

**Nassau County  
Office of the Comptroller**



**Living Wage Law  
2009 Annual Report**

**George Maragos  
Comptroller**

**July 28, 2010**

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## **1.0 EXECUTIVE SUMMARY**

The Nassau County Living Wage Law (the “Law”) was enacted by the Nassau County Legislature in 2006 to raise the minimum wage of employees working for the County and those working for most of its contractors. As a result of the Law, many Nassau County workers have seen increases in their annual salaries.

The Comptroller’s Office is responsible for monitoring compliance with the Law, and the Law requires that the Comptroller report annually to the County Executive and the County Legislature summarizing and assessing the implementation of and compliance with the Law during the preceding year.

After the Law became effective on January 1, 2007 the Comptroller established a Living Wage Unit (the “Unit”), dedicated to auditing covered entities to ensure compliance with the Law. The Comptroller promulgated rules and regulations for the Law, created forms and other documents to streamline implementation of the Law, 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 target the most likely offenders of the Law, and began auditing covered entities. Finally, the Comptroller established a Living Wage Advisory Board (the “Board”), comprised of labor leaders and Living Wage Law advocates, to advise the Comptroller in the compliance with the Law.

During 2009, 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. In 2009, Living Wage audit fieldwork focused on personal care aide (“PCA”) service providers that contract with the County and had annual 2009 billings to New York State of approximately \$73 million.<sup>1</sup> These PCAs provide assistance to Medicaid recipients in their homes to avoid the more costly option of institutionalizing the patients.

The Comptroller’s Office audited five (5) of these service providers and two (2) employment agencies that provided temporary personnel services to the County. As a result, seven (7) Living Wage audit reports were issued in 2009. Significant violations were identified in the audits; the majority 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, the number of violations identified in our audits increased by 71% from 310 to 530 and the amounts these affected employees were shortchanged increased by 105% from \$137,596 to \$281,790. The majority of this increase is attributed to one of the temporary personnel service providers audited in 2009, which alone underpaid its employees \$107,647.

Since the inception of the Living Wage Unit in 2007 through December 31, 2009, the Comptroller’s Office has released Living Wage audit reports of 14 different contractors. These audits found that the contractors underpaid their employees by \$419,386 for wages and

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<sup>1</sup> Source: New York State Department of Health Provider Ranking Report - Fiscal Year Ending 12/31/09. Payments by New York State during 2009 to Personal Care providers under contracts with Nassau County (exclusive of Consumer Directed Patient Assistant Program). Consumer Directed Patient Assistant Programs were not covered by the Law during the years covered by our audits.

compensated days off, impacting 840<sup>2</sup> employees. Each contractor was directed by the Comptroller's Office to take appropriate corrective action and follow-up reviews will be, or have been, performed to confirm their compliance. The table below summarizes the financial results of our findings.

### Summary of Findings for 2008 and 2009

| Year Issued | No. Audits Issued | 2007               |           |                                    |           | 2008               |          |                                    |          | Total            |           |
|-------------|-------------------|--------------------|-----------|------------------------------------|-----------|--------------------|----------|------------------------------------|----------|------------------|-----------|
|             |                   | Wage Under Payment |           | Compensated Time Off Under Payment |           | Wage Under Payment |          | Compensated Time Off Under Payment |          | No. of Emp.      | Amount    |
|             |                   | No. of Emp.        | Amount    | No. of Emp.                        | Amount    | No. of Emp.        | Amount   | No. of Emp.                        | Amount   |                  |           |
| 2008        | 7                 | 135                | \$76,173  | 175                                | \$61,423  |                    |          |                                    |          | 310              | \$137,596 |
| 2009        | 7                 | 116                | \$88,978  | 293                                | \$102,414 | 79                 | \$77,089 | 42                                 | \$13,309 | 530              | \$281,790 |
| Total       | 14                | 251                | \$165,151 | 468                                | \$163,837 | 79                 | \$77,089 | 42                                 | \$13,309 | 840 <sup>3</sup> | \$419,386 |

Note: The summary above does not include reports issued in 2010 with 2007 or 2008 findings.

In response to the audits, the PCA providers stated that they have made (or would make) payment in full to their employees and adjust their policies so that they are in full compliance with the Law. In addition to ensuring that these PCA providers have applied corrective action, as part of the follow-up audits, the Comptroller's Office will ensure that the agencies are subsequently in compliance with the Law.

We were discouraged to find in the audits performed during 2009, significant non-compliance continuing with regard to the payment of wages and benefits, including compensated time off. The Comptroller's Office publicized the results of the previous 2008 audits and the contractors had adequate time to perform self-audits and reviews, and take necessary corrective actions prior to the Comptroller's Office audits in 2009.

In addition, during 2009, seven PCA providers audited in prior years with significant findings were revisited to ensure that corrective action had taken place. Of the seven, we have issued follow-up audits of three in 2010), and confirmed that they have taken adequate corrective action. The follow-up audits of the remaining four have audit reports pending or the audits are in progress with the expectation that these audits will be released in 2010.

The Comptroller's Office was made aware of six waivers granted in 2009. We are currently working with the County Executive's Office to determine if any other waivers may have been granted or denied. Of the six waivers granted, four pertained to 2009 contracts, and two were for contract years prior to 2009. The two waivers granted for the contract years prior to 2009 were both to PCA providers. For the 2009 contractors granted waivers, two were PCA service providers and two were non-PCA providers.

<sup>2</sup> The number of employees impacted represents the total number of incidences in which an employee was under-compensated, in terms of wages or compensated days off, in 2007 and/or 2008. As a result, the same employee may account for up to four incidences if there was an under payment of both wages and compensated days off in both 2007 and 2008.

<sup>3</sup> Ibid.

The Living Wage Advisory Board has been a major source of guidance throughout 2009 and its suggestions and insights will continue to be utilized for improving the Law and its overall enforcement process. During 2009, in an effort to address enforcement and compliance issues experienced during audits, the Board developed a comprehensive list of recommendations for legislative changes to the Law. Some of the Board's changes were included in the 2010 amendments to the Law enacted on January 21, 2010. Amendments would help ensure that personal health care workers receive the Living Wage to which they are entitled in Nassau County.

## **2.0 BACKGROUND**

### **2.1 THE LIVING WAGE LAW**

All discussions of the Law in this document refer to the Law in existence during 2009, unless otherwise noted. The Law was amended on January 21, 2010, with an effective date of March 22, 2010.

#### ***Living Wage Rates***

The Law increases the minimum hourly wages on August 1 of each year up until and including August 1, 2010 when the last Living Wage rate increase of \$1.00 per hour will take effect and raise the Living Wage rate to \$12.50 per hour. In addition, a benefit supplement to be applied towards the provision of health benefits is required. The benefit supplement was \$1.55 per hour from August 1, 2008 to July 31, 2009, and thereafter, was increased to its current rate of \$1.60. 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 the New York-Northern New Jersey-Long Island metropolitan statistical area.<sup>4</sup> As of August 1, 2009, the Law required covered employers to pay an hourly wage of \$11.50, or \$13.10 if no health benefits are provided. The Law also required 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.

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."<sup>5</sup> However, the Law limits the annual increase to no greater than three and one-half percent.

#### ***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;

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<sup>4</sup> Nassau County Living Wage Law § 2 Definitions (2008).

<sup>5</sup> Nassau County Living Wage Law § 2 (4) (2008).

- financial assistance contracts<sup>6</sup> for more than \$50,000 and where the employer has at least 10 employees; and
- leases of property<sup>7</sup> owned or controlled by the County.

The Law also applies to County subcontractors, County tenants 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.<sup>8</sup>

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

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;
- 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;
- 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<sup>9</sup>; or
- covered by a bona fide collective bargaining agreement provided that the Law is expressly referenced in the agreement.<sup>10</sup>

### ***Penalties for Non-Compliance***

Where an employer fails to comply with the Law thirty (30) days after being notified in writing by the County, the Law allows the County to impose a fine “in the amount of \$500 for each week

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<sup>6</sup> Nassau County Living Wage Law § 2 Definitions (2008).

<sup>7</sup> Ibid

<sup>8</sup> The January 2010 amendments changed the definition of those employees who are covered by the Law. Nassau County Living Wage Law § 2 Definitions (2010).

<sup>9</sup> Nassau County Living Wage Law § 3 (2008).

<sup>10</sup> Nassau County Living Wage Law § 10 (c) (2008).

for each employee found not to have been paid in accordance with this title”<sup>11</sup>. In light of the significant number of instances of non-compliance and the number of employees affected, the Board had recommended that the Law be amended to increase the maximum allowable fine that may be imposed by the County and requiring employers who do not comply with the Law to repay wages with interest.<sup>12</sup> The Board also recommended that the Law impose a sanction of debarment after two findings of willful violation.

### ***Waivers***

The Law allows a County contractor to request a waiver from implementing the requirements of the Law. The Rules of the County Executive set forth the criteria under which a waiver may be granted (see Appendix D). 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 New York minimum wage requirements. From the inception of the Law through 2009, sixteen vendors (seven PCA and nine non-PCA) have been granted waivers from the Law.

## **2.2 THE LIVING WAGE UNIT**

The Law charges the Nassau County Comptroller with the responsibilities of monitoring, investigating and auditing compliance of the Law.<sup>13</sup> To perform these functions, the Comptroller established the Unit within the Field Audit Department of the Comptroller’s Office. In 2009, the personnel assigned to the Unit varied from six full-time staff to three. After the retirement of the Unit’s Director, the Unit was reorganized and in addition to the full-time staff assigned to work on Living Wage enforcement activities, other Field Audit staff rotated into the Unit to perform personal care agency audits on a part-time basis. As of December 31, 2009, the Unit has three staff (two auditors and one supervisor) assigned on a full-time basis. Other Field Audit staff assist with supervisory and quality assurance reviews on a part-time basis.

### ***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.<sup>14</sup> 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 revised the Rules in January 2009 in order to clarify the employer’s responsibilities in regard to compensated days off (see Appendix C). The Comptroller’s Office periodically reviews its Rules and will revise them as necessary.

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<sup>11</sup> Nassau County Living Wage Law § 7 (d) (iv) (2008).

