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Int. No. 1841

By Council Members Williams, Lander, Rosenthal and Johnson

A Local Law to amend the administrative code of the city of New York, in relation to increasing the living wage and expanding the class of covered employers to conform to executive order number 7 for the year 2014

Be it enacted by the Council as follows:

Section 1. Section 6-134 of the administrative code of the city of New York is amended to read as follows:

§ 6-134 Living Wage for Employees in City Financially Assisted Workplaces. a. This section shall be known as and may be cited as the “Fair Wages for New Yorkers Act”.

b. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) “City” means city of New York, and all subordinate or component entities or persons.

(2) “City economic development entity” means a local development corporation, not-for-profit

corporation, 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 pursuant to paragraph b of subdivision one of section 1301 of the New York city charter.

(3) “Comptroller” means the Comptroller of the city of New York and his or her authorized or designated agents.

(4) “Covered employer” means an employer that is any of the following:

(a) A financial assistance recipient;

(b) Any tenant, [sub-tenant,] subtenant, leaseholder or subleaseholder of the financial assistance recipient [in which the financial assistance recipient maintains an ownership interest of fifty percent or more] who occupies property improved or developed with financial assistance;

(c) Any concessionaire. For purposes of this section, concessionaire shall include any contractor, subcontractor, or tenant operating on [the premises of any stadium, arena, or other sports facility developed pursuant to a project agreement] property improved or developed with financial assistance; or

(d) Any person or entity that contracts or subcontracts with a financial assistance recipient to perform work for a period of more than [ninety] 90 days on the premises of the financial assistance recipient or on the premises of property improved or developed with financial assistance including but not limited to temporary services or staffing agencies, food service contractors, and other on-site service contractors.

(5) “Employee” means any person employed by a covered employer within the city of New York. This definition includes persons performing 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. Provided, however, that if the financial assistance is targeted to particular real property, then only persons employed at the real property to which the financial assistance pertains shall be deemed employees.

(6) “Entity” or “Person” means any individual, sole proprietorship, partnership, association, joint

venture, limited liability company, corporation or any other form of doing business.

(7) “Financial assistance” means assistance that is provided to a financial assistance recipient 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 financial assistance recipient enters into a project 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 use 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 project subject to a project agreement. 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 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); further, 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 served or other non-discretionary basis set forth in such state or local law shall not render such abatement, credit, reduction or exemption discretionary. 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 who does not receive financial assistance from the city or a city economic development entity. All determinations of the existence or the amount of financial assistance in a land sale or ground lease transaction shall be based on an independent appraisal acceptable to the city or city economic development entity of the value of the land or ground lease.

(8) “Financial assistance recipient” means any entity or person that receives financial assistance, or any assignee or successor in interest of real property improved or developed with financial assistance, including any entity to which financial assistance is conveyed through the sale of a condominium, but shall not include any entity who is exempt under subdivision d of this section.

(9) “Living wage” means an hourly compensation package that is no less than the sum of the living wage rate and the health benefits supplement rate for each hour worked. [As of the effective date of the local law that added this section, the]The living wage rate [shall be ten dollars]is \$15 per hour and the health benefits supplement rate [shall be one dollar and fifty cents]is \$1.75 per hour. The portion of the hourly compensation package consisting of the health benefits supplement rate may be provided in the form of cash wages, health benefits or any combination of the two. The value of any health benefits received shall be determined based on the prorated hourly cost to the employer of the health benefits received by the employee. Beginning in 2013 and each year thereafter, the living wage rate and the health benefits supplement rate shall be adjusted based upon the twelve-month percentage increases, if any, in the Consumer Price Index for All Urban Consumers for All Items and the Consumer Price Index for All Urban Consumers for Medical Care, respectively, (or their successor indexes, if any) as published by the Bureau of Labor Statistics of the United States Department of Labor, based on the most recent twelve-month period for which data is available. The adjusted living wage rate and health benefits supplement rate shall each then be rounded to the nearest five cents. Such adjusted rates shall be announced no later than January 1 of each year and shall become effective as the new living wage rate and health benefits supplement rate on April 1 of each year. For employees who customarily and regularly

receive tips, the financial assistance recipient may credit any tips received and retained by the employee towards the living wage rate. For each pay period that an employee's base cash wages and tips received total less than the living wage rate multiplied by the number of hours worked, the financial assistance recipient must pay the employee the difference in cash wages.

(10) "Not-for-profit organization" means an entity that is either incorporated as a not-for-profit corporation under the laws of the state of its incorporation or exempt from federal income tax pursuant to subdivision c of section [five hundred one]501 of the United States internal revenue code.

(11) "Project agreement" means a written agreement between the city or a city economic development entity and a financial assistance recipient pertaining to a project. A project agreement shall include an agreement to lease property from the city or a city economic development entity.

