

**Nassau County
Office of the Comptroller**



**Living Wage Law
2012 Annual Report**

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Comptroller**

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Executive Summary

Introduction

The Nassau County Living Wage Law (“Law”) was enacted by the Nassau County Legislature in 2006.¹ Its purpose is to ensure that employees of companies that do business with Nassau County earn the living wage and receive health benefits (or a health benefits supplement), and that full-time employees receive 12 paid days off a year.

As a result of the Law, covered workers in Nassau County have seen six annual increases in their hourly wages in the years following the implementation of the law.

Purpose

The Comptroller’s Office is responsible for monitoring, investigating and auditing compliance with the Law. In accordance with this responsibility, the Comptroller must submit an Annual Report to the County Executive and the County Legislature summarizing and assessing the implementation of, and compliance with, the Law during the preceding year.²

In prior years, our focus has been primarily on Personal Care Aides (“PCAs”) and Consumer Directed Patient Assistance Program (“CDPAP”)³ service providers. PCAs, also referred to as Home Health Aides or Home Attendants, assist the elderly or disabled in their homes. In general, they may be distinguished as persons who carry out their work as employees, in contrast to relatives, friends and others who are unpaid for their caregiving activities.

It is significant to note that, as part of our ongoing efforts, the Comptroller’s Office is now checking for conformity with the Law when conducting other audits, treating it as an important component of contract compliance.

Summary of Significant Findings

On August 1, 2012, the Living Wage rate in Nassau County increased to \$14.91 for employees without health benefits and \$13.11 for employees who receive health benefits.

The Comptroller’s Office issued three Living Wage audit reports in 2012; all covering PCA providers. Two of the auditees (A&B Healthcare Services, Inc. and Cottage Homecare Services) were found to be in compliance with the Law. However, we found that the third auditee, Jzanus Home Care, Inc., failed to pay the updated Living Wage rate. As a result of this finding, Jzanus began paying the increased Living Wage rate to its employees and retroactively paid the required back wages to their 100 employees. Significantly, this was the lowest amount of underpayment found in any one year since the Law’s enactment.

Since passage of the Law through December 31, 2012, the Comptroller’s Office has released 26 Living Wage audit reports covering 20 different contractors. In sum, we have found \$450,318 of

¹ Nassau County Living Wage Law, Title 57 of The Miscellaneous Laws of Nassau County.

² Nassau County Living Wage Law §7 (c) (2010).

³ This Medicaid program provides services to chronically ill or physically disabled individuals, who then choose their own caregivers.

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underpayments affecting 1,182 employees. As in 2011, we are encouraged that a trend of compliance with the Law has continued in 2012.

Conclusion

As progress continues in terms of compliance with the Law, the focus in the immediate future will be on performing additional desk audits, responding to employee complaints, and most importantly, expanding reviews to a greater variety of agencies.

As a part of the Comptroller's Office review of vendors who do business with the County, we will require vendors to provide payroll records and New York State Quarterly Wage Reporting Schedules.⁴ The Comptroller's Office will also continue to monitor providers who have been reviewed in the past to ensure that they remain in compliance.

⁴ NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return.

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The Living Wage Law

All discussions of the Law in this report refer to the Law in existence during 2012, unless otherwise noted. The Law was last amended on January 21, 2010; the amendments took effect on March 22, 2010.

Living Wage Rates

The Law increases the minimum hourly wages on August 1st of each year. On August 1, 2012 the Living Wage rate was set at \$14.91 in Nassau County for an employee without health benefits. If the employer offers health benefits to an employee who is covered under the Living Wage Law, the employee's rate of pay is \$13.11.

The Law also requires that full-time employees receive 12 compensated days off per year for sick leave, vacation, or personal reasons. Part-time employees who work at least 20 hours or more per week receive proportionate compensated days off.

