

STATE OF NEW YORK

10682

IN ASSEMBLY

August 28, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Rajkumar) --
read once and referred to the Committee on Labor

AN ACT to amend the administrative code of the city of New York, in
relation to prevailing wage for certain city service contracts

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "Close the
2 Gap Act."
3 § 2. Paragraphs 18, 19, 20 and 21 of subdivision a and subdivision b
4 of section 6-109 of the administrative code of the city of New York, as
5 added by local law number 38 of the city of New York for the year 2002,
6 are amended to read as follows:
7 (18) "Prevailing Wage and Supplements" means the rate of wage and
8 supplemental benefits per hour paid in the locality to workers in the
9 same trade or occupation and annually determined by the comptroller in
10 accordance with the provisions of section 234 of the New York state
11 labor law or, for titles not specifically enumerated in or covered by
12 that law, determined by the comptroller at the request of a contracting
13 agency or a covered employer in accordance with the procedures of
14 section 234 of the New York state labor law; provided, however, that for
15 any trade or occupation in which 75 per centum or more employees are a
16 member of the same protected class and such rate of wage and supple-
17 mental benefits would be less than the lowest rate of a covered building
18 services employee, the prevailing wage and supplements may be greater
19 than that paid in the locality to workers in the same trade or occupa-
20 tion. As provided under section 231 of the New York state labor law,
21 the obligation of an employer to pay prevailing supplements may be
22 discharged by furnishing any equivalent combinations of fringe benefits
23 or by making equivalent or differential payments in cash under rules and
24 regulations established by the comptroller.
25 (19) [~~"Living Wage" has the meaning provided in paragraph 2 of subdi-~~
26 ~~vision b of this section.~~
27 ~~(20)~~] "Health Benefits" has the meaning provided in paragraph [~~3~~] 2 of
28 subdivision b of this section.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 ~~[(21) "Health Benefits Supplement Rate" has the meaning provided in~~
2 ~~subparagraph b of paragraph 3 of subdivision b of this section.]~~

3 b. [~~Living Wage,~~] Prevailing Wage and Health Benefits. (1) Coverage.

4 (a) A city service contractor or city service subcontractor that
5 provides homecare services, day care services, head start services or
6 services to persons with cerebral palsy must pay its covered employees
7 that directly render such services in performance of the city service
8 contract or subcontract no less than the [~~living~~] ~~prevailing~~ wage and
9 must either provide its employees health benefits or must supplement
10 their hourly wage rate by an amount no less than the [~~health benefits~~]
11 ~~prevailing~~ supplement rate. This requirement applies for each hour that
12 the employee works performing the city service contract or subcontract.

13 (b) A city service contractor or city service subcontractor that
14 provides building services, food services or temporary services must pay
15 its employees that are engaged in performing the city service contract
16 or subcontract no less than the [~~living wage or the~~] prevailing wage[~~,~~
17 ~~whichever is greater. Where the living wage is greater than the prevail-~~
18 ~~ing wage, the city service contractor or city service subcontractor must~~
19 ~~either provide its employees health benefits or must supplement their~~
20 ~~hourly wage rate by an amount no less than the health benefits suppl-~~
21 ~~ement rate. Where the prevailing wage is greater than the living wage,~~
22 ~~the city service contractor or city service subcontractor must provide~~
23 ~~its employees the prevailing wage and supplements as provided in para-~~
24 ~~graph 18 of subdivision a of this section. These requirements apply for~~
25 ~~each hour that the employee works performing the city service contract~~
26 ~~or subcontract].~~

27 (2) [~~The Living Wage. The living wage shall be an hourly wage rate of~~
28 ~~ten dollars per hour and will be phased in as provided below. Provided,~~
29 ~~however, that for homecare services under the Personal Care Services~~
30 ~~program, the wage and health rates below shall only apply as long as the~~
31 ~~state and federal government maintain their combined aggregate propor-~~
32 ~~tionate share of funding and approved rates for homecare services in~~
33 ~~effect as of the date of the enactment of this section:~~

34 ~~(a) As of the effective date of this section, \$8.10 per hour;~~

35 ~~(b) As of July 1, 2003, \$8.60 per hour;~~

36 ~~(c) As of July 1, 2004, \$9.10 per hour;~~

37 ~~(d) As of July 1, 2005, \$9.60 per hour;~~

38 ~~(e) As of July 1, 2006, \$10.00 per hour.~~

39 ~~(3)]~~ Health Benefits. (a) Health Benefits means receipt by a covered
40 employee of a health care benefits package for the covered employee
41 and/or a health care benefits package for the covered employee and such
42 employee's family and/or dependents.

43 (b) [~~The Health Benefits Supplement Rate shall be \$1.50 per hour.~~

44 ~~(a)]~~ For homecare services provided under the Personal Care Services
45 program, the wage and health rates above shall only apply as long as the
46 state and federal government maintain their combined aggregate propor-
47 tionate share of funding and approved rates for homecare services in
48 effect as of the date of the enactment of this section.

49 [~~(d)]~~ (c) In the case of city service contractors or subcontractors
50 providing homecare services, the health benefits requirements of this
51 section may be waived by the terms of a bona fide collective bargaining
52 agreement with respect to employees who have never worked a minimum of
53 eighty (80) hours per month for two consecutive months for that covered
54 employer, but such provision may not be waived for any employees once
55 they have achieved a minimum of eighty (80) hours for two consecutive
56 months and no other provisions of this section may be so waived.