(12) "Small business cap" means three million dollars; provided that, beginning in 2015 and each year thereafter, the small business cap shall be adjusted contemporaneously with the living wage rate and using the methodology set forth in paragraph (9) of subdivision b of this section.["Small business" has the meaning specified in paragraph 1 of subdivision d of this section.]

(13) "Qualified workforce program" means any training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations. The director of the mayor's office of workforce development shall, in consultation with the commissioner of small business services, publish a list of such programs.

c. Living Wage Required

(1) Covered employers shall pay their employees no less than a living wage.

(2) In addition to fulfilling their own obligations under this section, financial assistance recipients shall help to ensure that all covered employers operating on their premises or on the premises of real property improved or developed with financial assistance pay their employees no less than a living wage and comply with all other requirements of this section.

(3) The requirements of this section shall apply for the term of the financial assistance or for ten years, whichever is longer, from the date of commencement of the project subject to a project agreement or the date the project subject to a project agreement commences operations, whichever is later.

d. Exemptions

The requirements established under this section shall not apply to the following entities or persons except with respect to the reporting requirements set forth in paragraph 2 of subdivision f of this section:

(1) Any otherwise covered employer that is [a small business, which shall be defined as] an entity that has annual consolidated gross revenues [of] that are less than [five million dollars] the small business cap or the revenues of which are included in the consolidated gross revenues of an entity having annual consolidated gross revenues that are less than the small business cap, in each case calculated for the fiscal year preceding the fiscal year in which the project agreement is entered into and determined in accordance with generally accepted accounting principles. [For purposes of determining whether an employer qualifies as a small business, the revenues of any parent entity, of any subsidiary entities, and of any entities owned or controlled by a common parent entity shall be aggregated.]

(2) Any otherwise covered employer that is a not-for-profit organization.

(3) Any otherwise covered employer whose principal industry conducted at the project location is manufacturing, as defined by the North American Industry Classification System.

(4) Any otherwise covered employer operating on the premises of a project where residential units comprise more than 75% of the project area, and no less than 75% of the residential units are affordable for families earning less than 125% of the area median income.

(5) [Any otherwise covered employer that is a grocery store participating in the Food Retail Expansion to Support Health (FRESH) program] Any otherwise covered employer operating on the premises of a project where residential units comprise more than 75% of the project area, and all of the residential units are subject to rent regulation.

[(6) Any otherwise covered employer that is a construction contractor or a building services contractor, which shall include but not be limited to any contractor of work performed by a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.

(7) Any otherwise covered employer, excepting a financial assistance recipient who executed a project agreement and any entity with which such financial assistance recipient contracts or subcontracts, occupying or operating on the premises of property improved or developed within the geographical delineations described in the definition of “Zone 3 Adjacent Developments,” without regard to whether or not the applicable project is deemed to be a “Hudson Yards Commercial Construction Project,” as such terms are defined in the first amendment to the Third Amended and Restated Uniform Tax Exemption Policy of the New York City Industrial Development Agency, as approved by the board of directors of the city industrial development agency on November 9, 2010, provided, however, that such exemption shall not extend to any such covered employer who receives financial assistance through the purchase of a condominium in the event that the city or city economic development entity grants such covered employer additional financial subsidies in addition to the financial assistance originally granted pursuant to such project agreement thereafter assigned or otherwise made available to such purchaser following such purchase.]

e. Notice Posting, Recordkeeping and Retaliation

(1) No later than the day on which an employee begins work at a site subject to the requirements of this section, a covered employer shall post in a prominent and accessible place at every such work site and provide each employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which employees are entitled under this section. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising employees that if they have been paid less than the living wage they may notify the comptroller and request an investigation. Such notices shall be provided in English and Spanish. The comptroller shall provide the city with sample written notices explaining

the rights of employees and covered employers' obligations under this section, and the city shall in turn provide those written notices to covered employers.

(2) A covered employer shall maintain original payroll records for each of its employees 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 work is performed. Failure to maintain such records as required shall create a rebuttable presumption that the covered employer did not pay its employees the wages and benefits required under this section. Upon the request of the comptroller or the city, the covered employer shall provide a certified original payroll record.

