# 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 Assembly, do enact as follows:**

Section 1. This act shall be known and may be cited as the "Close the Gap Act."

§ 2. Paragraphs 18, 19, 20 and 21 of subdivision a and subdivision b of section 6-109 of the administrative code of the city of New York, as added by local law number 38 of the city of New York for the year 2002, are amended to read as follows:

(18) "Prevailing Wage and Supplements" means the rate of wage and supplemental benefits per hour paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with the provisions of section 234 of the New York state labor law or, for titles not specifically enumerated in or covered by that law, determined by the comptroller at the request of a contracting agency or a covered employer in accordance with the procedures of section 234 of the New York state labor law**; provided, however, that for any trade or occupation in which 75 per centum or more employees are a member of the same protected class and such rate of wage and supplemental benefits would be less than the lowest rate of a covered building services employee, the prevailing wage and supplements may be greater than that paid in the locality to workers in the same trade or occupation**. As provided under section 231 of the New York state labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the comptroller.

(19) [~~"Living Wage" has the meaning provided in paragraph 2 of subdivision b of this section.~~

~~(20)~~] "Health Benefits" has the meaning provided in paragraph [~~3~~] **2** of 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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[~~(21) "Health Benefits Supplement Rate" has the meaning provided in subparagraph b of paragraph 3 of subdivision b of this section.~~]

b. [~~Living Wage.~~] Prevailing Wage and Health Benefits. (1) Coverage. (a) A city service contractor or city service subcontractor that provides homecare services, day care services, head start services or services to persons with cerebral palsy must pay its covered employees that directly render such services in performance of the city service contract or subcontract no less than the [~~living~~] **prevailing** wage and must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the [~~health benefits~~] **prevailing** supplement rate. This requirement applies for each hour that the employee works performing the city service contract or subcontract.

(b) A city service contractor or city service subcontractor that provides building services, food services or temporary services must pay its employees that are engaged in performing the city service contract or subcontract no less than the [~~living wage or the~~] prevailing wage[~~, whichever is greater. Where the living wage is greater than the prevailing wage, the city service contractor or city service subcontractor must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the city service contractor or city service subcontractor must provide its employees the prevailing wage and supplements as provided in paragraph 18 of subdivision a of this section. These requirements apply for each hour that the employee works performing the city service contract or subcontract~~].

(2) [~~The Living Wage. The living wage shall be an hourly wage rate of ten dollars per hour and will be phased in as provided below. Provided, however, that for homecare services under the Personal Care Services program, the wage and health 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 section:~~

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

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

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

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

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

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

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

~~(c)~~] For homecare services provided under the Personal Care Services program, the wage and health rates above 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 section.

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

[~~(4)~~] **(3)** Exemption for Employment Programs for the Disadvantaged. The following categories of employees shall not be subject to the requirements of this section:

(a) Any employee who is:

(i) 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

(ii) 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 covered employee, and the training does not exceed two years; and

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

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

(ii) 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.

[~~(5)~~] **(4)** Retaliation and Discrimination Barred. It shall be unlawful for any covered employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any covered employee for reporting or asserting a violation of this section, for seeking or communicating information regarding rights conferred by this section, for exercising any other rights protected under this section, or for participating in any investigatory or court proceeding relating to this section. This protection shall also apply to any covered employee or [~~his or her~~] **their** representative who in good faith alleges a violation of this section, or who seeks or communicates information regarding rights conferred by this section in circumstances where [~~he or she~~] **such person** in good faith believes this section applies. Taking adverse employment action against a covered employee(s) or [~~his or her~~] **their** 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 subsection e of this section in a court of competent jurisdiction.

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

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

(a) The mayor or [~~his or her~~] **their** designee shall promulgate implementing rules and regulations as appropriate and consistent with this section and may delegate such authority to the comptroller. The comptroller shall be responsible for [~~publishing the living wage and for~~] calculating and publishing all applicable prevailing wage and [~~health benefits~~] **prevailing** supplement rates. The comptroller shall annually publish the adjusted rates. The [~~adjusted living wage and health benefits supplement rate shall take effect on July 1 of each year, and the~~] adjusted prevailing wage rates shall take effect on whatever date revised prevailing wage rates determined under section 230 of the state

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

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

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

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

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

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

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

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