1 [~~(4)~~] (3) Exemption for Employment Programs for the Disadvantaged. The
2 following categories of employees shall not be subject to the require-
3 ments of this section:

4 (a) Any employee who is:

5 (i) Under the age of eighteen who is claimed as a dependent for feder-
6 al income tax purposes and is employed as an after-school or summer
7 employee; or

8 (ii) Employed as a trainee in a bona fide training program consistent
9 with federal and state law where the training program has the goal that
10 the employee advances into a permanent position; provided, however, that
11 this exemption shall apply only when the trainee does not replace,
12 displace or lower the wages or benefits of any covered employee, and the
13 training does not exceed two years; and

14 (b) Any disabled employee, where such disabled employee:

15 (i) Is covered by a current sub-minimum wage certificate issued to the
16 employer by the United States department of labor; or

17 (ii) Would be covered by such a certificate but for the fact that the
18 employer is paying a wage equal to or higher than the federal minimum
19 wage.

20 [~~(5)~~] (4) Retaliation and Discrimination Barred. It shall be unlawful
21 for any covered employer to retaliate, discharge, demote, suspend, take
22 adverse employment action in the terms and conditions of employment or
23 otherwise discriminate against any covered employee for reporting or
24 asserting a violation of this section, for seeking or communicating
25 information regarding rights conferred by this section, for exercising
26 any other rights protected under this section, or for participating in
27 any investigatory or court proceeding relating to this section. This
28 protection shall also apply to any covered employee or [~~his or her~~]
29 ~~their~~ representative who in good faith alleges a violation of this
30 section, or who seeks or communicates information regarding rights
31 conferred by this section in circumstances where [~~he or she~~] ~~such person~~
32 in good faith believes this section applies. Taking adverse employment
33 action against a covered employee(s) or [~~his or her~~] ~~their~~ represen-
34 tative within sixty days of the covered employee engaging in any of the
35 aforementioned activities shall raise a rebuttable presumption of having
36 done so in retaliation for those activities. Any covered employee
37 subjected to any action that violates this subsection may pursue admin-
38 istrative remedies or bring a civil action pursuant to subsection e of
39 this section in a court of competent jurisdiction.

40 [~~(6)~~] (5) Nothing in this section shall be construed to establish a
41 wage or benefit pattern or otherwise affect the establishment of wages
42 or benefits for city employees.

43 § 3. Subparagraph (a) of paragraph 1 of subdivision d of section 6-109
44 of the administrative code of the city of New York, as added by local
45 law number 38 of the city of New York for the year 2002, is amended to
46 read as follows:

47 (a) The mayor or [~~his or her~~] ~~their~~ designee shall promulgate imple-
48 menting rules and regulations as appropriate and consistent with this
49 section and may delegate such authority to the comptroller. The comp-
50 troller shall be responsible for [~~publishing the living wage and for~~]
51 calculating and publishing all applicable prevailing wage and [~~health~~
52 ~~benefits~~] ~~prevailing~~ supplement rates. The comptroller shall annually
53 publish the adjusted rates. The [~~adjusted living wage and health bene-~~
54 ~~fits supplement rate shall take effect on July 1 of each year, and the~~]
55 adjusted prevailing wage rates shall take effect on whatever date
56 revised prevailing wage rates determined under section 230 of the state

1 labor law are made effective. At least 30 days prior to their effective
2 date, the relevant contracting agencies, shall provide notice of the
3 adjusted rates to city service contractors, which shall in turn provide
4 written notification of the rate adjustments to each of their covered
5 employees, and to any city service subcontractors, which shall in turn
6 provide written notification to each of their covered employees. Covered
7 employers shall make necessary wage and health benefits adjustments by
8 the effective date of the adjusted rates.

9 § 4. Subparagraph (b) of paragraph 2 of subdivision d of section
10 6-109 of the administrative code of the city of New York, as added by
11 local law number 38 of the city of New York for the year 2002, is
12 amended to read as follows:

13 (b) Every city service contract shall have annexed to it the following
14 materials which shall form a part of the specifications for and terms of
15 the city service contract:

16 (i) A provision obligating the city service contractor to comply with
17 all applicable requirements under this section;

18 (ii) The certification required under paragraph 2 of subdivision c of
19 this section;

20 (iii) A schedule of the current [~~living~~] ~~prevailing~~ wage [~~and health~~
21 ~~benefits~~] supplement rates, a schedule of job classifications for which
22 payment of the prevailing wage is required under this section together
23 with the applicable prevailing wage rates for each job classification,
24 as determined by the comptroller and notice that such rates are adjusted
25 annually; and

26 (iv) A provision providing that: (a) Failure to comply with the
27 requirements of this section may constitute a material breach by the
28 city service contractor of the terms of the city service contract; (b)
29 Such failure shall be determined by the contracting agency; and (c) If,
30 within thirty days after or pursuant to the terms of the city service
31 contract, whichever is longer, the city service contractor and/or
32 subcontractor receives written notice of such a breach, the city service
33 contractor fails to cure such breach, the city shall have the right to
34 pursue any rights or remedies available under the terms of the city
35 service contract or under applicable law, including termination of the
36 contract.

37 § 5. This act shall take effect one year after it shall have become a
38 law.