers and those who hire them, regardless of industry. A portal website connected to the DCWP will be crucial in making this a reality. See Appendix A for a boilerplate contract that will serve as the template. After clients fill out the form, a contract is generated and sent to both parties to sign.

2. The Portal

Creating a portal website from scratch is not economical, and unnecessary as existing efficient payroll systems exist. Partnering with a payroll company such as ADP, ExtremeReach, Deel, Gusto, or Justworks will allow this proposal to best expand the DCWP's website to enable companies to efficiently pay freelancers the full amount on their invoices within seven business days.

⁷ <https://www1.nyc.gov/assets/dca/downloads/pdf/about/Freelance-Law.pdf>

⁸ <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf>

⁹ <https://www.gobankingrates.com/saving-money/savings-advice/americans-have-less-than-1000-in-savings/>

The transaction begins at the conclusion of the first two weeks of work or otherwise the end of a job, whatever arrives sooner. The freelancer submits their invoice by 11:59pm of that business day, starting the timer for employers to send payment. Upon submission, the client contact (and optionally the company's payroll department) will be notified via email that an invoice is pending. Payment can be accomplished via the portal website, using any of several payment methods, whether Paypal, Chase Quickpay (Zelle), ApplePay, or JustWorks; various cryptocurrency formats will also be explored in future iterations. These payment methods have been chosen for the ease for both senders and receivers to set up, as well as for their innate security in handling funds. They also allow ample time to schedule a transfer for receipt within the payment window.

Physical checks are not seen as a viable option as they are a legacy payment delivery method that is too slow and dependent on the United States Postal Service, an often unreliable third party; better payment methods exist.

The freelancer is notified via email upon delivery of funds, and the freelancer acknowledges receipt via the portal, closing the transaction.

A subsequent notification is sent to the client if no payment has not been recorded within five days as a reminder to send payment as soon as possible. If seven days elapse without receipt of funds, the DCWP performs the necessary audit to reach a resolution. Audits can be confidentially requested by the freelancer, and additionally random audits will be performed to remove the stigma of a freelancer reporting their client. Failure to document timely payment will result in daily \$50 fines for the employer in the form of penalties paid to the city or state, as well as the same daily late fee paid to the freelancer.

This system alleviates the current need for freelancers to chase their clients down after a job and asking for payment, and in the future, the portal can double as a report generation tool, aiding in creating tax forms for both parties.

3. Surcharges for Noncompliance

The third aspect of this proposal addresses employers who cannot extricate themselves from the net-30/60/90 model entrenched in their corporation: a "premium" charge for delayed payment with a loan interest rate mirroring those at financial institutions (the LIBOR rate¹⁰ will be used).

For example, if a company borrows \$10,000 for 90 days with a loan interest rate (using LIBOR in 2019) of 1.9%, they would have to pay back \$11,900. The "cost" to the company here is \$1,900. The same principle should apply to freelancers as the work produced was in the present value format.

The idea here is to dissuade companies from relying on legacy models; placing delayed payment on freelancers on the same plane as acquiring a bank loan makes this model ill-advised from a strictly economic standpoint.

Implementation

After the three aspects of the proposal are in place, a pilot group of companies willing to introduce this into their corporate structure will function as a way to work out potential issues

¹⁰ <https://www.global-rates.com/en/interest-rates/libor/american-dollar/2020.aspx>

before unveiling them on a citywide basis. Organizations like Kindred,¹¹ a membership network of well-meaning companies interested in strengthening their social responsibility, seem ripe for supporting a pilot study projected to last about six months. Participating companies' feedback will be invaluable for making use of the portal a seamless experience for everyone.

Criticisms and Rebuttals

This section offers a series of hypothetical arguments to address potential concerns around how the proposed changes might work.

Criticism: My company uses net-30 in order to verify that the service was rendered. Instituting a shorter time frame like net-7 would jeopardize this.

Rebuttal: The vast majority of freelancer-client relationships proceed in good faith. Still, each invoice can be verified by the main contact person, who can act as the barrier between the freelancer and accounts receivable to ensure that work was completed. Additionally, the online system will have a stopgap mechanism where the client can raise concern in the case of a discrepancy. It bears mentioning that there is a key difference between dissatisfaction with a freelancer's work and that work being completed. As stated in the Freelance Isn't Free Act, client satisfaction of the final product or usage doesn't affect payment if the agreed upon work was completed.

Criticism: My company doesn't really have a lot of cash on hand at any given moment. I'm worried I will be stretched even more thin if I pay freelancers on time.

Rebuttal: Chances are, the freelancers you're hiring are stretched even more thinly than your company. There are many systems in place to help your business, including getting business lines of credit in case your business encounters difficulties. Plus, paying freelancers days or weeks later is ultimately not a sustainable strategy for solving cash flow problems and only serves to make life harder for those you hire.

