



Legislation Text

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A Local Law to amend the administrative code of the city of New York, in relation to establishing prevailing wage requirements for city-contracted human service workers

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-130.1 to read as follows:

§ 6-130.1 Prevailing wage for city-contracted human service workers. a. Definitions. For purposes of this section, the following terms have the following meanings:

Comptroller. The term “comptroller” means the comptroller of the city.

Contracting agency. The term “contracting agency” means a city, county, borough, or other office, position, administration, city agency, department, division, bureau, board or commission, or a corporation, or institution, the expenses of which are paid in whole or in part from the city treasury.

Covered employer. The term “covered employer” means a provider of human services that has been awarded a human services contract by a contracting agency.

Employee. The term “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.

Human services. The term “human services” has the meaning set forth in subdivision c of section 6-129.

Human services contract. The term “human services 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 principal purpose of such agreement is to provide human services.

Human service worker. The term “human service worker” means an employee of a covered employer.

Prevailing wage. The term “prevailing wage” means the rate of wage and supplemental benefits 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 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 labor law. As provided under section 231 of the 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 under rules and regulations established by the comptroller.

b. Prevailing wage to human service providers required. 1. A covered employer must pay its human service workers that are engaged in performing the human services contract no less than the prevailing wage.

2. Prior to commencing any work under a human services contract, and annually thereafter, each covered employer shall provide to the comptroller and the contracting agency an annual certification executed under penalty of perjury that all human service workers subject to paragraph 1 of subdivision b of this section, who are employed by such covered employer, will be and/or have been paid no less than the prevailing wage. Such certification shall include a record of the wages and benefits paid to each human service worker. Such certification shall be certified by the chief executive or chief financial officer of the covered contractor, or the designee of any such person. A violation of any provision of the certification, or failure to provide such certification, shall constitute a violation of this section by the party committing the violation of such provision.

3. Each covered employer shall maintain original payroll records for each of its human service workers reflecting the days and hours worked, and the wages paid and benefits provided for such hours worked, and

shall retain such records for at least six years after the human services are performed. Failure to maintain such records as required shall create a rebuttable presumption that the human service workers were not paid the wages and benefits required under this section. Upon the request of the comptroller, a covered employer shall provide a certified original payroll record. The comptroller may inspect such records to verify the certifications submitted pursuant to paragraph 2 of subdivision b of this section.

4. No later than the day on which any work begins under a human services contract subject to the requirements of this section, a covered employer shall post in a prominent and accessible place at every human services site and provide each human service worker subject to paragraph 1 of subdivision b of this section a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which such human service workers are entitled under this section. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising such human service workers that if they have been paid less than the prevailing wage they may notify the comptroller and request an investigation. Such notice shall be provided in English, Spanish and other languages spoken by 10 percent or more of a covered employer's human service workers. Such notice shall remain posted for the duration of the human services contract and shall be adjusted periodically to reflect the current prevailing wage for human service workers.

c. Implementation and reporting. 1. Every human services contract shall contain a provision obligating covered employers to comply with all applicable requirements of subdivision b of this section.

2. The comptroller shall promulgate implementing rules and regulations as appropriate and consistent with this section. Beginning one year after the enactment of the local law that added this section, and each year thereafter, the comptroller shall submit a report to the mayor and the speaker of the council summarizing and assessing the implementation of this section during the preceding year.

d. Application to existing human service contracts. No later than 30 days after the effective date of the local law that added this section, the commissioner of each contracting agency shall provide notice of the

provisions of this section to each covered employer. To the extent permitted under a contract between a contracting agency and a covered employer executed prior to the effective date of the local law that added this section, upon availability of wage schedules, the contracting agency shall commence to amend such existing contract to include the provisions of this section and add any necessary funding to permit compliance, and shall terminate such existing contract if the covered employer does not accept such amendment within 90 days of receiving notice of the provisions of this section. The contracting agency shall provide sufficient funding for human service providers to fulfill the additional requirements imposed under this section.

e. Severability. 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 a 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 unenforceable to any other person or circumstance.

f. Competing laws. This section shall be liberally construed in favor of its purposes. 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 or benefits to human service workers subject to the provisions of this section. 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.

§ 2. This local law takes effect 120 days after it becomes law.

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