

**Nassau County
Office of the Comptroller**



**Living Wage Law
2010 Annual Report**

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Comptroller**

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1.0 EXECUTIVE SUMMARY

The Nassau County Living Wage Law (“Law”) was enacted by the Nassau County Legislature in 2006¹. The purpose of the Law is to provide a living wage to employees living and working in Nassau County. As a result of the Law, many covered workers in Nassau County have seen four annual increases in their hourly wage rates since the Law became effective.

The Comptroller’s Office is responsible for monitoring, investigating and auditing compliance with the Law, which requires the Comptroller to 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

After the Law became effective on January 1, 2007, the Comptroller’s Office established a Living Wage Unit (“Unit”) dedicated to auditing covered employers to ensure compliance with the Law. Pursuant to Section 7 (b) of the Law the Comptroller’s Office 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. The Unit established audit criteria for conducting Living Wage audits, created a comprehensive audit plan intended to concentrate on the contractors with the most employees. The Comptroller also established a Living Wage Advisory Board (“Board”) comprised of labor leaders and Living Wage Law advocates to advise the Comptroller on compliance issues and ways to improve the effectiveness of the Law.

During 2010, the Comptroller’s Office continued to make progress in achieving the objective of bringing as many covered employers as possible into compliance with the Law. 2010 Living Wage audit fieldwork focused on follow-up audits of personal care aide (“PCA”) service providers with 2010 billings to New York State of approximately \$81.8 million.³ The PCAs provide assistance to Medicaid recipients in their homes to avoid the more costly option of institutionalizing the patients. The audits focused on follow-up audits of PCAs in 2010 because of the large numbers of employees determined to have been underpaid in previous audits.

In 2010 the Comptroller’s Office also audited Consumer Directed Patient Assistance Program (“CDPAP”) service providers, which in 2009 fell under the auspices of the Law for the first time. CDPAP is a Medicaid program that provides an alternative to traditional home care by enabling self directed individuals (clients of the service provider) or their administrators to assume responsibility for their own care by recruiting, training, and supervising their personal assistants. The CDPAP service providers act as the fiscal intermediaries for the personal assistants. In 2010, these agencies received payments from the New York State Department of Health for approximately \$43.7 million.⁴

The Comptroller’s Office completed four follow-up audits of PCA service providers and three audits of CDPAP service providers in 2010. As a result, six Living Wage audit reports were issued in 2010 and one in March of 2011. Violations were identified in the audits; the majority

¹ Nassau County Living Wage Law, Title 57.

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

³ Source: New York State Department of Health Provider Ranking List - Fiscal Year Ending 12/31/10. Payments by New York State during 2010 to Personal Care providers under contract with Nassau County.

⁴ Ibid.

concerned failures to pay the hourly wage rates required by the Law or non-compliance with the Law's requirement to grant workers paid days off or payment in lieu of paid days off.

As shown in the Table below, according to the audits performed in 2009 and 2010, the number of violations identified in our audits declined by 76.6% from 530 to 124 and the amounts the affected employees were shortchanged decreased materially by 94.9% from \$281,790 to \$14,158. Four of the seven audits completed in 2010 were follow-up audits, conducted to ensure that the service providers had taken corrective action to address previously noted errors and deficiencies. These results demonstrate that significant improvement has occurred.

Since the inception of the Living Wage Unit in 2007 through December 31, 2010, the Comptroller's Office has released Living Wage audit reports of 16 different contractors. These audits found that contractors underpaid their employees by \$433,545 in wages and compensated days off, affecting 964⁵ employees. The table below summarizes the financial results of our findings.

Summary of Findings for 2008 - 2010 Reports

Year Tested	2007				2008				2009		Total	
	Wage Under Payments		Compensated Time Off Under Payment		Wage Under Payments		Compensated Time Off Under Payment		Compensated Time Off Under Payment			
Year Issued	No. of Emp.	Amount	No. of Emp.	Amount	No. of Emp.	Amount	No. of Emp.	Amount	No. of Emp.	Amount	No. of Emp.	Amount
2008	135	\$76,173	175	\$61,424	79	\$77,089	42	\$13,309			310	\$137,597
2009	116	\$88,978	293	\$102,414	3	\$3,645	3	\$33	67	\$5,424	530	\$281,790
2010			51	\$5,056							124	\$14,158
Total	251	\$165,151	519	\$168,894	82	\$80,734	45	\$13,342	67	\$5,424	964	\$433,545

