



Legislation Details (With Text)

File #: Int 1105-2009 **Version:** * **Name:** Requiring the payment of a living wage to employees employed on property developed by recipients of financial assistance for economic and community development.

Type: Introduction **Status:** Filed

In control: Committee on Contracts

On agenda: 12/9/2009

Enactment date: **Enactment #:**

Title: A Local Law to amend the administrative code of the city of New York, in relation to requiring the payment of a living wage to employees employed on property developed by recipients of financial assistance for economic and community development.

Sponsors:

Indexes:

Attachments:

Date	Ver.	Action By	Action	Result
12/9/2009	*	City Council	Introduced by Council	
12/9/2009	*	City Council	Referred to Comm by Council	
12/31/2009	*	City Council	Filed (End of Session)	

Int. No. 1105

By Council Members Koppell, Palma, Arroyo, Brewer, Foster, Gerson, Jackson, James, Mark-Viverito and Mealy.

A Local Law to amend the administrative code of the city of New York, in relation to requiring the payment of a living wage to employees employed on property developed by recipients of financial assistance for economic and community development.

Be it enacted by the Council as follows:

Section 1. Section 6-109 of title six of the administrative code of the city of New York is amended to read as follows:

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, day care 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 or a financial assistance recipient.

(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) "Financial Assistance Recipient" means any person, individual, proprietorship, joint venture, corporation, limited liability company, trust, association, organization or other entity who receives financial assistance in the amount of \$10,000 or more per year whether discretionary, or as of right, from the city for the improvement or development of real property for economic, community development, job growth or other purposes, including but 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) tax increment financing by the city, filing fee waivers, or energy cost reductions. Financial Assistant Recipient shall also include:

(a) a tenant or leaseholder of a financial assistance recipient who occupies property that is improved or developed as a result of the assistance provided; and

(b) any person or entity that contracts or subcontracts with the financial assistance recipient to perform services that improve or develop the property that is subject to the assistance.

Financial Assistant Recipient shall not include any not-for-profit organization whose highest paid employee earns a salary of less than \$100,000 per year. Notwithstanding any provision of this section to the contrary, no person shall be deemed a financial assistance recipient if they do not receive financial assistance of a type that is on the list published by the Department of Finance of the city of New York, pursuant to paragraph 1 of subdivision f of this section.

(1[7]8) "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.

(1[8]9) "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]20) "Living Wage" has the meaning provided in paragraph 2 of subdivision b of this section.

(2[0]1) "Health Benefits" has the meaning provided in paragraph 3 of subdivision b of this section.

(2[1]2) "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.

(c) A financial assistance recipient shall pay its employees 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. Where the financial assistance only applies to a specific property, this requirement shall only apply to the employees employed on such property.

(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 for City Service Contracts. (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 contracting 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) Certification of Compliance for Financial Assistance Recipients. (a) Unless prohibited by state or federal law, as a condition to receiving any form of financial assistance from the city, the financial assistance recipient shall provide a statement to the contracting agency or entity providing the assistance certifying that all employees employed on the property to which the financial assistance pertains shall be paid the living wage. Where the financial assistance applies only to certain property, such statement shall only be required for the employees employed on such property. The statement shall be certified by the chief executive or chief financial officer of the financial assistance recipient, or the designee of any such person, and shall be made a part of the award, grant or assistance agreement. Where there are multiple financial assistance recipients associated with a property to which the financial assistance pertains, each financial assistance recipient shall provide a statement certifying that all the employees employed on that property are paid the living wage. A violation of any provision of the certified statement shall constitute a material violation of the conditions of the award, grant or assistance agreement.

(b) Each financial assistance recipient shall provide to the contracting agency or entity awarding the assistance an annual certification, executed under penalty of perjury, stating that all employees employed on the property to which the financial assistance pertains are paid the living wage. Such certification shall also include the name and address of the employer or employers of the employees, along with copies of records indicating the days and hours worked, and the wages paid and benefits provided to each employee. The agency or entity shall maintain this information and make it available for public inspection.

