



Legislation Text

---

File #: Int 0251-2010, Version: \*

---

Int. No. 251

By Council Members Koppell, Palma, Arroyo, Cabrera, Chin, Dromm, Ferreras, James, Lander, Mendez, Sanders Jr., Mark-Viverito, Foster, Seabrook, Barron, Brewer, Gonzalez, Rivera, Rodriguez, Van Bramer, Vann, Williams, Rose, Jackson, Eugene and Levin (by the request of the Bronx Borough President)

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 development.

Be it enacted by the Council as follows:

Section 1: Title 6 of the administrative code of the city of New York is amended to add a new section 6-130, to read as follows:

§ 6-130 Living Wage for Employees in City Financially Assisted Workplaces.

- a. Short Title. This section shall be known as and may be cited as the “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 the city of New York.
  2. “City economic development entity” means a not-for-profit corporation, public benefit corporation, or other entity that is authorized to provide financial assistance, or that provides administrative support related to the provision of financial assistance.
  3. “Comptroller” means the Comptroller of the city of New York and its authorized or designated agents.
  4. “Entity” or “Person” means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

5. “Financial assistance” means financial assistance with a value of \$100,000 or more 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 directly by the city, or indirectly by a city economic development entity and that is in whole or in part at the expense of the city. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of buildings or land, or the cost of capital improvements related to real property that, under ordinary circumstances, the city would not pay for, and includes both discretionary and as of right assistance. In determining the value of assistance provided, the full value of all city, state and federal assistance received in connection with the project shall be included. Provided, however, assistance that is used exclusively to support an exempt project shall not constitute financial assistance or be included in determining the value of financial assistance provided.

6. “Financial assistance agreement” means an agreement under which the city or a city economic development entity provides financial assistance to a financial assistance recipient, or leases or sells property owned or controlled by the city or a city economic development entity to a financial assistance recipient for the purpose of economic development. Financial assistance agreement shall also include any written agreement between the city or a city economic development entity and a financial assistance recipient, regardless of whether the financial assistance is actually awarded pursuant to the agreement or received directly from the city or the city economic development entity. Each such agreement shall contain the provisions specified in paragraph 4 of subdivision e of this section.

7. “Financial assistance recipient” means any person, individual, proprietorship, partnership, joint

venture, corporation, limited liability company, trust, association, organization or other entity that receives financial assistance, or any assignee or successor in interest of real property improved or developed with financial assistance.

8. “Exempt project” means a project or portion of a project that is used exclusively for affordable housing, or to house a social services organization or an arts or cultural organization.

9. “Covered employer” means:

a. A financial assistance recipient;

b. A tenant, sub-tenant, leaseholder or subleaseholder who occupies real property that is improved or developed with financial assistance;

c. Fee holders or other condominium owners of any portion of real property improved or developed with financial assistance who purchased the property from a prior owner or were assigned the property through foreclosure or other means; or

d. Any person or entity that contracts or subcontracts with a financial assistance recipient to perform work for a period of more than thirty days on the premises of the financial assistance recipient or on the premises of real 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.

Provided however, that covered employers shall not include any not-for-profit organization that had an annual budget of one million dollars or less in the fiscal year immediately preceding the date that the financial assistance was awarded.

10. “Not-for-profit organization” means a corporation or entity that has tax exempt status under section 501(c)(3) of the United States internal revenue code, has been incorporated under state not-for-profit law, and is in compliance with all applicable federal, state and local laws and regulations.

11. “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. Provided further that persons employed exclusively at or in connection with an exempt project shall not be deemed employees.

12. “Living wage” or “paying a 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 living wage rate shall be ten dollars per hour and the supplemental health benefits rate shall be one dollar and fifty cents per hour. Financial assistance recipients must pay employees a minimum hourly wage of no less than the living wage rate. The balance of the hourly compensation package may be provided in the form of wages, health benefits or any combination of the two. The value of any health benefits provided shall be determined based on the prorated hourly cost to the employer of the health benefits provided to the employee. Beginning January 1, 2011 and no later than January 1 of 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 for New York-Northern N.J.-Long Island and the Consumer Price Index for All Urban Consumers for Medical Care for New York-Northern N.J.-Long Island, 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, and shall become effective as the new living wage rate and health benefits supplement rate on April 1 of each year.

c. Living Wage Required. 1. It is the policy of the city that jobs supported with financial assistance, whether conferred directly by the city or indirectly by a city economic development entity, should pay wages that allow working New Yorkers to support themselves with dignity. In furtherance of this policy, covered

employers shall pay their employees no less than a living wage.

2. Financial assistance recipients shall guarantee 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. The requirements of this section shall apply for the term of the financial assistance or for thirty years from the date that the financially assisted project opens, whichever is longer. Where the financial assistance is targeted to particular real property, then the requirements of this section shall apply only for hours worked by employees at or in connection with such real property. The requirements of this section shall not apply to exempt projects.

d. Notice posting, recordkeeping and retaliation. 1. No later than the day on which any work begins at a work site subject to the requirements of this section, a covered employer shall post in a prominent and accessible place at every 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 rate, they may notify the comptroller to request an investigation. Such notices shall be provided in English, Spanish, and other languages spoken by ten percent or more of a covered employer's employees. 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. Such records shall be maintained for the duration of the period that an employer qualifies as a covered employer and shall be retained for four years after such period. 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 the 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 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 an employee or his or her representative within sixty 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 f of this section in a court of competent jurisdiction.

e. Implementation and reporting. 1. The city shall cause all financial assistance recipients to be contractually obligated to comply with the requirements of this section, and shall not approve any development project that does not comply with such requirements.