<sup>12</sup> These legislative changes were enacted under the revised Law (passed January 21, 2010). Nassau County Living Wage Law § 7 (d) (iv) (2010).

<sup>13</sup> Nassau County Living Wage Law § 7 (a) (2008).

<sup>14</sup> Nassau County Living Wage Law § 7(b) (2008).

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 August 26, 2008 (see Appendix D).

### ***Webpage***

The Living Wage webpage may be found at: [www.nassaucountyny.gov/agencies/Comptroller/Livingwage/index.html](http://www.nassaucountyny.gov/agencies/Comptroller/Livingwage/index.html). The webpage includes a complete copy of the current Law including the 2010 amendments, 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 and 2008 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. The poster is available in English and Spanish (Appendices E and F) 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 telephone number and the e-mail address for the Unit to allow individuals to contact the Unit with eligibility questions and employee complaints. The Comptroller's Rules (Appendix C) 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 accordingly, to reflect changes in the Living Wage rates.

## **2.3 THE LIVING WAGE ADVISORY BOARD**

In order to benefit from the insight of union leaders and activists, the Comptroller established the Board in 2007. As of January 1, 2010, the current Board members are:

John Durso - President, Long Island Federation of Labor (Chairman)  
Jim Castellane - Building & Construction Trades Council (Vice Chair)  
Lisa Tyson - Long Island Progressive Coalition (Vice Chair)  
Jack Ahern - IUOE Local 30  
Shirley Aldebol - SEIU Local 32BJ  
Frank Bail - RWDSU Local 1102  
Walter Barton - NALC Branch 6000  
Patricia Bowden - TWU Local 252  
Roger Clayman - Executive Director LI Federation of Labor  
Donald Fiore - IBEW Local 25  
Nick LaMorte - CSEA Region 1  
Michele Lynch - 1199 SEIU

In 2009, the Board had four meetings where they discussed issues concerning challenges faced by the current Law and how certain changes would result in greater protection for a larger pool of employees. They also discussed ways to improve enforcement of the Law, how to publicize the Law, and how to coordinate Living Wage rate changes with other municipalities. 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 developed a comprehensive list of possible amendments to the Law. In July 2009, the Presiding Officer of the County Legislature met with the Board to discuss the need for amendments to the Law.

The proposed amendments were:

***Proposed Legislative Changes***

In May 2009, the Comptroller's Office sent a letter to the State Legislature outlining its support of a Bill directing that the State recognize the actual Living Wage payment made by personal care aide providers to its employees as an expense in their cost reports. The Bill also provides a mechanism for reimbursement of those costs. The purpose of the Bill is to adjust Medicaid rates to personal care service providers to enable them to meet the cost of paying personal care workers a statutorily-mandated Living Wage. As of January 6, 2010, the Bill had been discharged from the Social Services Committee and referred to the Health Committee.

In addition, the Board developed the following list of recommendations for legislative changes to the Living Wage Law:

- Require contractors and subcontractors to submit certified payroll reports similar to those submitted to the State to show compliance with prevailing wage laws.
- Publicize the names of employers who apply for a waiver so that interested parties could comment and provide information in support or opposition to the application.<sup>15</sup>
- Revise the eligibility criteria for waivers.<sup>16</sup>
- Determine what the County will do with unclaimed money by former employees who are owed money by covered employers but who cannot be located. The Board suggested that an escrow fund be established and that any unclaimed monies owed to workers who could not be found should revert to that fund, similar to New York State's database of unclaimed funds.<sup>17</sup>
- Exempt student interns working for the government.<sup>18</sup>
- Eliminate the exemption for child-care workers so that all child-care workers are covered under the Law.
- Coordinate with Suffolk County so Nassau and Suffolk Living Wage increases take effect on the same date. This would assist vendors with employees in both Nassau and Suffolk Counties.

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<sup>15</sup> This legislative change was enacted under the revised Law (passed January 21, 2010). Nassau County Living Wage Law §9b (2010).

<sup>16</sup> Ibid.

<sup>17</sup> This may be contrary to NYS Department of Labor regulations and would require further legal investigation.

<sup>18</sup> This legislative change was enacted under the revised Law (passed January 21, 2010). Nassau County Living Wage Law Definitions §2 (2010).

### *Nassau Community College*

The Law specifically excluded the College as an employer and, 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 issue was raised as to whether the Law should be changed to include the College as a Covered Employer. A review found that under Suffolk County's Living Wage Law, Suffolk Community College is a Covered Employer. Therefore, the Board recommended that the Law be amended to include Nassau Community College as a Covered Employer.<sup>19</sup>

### *Certified Payrolls*

The Board discussed the option of requiring certified payrolls from contractors and subcontractors to ensure their Living Wage compliance. The Comptroller's Office would like to see both contractors and subcontractors submit an annual certified payroll along with a payroll certification as a requirement for contracting with the County. In April 2009, the Comptroller's Office outlined new audit procedure requirements whereby contractors must provide signed Payroll Certification forms attesting that payroll information they provide is true, accurate and complete. Vendors may be asked to submit a form identifying all subcontractors who are working on County contracts on their behalf, and if applicable, a form to certify that they have no employees covered under the Living Wage Law. Currently, the certifications are being requested as audit circumstances warrant.

## **3.0 SCOPE OF 2009 AUDITS**

### *Audit Plan and Priorities*

The 2009 audit plan continued to focus on the PCA providers since these agencies employ a relatively large number of workers earning below the Living Wage; these contractors had annual billings to New York State of approximately \$73 million<sup>20</sup> in 2009. In addition, the audit plan called for targeting and revisiting companies previously audited 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 this program have begun in 2010.

Our 2009 audit plan included a review of the non-PCA County contracts covered by the Law. In 2009, audits were completed and audit reports issued for two non-PCA agencies providing temporary personnel services to the County.

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<sup>19</sup> Ibid.

<sup>20</sup> Source: New York State Department of Health Provider Ranking Report - Fiscal Year Ending 12/31/09. Payments by New York State during 2009 to Personal Care providers under contracts with Nassau County (exclusive of Consumer Directed Patient Assistant Program). Consumer Directed Patient Assistant Programs were not covered by the Law during the years covered by our audits.

Some Nassau County institutional foster care contracts are not covered by the Living Wage Law because they predate the January 1, 2007 enactment date of the Law. In 2009, the Nassau County Department of Social Services amended 13 contracts to include Living Wage compliance clauses. An additional 27 foster care contracts will be revised to include Living Wage compliance clauses when the contracts are renewed. These contracts all have termination dates of December 31, 2010.

In 2009, there were no significant leases entered into by the County, which were covered under the Law.

At the close of 2009, seven PCA providers who had been previously audited, with exceptions noted and reports issued, were in the process of being revisited for updates. The follow-up audits for three of these agencies were completed and released prior to the issuance of this report: Premier Health Care Services, Inc. (January 2010), First Choice Home Care, Inc. (July 2010) and Allen Health Care Services (July 2010); reports on the other four agencies' compliance with the Law will be released in 2010.

#### 4.0 AUDIT FINDINGS

Seven Living Wage audit reports were released in 2009. As illustrated in the table below, we found \$281,790 of underpayments impacting 530 employees.<sup>21</sup> Of the seven contractors audited, five were PCA providers and two were temporary employment agencies. The audit findings are described in more detail below.

#### 2009 Living Wage Findings

| Auditee                        | 2007               |                 |                                    |                  | 2008               |                 |                                    |                 | Total                   |                  |
|--------------------------------|--------------------|-----------------|------------------------------------|------------------|--------------------|-----------------|------------------------------------|-----------------|-------------------------|------------------|
|                                | Wage Under Payment |                 | Compensated Time Off Under Payment |                  | Wage Under Payment |                 | Compensated Time Off Under Payment |                 | No. of Emp.             | Amount           |
|                                | No. of Emp.        | Amount          | No. of Emp.                        | Amount           | No. of Emp.        | Amount          | No. of Emp.                        | Amount          |                         |                  |
| A&B Healthcare Services, Inc.  |                    |                 | 45                                 | \$26,067         |                    |                 |                                    |                 | 45                      | \$26,067         |
| ABLE Health Care Service, Inc. | 2                  | \$168           | 79                                 | \$12,126         |                    |                 |                                    |                 | 81                      | \$12,294         |
| 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         |
| VIP (a)                        |                    |                 |                                    |                  |                    |                 |                                    |                 |                         | \$0              |
| <b>Total PCAs</b>              | <b>47</b>          | <b>\$38,168</b> | <b>275</b>                         | <b>\$80,169</b>  | <b>30</b>          | <b>\$20,042</b> | <b>17</b>                          | <b>\$3,518</b>  | <b>369</b>              | <b>\$141,897</b> |
| Randstad US (b)                | 2                  | \$294           | 18                                 | \$22,245         |                    |                 | 23                                 | \$9,707         | 43                      | \$32,246         |
| Island Search (b)              | 67                 | \$50,516        |                                    |                  | 49                 | \$57,047        | 2                                  | \$84            | 118                     | \$107,647        |
| <b>Total non-PCAs</b>          | <b>69</b>          | <b>\$50,810</b> | <b>18</b>                          | <b>\$22,245</b>  | <b>49</b>          | <b>\$57,047</b> | <b>25</b>                          | <b>\$9,791</b>  | <b>161</b>              | <b>\$139,893</b> |
| <b>Total 2009</b>              | <b>116</b>         | <b>\$88,978</b> | <b>293</b>                         | <b>\$102,414</b> | <b>79</b>          | <b>\$77,089</b> | <b>42</b>                          | <b>\$13,309</b> | <b>530<sup>22</sup></b> | <b>\$281,790</b> |

Notes:

(a) The adoption of a collective bargaining agreement retroactive to the audit period resulted in no monetary findings.

(b) These non-PCAs are temporary employment agencies.

As previously indicated, the underlying conclusion drawn on the Living Wage audits performed in 2009 by the Comptroller's Office is that PCA providers continue to incorrectly compute compensation under the Living Wage Law. Two contractors had retained outside counsel to represent them and respond to the audit findings and recommendations issued by this Office, primarily by interpreting the Law in the favor of the agencies. In disputes with auditees with

<sup>21</sup> See footnote 1.