(c) A covered employer shall maintain original payroll records for each of its covered employees reflecting the days and hours worked 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 financial assistance agreement and shall retain them for a period of four years after completion of the term of the agreement. 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 request of the contracting agency or entity awarding the financial assistance, the covered employer shall provide a certified original payroll record.

[(3)] (4)(i) 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.

(ii) A financial assistance recipient shall comply with the requirements of this section, and shall provide written notification to its employees performing work on the property to which the financial assistance pertains, of such requirements.

(iii) The financial assistance recipient shall post a notice in a prominent location at every work site on the property for which it is required to provide the certification in paragraph 3 of subdivision c of this section, alerting all employees that payment of living wage is required 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.

[(4)] (5) 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 for city service contracts. 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 or entities providing financial assistance 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 and financial assistance agreement. No contracting agency may expend city funds in connection with any city service contract that does not comply with the requirements of this section. No contracting agency or other entity shall provide financial assistance to an applicant of such assistance that does not comply with the requirements of this section.

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

(i) A provision obligating the city service contractor or financial assistance recipient to comply with all applicable requirements under this section, whichever is applicable;

(ii) The certification required under paragraphs 2 or 3 of subdivision c of this section, whichever is applicable;

(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 whichever is applicable; 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 or by the financial assistance recipient of the terms of the financial assistance agreement, whichever is applicable; (b) Such failure shall be determined by the contracting agency or entity awarding the financial assistance, whichever is applicable; and (c) If, within thirty days after or pursuant to the terms of the city service contract or financial assistance agreement, whichever is longer, the city service contractor and/or subcontractor or financial assistance recipient receives written notice of such a breach, the city service contractor or financial assistance recipient 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, financial assistance agreement or under applicable law, including termination of the contract or financial assistance.

e. Monitoring, Investigation and Enforcement for city service contracts. (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, a 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). Applicability, Monitoring, Investigation and Enforcement of Financial Assistance Recipients.

(1) Within one hundred eighty days of the effective date of the law that added this section, the department of finance, in consultation with city agencies, shall publish a list of available types of financial assistance the recipient of which would be subject to the requirements of this section. Such list shall be updated and published as often as is necessary to keep it current.

(2) The contracting agency, in the cases where financial assistance is provided through a contract with an agency, or entity awarding the financial assistance shall monitor and investigate complaints about the financial assistance recipient's compliance with the requirements of this section. Whenever the contracting agency or entity awarding the assistance finds a violation of any provision of this section, the financial assistance recipient shall be given a written notice informing them of the violation. The recipient has thirty days to cure the violation. Should the recipient not cure the violation, the agency or entity awarding the

assistance shall pursue all available legal remedies, including but not limited to any or all of the following penalties and relief:

(i) Suspension and/or termination of the financial assistance agreement for cause;

(ii) Payback of any or all of the financial assistance awarded by the City;

(iii) Deem the financial assistance recipient ineligible for future financial assistance until all the restitution has been paid to all the employees affected;

(iv) A fine payable to the city in the sum of five hundred dollars (\$500) for each week for each employee found not to have been paid in accordance with this chapter; and

(v) Wage restitution for each affected employee.

[f.] (g) Other provisions. (1) Except where expressly provided otherwise in this section, the requirements of this section shall apply to city service contracts and financial assistance agreements entered into after the effective date of this section, and shall not apply to any existing city service contract and financial assistance agreement entered into prior to that date. Where a city service contract or financial assistance agreement is renewed or extended after the effective date of this section, such renewal or extension shall be deemed new city service contracts or financial assistance agreements and shall trigger coverage under this section if the terms of the renewed or extended city service contract or financial assistance agreement, 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. This law shall take effect ninety days after its enactment into law.

LC
LS# 7978
LS# 7979
12/04/2009