Application of the Law

The Law applies to the following types of contracts and leases entered into by the County after January 1, 2007:

- service contracts of \$25,000 or more; financial assistance contracts⁵ for more than \$50,000 and where the employer has at least 10 employees; and
- leases of property⁶ owned or controlled by the County.

The Law also applies to County subcontractors, County lessees and contractors of recipients of financial assistance from the County. The Law covers all employees of Nassau County and those of NuHealth (formerly known as the Nassau Health Care Corporation) and its subsidiaries.⁷ Nassau Community College employees are covered by the Law, as are the College's contractors/subcontractors, and their employees. However, student workers at the College are not covered.⁸

The Law does not apply to vendors who enter into the following types of contracts with the County:

- service contracts and financial assistance for providers of child care services, pre-school services and early intervention services;⁹

⁵ Nassau County Living Wage Law § 2 Definitions (2010).

⁶ Ibid.

⁷ The January 2010 amendments changed the definition of those employees who are covered by the Law. Nassau County Living Wage Law §2 (2010).

⁸ Ibid.

⁹ Nassau County Living Wage Law §3(c)(3) (2010).

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- contracts where services are incidental to the delivery of products, equipment or commodities;¹⁰ or
- inter-governmental contracts and financial assistance contracts for industrial development bonds, community development block grants and enterprise-zone investments.¹¹

The Law exempts those employees who are:

- under 18 years of age and are claimed as dependents for federal tax purposes and are employed as an after-school or summer employee;¹²
- 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;¹³
- disabled and who are covered by a current sub-minimum wage certificate issued to the employer by the United States Department of Labor, or if they 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;¹⁴ or
- covered by a bona fide collective bargaining agreement provided that the Law is expressly referenced in the agreement.¹⁵

The Comptroller's Office has promulgated rules and regulations, created forms and other documents, established a hotline for the confidential reporting of non-compliance and established a webpage to disseminate information about the Law and the audits undertaken. Audit criteria for conducting Living Wage audits have been established and a comprehensive audit plan intended to concentrate on the contractors with the most employees has been created.

The Comptroller has established a Living Wage Advisory Board ("Board") comprised of labor leaders and Living Wage Law advocates, advising the Comptroller on compliance issues and on ways to improve the effectiveness of the Law.

We continue to employ a "hotline" to field calls regarding instances of noncompliance with the Law. We strive to address and resolve whatever issues are reported through the "hotline". As a result of our efforts in bringing this issue out in the open, workers have been able to call, with the assurance of confidentiality. There are forms posted on the Comptroller's website to provide workers the opportunity to submit their complaints online or send them in via regular mail. The forms allow for complaints to be filed for non-compliance regarding their wages, health benefits and non-payment for holidays in accordance with the Law.

In past years, the Comptroller's Office focused on audits of health care service providers, because they tended to have the largest number of employees covered by the Law, i.e., personal

¹⁰ Nassau County Living Wage Law §2 (2010).

¹¹ Ibid.

¹² Nassau County Living Wage Law §3 (c)(1)(A) (2010).

¹³ Nassau County Living Wage Law §3 (c)(1)(B) (2010).

¹⁴ Nassau County Living Wage Law §3 (2010).

¹⁵ Nassau County Living Wage Law §10 (c) (2010).

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care aides. Currently, the selection of vendors for audit has been broadened to include additional vendors covered by the Law, such as emergency housing agencies.

Utilizing both field audits and desk audits we have been able to identify shortfalls in payments of both wages and compensated time off. We have been able to help more than eleven hundred people recover payments totaling \$450,318 owed to them. The table below summarizes the financial results of our findings.¹⁶

Summary Impact of Living Wage Audits Issued for the Years 2007-2012

Wage Underpayments	Number of Employees Impacted	Compensated Time Underpayments	Number of Employees Impacted	Total Underpayments Recovered	Total Employees Assisted
\$257,539	468	\$192,779	714	\$450,318	1,182