<sup>22</sup> Ibid.

regard to the Law, the Comptroller's Office seeks the counsel of the County Attorney's Office for clarification.

### ***PCA Contracts***

Nassau County enters into an agreement 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.<sup>23</sup> The County's share of these payments is normally 10%,<sup>24</sup> or \$11.4 million estimated for 2009.

Five audit reports of PCA providers were issued in 2009, which contained findings that 369<sup>25</sup> employees had been underpaid by \$141,897. Total payments in 2009 made by New York State to the PCA providers audited were approximately \$9.7 million. Audits in progress as of December 31, 2009, have identified an additional 419<sup>26</sup> employees potentially underpaid by \$92,068, based on audit work and/or on the vendor's assertion of the amount of underpayment.<sup>27</sup> The accuracy of these assertions and the corrective actions taken by the vendor will be reviewed as we complete the audits of these agencies in 2010.

Audit findings for the PCA service providers where audits were completed and reports issued in 2009. Below is a brief summary of the findings for each PCA:

- Able Health Care Services, Inc. did not provide its covered employees with compensated days off in accordance with the Law. Its policy provided that full-time employees received less than the mandated twelve compensated days off per year. The agency provided us with an analysis showing that employees were owed \$12,126 in accrued time, but indicated that a final computation of the amount due was still underway. Two employees were owed \$168 for underpayment of wages. Able provided this Office with documentation indicating it had made some of the payments, however, it disagreed with our application of the Law with regard to the vacation and bonus payments. The Comptroller's Office is currently conducting a follow-up audit of Able to determine if its computations of amounts paid to employees were correct and has sought the guidance of the County Attorney's Office on these issues.
- Jzanus Home Care, Inc. owed its employees \$35,925 by not properly compensating them for time off owed in accordance with the Law. The agency did not comply with the Law's requirement for compensated days off for its covered employees. The amounts owed averaged \$272 per employee. The Jzanus audit also found that, beginning June

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<sup>23</sup> Source: New York State Department of Health Provider Ranking Report - Fiscal Year Ending 12/31/09.

<sup>24</sup> Per the fiscal unit of the Department of Social Services.

<sup>25</sup> See footnote 1.

<sup>26</sup> Ibid

<sup>27</sup> The audits of Premier Home Health Care and Allen Health Care Services were released in January 2010 and July 2010, respectively; the numbers reported as part of the audits in progress include the Premier and Allen audit findings of 57 employees potentially underpaid by \$5,245.

2007, employees who were working overtime were paid \$0.27 per hour less than the amount required under the Law. Jzanus indicated that it had made payments in 2009. The Comptroller's Office is currently conducting a follow-up audit to determine if it has correctly paid its employees.

- VIP Healthcare Services' compensation policy was not compliant with the Law in 2007 because employees were not provided with paid days off until they completed a full year of service. The agency violated the Law's requirement that allows employees to: (1) earn time off each month and (2) begin using compensatory days off earned after six months of service. The agency determined that employees earned 3,442 hours of time off. Following the audit, the agency reached an agreement with the union representing its personal care employees. Under the agency's new collective bargaining agreement, employees agreed to waive the requirement of compensated days off with an effective date retroactive to January 1, 2007. Such an express waiver is permissible and supersedes the requirements of the Law.<sup>28</sup>
- A & B Health Care Services, Inc. did not pay its employees the hourly wage rate required by the Law in 2007; underpayments to employees ranged from \$0.27 to \$2.00 per hour. In addition, the agency did not institute a policy to provide employees with mandated compensated days off. As a result, only a small number of employees were provided with vacation day pay-outs. The agency owed employees \$26,067 resulting from the underpayment of days off in 2007. We are currently auditing the agency's compliance with the Law for fiscal year 2008. A & B indicated in its response to the audit report that all 2008 underpayments had been made to the employees, however, the agency disputed its underpayments for 2007. The Comptroller's Office is currently conducting a follow-up audit of this PCA provider to determine if it has applied all corrective actions and if payment was correctly made as it indicated.
- PHC Services, Ltd. owed its employees \$38,000 for 2007 and \$20,042 for the period January 1, 2008 to July 31, 2008, resulting from the underpayment of wages. In addition, the agency did not provide its covered employees with compensated days off in accordance with the Law. In 2007, employees were due \$6,051, while in 2008, employees were due \$3,518 in compensated time off. PHC indicated in its response to the audit report that the 2007 and 2008 underpayments due to its employees had been made. The Comptroller's Office is currently conducting a follow-up audit of this PCA provider to determine if it has applied all corrective actions and if payment was correctly made as it indicated.

In response to the audits, the PCA providers stated that they have made (or would make) payment in full to their employees and adjust their policies so that they are in full compliance with the Law. In addition to ensuring that these PCA providers have applied corrective action, as part of the follow-up audits, the Comptroller's Office will ensure that the agencies are subsequently in compliance with the Law.

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<sup>28</sup> Living Wage Law § 10 (c) (2008).

### ***County Service Contracts (Non-PCA)***

The Unit's review of non-PCA contracts identified two temporary personnel service providers to the County that had not complied with the Law. Two reports were issued in 2009, which contained audit findings that between the two companies 161<sup>29</sup> employees had been underpaid by \$139,893. The details of these findings are as follows:

- Island Search Group Inc. had not paid its employees the benefits supplement rate that is required by the Law when an entity does not provide health benefits to its employees. For fiscal years 2007 and 2008, the agency owed a total of \$107,647 to its employees. As of the date of this report, Island Search has not notified the Comptroller's Office of any payments having been made to its employees. This case has been referred to the County Attorney's Office.
- Randstad US had underpaid employees \$22,539 in 2007 and \$9,707 in 2008, primarily for failing to provide them with compensated time off. A follow-up review noted that the agency subsequently compensated its employees for these underpayments.

### ***Part-time and Seasonal County Employees***

It is important that the County ensure its own compliance with the Law. Through 2009, seasonal, part-time and student interns employed by the County were also covered by the Law and therefore, were entitled to the Living Wage. However, it was determined that County employees were not entitled to receive the benefits supplemental rate if they were covered by a collective bargaining agreement that provided health benefits even if certain employees did not qualify to receive such benefits. As County employees are covered by a collective bargaining agreement seasonal and part-time County employees are not entitled to the supplement. In July 2009, a review of the seasonal employees employed by Nassau County determined that none were earning less than the Living Wage rate applicable at that time.

### ***Waivers***

The Comptroller's Office was made aware of six waivers granted in 2009. We are currently working with the County Executive's Office to determine if any other waivers may have been granted or denied.

Of the six waivers granted, four pertained to 2009 contracts, and two were for contract years prior to 2009. The two waivers granted for the contract years prior to 2009 were both to PCA providers (Nassau-Suffolk Home Care Aides, Inc., and Massapequa Temporaries d/b/a MEA Health Care Services).

For the 2009 contractors granted waivers, two were PCA service providers (Long Island Care at Home and Attentive Care, Inc.), and two were non-PCA providers, (Maryhaven Center of Hope, and Island Search Group).

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<sup>29</sup>See footnote 1.

#### **4.0 ENFORCEMENT SUCCESSES AND CHALLENGES**

In attempting to monitor and audit entities covered by the Law, the Unit encountered some difficulties applying the Law in certain circumstances. One issue first identified in the 2007 Annual Report, was that certain PCA providers (CDPAP providers) were not subject to the Law because CDPAP providers had entered into Memorandums of Understanding (MOUs) with the Nassau County Department of Social Services and the MOUs pre-dated the Law's effective date of January 1, 2007. The Comptroller's Office brought this to the attention of the Health and Human Services management and was advised that in 2009, new agreements would be executed under which these providers would be subject to the Law. On January 1, 2009, the MOUs were replaced to include the Living Wage compliance clause.

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 Law. 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 their employers; for example, some employees were being paid for a thirteen-hour workday, while others were paid for a ten-hour workday despite 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.<sup>30</sup> The Comptroller's Office is considering developing a directive to address this issue.

We will continue to work with the County Attorney's Office to resolve issues raised by the contractors responding to our audit findings, such as the application of bonus and vacation payments, and travel reimbursements, forfeiture of accrued vacation upon termination and the application of the Law prior to contract execution.

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<sup>30</sup> August 31, 2009 letter from New York State Department of Labor to Comptroller's Office.



**APPENDIX A: THE LIVING WAGE LAW**

## TITLE 57

### NASSAU COUNTY LIVING WAGE LAW

#### Section 1. Short title

This law shall be known as the Nassau County Living Wage Law, which shall appear in the miscellaneous laws as title 57.

#### § 2. Definitions

For purposes of this law, the following terms shall have the following meanings:

"Benefits" means payment by an entity subject to the provisions of this law to its employees or on their behalf of an amount no less than one dollar and fifty cents per hour worked towards the provision of health benefits or child care benefits for employees and/or their dependents.

"Benefits supplement rate" means one dollar and fifty cents per hour, which may be paid to an employee in lieu of benefits. Such supplement rate shall be 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.

"Building services" means any work providing custodial, janitorial, grounds-keeping, or security guard services.

"Building services employee" means an employee of an entity performing building services.

"Child care" means care for a child on a regular basis provided away from the child's residence for less than 24 hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child.

"County" means the county of Nassau.

"County service contract" means (1) a contract let to a contractor by the county for the furnishing of services to or for the county and that involves an expenditure equal to or greater than twenty-five thousand dollars, except contracts where services are incidental to the delivery of products, equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other personal property is not a "service contract" for the purposes of this definition. This definition shall not include contracts awarded pursuant to the county's emergency procurement procedure as set forth in section twenty-two hundred six of the county charter, inter-governmental agreements, agreements with state or local public authorities or agreements with local development corporations incorporated pursuant to section 1411 of the not-for-profit corporations law.

"County contractor" means any entity or person that enters into a county service contract with the county.

"County financial assistance" shall mean any grant, loan, tax incentive or abatement, bond financing, subsidy or other form of assistance of more than fifty thousand dollars which is realized by or provided to an entity having at least ten employees by or through the authority or approval of the county. For purposes of

this law, county financial assistance shall not include industrial development bonds, community development block grant loans, and enterprise-zone-related incentives.

