LEGAL CORNER
HARVEY MARS, ESQ.

Harvey Mars is counsel to Local 802. Legal questions from members are welcome. E-mail them to **HsmLaborLaw@HarveyMarsAttorney.com**. Harvey Mars's previous articles in this series are archived at **www.HarveyMarsAttorney.com**. (Click on "Publications & Articles" from the top menu.) Nothing here or in previous articles should be construed as formal legal advice given in the context of an attorney-client relationship.

Two new state laws claim they are trying to protect the RIGHTS OF FREELANCERS

Musicians need to know what these laws do

THE TRUMP ADMINISTRATION has done as much as it can to curtail workers' rights. We can see the evidence of this through many recent labor board and federal court rulings. However, the good news is that several states and cities have sought to stem this reactionary tide by expanding labor rights on the local level. They have done this in significant ways.

New York and California have led the way. In New York City, progressive legislation has been enacted to ensure that independent contractors and individuals who work "gig to gig" – like musicians – are protected from employment discrimination and are accorded adequate means of legal redress from contractors or employers who fail to pay. And California has codified a recent state court decision that sets forth the parameters by which workers must be considered employees.

Since both of these are relatively recent laws that impact professional musicians, union members should be aware of their terms and scope.

New York City's "Freelance Isn't Free Act" created a legal mechanism that freelance workers can utilize to obtain payment of outstanding fees. This law is the first of its kind in this country. It mandates that payment for services rendered by an independent contractor valued more than $800 must be made within 30 days of performance (unless otherwise provided in a binding contract between the parties). If payment is not made within that time frame, the Department of Consumer Affairs has charged the Office of Labor Policy and Standards with the task of assisting workers in obtaining payment. To do this, the OLPS is available to provide mediation services and prepare civil suits to help workers collect overdue fees. If a collection suit is required, the employer will be required to pay double the amount of fees owed, plus damages, costs and counsel fees. Retaliation is statutorily prohibited.

It has been estimated that since the law was created, New York City has recovered $254,866 in payments owed to freelance workers, with the average amount collected being $2,039 per complaint. Furthermore, roughly 70 percent of workers filing complaints worked within the arts and entertainment industry. Any musician who occasionally works freelance should become familiar with this law. See **www1.nyc.gov/site/dca/workers/workersrights/freelancer-workers.page**

Similarly, the New York City Human Rights Law is being expanded to protect freelancers and independent contractors from employment discrimination (including sexual harassment) based upon protected categories such as age, race, national origin, and more. This law, which will become effective before the end of the year, will permit independent contractors to file complaints with the New York City Commission on Human Rights. This law only applies to employers who employ four or more workers, but the exemption would not apply if the employer employed four or more people anytime within 12 months before the discriminatory practice took place. This law will work well in tandem with the new Local 802 Anti-Discrimination bylaw, which is being voted on as Allegro goes to press.

California has created AB 5, a law that codifies a judicial decision (Dynamex Operations West, Inc. v. Superior Court of Los Angeles, 4 Ca. 5th903 (2018)), which redefined employer-employee relations in that state. The law creates a presumption that a worker who performs services for hire is an employee for purposes of claims for wages and benefits. The law exempts "fine artists" but it appears that this term does not include professional musicians or other performing artists. It also exempts employees who are covered by collective bargaining agreements, but by definition under the National Labor Relations Act, workers covered by collective bargaining agreements are already considered employees.

While this new law is laudable because it now requires employers to recognize several categories of workers as employees, such as cab drivers, dog walkers and some sex workers, it potentially creates a host of problems for freelance independent workers by foisting upon them employment relationships that could hamper the traditional processes by which they work and create. Marc Ribot, a prominent member of the Local 802 Indie Musicians Caucus, told me that "AB 5 is very complex, and I'm still forming my position. But the consensus of pro-artist groups I've consulted is that there should be a 'carve-out' to protect genuinely collaborative processes. The legislation will barely affect the core constituencies of the AFM, which are already working as W-2 employees. But its effects on indie musicians may be highly disruptive."

Both states' progressive statutes demonstrate different focuses. While New York seeks to provide greater protection to individual workers regardless of their employment status, California seeks to protect workers by requiring them to be treated as employees. There are pros and cons to both approaches. Time will tell how these play out for musicians. We'll keep you posted.