We were encouraged to find significant improvement in compliance with regard to the payment of wages and benefits, including compensated time off, in the follow-up PCA audits performed during 2010. The Comptroller's Office publicized the results of the previous 2009 audits and the contractors had adequate time to perform self-audits, reviews and take necessary corrective actions prior to the Comptroller's Office's audits in 2010. In 2010 four PCA providers audited in prior years with significant findings were revisited to ensure that corrective action had taken place. We issued follow-up audit reports of the agencies in 2010 and confirmed that they had taken adequate corrective action.

As of the date of this report, the Comptroller's Office was advised that twelve living wage waivers were requested in 2010. Eight of the waiver requests were from personal care agencies, however, one of the personal care agencies subsequently cancelled its waiver request. Two of the personal care agencies have been granted waivers to date. We are currently working with the

⁵ The number of employees affected represents the total number of occurrences when an employee was under-compensated, in terms of wages or compensated days off, in 2007, 2008 or 2009. As a result, the same employee may account for up to six occurrences if there was an under payment of both wages and compensated days off in 2007, 2008 and 2009.

County's Living Wage Waiver Review Officer to determine the status of the remaining waiver requests and to verify if any other waivers have been requested, granted or denied.

The Living Wage Advisory Board has been a major source of guidance throughout 2010 and its suggestions and insights will continue to be used for improving the Law and the monitoring and investigating process. The Board played an important role in advocating for improvements in the Law by developing a comprehensive list of recommendations for legislative changes to the Law. A number of the Board's recommended changes were included in the 2010 amendments to the Law enacted on January 21, 2010.

2.0 BACKGROUND

2.1 THE LIVING WAGE LAW

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

Living Wage Rates

The Law increased the minimum hourly wages on August 1st of each year up to and including August 1, 2010 when the last Living Wage rate increase of \$1.00 per hour took effect and raised the Living Wage rate to \$12.50 per hour. In addition, if a covered employer does not provide health benefits to covered employees, they must pay its employees a benefits supplement. The benefits supplement was \$1.60 per hour from August 1, 2009 to July 31, 2010; on August 1, 2010 it increased to \$1.66 per hour. As of August 1, 2010, the Law required covered employers to pay an hourly wage of \$12.50, or \$14.16 if no health benefits are provided.

The increase in the benefits supplement rate is upwardly adjusted in proportion to any increase during the preceding twelve months of the consumer price index for medical care for the New York-Northern New Jersey-Long Island metropolitan statistical area.⁶ Beginning August 1, 2011, the Living Wage rate will be increased by a "...percentage equal to the change in the New York Metropolitan Area All Urban Index (NY-CPI-U) as promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor (CPI) for the period of June of the preceding year to June of the current year."⁷ However, the Law limits the annual increase to no greater than three and one-half percent.⁸

The Law also requires that full-time employees receive 12 compensated days off per year for sick leave, vacation, or personal necessity. 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:

⁶ Nassau County Living Wage Law § 2 Definitions (2010).

⁷ Nassau County Living Wage Law § 2 (4) (2010).

⁸ Nassau County Living Wage Law § 2 Definitions (2010).

- service contracts of \$25,000 or more; financial assistance contracts⁹ for more than \$50,000 and where the employer has at least 10 employees; and
- leases of property¹⁰ 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.¹¹

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 services¹²;
- contracts where services are incidental to the delivery of products, equipment or commodities¹³; or
- inter-governmental contracts and financial assistance contracts for industrial development bonds, community development block grants and enterprise-zone investments¹⁴.

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 employee¹⁵;
- 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 position¹⁶;
- 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 wage¹⁷; or
- covered by a bona fide collective bargaining agreement provided that the Law is expressly referenced in the agreement.¹⁸

⁹ Nassau County Living Wage Law § 2 Definitions (2010).

¹⁰ Ibid.

¹¹ The January 2010 amendments changed the definition of those employees who are covered by the Law. Nassau County Living Wage Law § 2 Definitions (2010).

¹² Nassau County Living Wage Law, §3, 3) (2010).

¹³ Nassau County Living Wage Law, §2, Definitions (2010).