"County financial assistance recipient," or "CFAR" means any entity that receives financial assistance from the county. In addition, any tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who employs at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using such property, shall be considered a CFAR for the purposes of this chapter and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

"County lease" means 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.

"County lessee" means any entity leasing property from the county pursuant to a county lease.

"County subcontractor" means any entity or person that is engaged by a county contractor to assist in performing any of the services to be rendered pursuant to a county service contract. This definition does not include any entity that merely provides goods relating to a county service contract or that provides services of a general nature (such as relating to general office operations) to a county service contractor which do not relate directly to performing the services to be rendered pursuant to the county service contract. An entity shall be deemed a county subcontractor for the duration of the period during which it assists a county contractor in performing the county service contract.

"Employee" means any person who is employed (1) by the county; (2) as a service employee of a contractor or subcontractor pursuant to one or more service contracts and who expends any of his or her time thereon. Such employees shall include but not be limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; (3) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the subject of county financial assistance; (4) by a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property which is the subject of county financial assistance; or (5) as a service employee of a county lessee or by a service contractor of a county lessee and who expends at least half of his or her time on the leased premises. Any person who is a managerial, supervisory or professional employee shall not be considered an employee for purposes of this definition.

"Employer" means the county and any entity or person who is a CFAR or a service contractor of a CFAR, county contractor or subcontractor, county lessee, or a building services contractor or subcontractor of a county lessee, except that Nassau Community College shall not be considered an employer for

purposes of this law.

"Entity" or "person" means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

"Inter-governmental agreement" means any agreement or contract between the county and a) any municipal corporation located in the county; b) any school district located in the county; or c) any special district located in the county.

"Living wage" means an hourly wage rate of twelve dollars and fifty cents (\$12.50) per hour phased in as provided below; provided, however, that for homecare services under the personal care services program, the wage rates below shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this law:

- (1) from the effective date of this law through the thirty-first day of July, two thousand eight, nine dollars and fifty cents per hour;
- (2) from the first day of August, two thousand eight, through the thirty-first day of July, two thousand nine, ten dollars and fifty cents per hour;
- (3) from the first day of August, two thousand nine, through the thirty-first day of July, two thousand ten, eleven dollars and fifty cents per hour;
- (4) from the first day of August, two thousand ten, and through the thirty-first day of July, two thousand eleven, twelve dollars and fifty cents per hour.

Beginning on the first day of August, two thousand eleven, and on the first day of August every year thereafter, the living wage shall be adjusted upward 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. In no event shall such wage increase be greater than three and one-half percent.

### §3. Minimum Compensation

#### a. Wages

Employers shall pay their employees no less than the living wage for each hour they perform County work and either provide them benefits or supplement their hourly wage rate by an amount no less than the benefits supplement rate; provided, however, that:

- i. employers who provide building services shall pay their employees no less than the living wage, as required by this section, or the prevailing wage, whichever is greater; and
- ii. where an employee is covered by a bona fide collective bargaining agreement which provides benefits, his or her employer shall not be required to provide benefits pursuant to this subdivision.

#### b. Compensated days off

Employers shall provide their employees no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee's request. Full-time employees shall accrue such leave at a rate of one day per month of full-time employment. Part-time employees who work twenty or more hours per

week shall accrue such leave in increments proportional to the rate of accrual for full-time employees. Any employee shall be eligible to begin using such accrued leave six months following his or her start date of employment, or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve compensated days off.

c. Exemption for minors and employment programs, the disabled, child care

This law shall not apply to:

1) any employee who is:

(A) under the age of eighteen who is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer employee; or

(B) 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; provided, however, that this exemption shall apply only when the trainee does not replace, displace or lower the wages or benefits of any employee, and the training does not exceed two years; and

2) any disabled employee, where such disabled employee:

(A) is covered by a current sub-minimum wage certificate issued to the employer by the United States department of labor; or

(B) 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.

3) any county service contract or county financial assistance in relation to the furnishing of child care services; pre-school services provided pursuant to section forty-four hundred ten of the New York State Education Law; and early intervention services, as defined in section twenty-five hundred forty-one of the New York State Public Health Law.

4) any county service contract or county financial assistance where the application of this law in a particular case would violate any specific state or federal statutory, regulatory, or constitutional provision.

#### § 4. Duration

a. For CFARs, assistance given by the county in an amount equal to or greater than fifty thousand dollars in any twelve month period shall require compliance with this chapter for the life of the contract in the case of assistance given to fund a program, or for five years in the case of assistance given for the purchase of real property or personal property to construct facilities, including but not limited to materials, equipment, fixtures, merchandise, and machinery.

b. A service contractor and subcontractor shall be required to comply with this chapter for the term of the county service contract.

#### § 5. Obligations of Employers

a. Certification of Compliance. 1) Prior to the award of a county service contract, county financial assistance or county lease, any employer seeking such contract, financial assistance or lease shall provide the county with a certification containing the following information:

(A) the name, address, and telephone number of the chief executive officer of the employer;

(B) a statement that, if the county service contract, county financial assistance or county lease is awarded, the employer agrees to comply with the requirements of this law, and with all applicable federal, state and local laws;

(C) a record of any instances during the preceding five years in which the employer has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or where any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws; and

2) A county contractor shall each year throughout the term of the county service contract submit to the county an updated certification whenever there have been material changes to information contained in the current certification.

b. Payroll records.

Every employer shall maintain original payroll records for each of its employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of this law, and the wages paid and benefits provided for such hours worked, for a period of four years after completion of the term of the county service contract or receipt of county financial assistance. Upon request by the comptroller, a covered employer shall grant county employees access to worksites and produce, for inspection and copying, its payroll records and any other data that may be required by the comptroller from time to time for any or all of its covered employees for the prior four-year period. Failure to maintain such records as required shall create a rebuttable presumption that the covered employer did not pay its covered employees the wages and benefits required under the law.

§ 6. Implementation by county

a. The county shall comply with and enforce the requirements of this law, which shall be a term and condition of any county service contract, county financial assistance or county lease. The county shall not expend county funds in connection with any county service contract, county financial assistance, or county lease in contravention of the provisions of this law.

b. Every county service contract, county financial assistance agreement, or county lease shall have annexed to it the following materials which shall form a part of the specifications for and terms of such contract or agreement:

(A) a provision obligating the employer to comply with all applicable requirements under this law, as well as a provision providing that: (i) failure to comply with the requirements of this law may constitute a material breach by the employer; (ii) such failure shall be determined by the county; and (iii) if, within thirty days after such employer receives written notice of such a breach, the employer fails to cure such breach, the county shall have the right to pursue any rights or remedies available under the terms of such county service contract, county financial assistance, or county lease or under applicable law, including termination of such contract or assistance;

(B) the certification required under subdivision a of section five of this law.

§ 7. Monitoring and enforcement

a. The comptroller shall have the authority to monitor, investigate, and



audit compliance by all contracting agencies and may contract with non-governmental agencies to investigate possible violations.

b. The county executive or his or her designee may promulgate rules to implement the provisions of this law and may delegate such authority to the comptroller.

c. The comptroller shall submit an annual report to the county executive and the county legislature summarizing and assessing the implementation of and compliance with this law during the preceding year.

d. Where an employer has been determined to have violated any provision of this title, such employer shall be given written notice thereof by the county. If, within thirty days after such employer receives such notice, he or she fails to cure such breach, the county shall have the right to pursue any rights or remedies available under the terms of its contract or CFAR agreement with such employer, or under applicable law, including, but not limited to:

(i) suspension and termination of such contract or financial assistance;

(ii) payback of any or all of the contract or financial assistance awarded by the county;

(iii) declare the employer ineligible for future county service contracts, county financial assistance and county leases until all penalties and restitution have been paid in full;

(iv) a fine payable to the county of Nassau in the amount of \$500 for each week for each employee found not to have been paid in accordance with this title;

(v) wage restitution for each such employee.

#### § 8. Private Right of Action

a. An employee may, in addition to any other remedy provided by this law, institute an action in any court of competent jurisdiction against the employer alleged to have violated this law. For failure to pay wages or provide benefits required under this law, such court may award any of the remedies provided under section one hundred ninety eight of the New York state labor law. For failure to comply with other requirements of this law, including protections against retaliation and discrimination, the court may award any appropriate remedy at law or equity, including but not limited to back pay, payment for wrongly denied benefits, interest, other equitable or make-whole relief, reinstatement, injunctive relief and/or compensatory damages. The court shall award reasonable attorney's fees and costs to any complaining party who prevails in any such enforcement action.

b. Notwithstanding any inconsistent provision of this law or of any other general, special or local law, ordinance, county charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee under the provisions of this law because of the prior receipt by the employee without protest of wages or benefits paid, or on account of the employee's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages or benefits received by the employee are received under protest, or on account of the

employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages or benefits due the employee for the period covered by such payment.

c. An action pursuant to this section must be commenced within three years of the date of the alleged violation, or within three years of the final disposition of any administrative complaint or action concerning the alleged violation or, if such a disposition is reviewed in a proceeding pursuant to article seventy-eight of the New York state civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this law is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This law shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

d. This section shall not be construed to authorize an action against the county or any of its officers or employees relating to either the enforcement or implementation of this title.

#### § 9. Waiver

Any county contractor may request a waiver of the requirements of this law by submitting an application therefor to the county executive, or his or her designee, who shall establish such rules, regulations, procedures and forms as he or she may deem necessary to carry out the provisions of this section, as well as the eligibility criteria for such waiver, which shall include, but not be limited to the following:

a. 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; or

b. Compliance with the requirements of this law will directly increase a contractor's expected total annual budget in an amount greater than ten percent of the prior fiscal year's budget.

