

NASSAU COUNTY

NEW YORK

Nassau County

Living Wage Law

2022 Annual Report

July 2023



ELAINE PHILLIPS

Nassau County Comptroller



Nassau County Living Wage Law 2022 Annual Report

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Executive Summary

The Office of the Nassau County Comptroller (Office) is authorized to monitor, investigate, and audit compliance with the Nassau County Living Wage Law.

The Office is responsible for submitting an Annual Report to the County Executive and the County Legislature which summarizes and assesses the implementation of and compliance with the Law during the preceding year. This report covers calendar year 2022.

The Nassau County Living Wage Law (Law) was enacted in 2006, taking effect January 2007. The Law establishes a minimum hourly Living Wage and a Benefits Supplement to be paid to covered workers who are not provided health benefits. The Law also establishes a minimum number of paid days off that must be granted to employees each year.

Covered workers are employees who work for businesses doing work with or for Nassau County under service contracts of \$25,000 or more per year. Also covered are workers who are employed at an establishment that operates under a lease, concession agreement, or other agreement on property owned or controlled by the County. Covered workers have received increases in their hourly wages in each year following the establishment of the Law because the Law requires increases to the Living Wage rate each year. Increases are based on changes to the Consumer Price Index with a maximum increase or cap of 3.5%.

On August 1, 2022, the hourly Living Wage rate increased to \$15.73. The Benefits Supplement that must be paid to covered workers who do not receive health benefits increased to \$2.53, for a total rate of \$18.26 if health benefits are not provided.

The Office also conducts audits and monitors providers who do business with Nassau County to ensure compliance with the Law. Since 2007, the Comptroller's Office has released 50 Living Wage audit reports, which have identified 2,118 instances of Living Wage Law underpayments totaling \$1,494,223.

In 2022, an audit was conducted of Broken But Not Destroyed, a non-profit emergency shelter. See page 4 for details.

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Living Wage Rates and Benefit Supplement

The Living Wage rate is adjusted on August 1st of each year based on changes to the Consumer Price Index (CPI). The increase is a percentage equal to the change in the New York Metropolitan Area All Urban Index (NY-Consumer Price Index) for the period of June of the preceding year to June of the current year, with a cap of 3.5%. The Benefit Supplement may also increase based upon the CPI for medical care in the New York-Northern New Jersey-Long Island metropolitan area (the New York-Newark-Jersey City, NY-NJ-PA rate).

On August 1, 2022, the hourly Living Wage rate increased to \$15.73. The Benefits Supplement increased to \$2.53, for a total rate of \$18.26 for covered workers who do not receive health benefits. These rates stay in effect until July 31, 2023.

The Law requires that full-time employees of covered contractors receive 12 compensated days off per year for sick leave, vacation, or personal reasons. Paid holidays may be counted toward this requirement. Part-time employees who work at least 20 hours per week also must be granted paid days off in proportion to the number of hours they work.

Employers may seek a waiver from the requirements of the Law based upon specific financial criteria concerning their organization.

The chart below shows the Living Wage rates and Benefit Supplements since the law was established.

Living Wage Rate and Health Benefit Supplement			
Effective Dates	Living Wage Rate	Health Benefit Supplement	Total with Health Benefit Supplement
January 1, 2007 to July 31, 2008	\$9.50	\$1.50	\$11.00
August 1, 2008 to July 31, 2009	\$10.50	\$1.55	\$12.05
August 1, 2009 to July 31, 2010	\$11.50	\$1.60	\$13.10
August 1, 2010 to July 31, 2011	\$12.50	\$1.66	\$14.16
August 1, 2011 to July 31, 2012	\$12.90	\$1.71	\$14.61
August 1, 2012 to July 31, 2013	\$13.11	\$1.80	\$14.91
August 1, 2013 to July 31, 2014	\$13.35	\$1.86	\$15.21
August 1, 2014 to July 31, 2015	\$13.58	\$1.92	\$15.50
August 1, 2015 to July 31, 2016	\$13.59	\$1.95	\$15.54
August 1, 2016 to July 31, 2017	\$13.73	\$2.05	\$15.78
August 1, 2017 to July 31, 2018	\$13.98	\$2.09	\$16.07
August 1, 2018 to July 31, 2019	\$14.27	\$2.14	\$16.41
August 1, 2019 to July 31, 2020	\$14.51	\$2.25	\$16.76
August 1, 2020 to July 31, 2021	\$14.69	\$2.37	\$17.06
August 1, 2021 to July 31, 2022	\$15.20	\$2.37	\$17.57
August 1, 2022 to July 31, 2023	\$15.73	\$2.53	\$18.26