(3) 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 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, administrative, or court proceeding relating to this section. This protection shall also apply to any [covered] employee of a covered employer or [his or her] such employee's 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] such employee in good faith believes this section applies. Taking adverse employment action against an employee or [his or her] such employee's representative within [sixty] 60 days of the employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any employee subjected to any action that violates this paragraph may pursue administrative remedies or bring a civil action as authorized pursuant to subdivision g of this section in a court of competent jurisdiction.

f. Implementation and Reporting

(1) Each financial assistance recipient shall provide to the comptroller and the city or city economic development entity that executed the project agreement an annual certification, executed under penalty of

perjury, stating that all of its employees are paid no less than a living wage, confirming the notification to all covered employers operating on its premises that such employers must pay their employees no less than a living wage and comply with all other requirements of this section, providing the names, addresses and telephone numbers of such employers, and affirming its obligation to assist the city to investigate and remedy non-compliance of such employers. Where the financial assistance applies only to certain property, such statement shall be required only for the employees employed on such property. Where there are multiple covered employers operating on the premises of a financial assistance recipient, each covered employer shall, prior to commencing work at such premises, provide a statement certifying that all the employees employed by each such covered employer on the property subject to a project agreement are paid no less than a living wage. All statements shall be certified by the chief executive or chief financial officer of the covered employer, or the designee of any such person. A violation of any provision of such certified statements shall constitute a violation of this section by the party committing the violation of such provision.

(2) An otherwise covered employer that qualifies for an exemption from the requirements of this section under subdivision d of this section shall provide a statement, executed under penalty of perjury, certifying that [the]such employer qualifies for an exemption and specifying the basis for that exemption. Such an employer shall update or withdraw such statement on a timely basis if its eligibility for the claimed exemption should change.

(3) The comptroller and the city or city economic development entity that executed the project agreement may inspect the records maintained pursuant to paragraph 2 of subdivision e of this section to verify the certifications submitted pursuant to paragraph 1 of this subdivision.

(4) The city or city economic development entity that executed the project agreement shall maintain for four years all certifications submitted pursuant to this subdivision and make them available for public inspection.

(5) The city shall maintain a list of financial assistance recipients subject to project agreements that shall

include, where a project agreement is targeted to particular real property, the address of each such property. Such list shall be updated and published as often as is necessary to keep it current.

f-1. Conflicts with other programs. The provisions of section 6-130 supersede any conflicting provision of this section relating to a covered employer. In the event that a covered employer works significantly with a qualified workforce program, subdivision c of this section does not apply, but the city or a city economic development entity, as applicable, shall, to the extent practicable without impairing the goals of such qualified workforce program, use its best efforts to cause such covered employer to pay no less than a living wage to its employees. In addition, if the deputy mayor with jurisdiction over the city agency or a city economic development entity granting financial assistance makes a specific finding that a particular project contributes to the economic wellbeing of the city and cannot reasonably be achieved consistently with the requirement of subdivision c of this section as it applies to covered employers, such deputy mayor may exempt specific employers connected with that project from the requirement of subdivision c of this section.

g. Monitoring, Investigation and Enforcement

(1) The comptroller shall monitor covered employers' compliance with the requirements of this section. Whenever the comptroller has reason to believe there has been a violation of this section, or upon a verified complaint in writing from an employee or an employee's representative claiming a violation of this section, the comptroller shall conduct an investigation to determine the facts relating thereto. The name of any employee identified in a complaint shall be kept confidential as long as possible, and may be disclosed only with the employee's consent, provided, however, that such consent shall not be required once notice is required to be given pursuant to paragraph 4 of this subdivision. For the purpose of conducting investigations pursuant to this section, the comptroller shall have the authority to observe work being performed on the work site, to interview employees during or after work hours, and to examine the books and records relating to the payrolls being investigated to determine whether or not the covered employer is in compliance with this section. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by

subdivision 2 of section 235 of the state labor law, request that the city or city economic development entity that executed the project agreement withhold any payment due to the financial assistance recipient in order to safeguard the rights of the employees.

(2) The comptroller shall report the results of such investigation to the mayor, or his or her designee, who shall, in accordance with provisions of paragraph 4 of this subdivision and after providing the covered employer 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 employer committing the applicable violations:

(a) Direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of underpayment to the 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;

(b) Direct payment of a further sum as a civil penalty in an amount not exceeding two hundred percent of the total amount found to be due in violation of this section;

(c) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(d) Direct the reinstatement of, or other appropriate relief for, any person found to have been subjected to retaliation or discrimination in violation of this section;

(e) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the financial assistance recipient; and

(f) Declare ineligible to receive financial assistance or prohibit from operating as a covered employer on the premises of a financial assistance recipient or on real property improved or developed with financial assistance any person against whom a final disposition has been entered in two instances within any

consecutive six year period determining that such person has willfully failed to pay the required wages in accordance with the provisions of this section or to comply with the anti-retaliation, recordkeeping, notice, or reporting requirements of this section.

(3) 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 employer, and the failure to comply with record-keeping, notice, reporting, or other non-wage requirements. Any civil penalty shall be deposited in the city general fund.

(4) Before issuing an order, determination, or any other disposition, the mayor or his or her designee 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, 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 covered employer shall be notified of a hearing date by the office of administrative trials and hearings, or other appropriate tribunal, and shall have the opportunity to be heard in respect to such matters.