#### § 10. Other provisions

a. Except where expressly provided otherwise in this law, the requirements of this law shall apply to county service contracts and county leases entered into, and county financial assistance awarded after the effective date of this law, and shall not apply to any existing county service contract or county lease entered into or county financial assistance awarded prior to that date. Where a county service contract, a county lease or county financial assistance is renewed or extended after the effective date of this law, such renewal or extension shall be deemed a new county service contract, a new county lease, or new county financial assistance, as the case may be, subject to the requirements of this law, as applicable.

b. Nothing in this law shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement that mandates the provision of higher or superior wages, benefits, or protections to covered employees. No requirement or provision of this law shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law. However, in such circumstances, only those



specific applications or provisions of this law for which coverage would be preempted shall be construed as not applying.

c. The requirements of this law may be waived by the written terms of a bona fide collective bargaining agreement, provided that this local law is expressly referenced in the agreement, and that the agreement sets forth in clear and unambiguous terms the desire of all parties to waive some or all of the requirements of this local law. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of any of the requirements of this Section.

d. Not-for-profit corporations shall be eligible for financial assistance from the Nassau County Living Wage Contingency Fund, or any successor fund thereto, in order to meet increased payroll expenses incurred due the operation of this law, upon filing a request for such assistance with the county executive or his or her designee, who shall establish such rules, regulations, procedures and forms as he or she may deem necessary to carry out the provisions of this subdivision.

#### § 11. Retaliation and Discrimination Barred

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of this law, or who seeks or communicates information regarding rights conferred by this law in circumstances where he or she in good faith believes this law applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered employee subjected to any action that violates this subsection may pursue administrative remedies or bring a civil action pursuant to section 5 of this law in a court of competent jurisdiction.

#### § 12. Severability

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 13. Effective date. This local law shall take effect immediately.

(Added by Local Law No. 1-2006, passed by the Legislature on Dec. 19, 2005)

and signed by the County Executive on January 16, 2006; amended by Local Law No. -2006, passed by the Legislature on December 4, 2006 and signed by the County Executive on January 3, 2007.)

**APPENDIX B: AMENDMENTS TO THE LIVING WAGE LAW**

866

Clerk Item No. 866-09 - Amendment in the Nature of a Substitution

Introduced by Presiding Officer Yatauro and Legislator Scannell

Co-sponsored by Legislators Abrahams, Bosworth, Corbin, Denenberg, Jacobs, Mejias, Toback and Wink

LOCAL LAW 1-2010

A LOCAL LAW to amend Title 57 of the Miscellaneous Laws of Nassau County, as enacted by Local Law No. 1-2006, as amended by Local Law 19-2006

Passed by the Nassau County Legislature on December 21, 2009

Voting: ayes: 18, nays: 0, abstained: 0

Became a law on January 21, 2010

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. §§ 2, 3, 7, 9, and 10 of Title 57 of the Miscellaneous Laws of Nassau County are amended to read as follows:

§ 2. Definitions

For purposes of this law, the following terms shall have the following meanings:

"Benefits" means payment by an entity subject to the provisions of this law to its employees or on their behalf of an amount no less than one dollar and fifty cents per hour worked towards the provision of health benefits or child care benefits for employees and/or their dependents. For purposes of this law, benefits shall also be paid in the above amount for every hour an employee receives as compensated time off.

"Benefits supplement rate" means one dollar and fifty cents per hour, which may be paid to an employee in lieu of benefits. Such supplement rate shall be 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.

"Building services" means any work providing custodial, janitorial, grounds-keeping, or security guard services.

"Building services employee" means an employee of an entity performing building services.

"Child care" means care for a child on a regular basis provided away from the child's residence for less than 24 hours per day by someone other than the parent, step-parent, guardian or relative within the third degree of consanguinity of the parents or step-parents of such child.

"County" means the county of Nassau.

"County service contract" means (1) a contract let to a contractor by the county for the

FORM 100-100  
MAJORITY COUNSEL  
[Signature]

furnishing of services to or for the county and that involves an expenditure equal to or greater than twenty-five thousand dollars, except contracts where services are incidental to the delivery of products, equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other personal property is not a "service contract" for the purposes of this definition. This definition shall not include contracts awarded pursuant to the county's emergency procurement procedure as set forth in section twenty-two hundred six of the county charter, inter-governmental agreements, agreements with state or local public authorities or agreements with local development corporations incorporated pursuant to section 1411 of the not-for-profit corporations law. "County contractor" means any entity or person that enters into a county service contract with the county.

"County financial assistance" shall mean any grant, loan, tax incentive or abatement, bond financing, subsidy or other form of assistance of more than fifty thousand dollars which is realized by or provided to an entity having at least ten employees by or through the authority or approval of the county. For purposes of this law, county financial assistance shall not include industrial development bonds, community development block grant loans, and enterprise-zonerelated incentives.

"County financial assistance recipient," or "CFAR" means any entity that receives financial assistance from the county. In addition, any tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who employs at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using such property, shall be considered a CFAR for the purposes of this chapter and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

"County lease" means 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.

"County lessee" means any entity leasing property from the county pursuant to a county lease.

"County subcontractor" means any entity or person that is engaged by a county contractor to assist in performing any of the services to be rendered pursuant to a county service contract. This definition does not include any entity that merely provides goods relating to a county service contract or that provides services of a general nature (such as relating to general office operations) to a county service contractor which do not relate directly to performing the services to be rendered pursuant to the county service contract. An entity shall be deemed a county subcontractor for the duration of the period during which it assists a county contractor in performing the county service contract.

"Employee" means any person who is employed (1) by the County, except student interns; or by Nassau Community College, except for student workers (2) as a service employee of a contractor or subcontractor pursuant to one or more service contracts and who expends any of his or her time thereon. Such employees shall include but not be limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; (3) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the

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LEGISLATURE  
NASSAU COUNTY

subject of county financial assistance; (4) by a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property which is the subject of county financial assistance; or (5) as a service employee of a county lessee or by a service contractor of a county lessee and who expends at least half of his or her time on the leased premises. Any person who is a managerial, supervisory or professional employee shall not be considered an employee for purposes of this definition.

“Employer” means the county and any entity or person who is a CFAR or a service contractor of a CFAR, county contractor or subcontractor, county lessee, or a building services contractor or subcontractor of a county lessee, except that Medicaid funded assisted living program facilities that were providing services within Nassau County prior to 2006 and who continue to provide such services shall not be considered an employer for purposes of this law.

"Entity" or "person" means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

“Inter-governmental agreement” means any agreement or contract between the county and a) any municipal corporation located in the county; b) any school district located in the county; or c) any special district located in the county.

“Living wage” means an hourly wage rate of twelve dollars and fifty cents (\$12.50) per hour phased in as provided below; provided, however, that for homecare services under the personal care services program, the wage rates below shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this law:

- (1) from the effective date of this law through the thirty-first day of July, two thousand eight, nine dollars and fifty cents per hour;
- (2) from the first day of August, two thousand eight, through the thirty-first day of July, two thousand nine, ten dollars and fifty cents per hour;
- (3) from the first day of August, two thousand nine, through the thirty-first day of July, two thousand ten, eleven dollars and fifty cents per hour;
- (4) from the first day of August, two thousand ten, and through the thirty-first day of July, two thousand eleven, twelve dollars and fifty cents per hour.

Beginning on the first day of August, two thousand eleven, and on the first day of August every year thereafter, the living wage shall be adjusted upward 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. In no event shall such wage increase be greater than three and one-half percent.

“Student interns” means persons who are currently enrolled in a secondary or post-secondary educational institution, whether on a part-time or full-time basis, and are employed in a temporary position with the County. “Student workers” means persons who are currently Nassau Community College students, and are employed at Nassau Community College.

§3. Minimum Compensation  
a. Wages

Employers shall pay their employees no less than the living wage for each hour they perform County work and either provide them benefits or supplement their hourly wage rate by an amount no less than the benefits supplement rate; provided, however, that:

- i. employers who provide building services shall pay their employees no less than the living wage, as required by this section, or the prevailing wage, whichever is greater; and
- ii. where an employee is covered by a bona fide collective bargaining agreement which provides benefits, his or her employer shall not be required to provide benefits pursuant to this subdivision.

b. Compensated days off

Employers shall provide their employees no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee's request. Paid days off must be compensated at no less than the living wage rate plus the benefits supplement rate; except that if the employer provides benefits or subsection 3(a)(ii) applies, then the health benefits supplement need not be paid for compensated days off. Full-time employees shall accrue such leave at a rate of one day per month of full-time employment. Part-time employees who work twenty or more hours per week shall accrue such leave in increments proportional to the rate of accrual for full-time employees. Any employee shall be eligible to begin using such accrued leave six months following his or her start date of employment, or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve compensated days off. Compensated days off shall not be forfeited upon separation from service; such days shall be paid out to the employee upon such separation at the living wage rate at the time of separation.

c. Exemption for minors and employment programs, the disabled, child care

This law shall not apply to:

1) any employee who is:

- (A) under the age of eighteen who is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer employee; or
- (B) 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; provided, however, that this exemption shall apply only when the trainee does not replace, displace or lower the wages or benefits of any employee, and the training does not exceed two years; and

2) any disabled employee, where such disabled employee:

- (A) is covered by a current sub-minimum wage certificate issued to the employer by the United States department of labor; or
- (B) 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.

3) any county service contract or county financial assistance in relation to the furnishing of child care services; sleep away camp services for the disabled; pre-school services provided pursuant to section forty-four hundred ten of the New York State Education Law; and early intervention services, as defined in section twenty-five hundred forty-one of the New York State Public Health Law.

4) any county service contract or county financial assistance where the application of this law in a particular case would violate any specific state or federal statutory, regulatory, or constitutional provision.

d. No effect on county wage pattern

Nothing in this law shall be construed to establish a wage or benefit pattern for county employees.

§ 7. Monitoring and enforcement

a. The comptroller shall have the authority to monitor, investigate, and audit compliance by all contracting agencies and may contract with non-governmental agencies to investigate possible violations.

b. The county executive or his or her designee may promulgate rules to implement the provisions of this law and may delegate such authority to the comptroller.

c. The comptroller shall submit an annual report to the county executive and the county legislature summarizing and assessing the implementation of and compliance with this law during the preceding year.

d. Where an employer has been determined to have violated any provision of this title, such employer shall be given written notice thereof by the county. If, within thirty days after such employer receives such notice, he or she fails to cure such breach, the county shall have the right to pursue any rights or remedies available under the terms of its contract or CFAR agreement with such employer, or under applicable law, including, but not limited to:

(i) suspension and termination of such contract or financial assistance;

(ii) payback of any or all of the contract or financial assistance awarded by the county;

(iii) declare the employer ineligible for future county service contracts, county financial assistance and county leases until all penalties and restitution have been paid in full;

(iv) imposition of a fine payable to 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;

(v) wage restitution plus 9% simple interest for each such employee.

