

INDEPENDENT WORKFORCE ISSUE BRIEF

Unpaid Wages



Introduction

One of the greatest challenges that independent workers face is the inability to collect unpaid wages. Because of the nature of their work, independent workers often find themselves with clients who are unwilling or unable to pay the balance due. Unlike traditional employees, who can file a wage claim with their state department of labor, freelancers facing deadbeat clients must go to court or simply walk away.

Today, companies increasingly rely on flexible, freelance workers instead of full-time staff to meet their short-term needs; independent workers already account for thirty-one percent of the workforce.¹

But employment laws have not kept pace with the changing economy. When clients do not pay, independent workers waste countless hours chasing unpaid invoices and are often unable to recuperate their income, resulting in significant loss to themselves and the economy at large. Freelancers deserve the same wage protections as traditional employees. It is time to update our labor laws to meet the needs of the new workforce.

Independent workers are especially vulnerable to unpaid wages

Freelancers Union's annual surveys demonstrate that client nonpayment is a persistent and growing challenge for independent workers, Seventy-seven percent reported having trouble getting paid at some point in their freelance careers. In the last year alone, forty-four percent of independent worker respondents had trouble getting paid.



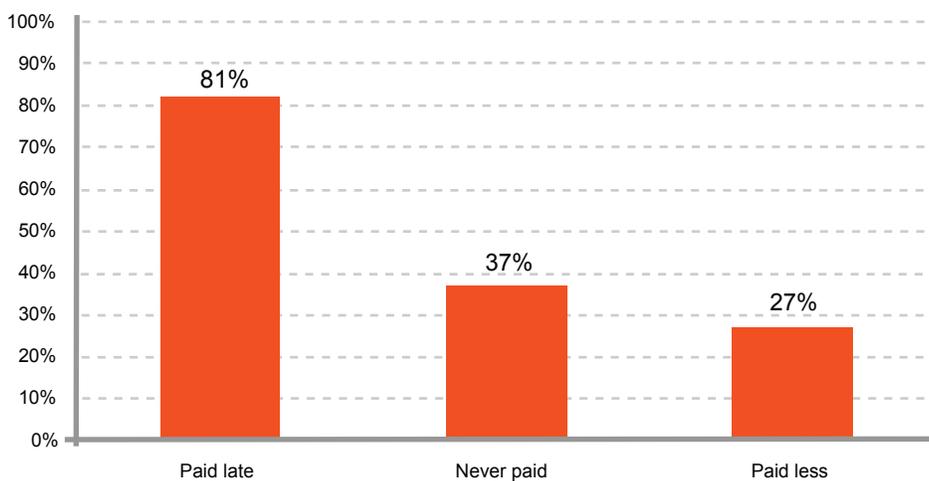
Nearly 8 in 10 freelancers faced client nonpayment in their careers.

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Of those respondents who struggled to get paid last year, thirty-seven percent were never paid at all, and twenty-seven percent were paid less than the agreed-upon amount. The average freelancer was unable to collect \$4,643.

The majority of respondents who had trouble getting paid last year received their wages late; eighty-one percent were paid after the agreed-upon date, averaging ninety-six days late. For companies, there is little incentive to pay independent workers on time, since these workers lack the infrastructure that many businesses utilize to collect unpaid invoices and have little leverage to force prompt payment.

2010 Nonpayment Experiences



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 throughout the United States, labor laws do not specifically protect them from this type of violation. For most traditional full-time employees, unpaid wage complaints are handled by their state's department of labor. At no charge to the employee, their department of labor will assist workers to collect their pay by investigating claims and recovering the owed wages. The Attorney General is even authorized to bring cases against repeat offenders, and in states with strong labor laws, the owners and shareholders of a company could be held personally liable for high fines and even face jail time.² Without the support of these labor protections, independent workers are left with few options for recovering the money owed them.

More often than not, companies treat freelancer payments as an optional expense. Shockingly, many major media companies recently introduced new freelancer contracts, in which the freelancer may choose to forgo a percentage of their fee in exchange for a guarantee of timely payment.³ This gross abuse of a worker's right to timely payment for completed work will continue unabated until freelancers gain equal protection from unpaid wages under the law.

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Independent workers have limited options to pursue unpaid wages

Independent contractors have little recourse when clients refuse to pay. Without the weight of labor laws behind them, they resort to ineffective collection methods, such as repeated phone calls (as eighty-seven percent of 2010 survey respondents did) and written letters (as twenty-six percent of freelancers did). Freelancers can attempt to charge late fees (as fourteen percent of freelancers did), but if a client is unwilling to pay to begin with, late fees are unlikely to have any compelling effect.

