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Int. No. 1818

By Council Members Lander, Rosenthal, Williams and Johnson

A Local Law to amend the administrative code of the city of New York, in relation to expanding the living wage law to cover additional human services workers and providing the department of consumer affairs additional enforcement authority over the living wage laws

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to read as follows:

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) “Commissioner” means the commissioner of consumer affairs [“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) “Human Services” means social services including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs [“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)] (7) “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)] (8) “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] human 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, day care and services to persons with cerebral palsy] human services. 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)] (9) “City Service Contractor” means any entity [and/or] 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)] (10) “City Service Subcontractor” means any entity [and/or] 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 includes any entity that is engaged by a city service contractor to provide building services, where such city service contractor renders human services on its premises in performance of the 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 subcontractor for the duration of the period during which it assists the city service [subcontractor] contractor in performing the city service contract.

[(13)] (11) “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)] (12) “Covered Employer” means a city service contractor or a city service subcontractor.

[(15)] (13) “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)] (14) “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)] (15) “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] or incorporated as a not-for-profit corporation under the laws of the state [not-for-profit law] of its incorporation.

[(18)] (16) “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)] (17) “Living Wage” has the meaning provided in paragraph 2 of subdivision b of this section.

[(20)] (18) “Health Benefits” has the meaning provided in subparagraph a of paragraph 3 of subdivision b of this section.

[(21)] (19) “Health Benefits Supplement Rate” has the meaning provided in subparagraph b of paragraph 3 of subdivision b of this section.

§ 2. Paragraph (1) of subdivision b of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to read as follows:

(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] human services 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. A city service subcontractor that provides building services to a city service contractor rendering human services on its premises pursuant to a city service contract must pay its employees that are engaged in performing the city service subcontract no less than the living wage. 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.

§ 3. Clause (v) of subparagraph (a) of paragraph (2) of subdivision c of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to read as follows:

(v) An acknowledgement that a finding by [a contracting agency] the commissioner that the applicant has violated the requirements of this section may result in the cancellation or rescission of the city service contract.

§ 4. Subparagraph (e) of paragraph (2) of subdivision c of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to read as follows:

(e) A city service contractor providing [homecare, day care, head start or services to persons with cerebral palsy] human services 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] (iii) of subparagraph [(2)(a)] (a) of paragraph (2) of [this paragraph] subdivision c of this section.

§ 5. Subparagraph (b) of paragraph (1) of subdivision d of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to read as follows:

(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] human services) 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.

§ 6. Subparagraph (a) of paragraph (2) of subdivision d of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to read as follows:

(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.

§ 7. Clause (iv) of subparagraph (b) of paragraph (2) of subdivision d of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to

read as follows:

(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] commissioner; and (c) If, within [thirty] 30 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.

§ 8. Subparagraphs (a), (c), (d), (f), (g) and (h) of paragraph (1) of subdivision e of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, are amended to read as follows:

(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, or a labor [union] organization 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] human services, 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 human 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] the commissioner, 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] commissioner, 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] covered employee, 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] 25 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, [a contracting agency] the commissioner 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. The commissioner may conduct an inquiry related to the results of the investigation conducted by the comptroller pursuant to this subparagraph, if necessary, in assessing an appropriate remedy. Any civil penalty shall be deposited in the city general revenue fund.

(c) Before issuing an order, determination or any other disposition, the comptroller or [contracting agency] the commissioner, 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] the commissioner, 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] the commissioner, 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.

(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] the commissioner, 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] the commissioner, 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] the commissioner, 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.

(h) The comptroller or [any contracting agency] the commissioner 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.

§ 9. Paragraph (1) of subdivision f of section 6-109 of the administrative code of the city of New York, as added by local law number 38 for the year 2002, is amended to read as follows:

(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.]

§ 10. Paragraph (3) of subdivision g of section 6-134 of the administrative code of the city of New York, as added by local law number 37 for the year 2012, is amended to read as follows:

(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. The mayor, or the mayor's designee, may conduct an inquiry related to the results of the investigation conducted by the comptroller pursuant to subdivision g of this section, if necessary, in assessing an appropriate remedy. Any civil penalty shall be deposited in the city general fund.

§ 11. This local law does not apply to city service contracts entered into or renewed prior to 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 before the effective date of this local law.

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

MHL
LS #1014; 12015
12/14/17 12:06 p.m.