2. The city shall include in any contract with a city economic development entity a requirement that such entity shall in turn require all financial assistance recipients to comply with the requirements of this section.

3. Payments in lieu of taxes, or other city funds or real property may not be conveyed to a city economic development entity unless that entity has agreed to require all financial assistance recipients to comply with the requirements of this section.

4. Every financial assistance agreement shall contain provisions: a. Obligating the financial assistance recipient to guarantee that all covered employers operating on their premises or on the real property, improved

or developed with financial assistance will pay their employees no less than a living wage, and comply with all other requirements of this section;

b. Granting the city or city economic development entity, as applicable, remedial authority: (1) to rescind the award of and suspend any further disbursement of financial assistance; and (2) to require the financial assistance recipient to repay previously disbursed or received financial assistance, including but not limited to repayment of any taxes or interest abated or deferred, if the financial assistance recipient is found to be in violation of any of the requirements of this section.

5. Each financial assistance recipient shall provide to the comptroller and the city or the city economic development entity that approved or awarded the financial assistance an annual certification, executed under penalty of perjury, stating that all of its employees and all other employees employed by covered employers on its premises or on the property to which the financial assistance pertains are paid no less than a living wage, and providing the names, addresses and telephone numbers of such additional covered employers operating on its premises or on said property. Where the financial assistance applies only to certain property, such statement shall be required only for the employees employed on such property. The statement shall be certified by the chief executive or chief financial officer of the covered employer, or the designee of any such person, and shall be made a part of the award, grant or assistance agreement. Where there are multiple covered employers operating on the premises of a financial assistance recipient or associated with a property to which the financial assistance pertains, each covered employer shall, prior to commencing work at such premises, provide a statement certifying that all the employees employed on that property are paid no less than a living wage. A violation of any provision of the certified statement shall constitute a material violation of the conditions of the financial assistance agreement. Such certification shall also include copies of records indicating the days and hours worked, and the wages paid and benefits provided to each employee. The city agency or city economic development entity approving or awarding the financial assistance shall maintain this information and make it available for public inspection.

6. Within ninety days of the enactment date of the law that added this section, the department of finance, in consultation with city agencies and the city Council, shall publish a list of available types of financial assistance that are subject to the requirements of this section. Such list shall include, but not be limited to, the types of financial assistance enumerated in section b(5). Such list shall be updated and published as often as is necessary to keep it current.

f. Monitoring, investigation and enforcement. 1. The comptroller shall monitor covered employers' compliance with the requirements of this section, and may upon its own initiative or upon receipt of a complaint investigate specific covered employers. Any employee, individual or organization may file a complaint with the comptroller concerning a violation of this section. 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. For the purpose of enforcing 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.

2. Whenever the comptroller has reason to believe that an employee has been paid less than a living wage or has been discriminated or retaliated against in violation of this local law, or upon a verified complaint in writing from an employee, former employee, or an employee's representative, the comptroller shall conduct a hearing 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, request that the city or the city economic development entity that approved the project or awarded the financial assistance withhold any payment due to the financial assistance recipient in order to safeguard the rights of the employees. Based upon such investigation, hearing, and findings, the comptroller shall issue an order, determination, or other

disposition, including but not limited to, a stipulation of settlement. Such disposition may:

(a) Direct payment of wages and 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; and

(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. 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 revenue fund.

3. Before issuing an order, determination, or any other disposition, the 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. The 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 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.

4. In an investigation conducted under the provisions of this section, the inquiry of the comptroller 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.

5. When, pursuant to the provisions of this section, a final disposition has been entered against a financial assistance recipient or other covered employer 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 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, such person, and any principal or officer of such person who knowingly participated in such failure, shall be ineligible to receive financial assistance from the city or from a city economic development entity, or to operate as a covered employer on the premises of a financial assistance recipient or on real property improved or developed with financial assistance, for a period of five years from the date of the second disposition.

6. 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 comptroller, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding has expired, the comptroller 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 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.

7. Upon determining that a covered employer is not in compliance, and where no cure is effected and approved by the comptroller, the comptroller shall provide evidence of the noncompliance to the city or the city economic development entity, as applicable, that approved the project or awarded the financial assistance, and request in writing that the city or the city economic development entity to rescind the award of and suspend any further disbursement of financial assistance, and require the financial assistance recipient to repay previously

disbursed or received financial assistance, including but not limited to repayment of any taxes or interest abated or deferred, if the financial assistance recipient is found to be in violation of any of the requirements of this section. Upon receipt of the comptroller's request, the city or the city economic development entity that approved the project or awarded the financial assistance shall take such actions as may be appropriate and provided for by law, rule, or contract, including, but not limited to: declaring the financial assistance recipient in default of the financial assistance agreement; imposing sanctions; or recovering the financial assistance disbursed or provided, including but not limited to requiring repayment of any taxes or interest abated or deferred.

8. 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 any court of appropriate jurisdiction against the person 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 compensatory damages. The court shall award reasonable attorneys' fees and costs to any complaining party who prevails in such enforcement action. Such action must be commenced within three years of the date 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.

9. 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 and 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.

g. 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 financial assistance agreement that was entered into prior to the enactment of the local law that added this section, except that extension, renewal, amendment or modification of such financial assistance agreement occurring on or after the enactment of the local law that added this section 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 a 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.

Section 2. This local law shall take effect in ninety days.

LS # 86

LS #272

Int. 1105-2009

04/28/2010

LC