



## Legislation Details (With Text)

**File #:** Int 0066-2002 **Version:** A **Name:** Low-wage workers, living wage  
**Type:** Introduction **Status:** Enacted  
**In control:** Committee on Contracts

**On agenda:** 3/13/2002

**Enactment date:** 11/27/2002 **Enactment #:** 2002/038

**Title:** A Local Law to amend the administrative code of the City of New York in order to ensure that low-wage workers employed by firms receiving certain service contracts from the City of New York are paid a living wage and are provided health benefits.

**Sponsors:** Gifford Miller, Bill Perkins, Margarita Lopez, Robert Jackson, Leroy G. Comrie, Jr., Christine C. Quinn, Joel Rivera, Joseph P. Addabbo, Jr., Tony Avella, Maria Baez, Charles Barron, Tracy L. Boyland, Gale A. Brewer, Yvette D. Clarke, James E. Davis, Bill De Blasio, Eric N. Gioia, Melinda R. Katz, John C. Liu, Michael E. McMahon, Hiram Monserrate, Michael C. Nelson, Domenic M. Recchia, Jr., Philip Reed, Diana Reyna, James Sanders, Jr., Helen Sears, Ruben Diaz, Erik Martin Dilan, Lewis A. Fidler, Simcha Felder, Helen D. Foster, James F. Gennaro, Allan W. Jennings, Jr., G. Oliver Koppell, Miguel Martinez, Larry B. Seabrook, Jose M. Serrano, Albert Vann, David I. Weprin, David Yassky, Betsy Gotbaum, Kendall Stewart, Alan J. Gerson

### Indexes:

**Attachments:** 1. Committee Report 4/23, 2. Hearing Transcript 4/23, 3. Committee Report 10/30, 4. Hearing Transcript 10/30, 5. Local Law, 6. Stated Meeting - Hearing Transcript, 7. Fiscal Impact Statement

Date	Ver.	Action By	Action	Result
3/13/2002	*	City Council	Introduced by Council	
3/13/2002	*	City Council	Referred to Comm by Council	
3/13/2002	*	City Council	Referred to Comm by Council	
4/23/2002	*	Committee on Governmental Operations	Laid Over by Committee	
4/23/2002	*	Committee on Governmental Operations	Hearing Held by Committee	
4/23/2002	*	Committee on Contracts	Hearing Held by Committee	
4/23/2002	*	Committee on Contracts	Laid Over by Committee	
10/30/2002	*	Committee on Contracts	Hearing Held by Committee	
10/30/2002	*	Committee on Contracts	Amendment Proposed by Comm	
10/30/2002	*	Committee on Contracts	Amended by Committee	
10/30/2002	A	Committee on Contracts	Approved by Committee	Pass
10/30/2002	*	Committee on Governmental Operations	Amendment Proposed by Comm	
10/30/2002	A	Committee on Governmental Operations	Approved by Committee	Pass
10/30/2002	*	Committee on Governmental Operations	Amended by Committee	
10/30/2002	*	Committee on Governmental Operations	Hearing Held by Committee	
11/7/2002	A	City Council	Approved by Council	Pass

11/7/2002	A	City Council	Sent to Mayor by Council
11/27/2002	A	Mayor	Hearing Held by Mayor
11/27/2002	A	Mayor	Signed Into Law by Mayor
11/27/2002	A	City Council	Recved from Mayor by Council

Proposed Int. No. 66-A

By: The Speaker (Council Member Miller), Council Members Perkins, Lopez, Jackson, Comrie, Quinn, Rivera, Addabbo Jr., Avella, Baez, Barron, Boyland, Brewer, Clarke, Davis, DeBlasio, Gioia, Katz, Liu, McMahon, Monserrate, Nelson, Recchia Jr., Reed, Reyna, Sanders Jr., Sears, Diaz, Dilan, Fidler, Felder, Foster, Gennaro, Jennings, Koppell, Martinez, Seabrook, Serrano, Vann, Weprin, Yassky and the Public Advocate (Ms. Gotbaum); also Council Members Stewart and Gerson.

A Local Law to amend the administrative code of the City of New York in order to ensure that low-wage workers employed by firms receiving certain service contracts from the City of New York are paid a living wage and are provided health benefits.