Application of the Law

The Law applies to the following types of County contracts, County subcontractors, contractors who receive financial assistance from the County, and contracts with Nassau Community College:

- service contracts of \$25,000 or more;
- grant, loan, tax incentive or abatement, bond financing, and County subsidy or other form of assistance of more than \$50,000 and where the contractor has at least 10 employees; and
- leases of property owned or controlled by the County.

The Law does not apply to contracts:

- for childcare services, pre-school services and early intervention services;
- for services which are incidental to the delivery of products, equipment or commodities; or
- contracts awarded under emergency procurement procedures or inter-governmental agreements.

The Law does not apply to employees who are:

- under 18 years of age and are claimed as dependents;
- employed as after-school or summer employees;
- students interns or workers of any age;
- employed as trainees in a bona fide training program where the training program has the goal for the employee to advance to a permanent position;
- disabled and covered by or meet the requirement for a United States Department of Labor sub-minimum wage certificate; or
- covered by a bona fide collective bargaining agreement which expressly waives the requirements of the Law.

Living Wage Law Rules

The County Executive has promulgated rules to address procedures governing the Living Wage Law and to clarify certain terms, such as the terms that apply to requests for waivers and the procedures for an employer to request a waiver from the requirements of the Law.

The Comptroller has promulgated rules related to monitoring and enforcement. The primary purpose of these rules is to outline the responsibilities of covered employers, such as record keeping, and to prescribe the method for evaluating an organization's finances for consideration of waiver requests.

These rules were last amended in December 2021 to create a process for the County to seek a prompt remedy for alleged violations (see Appendix B). These rules enabled the County to notify an employer of complaints without the need for an audit. The employer is given the opportunity to respond and remedy if necessary. Using this approach, rather than awaiting the results of an audit, employees who believe there is a violation of the law or who were underpaid, can get a timely response to their complaint and may be compensated sooner if a violation occurred.