§ 9. Waiver

a. Any county contractor may request a waiver of the requirements of this law by submitting an application therefor to the county executive, or his or her designee, who shall establish such rules, regulations, procedures and forms as he or she may deem necessary to carry out the provisions of this section, as well as the eligibility criteria for such waiver, which shall include, but not be limited to the following:

(i) The highest paid officer or employee of such contractor earns a salary and/or receives fringe benefits that the Comptroller, in its discretion, may determine a method for valuing



such benefits, including but not limited to dividends, a car and health insurance which cumulatively, when calculated on an hourly basis, is less than six times the lowest wage or salary paid by the contractor; or

(ii) Compliance with the requirements of this law will directly increase a contractor's expected total annual budget in an amount greater than ten percent of the prior fiscal year's budget

b. The name and address of any county contractor that applies for a waiver pursuant to this section shall be listed on the Nassau County web site at least 45 days prior to any decision on the granting of said waiver. Any interested party shall have 15 days from the posting of said contractor to provide written comments on the application and a decision shall issue within 30 days of the closing of the comment period.

#### § 10. Other provisions

a. Except where expressly provided otherwise in this law, the requirements of this law shall apply to county service contracts and county leases entered into, and county financial assistance awarded after the effective date of this law, and shall not apply to any existing county service contract or county lease entered into or county financial assistance awarded prior to that date. Where a county service contract, a county lease or county financial assistance is renewed or extended after the effective date of this law, such renewal or extension shall be deemed a new county service contract, a new county lease, or new county financial assistance, as the case may be, subject to the requirements of this law, as applicable.

b. Nothing in this law shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement that mandates the provision of higher or superior wages, benefits, or protections to covered employees, unless the requirements in subsection c of this section are fulfilled. No requirement or provision of this law shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law. However, in such circumstances, only those specific applications or provisions of this law for which coverage would be pre-empted shall be construed as not applying.

c. The requirements of this law may be waived by the written terms of a bona fide collective bargaining agreement, provided that this local law is expressly referenced in the agreement, and that the agreement sets forth in clear and unambiguous terms the desire of all parties to waive some or all of the requirements of this local law. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of any of the requirements of this Section.

d. Not-for-profit corporations shall be eligible for financial assistance from the Nassau County Living Wage Contingency Fund, or any successor fund thereto, upon funding availability, in order to meet increased payroll expenses incurred due the operation of this law, upon filing a request for such assistance with the county executive or his or her designee, who shall establish such rules, regulations, procedures and forms as he or she may deem necessary to carry out the provisions of this subdivision.

Section 2. SEQRA Determination. This legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this action is an unlisted action under the provisions of Title 6 NYCRR Part 617, and that based on an evaluation of the environmental criteria set forth in §617.7(c) that are considered to be indicia of significant adverse environmental impacts, along with the recommendation of the Nassau County Planning Commission acting in its advisory capacity to the legislature, that such action will not have significant adverse impacts on the environment, and that no additional environmental review or action is necessary.

Section 3. Effective date. This local law shall take effect sixty (60) days after becoming a law.

**DATE SUBMITTED** 12/23/09

**DEPUTY COUNTY EXECUTIVE  
ACTING FOR THE COUNTY EXECUTIVE**

**DATE APPROVED** \_\_\_\_\_

**APPENDIX C: RULES OF THE COUNTY COMPTROLLER**



**COUNTY OF NASSAU  
RULES OF THE COMPTROLLER**

**THE NASSAU COUNTY LIVING WAGE LAW  
LOCAL LAW 1-2006, MISCELLANEOUS LAWS TITLE 57**

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## **PART I**

### **INTRODUCTION**

#### **SECTION A: AUTHORITY AND USAGE**

- a. These Rules are promulgated pursuant to Local Law 1-2006, Section 7(a) which authorizes the Comptroller to monitor, investigate, and audit compliance by all contracting agencies and may contract with non-governmental agencies to investigate possible violations of the Living Wage Law.
- b. Whenever the term “Law” or “Living Wage Law” is used in this document, it shall mean Local Law 1-2006, otherwise known as the Nassau County Living Wage Law. Whenever the terms “Rule” or “Rules” are used in this document, it shall mean these Rules of the Nassau County Comptroller regarding the Nassau County Living Wage Law.

## **PART II**

### **INVESTIGATION, MONITORING & ENFORCEMENT**

#### **SECTION A: INVESTIGATING COVERED EMPLOYEE COMPLAINTS**

##### **1. RESPONSIBILITIES OF COVERED EMPLOYERS**

- a. Covered Employers are required to cooperate with the *Living Wage Unit* so that it may perform its monitoring, investigating and auditing functions pertaining to the Law. Covered Employers must permit access to work sites, payroll records and other relevant documents for compliance purposes. Cooperation includes, but is not limited to, producing payroll records for inspection and copying if deemed relevant and necessary by the *Living Wage Unit*.

#### **SECTION B: MONITORING AND ENFORCEMENT**

##### **1. RESPONSIBILITIES OF THE LIVING WAGE UNIT**

The Living Wage Unit is responsible for ensuring that Covered Employers are in compliance with the Living Wage Law. The investigation process may include, but is not limited to, the following:

- a. Visiting relevant work site(s).
- b. Notifying Covered Employers and Contracting Agencies if any non-compliance determinations have been made.

- c. Conducting follow-up investigations or audits with Covered Employers to ensure that corrective action has been taken.
- d. Referring any cases of non-compliance to the County Attorney and the Contracting Agency for further appropriate action.

## 2. RESPONSIBILITIES OF COVERED EMPLOYEES

- a. Covered Employers must ensure that its covered subcontractors comply with the requirements of the Law by attaching to each subcontract, a provision obligating the subcontractor to comply with the requirements of the Law. This provision shall also provide that failure to comply with the requirements of the Law may constitute a material breach of contract by the subcontractor.
- b. During the term of the County service contract, Covered Employers must notify the Contracting Agency and the *Living Wage Unit* of any material changes in the information contained in their current certification or their subcontractors' certification within sixty (60) days of the date of the material change.

## **PART III**

### **RECORD KEEPING & REPORTS**

#### **SECTION A: PUBLICATION OF LIVING WAGE RATES**

##### 1. RESPONSIBILITIES OF COVERED EMPLOYERS

- a. Provide written notification to each of their Covered Employees of the adjusted living wage and the health benefit supplement rates and the effective date of the change at least seven (7) days prior to the effective date.
- b. Post Living Wage notices in a conspicuous manner at all relevant work sites/locations no later than the day on which any work begins under a County service contract.
- c. Provide all covered subcontractors with Living Wage notices (see subsection (b) above) for posting in a conspicuous manner at each covered work site/location.
- d. Provide all subcontractors with certification of compliance forms. Covered Employers must maintain in their files for inspection, copies of Living Wage-related subcontractor completed paperwork.

## **SECTION B: PAYROLL RECORDS OF COVERED EMPLOYERS**

### **1. RESPONSIBILITIES OF COVERED EMPLOYER:**

- a. Maintain its payroll records in accordance with the Living Wage Law, Section 5(b).
- b. Upon request by the Living Wage Unit, provide a separate list of Covered Employees which shall include the name, date of hire, position, rate of pay and benefits paid for each employee.
- c. Submit any required information in a timeframe established by the Living Wage Unit.
- d. Require its subcontractors to maintain payroll records for its Covered Employees and related records under each subcontract including, but not limited to, the following:
  - Number of hours worked each day for each employee;
  - Base rate of wages for each employee;
  - Gross wages;
  - Deductions made;
  - The actual wages paid each employee; and
  - A record of compensated days off.
- e. Require its subcontractors to preserve its payroll records for a period of four (4) years after the expiration of the subcontract.

## **SECTION C: COMPENSATED DAYS OFF**

### **1. RESPONSIBILITIES OF COVERED EMPLOYERS**

In furtherance of Section 3b of the Living Wage Law, Covered Employers may offer eligible Employees the option of receiving cash payments in lieu of accrued days off, in accordance with the accrual requirements of the Law. Employers cannot, however, mandate that Employees take cash payments. Compensation policies shall include dates certain for when cash payments will be made, which shall be no less than every six (6) months.



A copy of the Employer's policy on compensated days off shall be provided to each Employee within thirty (30) days of the Employee's start date. Amendments to the policy shall be communicated to Employees within thirty (30) days of the amendment(s).

Where an employee separates from service with a Covered Employer for any reason, the Employer shall pay out an employee's accrued days bank within thirty (30) days of the employee's last day of employment.

**APPENDIX D: RULES OF THE COUNTY GZGEW&G**



**COUNTY OF NASSAU**

**RULES OF THE COUNTY EXECUTIVE:  
THE NASSAU COUNTY LIVING WAGE LAW  
LOCAL LAW 1-2006, MISCELLANEOUS LAWS TITLE 57**

**EFFECTIVE AUGUST 26, 2008, AS AMENDED**

## **Section 1. Authority and Usage**

a. These Rules are promulgated pursuant to Local Law 1-2006, section 7(b) which authorizes the County Executive to promulgate rules to implement the provisions of the Nassau County Living Wage Law.

b. Wherever the term "Law" or "Living Wage Law" is used in this document, it shall mean Local Law 1-2006, otherwise known as the Nassau County Living Wage Law. Whenever the terms "Rule" or "Rules" are used in this document, it shall mean these Rules of the County Executive regarding the Nassau County Living Wage Law.

## **Section 2. Clarification of Terms**

a. Awarded. "Awarded" shall mean that time at which a contractor is selected by the County, or any department of the County, to receive county financial assistance, even if that time is before execution of a county financial assistance agreement by all parties or approval of such agreement by the County Legislature.