(5) When a final disposition has been made in favor of an employee and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the mayor, or his or her designee, as applicable, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding has expired, the mayor, or his or her designee, as applicable, shall file a copy of such order containing the amount found to be due with the 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 mayor, or his or her designee, 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.

(6) In an investigation conducted under the provisions of this section, the inquiry of the comptroller or

mayor, or his or her designee, 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.

(7) Upon determining that a covered employer is not in compliance, and where no cure is effected and approved by the mayor, or his or her designee, as applicable pursuant to paragraph 2 of this subdivision, the city or city economic development entity shall take such actions against such covered employer as may be appropriate and provided for by law, rule, or contract, including, but not limited to: declaring the financial assistance recipient who has committed a violation in default of the project agreement; imposing sanctions; or recovering from such covered employer the financial assistance disbursed or provided to such covered employer, including but not limited to requiring repayment of any taxes or interest abated or deferred.

(8) Except as otherwise provided by law, any person claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the comptroller or the mayor with respect to such claim. In an action brought by an employee, if the court finds in favor of the employee, it shall award the employee, in addition to other relief, his/her reasonable attorneys' fees and costs.

(9) Notwithstanding any inconsistent provision of paragraph 8 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.

(10) A civil action commenced under this section shall be commenced in accordance with subdivision 2 of section 214 of the [New York] civil practice law and rules.

(11) 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.

(12) Notwithstanding any inconsistent provision of this section or any other general, specific, 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 to the employee for the period covered by such payment.

h. Living Wage Preferred

(1) The city and city economic development entity shall encourage living wage jobs on economic development projects, including those jobs offered by tenants, sub-tenants, and leaseholders of [subsidy] financial assistance recipients, by employing measures that may include exercising a preference when evaluating responses to requests for proposals and other solicitations for those parties who commit to the payment of a living wage and those who demonstrate that they have paid and/or required related parties to pay a living wage on prior projects. The city and city economic development entity shall strive to achieve a living wage for 75% or more of the hourly jobs created overall with respect to the portfolio of all such economic development projects.

(2) Upon entering into any agreement to develop property for an economic development project, the city or city economic development entity shall submit to the council a report detailing its efforts to provide living wage jobs. Such report shall indicate whether its agreement with the economic development [subsidy] financial assistance recipient mandated the payment of a living wage for any jobs created by the project. If the agreement includes such a mandate, the city or city economic development entity shall provide an analysis outlining the

number of living wage jobs anticipated to be created beyond those jobs for which a living wage is required pursuant to this section and a description of the applicable penalties if the wage requirement in the agreement is not ultimately fulfilled. If the agreement does not include such a mandate, the city or city economic development entity shall explain why such an agreement could not be reached.

(3) The city shall submit to the council and post on the city's website by January 31 of each year a report detailing the extent to which projects that receive financial assistance provide employees a living wage. Such reports shall provide, for employees at each site covered by the project in the categories of industrial jobs, restaurant jobs, retail jobs, and other jobs, including all permanent and temporary full-time employees, permanent and temporary part-time employees, and contract employees, the total number of employees and the number and percentage of employees earning less than a living wage, as that term is defined in this section. Reports with regard to projects for which assistance was received prior to July 1, 2012 need only contain such information required by this paragraph as is available to the city, can be reasonably derived from available sources, and can be reasonably obtained from the business entity to which assistance was provided.

i. Miscellaneous

(1) The provisions of this section shall not apply to any financial assistance that was provided prior to the enactment of the local law that added this section, nor shall they apply to any project agreement that was entered into or to any project for which an inducement resolution was adopted in furtherance of entering into a project agreement prior to the enactment of the local law that added this section, except that extension, renewal, amendment or modification of such project agreement occurring on or after the enactment of the local law that added this section that results in the grant of any additional financial assistance to the financial assistance recipient shall make the financial assistance recipient and any other covered employers operating on the premises of the financial assistance recipient or at the real property improved or developed with financial assistance subject to the requirements of this section.

(2) 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 unenforceable to any other person or circumstance. To this end, the parts of this section are severable.

(3) This section shall be liberally construed in favor of its purposes. This section shall not be construed to preempt or otherwise limit the applicability of any law, policy, contract term or other action by the city or a city economic development entity that provides for payment of higher or supplemental wages or benefits, or for additional penalties or remedies for violation of this or any other law.

§ 2. This local law does not apply to projects authorized or financial assistance awarded before the effective date of this local law. This local law shall not be applied in a manner that interferes with contracts or agreements entered into by the city or a city economic development entity before the effective date of this local law.

§ 3. This local law takes effect 90 days after it becomes law.

WCJ; MHL
LS #2268; 11531
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