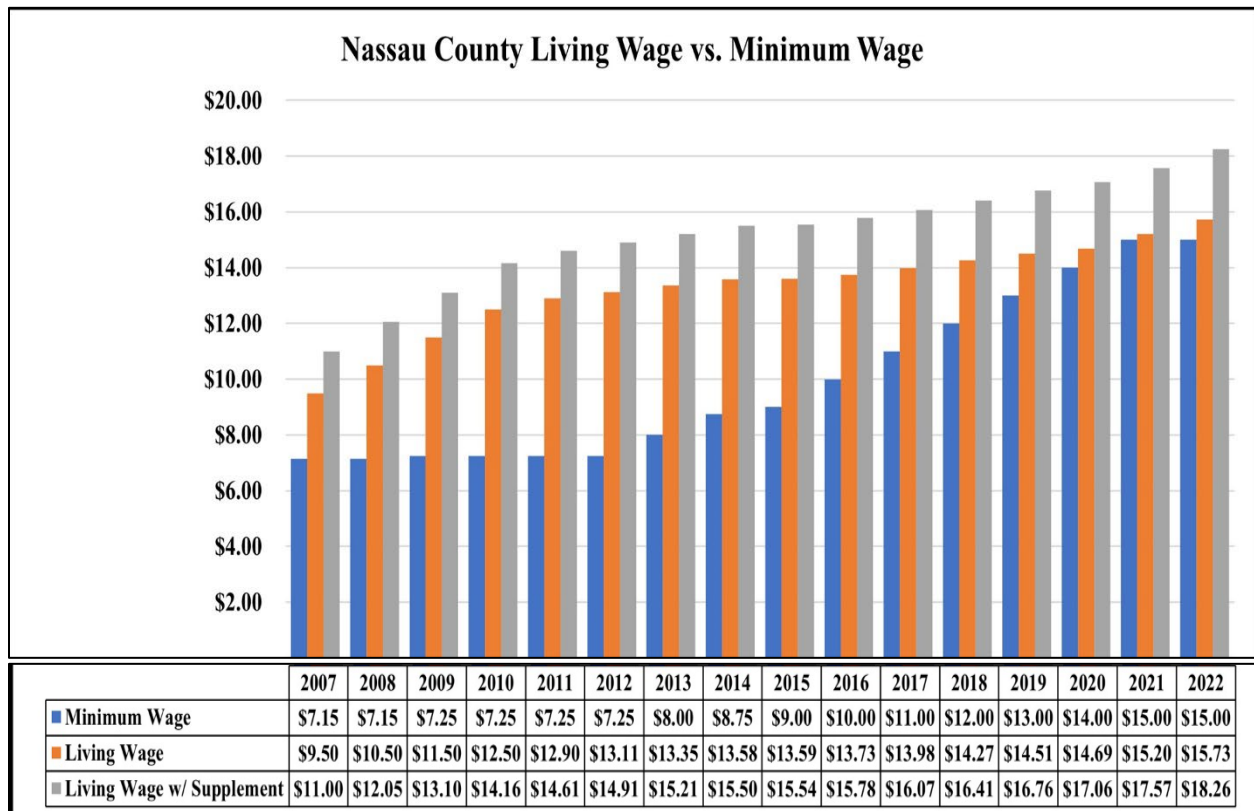
Monitoring and Enforcement

Complaints

The Nassau County Comptroller’s Office receives inquiries and complaints concerning violations of the Law through the Living Wage hotline and an online complaint form.

The Office has seen a decline in inquiries and complaints. This decrease has corresponded with changes to the New York State (NYS) Minimum Wage, which has brought closer parity between Minimum Wage and the Living Wage.

When the Living Wage Law went into effect in 2007, it was set at \$9.50/hour (or \$11.00 for workers who did not receive health benefits), while the NYS Minimum Wage was \$7.15 – a difference of 27%. In 2022, NYS’s Minimum Wage was up to \$15.00, much closer to the Living Wage of \$15.73 (or \$18.26 for workers who did not receive health benefits). See chart below.



In 2022, the Office answered eight Living Wage law inquiries received through the Living Wage hotline. None of these inquiries concerned complaints of underpayment of the Living Wage. In 2022, the Office did not receive any online complaint forms.

Audits

The Nassau County Comptroller's Office has the authority to monitor, investigate and audit compliance with the Law.

Since the establishment of the Law, audits by the Comptroller's Office have identified 2,118 instances of shortfalls in payments of either wages or compensated time off, amounting to \$1,494,223 in underpayments to employees.

EMPLOYEE UNDERPAYMENTS IDENTIFIED						
Audit Years 2008 to 2022	Instances			Dollar Value		
	Unpaid Wages	Unpaid Compensated Time Off	Total Non-Compliance	Unpaid Wages	Unpaid Compensated Time Off	Total Non-Compliance
Total	<u>981</u>	<u>1137</u>	<u>2,118</u>	<u>\$1,076,138</u>	<u>\$418,085</u>	<u>\$1,494,223</u>

Data for each year between 2008 and 2022 can be found in Appendix A.

In 2022, an audit was conducted of Broken But Not Destroyed (BBND), a non-profit emergency shelter provider.

The audit revealed that BBND did not:

- maintain adequate payroll records as required by the U.S. Department of Labor;
- have verifiable payroll records;
- accurately report wages to taxing authorities; and
- have records to support that all employees were paid the Living Wage rate and granted the appropriate amount of compensated leave.

BBND did not provide complete payroll records, but of the five employees for which an hourly rate appeared on payroll records provided, there were four instances where the rate was below the Living Wage rate and the amount underpaid totaled \$311.

The audit also found a lack of internal controls for BBND's use of County payments, including:

- personal expenses of the owner and Executive Director were paid with shelter funds (credit cards payment, mortgage payment, meals expenses) and County funds paid were diverted to a foreign corporation;
- BBND failed to maintain documentation to support the basis for most of the payments reviewed; and
- for several payments, BBND could not show that money was placed in their account(s).

