

Nassau County
Office of the Comptroller



Living Wage Law
2015 Annual Report

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Comptroller

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Executive Summary

Introduction

The Living Wage Law (“Law”) was enacted by the Nassau County Legislature in 2006¹, and took effect January 1, 2007. The purpose of the Living Wage Law is to ensure that all employees of companies that do business with Nassau County earn the living wage and receive health benefits or a health benefits supplement. Additionally, full-time employees receive no less than 12 paid days off a year. Part-time employees who work at least 20 hours per week receive proportionate compensated days off.

As a result of the Law, covered workers in Nassau County have seen 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

Summary of Significant Findings

- On August 1, 2015, the Living Wage rate in Nassau County saw a minimal increase to \$15.54 for employees without health benefits and \$13.59 for employees who receive health benefits.
- A limited compliance review of microMedia Imaging Systems®, Inc., a digital imaging company, was performed for the period January 1, 2012 - July 10, 2014. microMedia Imaging Systems®, Inc. performs scanning for the Department of Social Services (“DSS”) of documents which support eligibility requirements for various programs. At the time of the audit, we became aware that microMedia Imaging Systems® sold its assets and assigned the obligations of the Blanket Purchase Order to Smooth Solutions, Inc., a New Jersey based company. According to DSS officials, microMedia® did not obtain the required consent from the County prior to assigning the agreement to Smooth Solutions. Smooth Solutions acquired the employees performing the scanning services at DSS without a contract with Nassau County. Additionally, the audit found that 38 employees were underpaid a total of \$461,466. Furthermore, microMedia® did not maintain records of employee compensated time off accruals and utilization. microMedia® and they have negotiated a payment plan with their employees that will ensure all employees are fully compensated by 2018.

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

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

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- A limited compliance review for the period 2012-2014 was performed of Eager To Serve, Inc., a 501(c)(3) not-for-profit agency doing business as the Sunshine Residence which provides emergency housing to Nassau County's homeless population. The audit found that Eager to Serve shortchanged 11 employees a total of \$4,899 for the period under review. Employees were not paid on a timely basis, as required by New York State Labor Law. There were significant lapses in the processing time from the date worked as indicated on the employee's time sheet to the date checks were cut. Overtime was not paid at the rate of one and one half times the regular rate of pay for hours worked in excess of 40 hours per week.

Conclusion

Since the Law became effective in 2007, the Comptroller's Office has released 36 Living Wage audit reports encompassing 29 different contractors, as shown in the Appendix. Overall, we have identified a total of \$1,077,972 in underpaid wages affecting 1,368 employees. The Comptroller's Office continues to perform audits, respond to employee complaints and inquiries received through the hotline and monitor providers that have been reviewed in the past to ensure they remain in compliance with the Law.

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Background

The Living Wage Law

All discussions of the Law in this report refer to the Law in existence in 2015, unless otherwise noted. The Law was last amended on January 21, 2010; the amendments took effect on March 22, 2010.

Living Wage Rates

The Living Wage Rate is reevaluated on August 1st of each year. On August 1, 2015, the Living Wage rate increased to \$15.54 in Nassau County for an employee without health benefits. If the employer provides health benefits to an employee who is covered under the Living Wage Law the employee's rate of pay was increased to \$13.59. This rate will stay in effect until August 1, 2016. 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 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 contracts³ for more than \$50,000 and where the employer has at least 10 employees; and
- leases of property⁴ 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. 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.⁵

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 services⁶;
- contracts where services are incidental to the delivery of products, equipment or commodities⁷; or
- inter-governmental contracts and financial assistance contracts for industrial development bonds, community development block grants and enterprise-zone investments⁸.

³ Nassau County Living Wage Law §2 (2010).

⁴ Ibid.

⁵ Ibid.

⁶ Nassau County Living Wage Law §3 (c) (3) (2010).

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

⁸ Ibid.

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 employee⁹;
- employed as 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 position¹⁰;
- 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 wage¹¹; or
- covered by a bona fide collective bargaining agreement provided that the Law is expressly referenced in the agreement¹²

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 webpage¹³ to disseminate information about the Law and the audits performed. Audit criteria for conducting Living Wage audits have been established and a comprehensive audit plan intended to concentrate on the contractors with the greatest number of impacted employees has been created.

The Living Wage Advisory Board, comprised of labor leaders and Living Wage advocates, continues to meet several times a year to discuss ways to improve the effectiveness of the Law.

