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Int. No. 858

By Council Members Mark-Viverito, Chin, Jackson, James, Lander, Mendez, Rose, Williams, Wills and Rodriguez

A Local Law to amend the administrative code of the city of New York in relation to technical and minor amendments to the local law establishing a prevailing wage requirement for building service employees in city leased or financially assisted facilities.

Be it enacted by the Council as follows:

Section 1. The heading of section 6-130 of Title 6 of the administrative code of the city of New York relating to Prevailing Wage for Building Service Employees in City Leased or Financially Assisted Facilities is amended to read as follows:

§ 6-13[0]4 Prevailing Wage for Building Service Employees in City Leased or Financially Assisted Facilities.

§2. Paragraphs 5, 9 and 10 of subdivision a of title 6 of section 6-130 of the administrative code of the

city of New York as added by Int. No. 18-A, adopted by the Council on May 15, 2012 and renumbered by section 1 hereof as section 6-134 is amended to read as follows:

(5) “City economic development entity” means a local development corporation, not-for-profit organization, public benefit corporation, or other entity that provides or administers economic development benefits, and with which the department of small business services serves as a liaison [on behalf of the City] pursuant to paragraph b of subdivision one of section 1301 of the New York city charter.

(9) “Covered lessor” means any person entering into a lease with a contracting agency. (10) “Financial assistance” means assistance that is provided to a covered developer for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (a) directly by the city, or (b) indirectly by a city economic development entity, and that is paid in whole or in part by the city, and that at the time the covered developer enters into a written agreement with the city or city economic development entity is expected to have a total present financial value of one million dollars or more. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land, or leases, or the cost of capital improvements undertaken for the benefit of a city development project. Financial assistance shall include only discretionary assistance that is negotiated or awarded by the city or by a city economic development entity, and shall not include as-of-right assistance, tax abatements or benefits, such as those under the Industrial and Commercial Abatement Program, the J-51 Program, and other similar programs. Any [related to real property that, under ordinary circumstances, the city would not pay for; provided, however, that any] tax abatement, credit, reduction or exemption that is given to all persons who meet criteria set forth in the

state or local legislation authorizing such tax abatement, credit, reduction or exemption, shall be deemed to be as of right (or non-discretionary); and [provided] further [that] the fact that any such tax abatement, credit, reduction or exemption is limited solely by the availability of funds to applicants on a first come, first serve or other non-discretionary basis set forth in such state or local law shall not render such abatement, credit, reduction or exemption discretionary. [Financial assistance shall include only discretionary assistance that is negotiated or awarded by the city or by a city economic development entity, and shall not include as-of-right assistance, tax abatements or benefits.] Where assistance takes the form of leasing city property at below-market lease rates, the value of the assistance shall be determined based on the total difference between the lease rate and a fair market lease rate over the duration of the lease. Where assistance takes the form of loans or bond financing, the value of the assistance shall be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower that does not receive financial assistance from a city economic development entity.

§3. Paragraph 2 of subdivision b of title 6 of section 6-130 of the administrative code of the city of New York as added by Int. No. 18-A, adopted by the Council on May 15, 2012 and renumbered by section 1 hereof as section 6-134 is amended to read as follows:

(2) Prior to entering into a lease, or extension, renewal, amendment or modification thereof, and annually thereafter for the term of the lease, the contracting agency shall obtain from the prospective covered lessor, and provide to the comptroller, a certification, executed under penalty of perjury, that all building service employees employed in the building to which the lease pertains or under contract with the covered [developer] lessor to perform building service work in such building will be and/or have been paid the prevailing wage for the term of the lease. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each building service employee employed at such building which shall be available for inspection by the city. Such certification shall be certified by the chief executive or chief financial officer of the covered lessor, or the designee of any such person. The certification shall be annexed to

a part of any prospective lease. 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.