Auditors recommended that:

- BBND should maintain complete and accurate time and payroll records, properly report wages to the IRS and make all records available for inspection by the County.
- BBND should implement cash controls and use government funding exclusively for the shelter following Federal Regulations.

As of January 1, 2023, the County discontinued its use of this shelter, as there were several areas of concern.

Waivers

County contractors may request from the County Executive a waiver from the requirements of the Law based on criteria set forth in the Law. A contractor granted a waiver is not required to pay its employees the Living Wage rate or Benefit Supplement. Waivers, if granted, are for a maximum period of one year; contractors must reapply annually.

There are several criteria that can be used by contractors to receive a waiver. The two most common are based on the organization's finances. A contractor may be approved for a waiver if:

1. The highest paid officer or employee of the 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. Fringe benefits are taken into account for this wage computation. The Law authorizes the Comptroller's Office to determine the method of valuing the fringe benefits, which currently include items such as bonuses, stock options, educational assistance, and housing costs.
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 its prior fiscal year's budget.

Since the establishment of the Law, the number of waivers granted ranged from a high of 12 in 2014 to a low of 2 in 2022. See chart to the right.

Living Wage Waiver Activity		
Year	Granted Full	Granted Partial
2007	5	0
2008	5	0
2009	6	0
2010	2	0
2011	2	0
2012	11	0
2013	7	3
2014	12	0
2015	11	0
2016	10	0
2017	8	2
2018	6	2
2019	8	2
2020	5	0
2021	3	0
2022	2	0

Resources

The Comptroller's Office provides a variety of resources for information and complaints concerning the Law.

- The Office of the Comptroller's multilingual Living Wage hotline (516) 571-WAGE connects callers directly with staff in the Comptroller's Office to make inquiries and complaints.
- Living Wage posters are produced in English and Spanish. The posters explain the Law in simple format, listing the current Living Wage rates, the employee's right to compensated days off, and the Living Wage Hotline and email address (See Appendix C for 2022 Living Wage posters in English and Spanish). These posters are distributed by electronic mail to County Departments with covered contractors and Living Wage Law covered employers. Covered employers are required to post them at their work sites.

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- The Comptroller's Office Living Wage website (www.nassaucountyny.gov/livingwage) contains information about the Law, including:
 - the complete Living Wage Law;
 - definitions of a covered employee;
 - the Living Wage Rules of the County Executive and the Comptroller;
 - the current Living Wage rates;
 - Living Wage posters in English and Spanish;
 - Complaint Forms for reporting instances of non-compliance;
 - Living Wage Law annual reports;
 - all Living Wage audit reports; and
 - links to Living Wage Compensation Ratio Forms.

APPENDIX A – Summary of Employee Underpayments Identified 2008-2022

APPENDIX A – Summary of Employee Underpayments Identified 2008 – 2022

EMPLOYEE UNDERPAYMENTS IDENTIFIED						
Audit Year	Instances			Dollar Value		
	Unpaid Wages	Unpaid Compensated Time Off	Total Non-Compliance	Unpaid Wages	Unpaid Compensated Time Off	Total Non-Compliance
2008	135	175	310	\$76,173	\$61,424	\$137,597
2009	225	335	560	\$166,639	\$115,723	\$282,362
2010	20	121	141	\$3,645	\$10,513	\$14,158
2011	18	83	101	\$3,616	\$5,119	\$8,735
2012	100	0	100	\$8,039	\$0	\$8,039
2013	68	0	68	\$135,652	\$0	\$135,652
2014	15	0	15	\$16,735	\$0	\$16,735
2015	51	22	73	\$466,582	\$8,112	\$474,694
2016	30	7	37	\$10,398	\$889	\$11,287
2017	15	23	38	\$46,631	\$3,115	\$49,746
2018	165	152	317	\$100,167	\$123,073	\$223,240
2019	35	68	103	\$31,990	\$24,497	\$56,487
2020	99	130	229	\$8,296	\$53,799	\$62,095
2021	1	21	22	\$1,264	\$11,821	\$13,085
2022	4	0	4	\$311	\$0	\$311
Total	<u>981</u>	<u>1137</u>	<u>2,118</u>	<u>\$1,076,138</u>	<u>\$418,085</u>	<u>\$1,494,223</u>

APPENDIX B – Rules Amended December 2021

Changes to Section 9. Enforcement:

a. Procedure for settlement of violations and issuance of fines pursuant to Living Wage Law § 7.