While hiring an attorney or going to small claims court may induce a client to pay, the amount of time and money required means these modes of recourse may not ultimately be cost-effective. Indeed, even with a successful judgment from small claims court, actually compelling recalcitrant companies to pay the money owed may prove difficult.

Given these barriers, independent workers rarely turn to legal means to obtain their owed wages; only four percent of survey respondents hired an attorney, and two percent took their clients to small claims court. 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 to simply write off their unpaid work as a loss. Given the limited tools at their disposal, it is no wonder that so many independent workers suffer from client nonpayment.

How Freelancers Handled Client Nonpayment.

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| 87% | Repeated calls and/or emails to clients requesting payment |
| 26% | Sent demand letters to clients |
| 14% | Charged late payment fees |
| 4% | Hired an attorney to pursue unpaid wages/invoices |
| 2% | Took clients to small claims court |

Pursuing owed wages may threaten a freelancer's career

In some cases, independent workers do not pursue their owed payments because they do not want to jeopardize their relationships with clients or risk developing a bad reputation with potential clients. In fact, ten percent of survey respondents did not take action to pursue their unpaid wages. 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. 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. Additionally, these workers may not have the time to pursue payment, cannot afford to hire an attorney, or simply do not know what to do. Without a formal legal procedure for pursuing wages, independent workers are left to fend for themselves.

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Client nonpayment hurts freelancers and the economy

The cost of unpaid wages hits freelancers in several ways. Beyond the loss of income and stress of the resulting income volatility, pursuing unpaid wages takes away valuable time that could be spent doing something else, including paid work. According to a recent Freelancers Union survey, respondents spent twenty thousand hours last year pursuing nearly \$2.5 million in payments they were owed by clients. Sometimes, freelancers spent more time fighting to collect unpaid wages than they spent doing the work.

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, freelancers pay for business expenses first, so unpaid wages often eat into more easily deferred expenses, such as saving for retirement or children's education. Unfortunately, many must rely on credit cards or other unfavorable financing options to meet basic expenses while waiting for a payment.

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 deplete 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 a Freelancers Union survey showed that fifty-five percent of freelancers 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.

Nonpayment inflicts a heavy toll not only on the individual worker but also the broader economy. Cumulatively, the 2011 survey respondents spent more than twenty-thousand hours pursuing unpaid wages over the course of the last year and were unable to collect \$2.5 million. Expanded beyond the twenty-five hundred survey respondents, this has an even more significant impact on the economy. City, state, and federal governments lose not only personal income tax, but also income that would inevitably be produced as these workers purchase more goods and services in their communities and beyond.

There are simple solutions to ensure independent workers collect the wages they deserve

Independent workers need protection against unpaid wages. Freelancers Union proposes the following measures to help ensure that independent workers collect their owed wages on time, every time.

- **Amend state labor laws to include independent contractors in their wage and hour claims systems.**
While state labor laws differ, most restrict their department of labor's jurisdiction to traditional employees. These laws give the state commissioner of labor the right to investigate and penalize employers who do not pay their employees, a right that should be expanded to include clients who do not pay their independent contractors.

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- **Introduce legislation that would increase penalties for companies that fail to pay freelancers.** Many states hold employers liable for additional damages (up to \$20,000) beyond the owed wages. In some states, the individual owners or shareholders of a company can be held personally liable for the damages, and could face jail time for repeat offenses.⁴ Expanding these penalties to include deadbeat companies who do not pay their freelancers would create a huge deterrent to the problem of unpaid wages.
- **Introduce legislation to prevent companies with histories of freelancer nonpayment from doing business with state or city governments.** Some laws currently exist which prevent companies with labor violations from doing business with certain government entities.⁵ Companies who fail to pay their freelancers should not be allowed to receive government contracts, at least for some period of time following the documented offence.
- **Create free and low-cost legal services for freelancers.** From a recent Freelancers Union survey, only thirty-three percent of freelancers indicated that they always use written contracts. Independent workers would benefit from affordable legal services to help them draft contracts to help protect themselves against client nonpayment.

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 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. 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 access to their state department of labor’s wage claim system.

¹ Government Accountability Office (2006) *Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*

² See, for instance, New York State Labor Law, Article 6

³ See, for instance, Gawker (December 4, 2009) “NBC Universal’s Version of the Payday Loan Scam for Freelancers”

<http://gawker.com/5419215/nbc-universals-version-of-the-payday-loan-scam-for-freelancers>

⁴ See, for instance, New York State Labor Law, Article 6

⁵ See, for instance, New York City Administrative Code

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