Be it enacted by the Council as follows:

Section 1. Section 6-109 of title 6 of the administrative code of the City of New York is hereby repealed and replaced by the following:

Section 6-109. a. Definitions. For purposes of this section, the following terms shall have the following meanings:

- (1) "City" means the City of New York.
- (2) "Entity" or "Person" means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.
- (3) "Homecare Services" means the provision of homecare services under the city's Medicaid Personal Care / Home Attendant or Housekeeping Programs, including but not limited to the In-Home Services for the Elderly Programs administered by the Department for the Aging.
- (4) "Building Services" means work performing any custodial, janitorial, groundskeeping or security guard services, including but not limited to, washing and waxing floors, cleaning windows, cleaning of curtains, rugs, or drapes, and disinfecting and exterminating services.
- (5) "Day Care Services" means provision of day care services through the city's center-based day care program administered under contract with the city's administration for children's services. No other day

care programs shall be covered, including family-based day care programs administered by city-contracted day care centers.

(6) "Head Start Services" means provision of head start services through the city's center-based head start program administered under contract with the city's administration for children's services. No other head start programs shall be covered.

(7) "Services to Persons with Cerebral Palsy" means provision of services which enable persons with cerebral palsy and related disabilities to lead independent and productive lives through an agency that provides health care, education, employment, housing and technology resources to such persons under contract with the city or the department of education.

(8) "Food Services" means the work preparing and/or providing food. Such services shall include, but not be limited to those as performed by workers employed under the titles as described in the federal dictionary of occupational titles for cook, kitchen helper, cafeteria attendant, and counter attendant. Any contracting agency letting a food services contract under which workers will be employed who do not fall within the foregoing definitions must request that the comptroller establish classifications and prevailing wage rates for such workers.

(9) "Temporary Services" means the provision of services pursuant to a contract with a temporary services, staffing or employment agency or other similar entity where the workers performing the services are not employees of the contracting agency. Such services shall include those performed by workers employed under the titles as described in the federal dictionary of occupational titles for secretary, word processing machine operator, data entry clerk, file clerk, and general clerk. Any contracting agency letting a temporary services contract under which workers will be employed who do not fall within the foregoing definitions must request the comptroller to establish classifications and prevailing wage rates for such workers.

(10) "City Service Contract" means any written agreement between any entity and a contracting agency whereby a contracting agency is committed to expend or does expend funds and the principle purpose

of such agreement is to provide homecare services, building services, day care services, head start services, services to persons with cerebral palsy, food services or temporary services where the value of the agreement is greater than the city's small purchases limit pursuant to section 314 of the city charter. This definition shall not include contracts with not-for-profit organizations, provided however, that this exception shall not apply to not-for-profit organizations providing homecare, headstart, daycare and services to persons with cerebral palsy. This definition shall also not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the city charter.

(11) "City Service Contractor" means any entity and/or person that enters into a city service contract with a contracting agency. An entity shall be deemed a city service contractor for the duration of the city service contract that it receives or performs.

(12) "City Service Subcontractor" means any entity and/or person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that is engaged by a city service contractor to assist in performing any of the services to be rendered pursuant to a city service contract. This definition does not include any contractor or subcontractor that merely provides goods relating to a city service contract or that provides services of a general nature (such as relating to general office operations) to a city service contractor which do not relate directly to performing the services to be rendered pursuant to the city service contract. An entity shall be deemed a city service contractor for the duration of the period during which it assists the city service subcontractor in performing the city service contract.

(13) "Contracting Agency" means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury or the department of education.

(14) "Covered Employer" means a city service contractor or a city service subcontractor.

(15) "Employee" means any person who performs work on a full-time, part-time, temporary, or

seasonal basis and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity. For purposes of this definition and this section, "employ" means to maintain an employee, as defined in this section. For purposes of counting numbers of employees or employed persons when required by this section, full-time, part-time, temporary, or seasonal employees shall be counted as employees. Where an employer's work force fluctuates seasonally, it shall be deemed to employ the highest number of employees that it maintains for any three month period. However, in the case of city service contractors and city service subcontractors that provide day care services, independent contractors that are family-based day care providers shall not be deemed employees of the agencies and shall not be subject to the requirements of this section.

(16) "Covered Employee" means an employee entitled to be paid the living wage or the prevailing wage and/or health benefits as provided in subdivision b of this section.

(17) "Not-for-Profit Organization" means a corporation or entity having tax exempt status under section 501(c)(3) of the United States internal revenue code and incorporated under state not-for-profit law.

(18) "Prevailing Wage and Supplements" means the rate of wage and supplemental benefits per hour paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with the provisions of section 234 of the New York state labor law or, for titles not specifically enumerated in or covered by that law, determined by the comptroller at the request of a contracting agency or a covered employer in accordance with the procedures of section 234 of the New York state labor law. As provided under section 231 of the New York state labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the comptroller.