Penalties for Non-Compliance

Where an employer fails to comply with the Law after being notified in writing by the County, the Law, among other penalties, originally allowed the County to impose a fine “in the amount of \$500 for each week for each employee found not to have been paid in accordance with this title”.¹⁷ In light of the significant number of instances of non-compliance, in 2009 the Board recommended that the Law be amended to increase the maximum allowable fine that may be imposed by the County. These changes were implemented when the Law was amended, effective March 22, 2010, and are as follows:

1. Upon the issuance of the first written notice of a violation of this title an employer shall be fined in the amount of \$500 each week for each employee found not to have been paid in accordance with this title;
2. If within thirty days after such employer receives the first written notice of violation, such employer fails to cure such breach, such employer shall receive a second notice of such violation and shall be fined in the amount of \$1,000 each week thereafter for each employee found not to have been paid in accordance with this title;
3. If within thirty days after such employer receives a second written notice of violation, such employer fails to cure such breach, such employer shall receive a third notice of such violation and shall be fined in the amount of \$2,000 each week thereafter for each employee found not to have been paid in accordance with this title.

¹⁶ The table does not include an audit of Peace Valley Haven, Inc., (“PVH”), which commenced in 2012 but was released in 2013. That audit revealed 26 employees working for PVH who were undercompensated by approximately \$120,000. As of July 29, 2013, PVH began repaying their employees and the various taxing authorities. PVH assures the Comptroller’s Office that total restitution will be complete as of December 2013. We will follow-up with the details of this matter in our 2013 report.

¹⁷ Nassau County Living Wage Law §7 (d) (iv) (2010).

Rules

The Law provides for rulemaking in two areas: monitoring and enforcement of the Law, and waivers. The County Executive designated the Comptroller to promulgate the Rules as they relate to the monitoring and enforcement of the Law.¹⁸ The primary purpose of the Rules promulgated by the Comptroller is to define the role of the Comptroller, outline the responsibilities of covered employers, and clarify the rights of covered employees. The Comptroller's Office periodically reviews its Rules and will revise them as necessary. The County Executive has promulgated a separate set of Rules to address the procedures governing requests for waivers and to clarify certain terms. These Rules were last amended on November 10, 2010.

Waivers

County contractors may request a waiver of the requirements of the Law from the County Executive's Office. Section 9 of the Law sets forth the eligibility criteria that must be met to grant their request for a waiver. A contractor granted a waiver is exempt from the Living Wage Law and is not required to pay its employees the Living Wage rate. However, the contractor remains subject to Federal and State minimum wage requirements. In 2012, we saw the request for waivers increase and nine waivers were granted by the County Executive's Office. There were six waivers granted in 2011.

There are several criteria that can be used by contractors in order to receive a waiver. The two most common are as follows:

- a) The salary of the highest paid officer or employee of such contractor cannot exceed six times the lowest wage or salary paid by the contractor. Taken into account as well for this computation are benefits, including but not limited to: dividends, a car and health insurance.
- b) The Contractor must prove that complying with the Law will increase his expected total annual budget in an amount greater than ten percent of the prior fiscal year's budget.

In August of 2010, the Comptroller's Office began listing on its Living Wage webpage those vendors who have requested waivers. All requests for waivers must be submitted on an approved form, which is available on the Living Wage webpage. All waiver requests are reviewed by a representative of the County Executive's Office for completeness and compliance with the required criteria. Not all requests receive waivers.

At the Comptroller's request, the amended Law added the requirement that fringe benefits be included as part of the determination of the highest paid officer's total salary. The Law provides that the Comptroller can determine a method for valuing the fringe benefits in making this determination. Included in the Compensation Ratio calculation are items such as bonuses, stock options, educational assistance, housing costs, etc.

¹⁸ Nassau County Living Wage Law §7 (b) (2010).

Monitoring of Law by Comptroller's Office

The Law charges the Nassau County Comptroller with the responsibilities of monitoring, investigating and auditing compliance with the Law.¹⁹ Since the Law's inception, the Comptroller's Office, through its monitoring powers, have continued to make progress in achieving the objective of bringing as many covered employers as possible into compliance with the law.