¹⁴ Ibid.

¹⁵ Nassau County Living Wage Law §3, 1) (A) (2010).

¹⁶ Nassau County Living Wage Law, §3, 1) (B) (2010).

¹⁷ Nassau County Living Wage Law § 3 (2010).

¹⁸ Nassau County Living Wage Law § 10 (c) (2010).

Penalties for Non-Compliance

Where an employer fails to comply with the Law after being notified in writing by the County, 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”¹⁹. 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 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.²⁰

Waivers

The Law allows a County contractor to request a waiver from complying with the Law. The Rules of the County Executive set forth the criteria under which a waiver may be granted. As such, 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. From the inception of the Law through 2010, seventeen vendors (eight PCA and nine non-PCA) have been granted waivers from the Law. In August of 2010, the Comptroller’s Office began listing on its Living Wage webpage, vendors who have requested waivers.

2.2 THE LIVING WAGE UNIT

The Law charges the Nassau County Comptroller with the responsibilities of monitoring, investigating and auditing compliance with the Law.²¹ To perform these functions, the Comptroller established the Unit within the Field Audit Department of the Comptroller’s Office. In 2010, three full-time staff members were assigned to the Unit (two auditors and one supervisor). Other Field Audit personnel assist with supervisory and quality assurance reviews on a part-time basis. The Unit will continue monitoring Living Wage Law compliance in 2011, however due to the increased compliance noted in follow-up audits of covered service providers, anticipated employee retirements and the County’s current limits on hiring of nonessential employees, external Living Wage audit activities may be reduced. To adapt to the expected staffing changes, the Unit plans to implement new procedures including the following:

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

²⁰ Nassau County Living Wage Law § 7 (d) (iv) (2010).

²¹ Nassau County Living Wage Law § 7 (a) (2010).

requiring agencies to periodically certify their compliance with the Living Wage Law, and requiring the submission of certified payroll and other supporting documentation. When this information is obtained and reviewed, employers may be subject to desk or field audits.

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.²² 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.

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 Unit's 2007, 2008 and 2009 annual reports and audit reports that have been issued are posted on the webpage. This report is also available on the webpage.

Poster

The Unit created a Living Wage Poster to explain the Law in a simple format. Posters are available in English and Spanish 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 2010 to list the increased Living Wage rates effective August 1, 2010 through July 31, 2011.

2.3 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, 2011, the current Board members are:

John Durso – Long Island Federation of Labor (Chairman)
Jim Castellane – Building & Construction Trades Council (Vice Chair)
Lisa Tyson – Long Island Progressive Coalition (Vice Chair)

²² Nassau County Living Wage Law § 7 (b) (2010).

Jack Ahern – International Union of Operating Engineers Local 30
Shirley Aldebol – Service Employees International Union Local 32BJ
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
Donald Fiore – International Brotherhood of Electrical Workers Local 25
Nick LaMorte – Civil Service Employees Association Region 1
Michele Lynch – 1199 Service Employees International Union

In 2010, the Board held three meetings where they discussed challenges faced by the County in the administration of the Living Wage Law. They also considered the effects of the 2010 amendments to the Law and monitored the status of the audits in progress. The Board raised questions concerning the Law’s interpretation, the employees and entities covered by the Law, and the granting of waivers from compliance with the Law. The Board informed key County officials and vendors of the importance of the Law particularly to those in the home health care field.

Living Wage Legislative Changes

The Law was amended on January 21, 2010. The amendments took effect on March 22, 2010. The amendments included the following:

- The stipulated benefits rate must be paid for every hour an employee receives as compensated days off. The Law also further defines payment for compensated days off and provides that compensated days off will not be forfeited upon separation from service, but must be paid to the employee at the Living Wage rate at the time of separation.²³
- The maximum allowable fines imposed by the Law were increased. Previously, employers were to be fined \$500 each week for each employee not being paid in accordance with the law upon the issuance of the first written notice of violation. The amendment provides for second and third notices of violation to be issued if the employer fails to cure the underpayment and for increased fines of \$1,000 and \$2,000 per week for each employee respectively.²⁴
- The eligibility criteria for waivers was amended and the names of employers who apply for a waiver will be publicized so interested parties can comment and provide information in support or opposition of the application.²⁵ Medicaid funded assisted living program facilities that were providing services within Nassau County prior to 2006 and who continue to provide such services are exempt from the Law.²⁶ Sleep away camp

²³ Nassau County Living Wage Law § 3 b. (2010).