The Comptroller's Office continues to maintain a telephone "hotline" to field calls regarding instances of noncompliance with the Law. The number of the hotline is clearly noted on the Living Wage Poster which is required to be posted at workplaces. As stated on the poster "Complaints will remain confidential", enabling workers to call with assurances of confidentiality. Also, forms are posted on the Comptroller's website to provide workers the opportunity to submit their complaints online or submit them via regular mail. The forms allow for complaints to be filed for noncompliance regarding wages, health benefits and non-payment for compensated time in accordance with the Law.

The selection of vendors for audit has been broadened to include service providers such as food service, medical service and office services.

Utilizing both field audits and desk audits, we have been able to identify shortfalls in payments of both wages and compensated time off. Exhibit I below summarizes the financial results of our

⁹ Nassau County Living Wage Law §3.

¹⁰ Nassau County Living Wage Law §3 (c) (1) (B) (2010).

¹¹ Nassau County Living Wage Law §3 (2010).

¹² Nassau County Living Wage Law § 10 (c) (2010).

¹³ The web address is: http://www.nassaucountyny.gov/1597/Living_Wage.

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findings for the living wage audits issued from 2008-2015, covering years 2007-2014. Since the Law’s inception, we have helped more than 1,300 people recover payments totaling \$1,078,000 owed to them. The data for each audit can be found in the Appendix.

Exhibit I

Summary Impact of Living Wage Audits Issued from 2008-2015

Wage Underpayments Recovered		Compensated Time Underpayments Recovered		Total Underpayments Recovered	
Amount	Number of Employees Impacted	Amount	Number of Employees Impacted	Amount	Total Employees Assisted
\$ 877,081	632	\$ 200,891	736	\$1,077,972	1,368

Penalties for Non-Compliance

When an employer fails to comply with the Law after being notified in writing by the County, among other penalties, the Law 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”¹⁴. 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.

¹⁴ 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 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, including any amendments, can be viewed on the Comptroller's webpage under the Living Wage Law sub-heading.

Waivers

County contractors may request an annual waiver from 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 for the year the waiver is granted. However, the contractor remains subject to Federal and State minimum wage requirements. In 2015, we continued to see an increase in the number of waivers requested. Twelve agencies applied for waivers. Eleven of these agencies were granted at least a partial waiver by the County Executive's Office.

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

1. The salary of the highest paid officer or employee of such contractor earns a salary which, when calculated on an hourly basis, is less than six times the lowest wage or salary paid by the contractor. Also taken into account for this computation are benefits, including but not limited to: dividends, a car and health insurance.
2. The Contractor must prove that complying with requirements of 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 waivers requests are reviewed by a representative of the County Executive's Office for completeness and compliance with the required criteria. Not all requests for waivers are granted.

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.

Monitoring of the Law by the Comptroller's Office

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

Prior to 2015, the Comptroller's Office focused on audits of Personal Care Aide ("PCA's") agencies and Consumer Directed Personal Assistance Program ("CDPAP") service providers, because they have the largest number of employees covered by the Law. PCA providers and CDPAP agencies serving Nassau County had combined total billings to New York State of approximately \$23.6 million in 2015.

Webpage

The Living Wage webpage¹⁵ includes a complete copy of the current Law, the 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 2015 are available on the webpage. All Living Wage audit reports issued by the Comptroller's Office since 2007 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 display the Comptroller's Office Living Wage telephone hotline and e-mail address to allow individuals to contact the Comptroller's Office 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 2015 to reflect the increased Living Wage effective August 1, 2015 through July 31, 2016.

¹⁵ The web address is: <http://www.nassaucountyny.gov/1597/Living-Wage>

The Living Wage Advisory Board

In order to benefit from the insight of union leaders and activists, the County Comptroller established the Living Wage Advisory Board in 2007. Exhibit II lists the Board members as of January 1, 2015.

Exhibit II

**Living Wage Advisory Board Members
as of January 1, 2015**

John Durso	Long Island Federation of Labor (Chairman)
Richard O’Kane	Building and Construction Trades Council (Vice Chair)
Lisa Tyson	Long Island Progressive Coalition (Vice Chair)
Gemma DeLeon	Retail Wholesale Department Store Union Local 1102
Walter Barton	National Association of Letter Carriers Branch 6000
Debra Hagan	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 these meetings.

Four Living Wage Advisory Board Meetings were held in 2015. Key topics discussed are summarized below:

- A living wage review would be conducted in conjunction with the audit of Dover Gourmet Corporation (“Dover”).
- Types of documentation provided when requesting waivers and if financials are reviewed when determining if a waiver should be granted.
- Agreement that there should be some proposed changes to the Law with regard to the 10% waiver criteria¹⁶. If the waiver is granted, the auditee does not have to pay the living wage but what should the rate of pay be? Additionally, it appears that the same agencies continue to apply for waivers year after year.
- Questions were raised regarding fines for non-payment of the Living Wage and there is an issue with how the law is written regarding who within the County is responsible for enforcement.