1. Where the Comptroller’s Office has made findings that an “employer,” as defined under section 2 of the Living Wage Law, that contracts with the County has violated the Living Wage Law, the Comptroller’s Office shall refer a report of their findings to the relevant contracting department and the County Attorney’s Office.

2. If the contracting department and County Attorney’s office find that the report demonstrates a violation of the Living Wage Law, such contracting department shall direct the County Attorney’s Office to issue a notice of violation to the employer, notifying the employer that if the employer fails to cure the violation within 30 days, the County may pursue any rights or remedies available pursuant to Living Wage Law § 7(d)(i)-(iii) and (v). If the breach is not cured or a resolution is not negotiated within 30 days, the contracting department may request the County Attorney’s Office to initiate action pursuant to Living Wage Law § 7(d)(i)-(iii) and (v).

3. Such contracting department shall also direct the County Attorney’s Office, on behalf of the County, to issue the employer a separate Notice of Violation pursuant to Living Wage Law § 7(d)(iv). The Notice of Violation shall indicate that as of the date the Notice of Violation is received, the employer will be fined in the amount of \$500 each week for each employee found not to have been paid in accordance with the Living Wage Law. The Notice of Violation will also indicate that such fines will be rescinded if the employer cures the violation within 30 days of the issuance of the Notice of Violation. The Notice of Violation will also specify a hearing date for such violations, to be held no sooner than 30 days from the issuance of the Notice of Violation. Such Notice of Violation shall be sent by email and certified mail.

i. The hearing for the Notice of Violation will be held before a Department of Consumer Affairs hearing officer. The subject employer may submit a written opposition refuting the fine by email to the hearing officer and County Attorney’s Office no later than 10 days prior to the hearing date, and the County Attorney’s Office may submit a written reply to the hearing officer no later than 1 day prior to the hearing date. The hearing officer has discretion to grant adjournments of the hearing date and/or the briefing schedule, upon request by a party. The parties may consent to adjournments or extensions.

ii. The parties may negotiate a settlement regarding fines issued without requiring the consent of the hearing officer and must notify the hearing officer of any such settlement.

iii. The employer and/or the employer’s legal counsel appear at the hearing, and, where permitted at the discretion of the hearing officer, other relevant parties that can offer evidence or explanation on behalf of the employer may appear. The hearing officer keeps the record of the hearing. The violation is presented by the County Attorney’s office. The County Attorney’s office may call upon a member of the Comptroller’s Office to offer evidence or explanation. After the presentation of the County Attorney’s Office, the employer may then offer evidence to refute or mitigate the facts presented. The County

APPENDIX B – Rules Amended December 2021

Attorney's Office also explains why a violation was issued and the legal basis of the violation.

iv. At the conclusion of the hearing, the hearing officer weighs the evidence and credibility of the arguments and will issue a report and recommendation to the Commissioner of Consumer Affairs, as the designee of the County Executive, and will send a copy to the employer and the County Attorney's Office, regarding whether a violation has occurred, and whether to assess a fine, and if so, the amount of the fine, in accordance with Living Wage Law § 7(d)(iv).

v. The report and recommendation of the hearing officer may be appealed by the employer to the Commissioner of Consumer Affairs, a copy of which shall be provided by the employer to the County Attorney's Office, within 14 days of receipt of the report and recommendation. The County Attorney's Office may submit a response to the appeal within 7 days of receipt of such appeal. The Commissioner will then issue a final determination to accept or reject the report and recommendation, in whole or in part.

vi. Fines shall be paid to the County Treasurer's Office within 30 days of the Commissioner's determination, regardless of whether a CPLR Article 78 petition challenging the determination has been filed.

vii. Once the 30-day cure period after issuance of a violation has elapsed, the County Attorney's Office is stayed from issuing additional fines related to the alleged violation until a final determination has been issued by the Commissioner of the Department of Consumer Affairs regarding such alleged violation.

b. Referral to Contracting Department. In addition to any other authority the Comptroller has to monitor, investigate, and audit employers that contract with the County under the Living Wage Law, where the Comptroller receives a complaint alleging a violation of the Living Wage Law, the Comptroller may forward the complaint to the relevant contracting department, and advise the department to contact such employer to request that the employer provide an explanation in writing regarding the complaint.



