

TITLE 57

NASSAU COUNTY LIVING WAGE LAW

§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. 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 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, 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 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.

§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) 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.

§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

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.

§ 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. Protection against displacement of building services workers

a. It is the purpose of this provision to ensure continuity in living wage employment for building services employees and minimize disruption when building services that were previously performed by employees of an entity subject to the provisions of this title are continued by a new entity.

b. In the event that an employer that provides building services sells, transfers, assigns, or otherwise conveys its interest in county real property, the county shall require any subsequent employer assuming such interest to retain and employ such building service employees as were employed by the original county contractor.

§ 13. 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.

§ 14. Effective date. This local law shall take effect January 1, 2007.

(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; section 2, subdivisions a and c of section 3, section 5, subdivision b of section 6, and subdivision a of section 7 amended by Local Law No. 19-2006; sections 2,3,7,9 and 10 amended by local law 1-2010 passed by the Legislature on December 21, 2009 and signed by the County Executive on January 21, 2010)