See Living Wage Law, § 5(a) "Certification of Compliance" and § 10 "Other Provisions"

b. County Service Contract. "County Service Contract" shall mean any contract let to a contractor by the county for the furnishing of services to or for the county and that involves an expenditure equal to or greater than twenty-five thousand dollars. A contract for the sale of goods to the County, or a contract for the sale of goods where incidental services are being provided to the County, are not considered County Service Contracts. This definition shall not include contracts awarded pursuant to the County's emergency procurement procedure as set forth in section 2206 of the county charter, inter-governmental agreements, agreements with state or local public authorities or agreements with local development corporations incorporated pursuant to section 1411 of the not-for-profit corporations law.

c. County Financial Assistance. "County Financial Assistance" shall mean any grant, loan, tax incentive or abatement, bond financing, subsidy or other form of assistance of more than fifty thousand dollars given by or through the authority or approval of the county to an entity having at least ten employees. County financial assistance shall not include industrial development bonds, community development block grant loans, and enterprise-zone-related incentives.

d. Disabled Employee. For purposes of Section 3(c)(2) of the Law, "disabled employee" shall mean any employee whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury. An employee may not be considered a disabled employee under the Law unless such employee is covered by a sub-minimum wage certificate issued by the United States Department of Labor in compliance with 29 U.S.C. § 214(c) and 29 C.F.R. Part 525, or would qualify to receive such a sub-minimum wage certificate but for the fact that the employer is paying a wage equal to or higher than the federal minimum wage.

e. Employee and Employer.

i. Under Section 1 of the Living Wage Law, an "Employee" for the purposes of a county service contract is an employee of a county contractor "pursuant to one or more service contracts and who expends any of his or her time thereon." An Employee may be:

A. Any person hired by a County contractor specifically to work on the County Service Contract at issue

B. Any person employed by the County Contractor who works on the specific services contemplated by the County Service Contract

ii. An Employee is not:

A. An employee who provides services that are only incidental to the services specified in the County Service Contract.

B. An employee who does not provide any services contemplated under the County Service Contract in Question

iii. For the purposes of the Living Wage Law, Nassau Community College is not an Employer as defined in the Law. However, service contractors, financial assistance recipients and lessees of the College are Employers as defined in the law and are subject to the provisions of the Living Wage Law as they are applicable.

iv. In relation to County Financial Assistance, an employee is any person employed by a County Financial Assistance Recipient (CFAR) and who expends at least half of his or her time on the funded project/program or property which is the subject of county financial assistance. For the purposes of this definition, "any person who expends at least half of his or her time on the funded project/program or property" shall refer to any employee of the CFAR who expends at least half of his or her time on 1) a County-funded project or program which the CFAR administers related to the delivery of services or 2) a County-funded project related to the improvement, maintenance or demolition of property of the CFAR.

See Living Wage Law, § 2 "Employee," "Employer"

f. Enter Into. "Enter into" shall mean that time at which both parties have signed the contract in question.

See Living Wage Law, § 2 "County Service Contract" and § 10(a) "Other Provisions"

### **3. Amendments, Extensions and Renewals**

a. Renewals and Extensions. Where an existing County Financial Assistance Agreement, County Service Contract, or County Lease is renewed or extended after the

effective date of the Law, such agreement is a new County Financial Assistance Agreement, County Service Contract or County Lease, as the case may be, and is subject to the applicable provisions of the Law.

b. Determination of Applicability.

i. County Service Contracts.

A. Any renewal of a County Service Contract is subject to the Living Wage Law if the total expenditure by the County under the renewal is \$25,000 or greater.

B. If a County Service Contract is extended or otherwise amended, such extension or amendment will be subject to the provisions of the Law if such amendment increases the total expenditure under the original agreement to an amount \$25,000 or over, or if such amendment itself involves an expenditure of \$25,000 or over. In no event shall the Law apply in a situation where an amendment involves an expenditure of less than \$25,000 and the original agreement already involves an expenditure of \$25,000 or over.

ii. County Financial Assistance Agreements.

A. Any renewal of a County Financial Assistance Agreement is subject to the Living Wage Law if the total expenditure by the County under the renewal is greater than \$50,000.

B. If a Financial Assistance Agreement is extended or otherwise amended, such extension or amendment will be subject to the provisions of the Law if such amendment increases the total expenditure under the original agreement to an amount over \$50,000, or if such amendment itself involves an expenditure over \$50,000. In no event shall the Law apply in a situation where an amendment involves an expenditure of \$50,000 or less and the original agreement already involves an expenditure over \$50,000.

iii. County Leases. Any renewal, extension or modification of a County Lease is subject to the provisions of the Living Wage Law.

See Living Wage Law, §10(a) "Other Provisions"

**4. Waiver of the Law**

a. Application of the Provision

i. Any County Contractor may apply for a waiver of the provisions of the Law. In order to qualify as a County Contractor, the applying organization must have a County Service Contract with the County of Nassau. A County Service Contract is a contract which contemplates providing a service to the County (not goods or any

service performed only to deliver goods) for which the County is paying \$25,000 or more. Both non-profit and for-profit County Contractors may apply for a waiver.

ii. At this time, the Living Wage Law does not allow a County Lessee or an entity receiving County Financial Assistance to apply for a waiver of the Law's provisions.

b. Request for a Waiver The following procedures have been established by the County Executive for requesting a waiver of the provisions of the Living Wage Law:

i. Request for a waiver must be made to the Nassau County Office of Compliance. Since a waiver request must be made by a County Contractor who already has a contract with the County to provide services, a request for a waiver may only be made after the contract in question is entered into with the County.

ii. A request for a waiver must be made on the approved form designated "Request for Waiver of the Provisions of the Nassau County Living Wage Law." This form is attached to these rules. Additional forms may be requested by contacting the agency with which the requesting organization has a contract.

iii. Except for those requesting organizations with County Service Contracts listed in section 4(b)(iv)(E)(3) below, and except for County Contractors providing Personal Care Aide Services, those requesting organizations which plan to request a waiver once a County Service Contract has been entered into must include, in their bid or proposal for the specific County Service Contract, a budget breakdown stating the amount of the budget allocated to wages (*assuming the Living Wage Law applies*), and the amount of the budget allocated to services and other contract expenses. For the purposes of these Rules, "Personal Care Aid Services" shall refer to those services provided by County Contractors pursuant to Title 11 of Article 5 of the New York Social Service Law and Title XIX of the United States Social Security Act.

A. In any budget breakdown submitted, the requesting organization must include only those employees who are included within the definition of "Employee" described above.

B. Those County contractors who have been awarded a contract through Executive Order No. 1 of 1993, a state or federal grant, General Municipal Law section 104, or any other state or federal rule or regulation must submit the above budget breakdown to the contracting agency before such contract is entered into with the County in order to be eligible for a waiver.

iv. A waiver request must contain the following information:

A. The name of the organization

B. The address of the organization

C. The County-issued contract number for the County Service Contract to which the request for waiver pertains. This number may be obtained from the County department with which the requesting organization contracts.

D. The name and email address of the Chief Executive Officer of the requesting organization

E. The criteria (hereinafter, the "Criteria") for qualifying for a waiver under the provisions of the Law. Currently, a requesting organization must meet either Criteria 1, 2, 3 or 4 below, and, if Criteria 1, 2 or 4 are cited, must meet Criterion 5 below:

1. The highest paid officer or employee of the requesting organization earns a salary which, when calculated on an hourly basis, is less than six times the lowest wage or salary paid by the requesting organization.

OR

2. Compliance with the requirements of the Living Wage Law will directly increase the requesting organization's expected total annual budget in an amount greater than ten percent of the prior fiscal year's budget.

OR

3. The requesting organization is providing any of the following services to the County and compliance with the Living Wage Law would exceed the amount, per hour or per diem (as the case may be), reimbursed to the County by any State or Federal Source:

- i. Services under the Expanded In-Home Services for the Elderly Program (EISEP)
- ii. Foster care services under the New York Social Services Law.
- iii. Residential domestic violence services under the New York Social Services Law.
- iv. Residential care, educational and vocational training, physical and mental health services, and employment counseling services to residents of the Juvenile Detention Center under the New York Executive Law.

OR

4. The requesting organization is providing any of the following services to the County and compliance with the Living Wage Law would increase the County Service Contract's budget by greater than ten percent over the budget for the requesting organization's County Service Contract for the previous contracting year:



- i. Non-residential domestic violence services under the New York Social Services Law.
- ii. Services under the Home Energy Assistance Program (HEAP)
- iii. Preventive services for children pursuant to the New York Social Services Law
- iv. Non-Secure detention services pursuant to the New York Executive Law.

AND (if Criteria 1, 2 or 4)

5. When the requesting organization placed a bid or submitted a proposal for the County Service Contract at issue, it must have submitted a budget which included a breakdown of the wages paid to employees of the requesting organization who would be covered under the Living Wage Law. This requirement shall not apply to County Contractors providing Personal Care Aide Services.

F. A statement that, if a waiver is granted, the requesting organization will decrease its budgeted wage allocation to that amount the requesting organization would have paid its employees had the requirements of Living Wage Law not been applied. The amount to be paid by the County to the requesting organization will be reduced accordingly by contract amendment. This requirement shall not apply to County Contractors providing Personal Care Aide Services.

G. The notarized signature of the requesting organization's Chief Executive Officer.

v. A request must be accompanied by documentation supporting the Criteria claimed by the requesting organization.

A. If Criteria (1) is cited in the request, the requestor must include a statement, certified by the chief financial officer of the requesting organization as true and accurate, of the wages paid, on an hourly basis, of the highest and lowest paid individuals employed by the requesting organization.

B. If Criteria (2) is cited in the request, the requestor must provide a copy of the requesting organization's budget for the last fiscal year along with a copy of the organization's expected budget taking into account increases in salary as a result of compliance with the Living Wage Law. Both budgets must be certified as complete and accurate by the chief financial officer of the requesting organization.

