



Legislation Text

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Int. No. 870

By Council Members Linares, DiBrienza, Michels, Fisher, Boyland, Clarke, Freed, Lopez, Marshall, Miller, Perkins, Reed, Robinson, Rodriguez, Warden, Watkins, Ognibene and The Public Advocate (Mr. Green); also Council Members Pinkett, Quinn, Eisland and Espada

A Local Law to amend the administrative code of the city of New York in relation to establishing a prevailing wage requirement for employees providing security or cleaning services in commercial buildings owned, or managed, in whole or in part by persons receiving financial assistance or rent derived in whole or in part from the city treasury.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Findings and Intent. The Council finds that some commercial building operators who receive, either directly or indirectly, financial assistance or revenues which derive from the city treasury, utilize or contract for security or cleaning services which pay less than the prevailing wage in the industry. It is not uncommon for City agencies to lease space in commercial office buildings or facilities in which the wages and benefits paid to employees providing cleaning and security services are below the prevailing rates which would otherwise apply if those agencies were to contract directly for such services. It is vital for the City to ensure that employees who work in private facilities that are supported by City monies receive wages commensurate with a high level of performance and service.

The City Council therefore finds that it is in the best interest of the city to (1) require as a condition of every lease agreement between the City and a commercial building operator that the lessor ensure that employees performing cleaning and security services in the building are paid a prevailing wage; and (2) require every commercial office building or facility operator who receives, either directly or indirectly, financial assistance which derives from the city treasury to ensure that employees performing cleaning or security services in the building or buildings to which the assistance relates are paid a prevailing wage.

Recognizing, that the not-for-profit sector is uniquely instrumental in the provision of services to the City's most vulnerable populations, such organizations are exempt from the requirements of this legislation. This is consistent with the New York State Constitution's and the City's Administrative Code that finds that institutions whose mission is charity cannot be treated in the same manner as those organizations whose mission is profit-making.

§2. Chapter 1 of title 6 of the administrative code of the city of New York is amended to add a new section 6-123 to read as follows:

§6-123. Prevailing Wage for Building Service Employees in City Leased or Financially Assisted Facilities. a. For purposes of this section only, the following terms shall have the following meanings:

(1) "City" means the city of New York and all subordinate or component entities or persons.

(2) "City financial assistance recipient" means any person who receives exclusively from the city, financial assistance for economic, community development, job growth, or other purposes including but not limited to zoning variances or exemptions, bond financing, planning assistance, tax increment financing by the city, mortgage tax or other filing fee waivers.

(3) "Cleaning or security services" means the work performed by any "building service employee" as that term is defined in section 230 of the New York state labor law.

(4) "Contracting agency" means a city county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(5) "Lease" means any agreement whereby a contracting agency contracts for, or leases or rents commercial office space or facilities from a non-governmental entity, but does not include leases between not-for-profit organizations and a contracting agency.

(6) "Lessor" means any person entering into a lease with a contracting agency.

(7) "Not-for-profit organization" means a corporation having tax exempt status under section 501(c)(3) of the United States internal revenue code and recognized under the New York state not-for-profit law.

(8) "Prevailing wage" means the rate of wage paid in the locality to workers in the same trade or occupation and annually determined by the city comptroller in accordance with the provisions of section 234 of the New York state labor law.

b. Prior to entering into a lease, the contracting agency shall obtain from the prospective lessor and submit to the comptroller a certification, executed under penalty of perjury, stating that the building service employees performing services in the building or buildings to which the lease pertains will be paid the prevailing wage for the duration of the proposed lease, the name, and address of the employer or employers of those building service employees, and the position and title of the person or persons signing the certification. The certification shall be annexed to and form a part of any prospective lease.

c. Every lease shall contain a provision requiring that building service employees performing services in the building to which the lease pertains shall be paid the prevailing wage.

d. Each lessor entering into a lease with a contracting agency shall maintain records reflecting the days, times and wages paid to each building service employee whose wages are provided for under certification as required by this local law. The lessor may satisfy this requirement by obtaining copies of such records from the employer or employers of such employees. Such lessors shall submit copies of such records to the contracting agency certified, under penalty of perjury, to be true and accurate, with every request for payment under the lease. These records shall be maintained at the building to which the lease pertains for a period of three years after the term of the lease or any renewal or extension. Every such lease shall contain a provision or provisions requiring the maintenance, submission and certification of such payroll records in accordance with this section. The contracting agency must maintain this information in the agency lease file and make it available for public

inspection. The contracting agency shall forward to the council an annual report within thirty days of the close of the fiscal year listing each lease let pursuant to this section and include copies of the payroll records submitted by the lessor.

e. No later than the day on which the term of the lease begins to run, the lessor shall post the certification in the building to which the lease pertains at all locations at which notices to building service employees are customarily posted.

f. Any city financial assistance recipient shall provide to the comptroller a certification, executed under penalty of perjury, stating that the building service employees providing services in any commercial office building or facility to which such assistance pertains in whole or in part, are paid the prevailing wage, and the name and address of the employer or employers of those building service employees.