²⁴ Nassau County Living Wage Law §7 (iv) (2010).

²⁵ Nassau County Living Wage Law §9 b. (2010).

²⁶ Nassau County Living Wage Law Definitions § 2 (2010).

services for the disabled are exempt.²⁷ The amended Law also exempts student interns working for the County.²⁸

Nassau Community College

The original Law had specifically excluded Nassau Community College as an employer; therefore, its direct employees were not covered. However, the College's service contractors/subcontractors and their employees were covered by the Law. As the College directly employs approximately 3,200 individuals, the Board recommended that the Law be amended to include Nassau Community College as a Covered Employer. This suggestion was implemented in the amended law, excluding only student workers at the College.²⁹

Waivers

One of the criteria for a waiver from the Living Wage Law is that the highest paid officer or employee of the company must earn a salary including fringe benefits, which are less than six times that of the wages plus fringe benefits of the worker receiving the lowest pay.³⁰ 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.³¹

In accordance with the Law, the Comptroller's Office established a methodology and created a Nassau County Living Wage Law Waiver Eligibility Compensation Ratio Test Form which must be submitted with the waiver request. All waiver-related rules forms may be found on the Nassau County Comptroller's webpage. The Rules of the County Executive were revised effective November 10, 2010 to coincide with the changes in the Law and to implement the new methodology for waivers.

3.0 SCOPE OF 2010 AUDITS

Audit Plan and Priorities

The 2010 audit plan continued to focus on the PCA providers since these agencies employ a relatively large number of workers earning wages close to the Living Wage rate; these contractors had total annual billings to New York State of approximately \$73.3 million in 2009, and \$81.8 million in 2010³². The audit plan called for revisiting companies previously audited

²⁷ Nassau County Living Wage Law § 3 c. (2010).

²⁸ Nassau County Living Wage Law Definitions §2 (2010).

²⁹ Ibid.

³⁰ Nassau County Living Wage Law §9 (2010).

³¹ Ibid.

³² Source: New York State Department of Health Provider Ranking Lists - Fiscal Years Ending 12/31/09 and 12/31/10. Payments by New York State during 2009 to Personal Care providers under contracts with Nassau County (exclusive of Consumer Directed Patient Assistant Program).

that were determined to be non-compliant. This was done to confirm that corrective action had been taken and to deter recurring non-compliance.

PCA providers that fall under the Consumer Directed Personal Assistance Program (“CDPAP”) were subject to the Law for the first time in 2009. Compliance audits of CDPAP vendors started in 2010, with the audits covering calendar year 2009. In 2010, we selected Pathways to Independent Living, Inc. and Long Island Center for Independent Living, Inc., two of the largest CDPAP agencies. These two agencies received payments of \$17.7 million and \$15.1 million respectively. For 2009, the CDPAP agencies audited accounted for approximately 87% of the \$40.8 million of total payments to CDPAP agencies. The two agencies had significant numbers of employees covered by the Law in 2009; Pathways to Independent Living had 790 such employees while the Long Island Center for Independent Living had 579 employees covered under the Law.

The Living Wage Unit also performed desk audits on a variety of large and small County vendors by pulling claim vouchers from the Comptroller’s Vendor Claims Unit and checking the salary information for compliance with the Law.

Some Nassau County institutional foster care contracts were not covered by the Living Wage Law because they predated the January 1, 2007 effective date of the Law. As their expiration dates are reached, Living Wage compliance clauses are added. In 2010, 25 foster care contracts with termination dates of December 31, 2010 were revised effective January 1, 2011 to include Living Wage compliance clauses in the renewed contracts.

In 2010, there were no significant leases entered into by the County, where the County leased property to others, which were covered under the Law. In 2010, follow-up audit reports were issued for four PCA providers which had been previously audited. Three audits of CDPAP providers for fiscal year 2009 were completed. Audit reports for two of the agencies were issued in 2010 and the report for the third agency was issued in March of 2011.