¹⁶ Nassau County Living Wage Law §9 (b).

- Workers initiated a class action complaint to the Comptroller's Office against microMedia® Imaging Inc. when they discovered they were not being paid the living wage. The owner of microMedia® Imaging, contacted the Comptroller's Office and claimed he had moved his operation to New Jersey. The Nassau County Department of Social Services ("DSS") discovered that he had actually sold his company to Smooth Solutions, without notifying the County, which resulted in a Living Wage audit. microMedia®, which had been found to owe \$461,000 to 38 employees, contacted the County Attorney stating they agreed to pay the employees but was requesting a payment plan over three years. The question was raised if the company should be charged interest and if it should be compounded.
- A living wage compliance review of Eager to Serve, a homeless shelter, was requested by the Commissioner of DSS after an article appeared in Newsday reporting that the shelter was not providing adequate heat to its residents.

Scope of 2015 Audits

The 2015 audit plan did not focus on any particular sector such as Personal Care Aides, Emergency Housing Shelters, Service Providers etc.

Living Wage audits are a component of most contract compliance audits performed by the Comptroller's Field Audit unit.

Audit Findings

Two living wage audits were released in 2015; one covering an imaging company providing scanning services to DSS and the other a homeless shelter provider. As illustrated in the table presented in the appendix, the summary impact of the two audits issued in 2015 totaled \$466,582 of underpayments affecting 51 employees.

Below is a brief summary of the 2015 audit findings:

microMedia® Imaging Systems Inc.

microMedia® violated its contract with the County by selling its assets and assigning the obligations of the Blanket Purchase Order ("BPO") to Smooth Solutions, Inc., a New Jersey based company. It was established that the subcontracting / reassignment of the BPO was a material breach of contract.

The auditors' review found that 38 employees were underpaid a total of \$461,466 for the period January 2012 - July 2014. Additionally, microMedia® did not maintain records of compensated time off accruals and utilization. It was determined that \$3,846 was owed to employees in compensated time off accruals. The microMedia® Employee Handbook stated that only employees working more than 30 hours per week are entitled to vacation or holiday pay, which is

not in compliance with the Law. As of the date of this report, microMedia® has issued checks for \$250,000 of the balance due to employees. microMedia® and the County have negotiated a payment arrangement with their employees whereby microMedia® will make two additional equal payments, on the two anniversaries following the initial payment, in 2017 and 2018.

Eager to Serve, Inc.

Hourly rates paid to employees were less than mandated by the Law. For the three year period 2012-2014, a total of \$4,899 is due to 11 employees. Overtime was not paid in accordance with the Fair Labor Standards Act, which is at the rate of one and a half times the regular rate of pay for hours worked in excess of 40 hours per week. For the period 2012-2014, two employees are due \$217. Additional findings were that Eager to Serve was not paying their employees on a timely basis with the number of days ranging from 27 to 658 days from the last date of the work period to the pay date (check date).

Eager to Serve also failed to comply with Section 5 (2b) of the Living Wage Law as well as with the Memorandum of Understanding with the County by not providing complete original payroll records to the auditors for 2014. Eager to Serve did not maintain any Compensated Time Off Accrual and Utilization schedules to indicate employees were being paid leave time. Eight employees are owed a total of \$4,266 for compensated time off.

Finally, Eager to Serve failed to file IRS Annual Form 990 Information Return for years 2012-2014. As a 501(c)(3) organization, the entity is required to file an annual informational tax return with the Internal Revenue Service. The Form 990 serves two essential purposes. First, it provides information that helps the IRS and state charity regulators enforce the laws that govern nonprofits. Secondly, it provides substantial information about the organization’s financial condition, the source of its income, top management salaries and any relatively large payments made to those who serve as independent contractors to the filer.

Enforcement Successes and Challenges Going Forward

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”¹⁷.) For 2015, the Office of Real Estate Services advised us that there were two new significant leases subject to the Law. Nassau County entered into two separate severance leases with the Nassau Events Center (“NEC”); one for the renovation of Nassau Coliseum, the other for the enhancement to the Coliseum Plaza. These severance leases allow for the renovation of the Coliseum separate from the Coliseum plaza modifications. Under the terms of their agreements, these entities are bound to comply with the Nassau County Living Wage Law.

¹⁷ Nassau County Living Wage Law §2 (2010).