§4. Paragraphs 2 and 4 of subdivision c of title 6 of section 6-130 of the administrative code of the city of New York as added by Int. No. 18-A, adopted by the Council on May 15, 2012 and renumbered by section 1 hereof as section 6-134 is amended to read as follows:

(2) Prior to commencing work at the city development project, and annually thereafter, every covered developer shall provide to the city economic development entity and the comptroller an annual certification executed under penalty of perjury that all building service employees employed at a city development project by the covered developer or under contract with the covered developer to perform building service work will be and/or have been paid the prevailing wage. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each building service employee employed at the city development project or under contract with the covered developer. Such certification shall be certified by the chief executive or chief financial officer of the covered developer, 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.[.]

(4) No later than the day on which any building service employee begins work [begins] at any city economic development project subject to the requirements of this section, a covered developer shall post in a prominent and accessible place at every such city economic development project and provide each building service employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which building service employees are entitled under this section. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising building service employees that if they have been paid less than the prevailing wage they may notify the comptroller and request an investigation. Such notices shall be provided in English and Spanish. Such notice shall remain posted for the duration of the [lease] period set forth in paragraph 6 of this subdivision, and shall be adjusted periodically

to reflect the current prevailing wage for building service employees. The comptroller shall provide the city with sample written notices explaining the rights of building service employees and covered developers' obligations under this section, and the city shall in turn provide those written notices to covered developers.

§5. Paragraphs 4 and 6 of subdivision d of title 6 of section 6-130 of the administrative code of the city of New York as added by Int. No. 18-A, adopted by the Council on May 15, 2012 and renumbered by section 1 hereof as section 6-134 is amended to read as follows:

(4) The comptroller shall report the results of such investigation to the mayor or his or her designee, who shall, in accordance with the provisions of paragraph 6 of this subdivision and after providing the covered lessor or covered developer an opportunity to cure any violations, where appropriate issue an order, determination, or other disposition, including, but not limited to, a stipulation of settlement. Such order, determination, or disposition may at the discretion of the mayor, or his or her designee, impose the following on the covered lessor or covered developer committing the applicable violations: (i) direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of the underpayment to the building service employee, based on the interest rate 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 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, except that in cases where a final disposition has been entered against a person in two instances within any consecutive six year period determining that such person has willfully failed to pay or to ensure the payment of the prevailing wages in accordance with the provisions of this section or to comply with the anti-retaliation, recordkeeping, notice, or reporting requirements of this section, the mayor, or his or her designee, may impose a civil penalty in an amount not exceeding fifty percent of the total amount found to be due in violation of this section; (iii) direct the maintenance or disclosure of any records that were not maintained or disclosed as required by this section; (iv) 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; or (v) direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered lessor or covered developer. In assessing an appropriate remedy, due consideration shall be given to the gravity of the violation, the history of previous violations, the good faith of the covered lessor or covered developer, and the failure to comply with record-keeping, notice, reporting, or other non-wage requirements. Any civil penalty shall be deposited in the general fund.

(6) Before issuing an order, determination, or any other disposition, the mayor, or his or her designee, as applicable, shall give notice thereof, together with a copy of the complaint, which notice shall be served personally or by mail on any person affected thereby. The mayor, or his or her designee, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings, or other appropriate agency or tribunal, 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, or other appropriate agency or tribunal, and shall have the opportunity to be heard in respect to such matters.

§ 6. Paragraph 2 of subdivision e of title 6 of section 6-130 of the administrative code of the city of New York as added by Int. No. 18-A, adopted by the Council on May 15, 2012 and renumbered by section 1 hereof as section 6-134 is amended to read as follows:

(2) Notwithstanding any inconsistent provision of paragraph 1 of this subdivision where a complaint filed with the comptroller or the mayor is dismissed an aggrieved person shall maintain all rights to commence a civil action pursuant to this chapter as if no such complaint had been filed; provided, however, that for purposes of this paragraph, the failure of the comptroller or the mayor to issue a disposition within one year of the filing of a complaint shall be deemed to be a dismissal.

§ 7. This local law shall take effect on the same date as the effective date of Int. No. 18-A, adopted by the Council on May 15, 2012.

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