As part of our ongoing efforts, the Comptroller's Office is requiring selected contractual agencies covered by the Law to submit a Payroll Report for Living Wage Compliance, payroll registers or ADP reports, and other supporting documentation. When this information is obtained and reviewed, employers may be subject to desk or field audits.

Prior to 2012, the Comptroller's Office focused on audits of PCA and CDPAP service providers, because they tended to have the largest number of employees covered by the Law. The selection of vendors for review has been broadened to include other types of vendors covered by the Law, such as housing agencies serving the homeless population.

Webpage

The Living Wage webpage may be found at:

www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html. The webpage includes a complete copy of the current Law, Living Wage Rules promulgated by the Comptroller and the County Executive, links to Living Wage Forms in a downloadable format and Frequently Asked Questions about the Law. Additionally, the annual reports for the years 2007 through 2011 are available on the webpage. The Unit's issued audit reports can also be accessed through the webpage.

Poster

The Comptroller's Office created a Living Wage Poster to explain the Law in a simple format. Posters are available in English, Spanish and Creole and may be downloaded from the webpage. The posters list the current Living Wage rates and the employee's right to compensated days off; they also provide the Unit's telephone number and e-mail address to allow individuals to contact the Unit with questions and employee complaints. The Comptroller's Rules require that Living Wage notices be posted in a conspicuous manner at all relevant work sites. The posters have been designed in a manner to meet this requirement and are updated to reflect changes in the Living Wage rates. The posters were updated in 2012 to list the increased Living Wage effective August 1, 2012 through July 31, 2013.

¹⁹ Nassau County Living Wage Law §7 (a) (2010).

The Living Wage Advisory Board

In order to benefit from the insight of union leaders and activists, the County Comptroller established the Board in 2007. As of January 1, 2012, the current Board members are:

John Durso – Long Island Federation of Labor (Chairman)
Jim Castellane – Building & Construction Trades Council (Vice Chair)²⁰
Lisa Tyson – Long Island Progressive Coalition (Vice Chair)
Jack Ahern – International Union of Operating Engineers Local 30
Frank Bail – Retail Wholesale Department Store Union Local 1102
Walter Barton – National Association of Letter Carriers Branch 6000
Patricia Bowden – Transit Workers Union Local 252
Roger Clayman – Long Island Federation of Labor
Nick LaMorte – Civil Service Employees Association Region 1
Michele Lynch – 1199 Service Employees International Union

Representatives from the Office of Management and Budget, Field Audit and Legal Counsel are also present at meetings.

Three Living Wage Advisory Board Meetings were held in 2012. It was during one of the meetings that the discussion centered on the fact that a waiver covers the duration of a contract when it is approved. Contracts that went into effect prior to the implementation of the Law and have long term durations are not under the authority of the Law. The County's leases with the Museum of Art and the Coliseum were two examples cited as having lengthy terms. Although these agreements would not fall within the Law, any amendments to these leases subsequent to the Law's enactment in 2007 would apply. At this meeting, it was noted that lengthy terms are more prevalent in leases. Furthermore, at the same meeting, the Nassau County Comptroller stated that it is unusual for the County to enter into lengthy contracts. He also stated that in his first year as Comptroller he instituted a policy that no contract for health and human services should exceed five years. As a result, there is now a directive in place requiring all health and human services contracts to go through the competitive bidding process at least every five years.

Another topic of interest was related to the criteria to obtain a waiver, which relates to the ratio between the highest and lowest paid employees of the company providing these services. To meet this threshold, the top wage earner must earn less than six times the rate of the lowest paid employee. The concern expressed at the meeting was that companies were submitting the salaries of local management, without taking into account the salaries of the parent company executives. This concern is presently being explored.