(19) "Living Wage" has the meaning provided in paragraph 2 of subdivision b of this section.

(20) "Health Benefits" has the meaning provided in paragraph 3 of subdivision b of this section.

(21) "Health Benefits Supplement Rate" has the meaning provided in subparagraph b of paragraph 3 of subdivision b of this section.

b. Living Wage, Prevailing Wage and Health Benefits. (1) Coverage. (a) A city service contractor or city service subcontractor that provides homecare services, day care services, head start services or services to persons with cerebral palsy must pay its covered employees that directly render such services in performance of the city service contract or subcontract no less than the living wage and must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. This requirement applies for each hour that the employee works performing the city service contract or subcontract.

(b) A city service contractor or city service subcontractor that provides building services, food services or temporary services must pay its employees that are engaged in performing the city service contract or subcontract no less than the living wage or the prevailing wage, whichever is greater. Where the living wage is greater than the prevailing wage, the city service contractor or city service subcontractor must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the city service contractor or city service subcontractor must provide its employees the prevailing wage and supplements as provided in paragraph 18 of subdivision a of this section. These requirements apply for each hour that the employee works performing the city service contract or subcontract.

(2) The Living Wage. The living wage shall be an hourly wage rate of ten dollars per hour and will be phased in as provided below. Provided, however, that for homecare services under the Personal Care Services program, the wage and health rates below shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section:

a) As of the effective date of this section, \$8.10 per hour;

- (b) As of July 1, 2003, \$8.60 per hour;
- (c) As of July 1, 2004, \$9.10 per hour;
- (d) As of July 1, 2005, \$9.60 per hour;
- (e) As of July 1, 2006, \$10.00 per hour,

(3) Health Benefits. (a) Health Benefits means receipt by a covered employee of a health care benefits package for the covered employee and/or a health care benefits package for the covered employee and such employee's family and/or dependents.

(b) The Health Benefits Supplement Rate shall be \$1.50 per hour.

(c) For homecare services provided under the Personal Care Services program, the wage and health rates above shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section.

(d) In the case of city service contractors or subcontractors providing homecare services, the health benefits requirements of this section may be waived by the terms of a bona fide collective bargaining agreement with respect to employees who have never worked a minimum of eighty (80) hours per month for two consecutive months for that covered employer, but such provision may not be waived for any employees once they have achieved a minimum of eighty (80) hours for two consecutive months and no other provisions of this section may be so waived.

(4) Exemption for Employment Programs for the Disadvantaged. The following categories of employees shall not be subject to the requirements of this section:

- (a) Any employee who is:
  - (i) Under the age of eighteen who is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer employee; or
  - (ii) Employed as a trainee in a bona fide training program consistent with federal and state law

where the training program has the goal that the employee advances into a permanent position; provided, however, that this exemption shall apply only when the trainee does not replace, displace or lower the wages or benefits of any covered employee, and the training does not exceed two years; and

(b) Any disabled employee, where such disabled employee:

(i) Is covered by a current sub-minimum wage certificate issued to the employer by the United States department of labor; or

(ii) Would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the federal minimum wage.

(5) Retaliation and Discrimination Barred. It shall be unlawful for any covered employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any covered employee for reporting or asserting a violation of this section, for seeking or communicating information regarding rights conferred by this section, for exercising any other rights protected under this section, or for participating in any investigatory or court proceeding relating to this section. This protection shall also apply to any covered employee or his or her representative who in good faith alleges a violation of this section, or who seeks or communicates information regarding rights conferred by this section in circumstances where he or she in good faith believes this section applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered employee subjected to any action that violates this subsection may pursue administrative remedies or bring a civil action pursuant to subsection e of this section in a court of competent jurisdiction.

(6) Nothing in this section shall be construed to establish a wage or benefit pattern or otherwise affect the establishment of wages or benefits for city employees.

c. Obligations of Covered Employers. (1) A covered employer shall comply with the wage,



benefits and other requirements of this section.