Criticism: What if my client's company is owned by a company overseas? Is it correct that they wouldn't be subject to the same compliance as found in the proposal?

Rebuttal: Unfortunately, this is correct. This proposal is not meant to patch every hole in the leaking boat, but it is meant to address several main issues in the pursuit of more equitable relations between freelancers and their clients. Targeting large companies that maintain businesses in the United States doesn't take the global marketplace into account, but that still accounts for many companies and workers.

Criticism: I'm worried about getting dinged with penalties if there is a federal holiday or if my accountant is sick.

Rebuttal: Invoices must be submitted by 11:59pm of that business day for the clock to start. The seven days provides enough leeway given the amount of time it takes for digital

¹¹ <https://kindredmembers.com/>

payments to be sent and received. The seven days are also calculated in business days, so any holidays will not count toward the payment terms. Additionally, freelancers are your collaborators, and the system is meant to increase communication with those you employ. Most freelancers would simply appreciate being notified when their payments will arrive, instead of waiting patiently for them to arrive at some unspecified time. The aim is to improve the payment process, not render it foolproof.

Good Actors

This policy proposal does not aim to attack companies. In fact, a great number of companies have already enacted progressive policies in efforts to increase transparency and pay freelancers quickly. The anecdotes below show that the changes proposed herein are not insurmountable; in fact, they are already in practice across a wide range of industries.

“As far as their systems, I’d attribute **Tiffany & Co’s** prompt payment to thorough and considerate employees who respected our policies, as well as Coupa as their payment portal.”

“For **Catch Hospitality Group**, I’d attribute this to just a good internal accounting team that is responsive and helpful and knows their vendors personally.”

“At [music talent management and event production company] **4AM**, we use Bill.com, which works well for our purposes. People can send us invoices and we can pay them out directly on the platform, see what bills are open or unpaid, etc. We encourage everyone who works with us to opt in for direct deposits because it means the money hits our contractors’ accounts within 2 days of us processing the invoice.”

“**Get It Production’s** payments are never late. They are also an exemplary production company all around: excellent communication, above average rates, Covid safety is top notch, and women-owned. They are also one of the only companies that has sent me their own internal contract unprompted.”

“Since Covid began, I’ve noticed post-production house **Versus** regularly pays me as soon as I send over the invoice. Incredibly transparent and approachable accounting department who is able to tell me with certainty when funds will hit my account. They use Chase Quickpay so I don’t even have to deposit a check or even move funds over. They’re just there.”

“Financial consulting services firm **RVJ Capital Solutions LLC** just hired an assistant and we use ADP as the payroll provider. One of the features of ADP is an option that allows the Employer the option to add “Employees” or “Vetted Contractors.” I believe this can help freelancers through providing a transparent portal that both the employer and freelancer can use to ensure that contracts are signed, work has been received, and payment dates have been pre-established. This can create accountability for both parties, which will ultimately provide the financial stability that freelancers need to continue to operate their businesses while also serving their clients in the long term.”

Concluding Thoughts

This policy recommends faster payment for freelancers over staff workers who enjoy regular payment periods. Freelancers endure more volatile professional lives than a staff employee, given the nature of servicing multiple clients as well as our necessarily unpredictable “feast or famine” seasons. However, this uncertainty should not exist where payment is concerned.

Making this proposal a reality would help restore dignity to freelance work, enabling freelancers to make better financial decisions based on a more regular monetary flow. In the year after a global pandemic, this can only help alleviate America’s economic slump. In an age where numerous digital payment methods are available, there are no excuses for outdated payroll systems, and regardless, standard contracts should always be in place. It is a common-sense policy that lacks partisanship – regardless of one’s affiliation, everyone prefers to be paid on time.

Appendix A: Sample Contract and Agreement Form

Information Field	Contract Field	Data type
Project Details	A	<i>(text box)</i>
Company	B	<i>(text box)</i>
Company Address	C	<i>(text boxes with address formatting)</i>
Freelancer	D	<i>(text box)</i>
Freelancer Address	E	<i>(text boxes with address formatting)</i>
Project Start Date	F	<i>(calendar)</i>
Project End Date	G	<i>(calendar)</i>
Rate	H	<i>(dollar amount) / (menu options: hourly, daily, project rate)</i>
Deliverables	I	<i>(text box)</i>
Payment Method	J	<i>(menu options: Paypal, Chase Quickpay (Zelle), ApplePay, JustWorks)</i>
Payment Detail	K	<i>(text field for detailed payment information)</i>

Corresponding Generated Work For Hire Contract

This Work for Hire Contract is entered into *[Contract Field F]* (the “Effective Date”), by and between *[Contract Field B]*, with an address of *[Contract Field C]* (the “Client”) and *[Contract Field D]*, with an address of *[Contract Field E]*, (the “Freelancer”), collectively “the Parties.”