g. Any city financial assistance recipient shall maintain records reflecting the days, times, and wages paid to each building service employee whose wages are provided for under a certification required by this section. The recipient may satisfy this requirement by obtaining copies of such records from the employer or employers of such employees. The recipient or the employers, as the case may be, shall submit copies of such records to the comptroller certified, under penalty of perjury to be true and accurate, every six months. These records shall be maintained at the building to which the city financial assistance pertains for a period of three years. The comptroller shall maintain this information, make it available for public inspection, and forward to the council an

annual report within thirty days of the close of the fiscal year listing each building or facility for which information has been received pursuant to this section.

i. Any city financial assistance recipient shall post the certification in the building to which the assistance pertains at all locations at which notices to building service employees are customarily posted.

j. It shall be a violation of this local law for any lessor, city financial assistance recipient, or other

person to retaliate or discriminate against any employee who makes a claim that he or she is owed wages due as provided under this section or otherwise seeks information regarding or enforcement of this local law.

k. Whenever the city comptroller has reason to believe that a worker has been paid less than the prevailing rate of wages or has been discriminated or retaliated against in violation of this local law, or upon a verified complaint in writing from a worker affected by the provisions of this section, the city comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation the city comptroller shall have the same investigatory, hearing and other powers as are conferred on the city comptroller by sections 234 and 235, respectively, of the state labor law. Based upon such investigation and hearing, the city comptroller shall issue an order, determination or other disposition, including but not limited to, a stipulation of settlement. Such disposition may: (i) direct payment of wages due; (ii) direct payment of interest at a rate of not less than six percent per year and not more than the rate of interest then in effect, as prescribed by the superintendent of banks pursuant to section 14(a) of the state banking law, per annum from the date of underpayment to the worker; (iii) 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 assessing the interest and penalty, due consideration shall be given to the gravity of the violation, the history of previous violations, the lessor or financial assistance recipient's good faith and the failure to comply with record-keeping or other non-wage requirements. The penalty shall be paid to the city comptroller for deposit in the city general revenue fund.

l. Before issuing an order, determination or any other disposition, the city comptroller 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 affected thereby. It shall not be a defense to any complaint that the lessor or the financial assistance recipient was not the employer of the building service employees who were alleged to be underpaid. The city comptroller 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 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 the matters realted in such complaint.

m. In an investigation conducted under the provisions of this section, the inquiry of the city comptroller shall not extend to work performed more than three years prior to: (i) the filing of the complaint, or (ii) the commencement of the investigation upon the city comptroller's own initiative, whichever is earlier.

n. When a final disposition has been made and such disposition is in favor of an employee, such employee may, in addition to any other remedy provided by this section, institute an action in a court of appropriate jurisdiction against the person found to have violated this section for the recovery of the difference between the sum, if any, actually paid to him or her pursuant to said disposition and the amount found to be due him or her as determined by the disposition, including any back pay owed because of violations of this local law. Such action must be commenced with in three years of the date of filing of said disposition, or if said disposition is reviewed in a proceeding pursuant to article seventy-eight of the civil practice law and rules, within three years after the termination of such review proceeding.

o. When, pursuant to the provisions of this section, a final disposition has been entered against a person in two instances within any consecutive six year period determining that such person has willfully failed to pay or to ensure the payment of the prevailing wages in accordance with the provisions of this section, such person, and any principal or officer of such person who knowingly participated in such failure, shall be ineligible to let property to or receive financial assistance from the city or a contracting agency, as the case may be, for a period of five years from the date of the second disposition. Nothing in this section shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts.

p. When a final determination has been made in favor of an employee and the person found violating this section has failed to make payment as required by the order of the city comptroller, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the city comptroller may 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 or any principal or officer of the person 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 city comptroller in the same manner and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

q. Notwithstanding any inconsistent provision of this law or of any other general, special or local law, 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 pursuant to a disposition entered under the provision of this law because of the prior receipt by the employee without protest of wages paid or on account of the employee's failure to state orally or in writing upon any payroll or receipt of which the employee is required to sign that the wages 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 due the employee for the period covered by such payment.

r. (1) Before payment is made of any sums due on any lease subject to this law, it shall be the duty of the contracting agency to require the lessor, or its contractor or subcontractor, to file a written statement certifying to the amounts then due and owing from any employer identified on the certification required by this section to or on behalf of any and all employees for wages for labor performed subject to the certification, setting forth the names of the persons whose wages are unpaid and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the lessor, or its contractor or subcontractor, under penalty of perjury.

(2) If any interested person shall have previously filed a protest in writing objecting to the payment to any lessor, or its contractor or subcontractor, on the basis that wages are due and owing to one or more employees under any certification required by this section, or if for any other reason it may be deemed

advisable, the city comptroller or the department of finance may deduct from the whole amount of any lease payment to the lessor sums admitted by the lessor, or its contractor or subcontractor, in the verified statement or statements to be due and owing to any employee before making payment of the amount certified for payment in any estimate or voucher, and may withhold the amount so deducted for the benefit of the employee whose wages are unpaid as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due to the employee.

s. Nothing contained herein shall operate to impair any existing contract, except that renewal, amendment or modification of such contract occurring on or after the enactment of this local law shall be subject to the conditions specified in this section.

t. Any person who submits any statement made under penalty of perjury which is required to be submitted under this law which he knows to be false shall be guilty of perjury and punishable as provided by the penal law.

u. Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 3. This local law shall take effect 45 days after its enactment into law.

LS # 3473