C. If Criteria (4) is cited in the request, the requestor must provide a copy of the requesting organization's budget for the County Service Contract for the prior

agreement year along with the requesting organization's budget for the County Service Contract for the current agreement year which takes into account increases in salary as a result of compliance with the Living Wage Law. Both budgets must be certified as complete and accurate by the chief financial officer of the requesting organization.

vi. The request form and all documentation must be sent to the following address:

County of Nassau Office of Compliance  
Attention: Living Wage Waiver Request Office  
One West Street, Room 327  
Mineola, New York 11501

c. Waiver and Procurement

i. As a waiver may only be requested once a County Service Contract has been entered into, no waiver application may be submitted by any organization submitting a bid or proposal to the County for a County Service Contract.

ii. It shall not be a consideration in evaluating a bid or proposal that an organization submitting a bid or proposal to the County for a County Service Contract may be eligible to receive a waiver.

d. Review Procedures

i. Review of a request for a waiver must be made by the Office of Compliance.

ii. Approval of a request is dependent on the requestor satisfying either criteria (1), (2), (3) or (4) in section 4(b)(iv)(E) above and, if citing criteria (1), (2) or (4), criterion (5) in section 4(b)(iv)(E) above. Applications not satisfying these criteria, or incomplete applications, will not be approved. However, complete applications that do meet these criteria shall be approved by the Office of Compliance.

iii. The Office of Compliance shall inform the requestor of his or her decision to grant or deny a request in writing within thirty days of receipt of the request. A copy of the grant or denial shall be transmitted to the County Comptroller for the purposes of monitoring compliance with the Living Wage Law.

iv. In the event that a request for a waiver made pursuant to these Rules and the Law is denied by the Office of Compliance, the requesting organization must comply with the provisions of the Law and these Rules, as they are applicable, including, without limitation, the payment of any unpaid wages to the requesting organization's Employees as required under the Law. Failure to do so may result in action by the Office of the Nassau County Comptroller to enforce the provisions of the Law.

e. Period in Which Request for Waiver Must Be Made; Effective Date and Duration of Waiver

i. For County Service Contracts entered into after January 1, 2007 with terms commencing between January 1, 2007 and October 25, 2007, a request for a waiver may be made at any time, including any period after the termination of such County Service Contract, provided, however, that no request for a waiver may be made and no request for a waiver may be accepted by the County after December 31, 2008. If such waiver is granted by the County, such waiver shall be effective as of the commencement date of such County Service Contract and shall continue until the termination of such County Service Contract. Such waiver may be granted if, and only if:

1. the requesting organization certifies that it would have qualified for a waiver for the County Service Contract for which it requests a waiver during the term of such County Service Contract; and
2. the requesting organization submits to the County with such request such documentation that would otherwise be required for a waiver of the Law as described in Section 4(b) above.

ii. For County Service Contracts with terms commencing October 26, 2007 or after, a request for a waiver may only be made within six (6) months of the date that the County Contractor has constructive or actual notice that such County Service Contract was executed by the County. It shall be a rebuttable presumption that such County Contractor has been notified of such execution on the date which is five (5) days after the date that accompanies the seal of the County, which is affixed to such County Service Contract by the Clerk of the Nassau County Legislature. If such waiver is granted by the County, such waiver shall be effective as of the commencement date of such County Service Contract and shall continue until the termination of such County Service Contract.

iii. For County Service Contracts entered into after January 1, 2007 with terms commencing October 26, 2007 or after for which a request for waiver has been made and which waiver was granted by the County as of August 26, 2008, notwithstanding any language contained in such waiver grant letter, such waiver shall be deemed effective as of the commencement date of the County Service Contract to which the waiver pertains, and shall continue until the termination of such County Service Contract.

iv. As a renewal, extension or other time-related amendment to a County Service Contract is considered a new County Service Contract and is subject to the provisions of the Law, as they are applicable, if a County Service Contract is renewed, extended or amended in such a manner as to increase the term of the County Service Contract, a new request for a waiver of such renewed, extended or amended contract must be made to the Office of Compliance.

f. Post-Award Review

i. After the County grants a waiver, if at any time during the term of the County Service Contract the requesting organization alters its budget or wages such that the organization no longer qualifies for a waiver of the Living Wage Law, the requesting organization must contact the County department with which it contracts and inform such department of such alteration.

ii. If a County department is contacted in reference to such a change, the department must either:

1. Amend the County Service Contract in question to restore any funding subtracted from the contract as a result of a waiver of the Living Wage Law and receive from the Contractor a completed Certificate of Compliance; or
2. Terminate such Contract according to its terms.

See Living Wage Law, § 9 "Waiver"

**5. Inter-Governmental Agreements**

a. The Living Wage Law shall not apply to those County Service Contracts which are entered into with any municipal corporation located within the County, any school district located within the County, and any special district located within the County.

b. County Financial Assistance Agreements and County Leases. The Living Wage Law shall not apply to a County Financial Assistance Agreement or a County Lease in the event that application of the law would conflict with the application of a federal, state or local law, rule, regulation or ordinance. For the purposes of this Rule, the Living Wage Law would not apply to a County Financial Assistance Agreement or County Lease where funding for the Agreement or Lease is derived from a Federal or state grant where the distribution of such grant funds to certain subrecipients is mandatory and non-discretionary.

See Living Wage Law, § 2 "County Service Contract," "Inter-governmental Agreement," § 3 "Minimum Compensation;" §10 "Other Provisions"

**6. Certification of Compliance**

a. An updated certification of compliance with the provisions of the Living Wage Law shall be submitted to the County on or before the first day of each agreement year during the term of any County Service Contract.

b. For the purposes of updating a certification of compliance, a "material change" as used in the Law shall be limited to the following:

i. Any determination by the County Comptroller that the contractor has violated any provision of the Law.

ii. Any instance during the preceding year in which the contractor has been found by a court or governmental agency to have violated federal state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or where any governmental body has initiated a judicial action, administrative proceeding or investigation of the contractor in regard to any of the above laws.

See Living Wage Law, § 5 "Certification of Compliance"

## **7. Nassau County Employees**

a. All Nassau County Employees are covered by the provisions of the Living Wage Law, provided, however, that Nassau County Employees covered by the collective bargaining agreement between the County and the Civil Service Employees Association are not entitled to receive the benefit supplement rate as the term is defined in the Law. The provisions of the Law also extend to paid interns hired by the County.

b. The Living Wage Law does not apply to volunteer workers utilized by the County pursuant to the County's authority to use volunteer workers under § 2105 of the Nassau County Charter. As such, the Law does not cover unpaid interns utilized by the County.

See Living Wage Law, § 2 "Employee," "Employer," § 10 "Other Provisions"

## **8. Benefit Supplement Rate**

The benefit supplement rate shall be upwardly adjusted at such times as the Living Wage is adjusted in conformance with the definition of "Living wage" contained in Section 2 of the Law. Any adjustment of the benefit supplement rate shall be made in proportion to any increase of the consumer price index for medical care in the All Urban Consumers Index (CPI-U) during the twelve (12) months preceding the month prior to the time at which the living wage is adjusted. The benefit supplement rate shall only be adjusted if the above-referenced index shows an increase in such twelve-month period. In no event shall the benefit supplement rate be downwardly decreased at such times.

See Living Wage Law, § 2 "Benefit Supplement Rate"

## **APPENDIX E: LIVING WAGE LAW POSTER**



George Maragos  
Nassau County Comptroller  
Living Wage Unit



## IMPORTANT NOTICE FOR WORKERS

The Nassau County Living Wage  
is  
**\$13.10 per hour**  
or  
**\$11.50 with health benefits**

(Rate Effective August 1, 2009 through July 31, 2010)

Employees who work 20 hours or more per week are entitled to receive a maximum of 12 paid days off per year, including paid holidays

If you work for a County contractor or lessee, the Living Wage Law may apply to you. If you have any questions about your eligibility, or if you believe your employer is not complying with the Law, please contact:

**Office of the Nassau County Comptroller  
Living Wage Unit at (516)571-3668**

You may also visit our website at [www.nassaucountyny.gov/comptroller](http://www.nassaucountyny.gov/comptroller) and click on Living Wage for more information or to obtain a complaint form

**\*Complaints will remain confidential\***

**Exceptions:**

The Law **DOES NOT** apply to the following:

- Contracts for child-care services, pre-school services and early intervention services
- Contracts where services are incidental to the delivery of products, equipment or commodities
- Inter-governmental contracts and financial assistance contracts for industrial development bonds, community development block grant loans and enterprise-zone incentives
- Contracts for less than \$25,000
- Employees under 18 years of age who are claimed as dependents for federal tax purposes and who are working as an after-school or summer employee
- Trainees in a bona fide training program
- Disabled employees covered by a current sub-minimum wage certificate issued to the employer by the United States Department of Labor or if he/she would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.

**APPENDIX F: LA LEY DE LIVING WAGE (POSTER IN SPANISH)**





George Maragos  
Nassau County Comptroller  
Living Wage Unit



## INFORMACION IMPORTANTE PARA TRABAJADORES

# La Ley de Living Wage de Nassau County

es

# \$13.10 por hora

# o

# \$11.50 con beneficios de salud

(Efectivo Agosto 1, 2009 hasta Julio 31, 2010)

Empleados que trabajan 20 horas o mas por semana reciben un maximo de 12 dias libre con pago por año por la ley de Living Wage

Si usted es un empleado de las compañías que tienen contratos con Nassau County la ley de Living Wage puede aplicarle a usted. Si usted tiene preguntas o si usted piensa que su empleador no esta cumpliendo con la ley de Living Wage, por favor llame a:

**La Oficina del Nassau County Comptroller  
Living Wage Unit a (516)571-3668**

Tambien puede visitar nuestro website [www.nassaucountyny.gov/comptroller](http://www.nassaucountyny.gov/comptroller)

**\*Las Quejas Seguiran Siendo Confidenciales\***

**Excepciones:**

**La Ley** NO SE APLICA para los siguiente:

- Los contratos para servicios de cuidado de niños, servicios preescolares e intervención temprano para niños
- Contratos adonde los servicios son incidentales a la entrega de productos, equipos o materias primas
- Contratos Inter-gubernamentales y los contratos de asistencia financiera para el desarrollo industrial de los bonos, el desarrollo de la comunidad bloquear la concesión de préstamos y de las empresas de zonas incentivos
- Contratos por menos de \$25,000
- Los empleados menores de 18 años de edad que son reclamados como dependientes para efectos del impuesto federal y que están trabajando como un después de la escuela de verano
- Aprendices en un programa de entrenamiento auténtico
- Empleados discapacitados cubiertos por un sub-actual salario mínimo certificado expedido a los empleadores por los Estados Unidos Departamento de Trabajo o si él / ella sería objeto de dicho certificado, pero por el hecho de que el empleador paga un salario igual o superior a el salario mínimo