1. **Services.** Client requests and Freelancer agrees to perform the following specific Services (the “Services”): *[Contract Field A]*.
2. **Compensation.** The Parties agree Freelancer will be compensated as follows: *[Contract Field H]*, using *[Contract Field J]*, delivered via *[Contract Field K]* at a maximum of seven business days. Failure to deliver payment is subject to fines determined by the LIBOR rate and accrued daily.
3. **Ownership of Work Product.** As a result of this Agreement, Freelancer will create Work Product, including, but not limited to, documents, presentations, reports and the like, physical and/or electronic. All Work Product shall be owned by Client. Freelancer does not maintain any rights to this Work Product and shall turn over all Work Product upon the termination of this Agreement. However, upon project conclusion, Freelancer may exhibit Work Product on their website in portfolio contexts as a showcasing of abilities to aid in attaining future client work. Deliverables are as follows: *[Contract Field I]*.

4. **Term.** This Agreement shall commence upon the Effective Date, as stated above, and will continue until *[Contract Field G]*.
5. **Freelancer Relationship.** The Parties agree that Freelancer is providing the Services under this Agreement and acting as an independent contractor and not as an employee. This Agreement does not create a partnership, joint venture, or any other fiduciary relationship between Client and Freelancer.
6. **Confidentiality.** During the course of this Agreement, it may be necessary for Client to share proprietary information, including trade secrets, industry knowledge, and other confidential information, to Freelancer in order for Freelancer to complete the Services. Freelancer will not share any of this proprietary information at any time. Freelancer also will not use any of this proprietary information for his/her personal benefit at any time. This section remains in full force and effect even after termination of the Agreement by its natural termination or the early termination by either party.
7. **Termination.** This Agreement may be terminated at any time by either Party upon written notice to the other party. Client will be responsible for payment of all Services performed up to the date of termination, except for in the case of Freelancer's breach of this Agreement, where Freelancer fails to cure such breach upon reasonable notice. Upon termination, Freelancer shall return all Client content, materials, and all Work Product to Client at its earliest convenience, but in no event beyond thirty (30) days after the date of termination.
8. **Representations and Warranties.** Both Parties represent that they are fully authorized to enter into this Agreement. The performance and obligations of either Party will not violate or infringe upon the rights of any third-party or violate any other agreement between the Parties, individually, and any other person, organization, or business or any law or governmental regulation.
9. **Indemnity.** The Parties each agree to indemnify and hold harmless the other Party, its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from the negligence of or breach of this Agreement by the indemnifying party, its respective successors and assigns that occurs in connection with this Agreement. This section remains in full force and effect even after termination of the Agreement by its natural termination or the early termination by either party.
10. **Limitation of Liability.** Under no circumstances shall either party be liable to the other party or any third party for any damages resulting from any part of this agreement such as, but not limited to, loss of revenue or anticipated profit or lost business, costs of delay or failure of delivery, which are not related to or the direct result of a party's negligence or breach.

11. **Disclaimer of Warranties.** Freelancer shall complete the services for Client's purposes and to Client's specifications. Freelancer does not represent or warrant that such services will create any additional profits, sales, exposure, brand recognition, or the like. Freelancer has no responsibility to Client if the deliverables do not lead to Client's desired result(s).
12. **Severability.** In the event any provision of this Agreement is deemed invalid or unenforceable, in whole or in part, that part shall be severed from the remainder of the Agreement and all other provisions should continue in full force and effect as valid and enforceable.
13. **Waiver.** The failure by either party to exercise any right, power or privilege under the terms of this Agreement will not be construed as a waiver of any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.
14. **Legal Fees.** In the event of a dispute resulting in legal action, the successful party will be entitled to its legal fees, including, but not limited to its attorneys' fees.
15. **Legal and Binding Agreement.** This Agreement is legal and binding between the Parties as stated above. This Agreement may be entered into and is legal and binding both in the United States and throughout Europe. The Parties each represent that they have the authority to enter into this Agreement.
16. **Governing Law and Jurisdiction.** The Parties agree that this Agreement shall be governed by the State and/or Country in which both Parties do business. In the event that the Parties do business in different States and/or Countries, this Agreement shall be governed by New York State law.
17. **Entire Agreement.** The Parties acknowledge and agree that this Agreement represents the entire agreement between the Parties. In the event that the Parties desire to change, add, or otherwise modify any terms, they shall do so in writing to be signed by both parties.

The Parties agree to the terms and conditions set forth above as demonstrated by their signatures as follows:

Client

Freelancer

Signed: _____

Signed: _____

By: _____

By: _____

Date: _____

Date: _____