(2) **Certification of Compliance.** (a) Prior to the award or renewal of a city service contract, the applicant for award or renewal shall provide to the extent permitted by law the awarding contracting agency a certification containing the following information:

- (i) The name, address, and telephone number of the chief executive officer of the applicant;
- (ii) A statement that, if the city service contract is awarded or renewed, the applicant agrees to comply with the requirements of this section, and with all applicable federal, state and local laws;
- (iii) The following workforce information concerning employees of the applicant that will be covered employees under the planned city service contract: (a) the absolute number of covered employees and the number of full-time equivalent covered employees; (b) for all categories of covered employees, the following information broken down by category: (1) job classifications of covered employees in each category; and (2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave). The applicant further agrees to require all of its city service subcontractors to provide the same workforce information as described herein;
- (iv) To the extent permitted by law, a record of any instances during the preceding five years in which the applicant has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or to the extent permitted by law, in which any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws; and
- (v) An acknowledgement that a finding by a contracting agency that the applicant has violated the requirements of this section may result in the cancellation or rescission of the city service contract.

The certification shall be signed under penalty of perjury by an officer of the applicant, and shall be annexed to and form a part of the city service contract. The certification (including updated certifications) and the city service contract shall be public documents and the contracting agency shall make them available to the

public upon request for inspection and copying pursuant to the state freedom of information law.

(b) A city service contractor shall each year throughout the term of the city service contract submit to the contracting agency an updated certification, identifying any, if any exist, changes to the current certification.

(c) A covered employer shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of this section, and the wages paid and benefits provided for such hours worked. The covered employer shall maintain these records for the duration of the term of the city service contract and shall retain them for a period of four years after completion of the term of the city service contract. Failure to maintain such records as required shall create a rebuttable presumption that the covered employer did not pay its covered employees the wages and benefits required under the section. Upon the request of the comptroller or the city affiliated agency, the covered employer shall provide a certified original payroll record.

(d) A city service contractor providing building services, food services or temporary services shall, as required by the predecessor version of this section, continue to submit copies of such payroll records, certified by the city service contractor under penalty of perjury to be true and accurate, to the contracting agency with every requisition for payment.

(e) A city service contractor providing homecare, day care, head start or services to persons with cerebral palsy may comply with the certification and other reporting requirements of this paragraph by submitting, as part of the contract proposal/contract and requests for payment categorical information about the wages, benefits and job classifications of covered employees of the city service contractor, and of any city service subcontractors, which shall be the substantial equivalent of the information required in clause iii of subparagraph (2) (a) of this paragraph.

(3) A city service contractor shall ensure that its city service subcontractors comply with the requirements of this section, and shall provide written notification to its city service subcontractors of those

requirements, and include in any contract or agreement with its city service subcontractors a provision requiring them to comply with those requirements.

(4) No later than the day on which any work begins under a city service contract subject to the requirements of this section, the covered employer shall post in a prominent and accessible place at every work site and provide each covered employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under this section. Such notices shall be provided in english, spanish and other languages spoken by ten percent or more of a covered employer's covered employees. The comptroller shall provide contracting agencies with sample written notices explaining the rights of covered employees and covered employers' obligations under this section, and contracting agencies shall in turn provide those written notices to city service contractors, which shall in turn provide them to their subcontractors.

d. City Implementation and Reporting. (1) Coordination by the Comptroller. The comptroller shall monitor, investigate, and audit the compliance by all contracting agencies, and provide covered employers and employees with the information and assistance necessary to ensure that the section is implemented.

(a) The mayor or his or her designee shall promulgate implementing rules and regulations as appropriate and consistent with this section and may delegate such authority to the comptroller. The comptroller shall be responsible for publishing the living wage and for calculating and publishing all applicable prevailing wage and health benefits supplement rates. The comptroller shall annually publish the adjusted rates. The adjusted living wage and health benefits supplement rate shall take effect on July 1 of each year, and the adjusted prevailing wage rates shall take effect on whatever date revised prevailing wage rates determined under section 230 of the state labor law are made effective. At least 30 days prior to their effective date, the relevant contracting agencies, shall provide notice of the adjusted rates to city service contractors, which shall in turn provide written notification of the rate adjustments to each of their covered employees, and to any city service subcontractors, which shall in turn provide written notification to each of their covered

employees. Covered employers shall make necessary wage and health benefits adjustments by the effective date of the adjusted rates.

(b) The comptroller and the mayor shall ensure that the information set forth in the certifications (including annual updated certifications and alternatives to certifications authorized for city service contractors providing homecare, day care, or head start services or services to persons with cerebral palsy) required to be submitted under paragraph 2 of subdivision c of this section is integrated into and contained in the city's contracting and financial management database established pursuant to section 6-116.2 of the administrative code. Such information shall to the extent permitted by law be made available to the public. Provided, however, that the comptroller and the mayor may agree to restrict from disclosure to the public any information from the certifications required under paragraph 2 of subdivision c of this section that is of a personal nature.