4.0 AUDIT FINDINGS

As illustrated in the table presented in the report’s Appendix, for 17 audits conducted from 2008 to 2010, we found \$433,545 of underpayments impacting 964 employees.³³ Six Living Wage audit reports were released in 2010; four were covered PCA providers while two were for CDPAP providers. The 2010 audits disclosed \$14,158 in underpayments affecting 124 employees. The 2010 audit findings are described in more detail below. The underlying conclusion drawn on the Living Wage audits performed in 2010 by the Comptroller’s Office is that significant improvement was noted in the follow-up audits of PCA providers that had been audited previously.

³³The number of employees affected represents the total number of incidences in which an employee was under-compensated, in terms of wages or compensated days off, in 2007 through 2009. As a result, the same employee may account for up to six incidences if there was an under-payment in both wages and compensated day off in the period.

PCA Contractual Agreements

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. The total payments by New York State for Nassau County in 2009 for CDPAP and PCA providers were approximately \$114 million; CDPAPs amounted to \$41 million and PCA providers amounted to \$73 million.³⁴ The County's share of these payments is normally 10%³⁵, or an estimated \$11.4 million for 2009. Four follow-up audit reports of PCA providers were issued in 2010 which contained findings that 57³⁶ employees had been underpaid by \$5,245. Below is a brief summary of the audit findings for each PCA provider:

Premier Home Health Care Services, Inc.

We performed a limited review of the agency's compliance with the Law for calendar year 2008 and performed a follow-up review to ensure that corrective actions were taken as a result of our previous audit of calendar year 2007. Our prior audit of 2007 had disclosed that Premier underpaid 70 of its employee's wages totaling \$15,683. For 2008, we found a small underpayment of wages of \$156 affecting 3 employees; as a result, we recommended that Premier review its 2008 wages to ensure no other employees were underpaid. In addition, our follow-up review of 2007 noted that Premier underpaid 51 part-time employees by \$5,056 because of an error in the method they were using to calculate accrued hours. In 2008, Premier was in full compliance in its calculation of compensated days off and we confirmed that the provider's employees had been properly reimbursed for the underpayments.

Allen Health Care Services

We performed a limited Living Wage compliance audit for calendar year 2008 and conducted a follow-up review to ensure that corrective actions were taken following our prior audit of calendar year 2007. Our review found that in 2007 and 2008, miscalculations in the provider's determination of compensated days off had resulted in small underpayments to employees, which were paid to the employees. Due to the 2008 miscalculations, we recommended that Allen perform a review to ensure that no other employees were underpaid. Our testing of wages paid found compliance with the Law.

First Choice Home Care, Inc.

We performed a limited compliance audit of calendar year 2008 wages and completed a follow-up review to ensure that corrective actions were taken as a result of our prior audit of calendar year 2007 wages. In the previous audit of 2007 wages, we found that 45 employees were underpaid a total of \$6,290; we verified that underpaid employees had been reimbursed. Our audit of 2008 wages found full compliance with the Law in regard to wages, supplemental benefits and compensated time off.

³⁴ Source: New York State Department of Health Provider Ranking Report - Fiscal Year Ending 12/31/09.

³⁵ Per the Fiscal Unit of the Department of Social Services.

³⁶ See Living Wage Findings by Year schedule (page 14). Total consists of 2010 audit report findings for Premier Home Health Care Services, Inc. and Allen Health Care Services.

PHC Services Ltd.

The Unit issued a prior audit report in 2009 which covered the provider's compliance with the Law for the period January 1, 2007 through July 20, 2008. The follow-up review conducted in 2010 included a review of the period July 21, 2008 through December 31, 2008. The prior audit had determined that for the entire period PHC had not paid the Living Wage rate and the compensated days off. PHC calculated that it owed \$67,611 to its employees. As part of the follow-up audit, we verified the accuracy of PHC's calculation of the monies due and paid to the employees. In our audit of the balance of 2008, we noted that PHC corrected the rate of pay to the proper living wage rate as of August 24, 2008. We verified that PHC correctly calculated the underpayment in wages for the period of July 21, 2008 through August 17, 2008. We agreed with its calculation that \$3,489 was due to its employees and verified that payment was made.