Office of the Nassau County Comptroller
Living Wage

NOTICE FOR WORKERS

The Nassau County Living Wage
is
\$15.73 per hour

The Health Benefit Supplement
is
\$2.53 per hour

(Rate Effective August 1, 2022 through July 31, 2023)

If an employer does not provide health benefits to employees, the total rate will be **\$18.26** per hour.

•Employees who work 20 hours or more per week are entitled to receive paid days off including paid holidays (days off are earned based on hours worked).

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 HOTLINE at (516) 571-WAGE (9243)**

You may also visit our website at www.nassaucountynv.gov/LivingWage for more information, or to obtain a complaint form

Complaints will remain confidential

or contact us by e-mail at complivingwage@nassaucountynv.gov

Please Note that the Living Wage Law **DOES NOT** apply to the following.

- Contracts for child-care services, sleep away camp services for the disabled, pre-school and/or early intervention services.
- Contracts in which 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.
- Student interns working for Nassau County and student workers at Nassau Community College.
- Medicaid funded assisted living program facilities that were providing services within Nassau County prior to 2006 and that continue to provide such services.



Oficina del Contralor del condado de Nassau
Salarios dignos

AVISO PARA LOS TRABAJADORES

El salario digno del condado de Nassau
es

\$15.73 por hora

El Complemento de beneficios de salud
es

\$2.53 por hora

(Tarifa efectiva del 1 de agosto de 2022 al 31 de julio de 2023)

Si un empleador no da beneficios de salud a los empleados, la tarifa total será de **\$18.26** por hora.

•Los empleados que trabajan 20 horas o más por semana tienen derecho a recibir días libres pagados, incluyendo días festivos pagados (los días libres se ganan en función de las horas trabajadas).

Si trabaja para un contratista o arrendatario del condado, es posible que se le aplique la Ley de salario digno. Si tiene alguna pregunta sobre su elegibilidad, o si cree que su empleador no está cumpliendo con la Ley, comuníquese con:

Oficina del Contralor del condado de Nassau

LÍNEA DIRECTA DE SALARIOS DIGNOS al (516) 571-WAGE (9243)

Visite nuestro sitio web en: www.nassaucountyny.gov/LivingWage
para obtener más información o un formulario de queja

Las quejas serán confidenciales

o comuníquese con nosotros por correo electrónico a complivingwage@nassaucountyny.gov

Tenga en cuenta que la Ley de salario digno **NO** se aplica a lo siguiente.

- Contratos de servicios de cuidado infantil, servicios de campamento para dormir fuera para personas con discapacidad, servicios de preescolar o intervención temprana.
- Contratos en los que los servicios son no esenciales a la entrega de productos, equipos o mercancías.
- Contratos intergubernamentales y contratos de asistencia financiera para bonos de desarrollo industrial, préstamos de subvención en bloque para desarrollo de la comunidad e incentivos de zona comercial.
- Contratos por menos de \$25,000.
- Empleados menores de 18 años que se declaran personas dependientes para propósitos de impuestos federales y que trabajan como empleados después de la escuela o durante el verano.
- Aprendices en un programa de capacitación legales.
- Empleados con discapacidad cubiertos por un certificado de salario más bajo que el mínimo actual emitido al empleador por el United States Department of Labor (Departamento de Trabajo de los Estados Unidos) o si ellos están cubiertos por dicho certificado, pero por el hecho de que el empleador está pagando un salario igual o superior al salario mínimo.
- Estudiantes residentes que trabajan para el condado de Nassau y estudiantes que trabajan en Nassau Community College.
- Centros del programa de residencia asistida financiados por Medicaid que daban servicios dentro del condado de Nassau antes de 2006 y que continúan prestando dichos servicios.