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The Comptroller's Office will continue to expand their Living Wage Law compliance reviews to covered agencies and lessees in order to ensure the work force is properly compensated.

Appendix

SUMMARY OF FINDINGS FOR LIVING WAGE REPORTS ISSUED 2008-2011														
Year Impacted by Findings	2007				2008				2009		2010		TOTAL	
	Wage Underpayments		Compensated Time Off Underpayments		Wage Underpayments		Compensated Time Off Underpayments		Compensated Time Off Underpayments		Wage Underpayments			
NAME of AUDITEE	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount
Aides At Home	0	\$ -											0	\$ -
Allen Health Care Services			103	\$ 45,119									103	\$ 45,119
First Choice Home Care, Inc.			45	\$ 6,290									45	\$ 6,290
LI Care At Home	0	\$ -											0	\$ -
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.	30	\$ 572	45	\$ 26,067									75	\$ 26,639
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
VIP	0	\$ -											0	\$ -
Total Issued 2009	146	\$ 89,550	293	\$ 102,414	79	\$ 77,089	42	\$ 13,309					560	\$ 282,362
Premier Home Health Care Services, Inc.			51	\$ 5,056	3	\$ 156							54	\$ 5,212
Allen Health Care Services							3	\$ 33					3	\$ 33
First Choice Home Care, Inc.					0	\$ -							0	\$ -
PHC Services, Ltd.					17	\$ 3,489							17	\$ 3,489
South Shore Home Health Services									67	\$ 5,424			67	\$ 5,424
Pathways to Independent Living									0	\$ -			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	\$ 2,771
Uniondale Community Center											2	\$ 1,468	2	\$ 1,468
LI Center for Independent Living									0	\$ -			0	\$ -
Long Beach Reach											1	\$ 989	1	\$ 989
G.E.M. Health Care Agency			32	\$ 1,770			12	\$ 999	15	\$ 738			59	\$ 3,507
Total Issued 2011			44	\$ 2,637	15	\$ 1,159	24	\$ 1,744	15	\$ 738	3	\$ 2,457	101	\$ 8,735
Total Issued 2008-2011	281	\$ 165,723	563	\$ 171,531	114	\$ 81,893	69	\$ 15,086	82	\$ 6,162	3	\$ 2,457	1112	\$ 442,852

Appendix

SUMMARY OF FINDINGS FOR LIVING WAGE REPORTS ISSUED 2012-2015														
Year Impacted by Findings	2010		2011		2012		2013		2014				TOTAL	
NAME of AUDITEE	Wage Underpayments		Wage Underpayments		Wage Underpayments		Wage Underpayments		Wage Underpayments		Compensated Time Off Underpayments			
	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount	Employee Count	Amount		
A&B Healthcare Services, Inc.			0	\$ -									0	\$ -
Cottage Home Care, Inc.			0	\$ -									0	\$ -
Jzanus Home Care, Inc.*			100	\$ 8,039									100	\$ 8,039
Total Issued 2012			100	\$ 8,039									100	\$ 8,039
Bethany House			7	\$ 5,053	7	\$ 5,002							14	\$ 10,055
Glory House Recovery			1	\$ 1,523									1	\$ 1,523
Community Housing Innovations, Inc.	7	\$ 1,010	8	\$ 800									15	\$ 1,810
Peace Valley Haven, Inc.	23	\$ 42,978	15	\$ 79,286									38	\$ 122,264
Total Issued 2013	30	\$ 43,988	31	\$ 86,662	7	\$ 5,002							68	\$ 135,652
Peace Valley Haven, Inc.							15	\$ 16,735					15	\$ 16,735
Utopia Home Care Inc.					0	\$ -							0	\$ -
Total Issued 2014					0	\$ -	15	\$ 16,735					15	\$ 16,735
Eager To Serve, Inc.									11	\$ 5,116	8	\$ 4,266	19	\$ 9,382
MicroMEDIA									38	\$ 461,466	14	\$ 3,846	52	\$ 465,312
Total Issued 2015									49	\$ 466,582	22	\$ 8,112	71	\$ 474,694
Total Issued 2012-2015	30	\$ 43,988	131	\$ 94,701	7	\$ 5,002	15	\$ 16,735	49	\$ 466,582	22	\$ 8,112	254	\$ 635,120
Grand Total Issued 2008-2015												1366	\$ 1,077,972	

* 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 for the 100 employees affected (\$.45 per hour increase). The 2011 wage underpayment amount of \$8,039 was calculated based on the average number of hours worked over a 4 week period for the 100 employees.