In general, our follow-up audits of PCA providers noted considerable improvement over prior audit results. In two instances, based on error rates noted in our follow-up reviews, we recommended that the providers review all 2008 wage payments to employees to ensure that no other employees were underpaid. In addition to ensuring that these PCA providers have applied corrective action, as part of additional follow-up reviews, the Comptroller's Office will ensure that the agencies are in compliance with the Law. If necessary, if an agency fails to address instances of non-compliance, the matter would be referred to the appropriate enforcement agency to take necessary action allowed under the applicable laws.

CDPAP Agreements

The Unit's review of CDPAP agreements included three service providers to the County. 2009 was the first year that CDPAP agreements were covered under the Law.³⁷ Two audit reports were issued in 2010 and a third audit report was issued in March of 2011. The three audit reports contained audit findings noting that 67 employees had been underpaid by \$5,424. The details of these findings are as follows:

Pathways to Independent Living, Inc.

We performed a limited Living Wage compliance audit of this CDPAP provider for calendar year 2009. In 2009, the provider had 790 employees who were covered by the Law. Based on our testing of the wages paid and the calculation of compensated time off due employees, we found that the provider was in full compliance with the Law.

South Shore Home Health Care, Inc.

A limited compliance audit was performed of the agency's CDPAP agreement with the County for calendar year 2009. Based on our testing of the wage rates paid to employees, we found the agency to be in full compliance with the Law. However, for compensated time off, we found the methodology used to determine the accrued hours due to the employees was incorrect. As a

³⁷ Pursuant to Memorandums of Understanding ("MOUs") that the Nassau County Department of Social Services entered into with the CDPAP providers prior to the January 1, 2007 effective date of the Law, CDPAP providers were not subject to the law until 2009. Once these MOUs expired, new MOUs were entered into with the County which required these providers to comply with the Law.

result, 67 employees were due a total of \$5,424. We verified that the agency subsequently reimbursed the employees the \$5,424.

Long Island Center for Independent Living, Inc.

The review period for the limited Living Wage compliance audit was calendar year 2009. The final report was not issued until 2011; however, the field work was completed in 2010. This provider had 579 employees in 2009. Based on our review of wages paid and the calculation of compensated time off due employees, we found that they were in full compliance with the Law.

5.0 ENFORCEMENT SUCCESSES AND CHALLENGES

In 2009, the Living Wage Unit sought clarification from the New York State Department of Labor as to the number of hours live-in personal care aides were required to be paid under the New York State Labor Laws. This query was made because our audits had noted that live-in personal care aides working twenty-four hours per day were being paid inconsistently by employers; for example, some employees were being paid for a thirteen-hour workday while others were paid for a ten-hour workday. These inconsistent workday payments were made despite the fact that the employees were working the same twenty-four hour shift. The State replied with an opinion stating that live-in care aides must be paid not less than thirteen hours per twenty-four hour period provided that they are afforded at least eight hours for sleep and actually receive five hours of uninterrupted sleep, and that they are afforded three hours for meals.³⁸ The Comptroller's Office is considering developing a directive to address this issue.

The Unit will continue to monitor waivers requested and granted and will keep the Board informed as we observe the effect the recent changes to the Law have made on the number of waivers approved and granted.

We expect that Unit staffing will be more limited in 2011 due to anticipated employee retirements and limits on hiring new employees; while Living Wage audit work will continue, adjustments will be needed. We will develop alternate audit methods, such as expanded desk audits and new requirements for agencies to submit certified payrolls and supporting documentation. These changes will be needed in order to address these changing conditions. Despite these challenges, we will ensure that the Unit fulfills its responsibilities under the Law.

³⁸ August 31, 2009 letter from New York State Department of Labor to Comptroller's Office.

Appendix

LIVING WAGE FINDINGS BY YEAR

Auditee	2007				2008				2009		Total	
	Wage Under Payment		Compensated Time Off Under Payment		Wage Under Payment		Compensated Time Off Under Payment		Compensated Time Off Under Payment			
	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount	Number of Employees	Amount
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.						\$ 3,489					0	\$ 3,489
South Shore									67	\$ 5,424	67	\$ 5,424
Pathways											0	
Total Issued 2010	0	\$ -	51	\$ 5,056	3	\$ 3,645	3	\$ 33	67	\$ 5,424	124	\$ 14,158
Total Issued 2008-2010	251	\$165,151	519	\$168,894	82	\$ 80,734	45	\$ 13,342	67	\$ 5,424	964	\$433,545