It was at another meeting that inquiries were made as to Law and its relationship to the County's food service vendors. Expansion into the review of these companies and their payrolls was suggested as an addition to our roster of future audits.

²⁰ Jim Castellane retired as President of the Building Trades Council of Nassau and Suffolk in June of 2013. He is succeeded by Richard O'Kane who was Business Manager at Ironworkers Local 361.

Scope of 2012 Audits

Audit Plan and Priorities

The 2012 audit plan continued to focus on PCA providers since these agencies employ a relatively large number of workers earning wages close to the Living Wage rate. In 2012, PCA service providers and CDPAP agencies serving Nassau County had combined total annual billings to New York State of approximately \$133.2 million.²¹

Audit Findings

Three Living Wage audit reports were released in 2012; all covering PCA providers. As illustrated in the table presented in the report's Appendix, for all 26 audits conducted from 2008 to 2012, we found \$450,318 of underpayments affecting 1,182 employees. Moving forward to 2012 we found compliance in two of the audits we conducted. In the case of the third, where compliance was a month late, retroactive payments were made to 100 employees. For 2012, we have concluded that based on the Living Wage audits performed by the Comptroller's Office, significant improvement was noted in the compliance of PCA providers.

PCA Contractual Agreements and the Law

Nassau County enters into agreements with PCA contractors to provide state-mandated personal care services to Medicaid recipients. The reimbursement claims for these personal care services are submitted to (and paid by) the New York State Department of Health. As part of the requirements of the Law, employers are required to maintain original payroll records for each employee, reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of the Law. Failure to maintain the required records creates the assumption that the covered employer did not pay its covered employees the wages and benefits required under the Law.

Below is a brief summary of the audit findings for the PCA providers:

- **A&B Healthcare Services, Inc.**

A limited compliance audit was performed for this vendor to evaluate compliance with Living Wage Laws and related rules for the calendar year 2011. After reviewing a sample of the agency's employee records, A&B Healthcare was found to be in compliance in regard to wages and compensated time off.

- **Cottage Homecare Services**

A limited compliance audit was completed in 2012 for the 2011 calendar year for Cottage Homecare Services. In doing so, we reviewed a test sample of Cottage's records and employee earnings from the New York State Quarterly Wage Reporting Schedules²². Based

²¹ Source: New York State Department of Health Provider Ranking List – Fiscal Years Ending 12/31/2012 and 12/31/2011. Amounts listed consist of payments by New York State during years 2012 and 2011 to PCA and CDPAP providers under contract with Nassau County.

²² NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return.

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on the sample tested, the agency was found to be in compliance with the Law and related rules in regard to wages and compensated time off.

This company has been granted a waiver for the period effective January, 2013.

- **Jzanus Home Care, Inc.**

Although Jzanus Home Care, Inc. (“Jzanus”) did not institute the correct wage/benefit on August 1, 2011 (the date the Living Wage changed), they began paying the higher rate on September 9, 2011. A week later, on September 16, 2011, they retroactively paid all back wages owed to their 100 employees. From that date forward, they continued to pay the correct Living Wage Rate. Jzanus agreed with our findings and our recommendation that they review the Law periodically in order to keep up to date with any updates or changes.

Enforcement Successes and Challenges Going Forward

As stated in last year’s report, compliance with the Law has been consistent. During 2012, we continued to receive feedback from health care workers who have used our hotline to report issues regarding adherence to the Living Wage Law. We plan to keep this in place while we expand the range of businesses we are reviewing.

Every year we disclose whether any significant leases subject to the Living Wage Law were entered into by the County. (The Law defines a county lease as “any lease, concession agreement, or other agreement authorizing any party to occupy, use, control, or do business at property owned or controlled by the county”.) For 2012, the Office of Real Estate Services advised us that there were no new significant leases subject to the Law.