(c) The comptroller shall submit annual reports to the mayor and the city council summarizing and assessing the implementation and enforcement of this section during the preceding year, and include such information in the summary report on contracts required under section 6-116.2 of the administrative code.

(2) Implementation by Contracting Agencies. (a) Contracting agencies shall comply with and enforce the requirements of this section. The requirements of this section shall be a term and condition of any city service contract. No contracting agency may expend city funds in connection with any city service contract that does not comply with the requirements of this section.

(b) Every city service contract shall have annexed to it the following materials which shall form a part of the specifications for and terms of the city service contract:

(i) A provision obligating the city service contractor to comply with all applicable requirements under this section;

(ii) The certification required under paragraph 2 of subdivision c of this section;

(iii) A schedule of the current living wage and health benefits supplement rates, a schedule of job classifications for which payment of the prevailing wage is required under this section together with the

applicable prevailing wage rates for each job classification, as determined by the comptroller and notice that such rates are adjusted annually; and

(iv) A provision providing that: (a) Failure to comply with the requirements of this section may constitute a material breach by the city service contractor of the terms of the city service contract; (b) Such failure shall be determined by the contracting agency; and (c) If, within thirty days after or pursuant to the terms of the city service contract, whichever is longer, the city service contractor and/or subcontractor receives written notice of such a breach, the city service contractor fails to cure such breach, the city shall have the right to pursue any rights or remedies available under the terms of the city service contract or under applicable law, including termination of the contract.

e. Monitoring, Investigation and Enforcement. (1) Enforcement. (a) Whenever the comptroller has reason to believe that a covered employer or other person has not complied with the requirements of this section, or upon a verified complaint in writing from a covered employee, a former employee, an employee's representative, a labor union with an interest in the city service contract at issue, the comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the comptroller shall have the same investigatory, hearing, and other powers as are conferred on the comptroller by sections 234 and 235 of the state labor law. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by section 235.2 of the state labor law, instruct or, in the case of homecare services, day care services, head start services or services to persons with cerebral palsy, advise the relevant contracting agency to withhold any payment due the covered employer in order to safeguard the rights of the covered employees. Provided, however, that in the case of city service contractors providing services to persons with cerebral palsy, day care or head start services, no such withholding of payment may be ordered until such time as the comptroller or contracting agency, as applicable, has issued an order, determination or other disposition finding a violation of this section and the city service contractor has failed to cure the violation in a timely fashion. Based upon such investigation, hearing, and findings, the comptroller shall report

the results of such investigation and hearing to the contracting agency, who shall issue such order, determination or other disposition. Such disposition may:

- (i) Direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of the underpayment to the worker, based on the rate of interest per year then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the state banking law, but in any event at a rate no less than six percent per year;
- (ii) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;
- (iii) Direct the reinstatement of, or other appropriate relief for, any person found to have been subject to retaliation or discrimination in violation of this section;
- (iv) Direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due in violation of this section;
- (v) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer; and
- (vi) Declare a finding of non-responsibility and bar the covered employer from receiving city service contracts from the contracting agency for a prescribed period of time.

In assessing an appropriate remedy, contracting agency shall give due consideration to the size of the employer's business, the employer's good faith, the gravity of the violation, the history of previous violations and the failure to comply with record-keeping, reporting, anti-retaliation or other non-wage requirements. Any civil penalty shall be deposited in the city general revenue fund.

- (b) In circumstances where a city service contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, a contracting agency may obtain from another source the required service as specified in the original contract, or any part thereof, and may charge the non-performing city service contractor for any difference in price resulting from the alternative arrangements,

may assess any administrative charge established by the contracting agency, and may, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

(c) Before issuing an order, determination or any other disposition, the comptroller or contracting agency, as applicable, shall give notice thereof together with a copy of the complaint, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person or covered employer affected thereby. The comptroller or contracting agency, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and disposition. Such person or covered employer shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard in respect to such matters.

(d) In an investigation conducted under the provisions of this section, the inquiry of the comptroller or contracting agency, as applicable, shall not extend to work performed more than three years prior to the filing of the complaint, or the commencement of such investigation, whichever is earlier.

(e) When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the wage, benefits, anti-retaliation, record-keeping or reporting requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any city service contract for a period of five years from the date of the second disposition.

(f) When a final determination has been made in favor of a covered employee or other person and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the comptroller or contracting agency, as applicable, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the comptroller or contracting agency, as applicable, shall file a copy of such order containing the amount found to be due with the city clerk of the county of residence or place of business of the person found to have violated this section, or

of any principal or officer thereof who knowingly participated in the violation of this section. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the comptroller or contracting agency, as applicable, in the same manner and with like effect as that prescribed by the state civil practice law and rules for the enforcement of a money judgment.