The Living Wage Law requires County vendors to pay their employees a minimum hourly rate plus a benefits supplement rate if no health insurance is provided. When the Law was implemented in 2007, the policy exempted County part-time and seasonal employees from the provision of the Living Wage Law due to the CSEA’s collective bargaining agreement. At that time it was determined that County part-time and seasonal employees were exempt from the Living Wage Law and thus could be denied the same minimum wage rates as private employees working under County contracts. In keeping with his commitment to ensure that the Living Wage Law is fairly enforced, the Nassau County Comptroller has requested an updated opinion from the current County Attorney as to whether the County’s part-time and seasonal employees should continue to be considered exempt from the Law.

We will continue to establish alternate audit methods, such as expanded desk audits and new requirements for agencies to submit their payroll registers or ADP reports and supporting documentation, in order to ensure that the Comptroller’s Office fulfills its responsibilities.

LIVING WAGE FINDINGS BY YEAR

YEAR AUDIT REPORT WAS ISSUED	2007				2008				2009		2010		2011		Total	
	Wage Underpayments		Compensated Time Off Underpayments		Wage Underpayments		Compensated Time Off Underpayments		Compensated Time Off Underpayments		Wage Underpayments		Wage Underpayments			
	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount
AUDITEE																
Allen Health Care Services			103	\$45,119											103	\$45,119
First Choice Home Care, Inc.			45	\$6,290											45	\$6,290
New York Health Care Inc.	26	\$6,350													26	\$6,350
Premier Home Health Care Services, Inc.	70	\$15,683													70	\$15,683
Tender Loving Care Health Care Services, Inc.	39	\$54,140	27	\$10,015											66	\$64,155
Total Issued 2008	135	\$76,173	175	\$61,424											310	\$137,597
A&B Healthcare Services, Inc.			45	\$26,067											45	\$26,067
ABLE Health Care Service, Inc.	2	\$168	79	\$12,126											81	\$12,294
Island Search	67	\$50,516			49	\$57,047	2	\$84							118	\$107,647
Jzanus Home Care, Inc.			132	\$35,925											132	\$35,925
PHC Services, Ltd.	45	\$38,000	19	\$6,051	30	\$20,042	17	\$3,518							111	\$67,611
Randstad US	2	\$294	18	\$22,245			23	\$9,707							43	\$32,246
Total Issued 2009	116	\$88,978	293	\$102,414	79	\$77,089	42	\$13,309							530	\$281,790
Premier Home Health Care Services, Inc.			51	\$5,056	3	\$156									54	\$5,212
Allen Health Care Services							3	\$33							3	\$33
First Choice																\$0
PHC Services, Ltd.					17	\$3,489									17	\$3,489
South Shore									67	\$5,424					67	\$5,424
Pathways																\$0
Total Issued 2010			51	\$5,056	20	\$3,645	3	\$33	67	\$5,424					141	\$14,158
Family Aides			12	\$867	15	\$1,159	12	\$745							39	\$2,772
Uniondale Community Center											2	\$1,468			2	\$1,468
Long Beach Reach											1	\$989			1	\$989
G.E.M. Health Care Agency			32	\$1,770		\$0	12	\$999	15	\$738					59	\$3,507
Total Issued 2011			44	\$2,637	15	\$1,159	24	\$1,744	15	\$738	3	\$2,456			101	\$8,734
A&B Healthcare Services, Inc.																
Cottage Home Care, Inc.																
Jzanus Home Care, Inc.													100*	\$8,039**	100	\$8,039
Total Issued 2012													100*	\$8,039**	100	\$8,039
Total Issued 2008-2012	251	\$165,151	563	\$171,531	114	\$81,893	69	\$15,086	82	\$6,162	3	\$2,456	100*	\$8,039**	1,182	\$450,318

* One hundred employees saw their rate change as a result of the change in the Living Wage rate. This change was not implemented by Jzanus until September 9, 2011, when they changed the rate retroactively at that time for the 100 employees affected (\$.45 per hour rate increase).

** Calculated based on the average number of hours worked over a 4 week period for the 100 Jzanus employees.