(g) Before any further payment is made, or claim is permitted, of any sums or benefits due under any city service contract covered by this section, it shall be the duty of the contracting agency to require the covered employer, including each city service subcontractor of the covered employer, that has been found to have violated the law, to file a written statement certifying to the amounts then due and owing from each such covered employer to or on behalf of all covered employees, or the city for wages or benefits wrongly denied them, or for civil penalties assessed, and setting forth the names of the persons owed and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the covered employer under penalty of perjury. If any interested person shall have previously filed a protest in writing objecting to the payment to any covered employer on the ground that payment is owing to one or more employees of the covered employer for violations of this section, or if for any other reason it may be deemed advisable, the comptroller, a contracting agency or the city department of finance may deduct from the whole amount of any payment to the covered employer sums admitted by the covered employer in the verified statement or statements to be due and owing to any covered employee before making payment of the amount certified for payment, and may withhold the amount so deducted for the benefit of the employees or persons that are owed payment as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due them.

(h) The comptroller or any contracting agency shall be authorized to contract with non-governmental agencies to investigate possible violations of this section. Where a covered employer is found to have violated the requirements of this section, the covered employer shall be liable to the city for costs



incurred in investigating and prosecuting the violation.

(2) Enforcement by Private Right of Action. (a) When a final determination has been made and such determination is in favor of a covered employee, such covered employee may, in addition to any other remedy provided by this section, institute an action in any court of appropriate jurisdiction against the covered employer found to have violated this section. For any violation of this section, including failure to pay applicable wages, provide required benefits, or comply with other requirements of this section, including protections against retaliation and discrimination, the court may award any appropriate remedy at law or equity including, but not limited to, back pay, payment for wrongly denied benefits, interest, other equitable or make-whole relief, reinstatement, injunctive relief and/or compensatory damages. The court shall award reasonable attorney's fees and costs to any complaining party who prevails in any such enforcement action.

(b) Notwithstanding any inconsistent provision of this section or of any other general, special or local law, ordinance, city charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee under the provisions of this section because of the prior receipt by the employee without protest of wages or benefits paid, or on account of the employee's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages or benefits received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages or benefits due the employee for the period covered by such payment.

(c) Such action must be commenced within three years of the date of the alleged violation, or within three years of the final disposition of any administrative complaint or action concerning the alleged violation or, if such a disposition is reviewed in a proceeding pursuant to article 78 of the state civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights

hereunder in a court of law. This section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

f. Other provisions. (1) Except where expressly provided otherwise in this section, the requirements of this section shall apply to city service contracts entered into after the effective date of this section, and shall not apply to any existing city service contract entered into prior to that date. Where a city service contract is renewed or extended after the effective date of this section, such renewal or extension shall be deemed new city service contracts and shall trigger coverage under this section if the terms of the renewed or extended city service contract, otherwise meet the requirements for coverage under this section. However, city service contractors and city service subcontractors that provide services to persons with cerebral palsy, day care services or head start services shall be subject to the requirements of this section only upon the award or renewal of city service contracts after the effective date of this section. City service contractors and city service subcontractors that provide homecare services shall be subject to the requirements of this section immediately upon the effective date of this section.

(2) Members of the public shall have a right of access to documents or information that is designated as public under article six of the public officers law. Such public documents or information as pursuant to the law shall be made available to the public for inspection and copying. The custodians of such documents or information may charge a reasonable fee, not to exceed twenty-five cents per page, for copying.

(3) Contracting agencies shall begin requiring city service contractors to supplement the information currently required to be submitted pursuant to section 6-116.2 with the additional information specified in clause iii of subparagraph a of paragraph 2 of subdivision c of this section. This information shall be compiled by the contracting agency and included in the computerized database jointly maintained by the mayor and the comptroller pursuant to section 6-116.2.

(4) Nothing in this section shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement, that mandates the provision of higher or superior wages,

benefits, or protections to covered employees. No requirement or provision of this section shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law.

However, in such circumstances, only those specific applications or provisions of this section for which coverage would be preempted shall be construed as not applying.

(5) In the event that any requirement or provision of this section, or its application to any person or circumstance, should be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other requirements or provisions of this section, or the application of the requirement or provision held invalid to any other person or circumstance.

§ 2. This section shall take effect 90 days after enactment.