

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 125

Introduced by Council Members Moya, Ayala, Reynoso, Lander, Kallos, Rivera, Levine, Chin, Powers, Van Bramer, Gibson, Brannan, Adams, Salamanca, Koslowitz, Cabrera, Ampry-Samuel, Gjonaj, Louis, Menchaca, Grodenchik, Rosenthal, Cornegy, Treyger, Eugene, Barron, Gennaro, Yeger, Riley, Dinowitz and Vallone.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing prevailing wage requirements for security guards and fire guards at city-contracted shelters

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 of the administrative code of the city of New York is amended by adding a new section 6-109.1 to read as follows:

§ 6-109.1 Prevailing wage for security guards and fire guards at city-contracted shelters. a.

Definitions. For purposes of this section, the following terms have the following meanings:

Commissioner. The term “commissioner” means the commissioner of homeless services.

Comptroller. The term “comptroller” means the comptroller of the city.

Covered employer. The term “covered employer” means a shelter operator or a covered guard service company.

Covered guard. The term “covered guard” means a security guard or a fire guard.

Covered guard service company. The term “covered guard service company” means a person that has entered into an approved subcontract under a shelter contract, and pursuant to such subcontract:

1. provides the services of fire guards; or

2. provides security services, and is licensed to provide the services of security guards under contract to other entities pursuant to article 7 of the general business law.

Department. The term “department” means the department of homeless services.

Fire guard. The term “fire guard” has the same meaning as provided under section 202 of the fire code.

Prevailing wage. The term “prevailing wage” means the rate of wage and supplemental benefits paid in the locality to workers in the same trade or occupation and determined by the comptroller in a manner consistent with the provisions of section 234 of the labor law.

Security guard. The term “security guard” means any unarmed individual with a current and valid license issued in accordance with article 7-A of the general business law, authorizing such individual to perform security services in the state of New York.

Security services. The term “security services” means the unarmed protection of individuals and/or property from harm or other unlawful activity, as well as prevention, deterrence, observation, detection and/or reporting to government agencies of unlawful activity or conditions that present a risk to the safety of shelter residents, staff or the public.

Shelter. The term “shelter” means temporary emergency housing provided to homeless individuals by the department or by another person through a contract with the department.

Shelter contract. The term “shelter contract” means any written agreement whereby the department is committed to expend and does expend funds and the principal purpose of such agreement is to operate a shelter.

Shelter operator. The term “shelter operator” means any person that enters into a shelter contract with the department.

b. Prevailing wage in city-contracted shelters required. 1. A shelter operator or covered guard service company that employs covered guards at a shelter shall pay such guards no less than the prevailing wage determined in a manner consistent with the requirements of section 234 of the labor law. The obligation of a shelter operator or covered guard service company 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, if any, promulgated pursuant to paragraph 1 of subdivision c of this section.

2. Every covered employer that employs a covered guard to perform services pursuant to such shelter contract shall provide to the comptroller and the commissioner an annual certification executed under penalty of perjury that all such covered guards subject to the requirements of this subdivision have been paid the prevailing wage, provided that a shelter contract may include specifications setting forth a process for a shelter operator to collect such certifications from any covered guard service companies and transmit such certifications to the comptroller and the commissioner. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each covered guard employed at the shelter. Such certification shall be certified by the chief executive or chief financial officer of the covered employer or the designee of any such person. A material inaccuracy in such certification, or a failure to provide such certification, shall constitute a violation of this section by the party that has violation of paragraph.

3. *Each covered employer shall maintain original payroll records for each of the covered guards it employs to perform services pursuant to such shelter contract reflecting the days and hours worked, and the wages paid and benefits paid for such hours worked, and shall retain such records for the duration of its provision of services under a shelter contract and at least six years after the end of the contract term. Failure to maintain such records as required shall create a rebuttable presumption that the covered guards were not paid the wages and benefits required under this section. Covered guard services companies shall provide copies of such records to relevant shelter operators. Upon the request of the comptroller or the commissioner, a covered employer shall provide a certified original payroll record. The comptroller or the commissioner may inspect such records to verify the certifications submitted pursuant to paragraph 2 of this subdivision, consistent with applicable law.*

4. *A shelter operator subject to the requirements of this section shall post in a prominent and accessible place at every shelter a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which covered guards are entitled under this section. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising such covered guards that if they have been paid less than the prevailing wage, they may notify the comptroller and request an investigation. Such notice shall be provided in English, Spanish and any other language that the shelter operator is aware is the primary language of a significant portion of a covered employer's covered guards. Such notice shall remain posted for the duration of the shelter contract and shall be adjusted periodically to reflect the current prevailing wage for covered guards. Each covered employer shall provide a copy of such notice to each covered guard subject to paragraph 1 of this subdivision. The comptroller*

shall provide the commissioner with sample written notices explaining the rights of covered guards and covered employers' obligations under this section, and the commissioner shall in turn provide those written notices to shelter operators.

c. Implementation and enforcement. 1. The mayor shall promulgate implementing rules and regulations as appropriate and consistent with this section. The mayor may delegate such rulemaking authority to the comptroller, and may also delegate to the comptroller the authority to enforce the requirements established under paragraphs four and five of this subdivision. For the fiscal year ending June 30, 2024 and every year thereafter, the comptroller shall submit a report to the mayor and the speaker of the council summarizing and assessing the implementation and enforcement of this section during the preceding fiscal year.

2. Every shelter contract and every subcontract between a shelter operator and a covered guard service company for the provision of services at a shelter shall contain a provision obligating covered employers to comply with all applicable requirements of this section.

3. The comptroller shall monitor covered employers' compliance with the requirements of this section. Whenever the comptroller has reason to believe that there has been a violation of this section, or upon a verified complaint in writing from a covered guard, a former covered guard, or a covered guard's representative claiming a violation of this section, the comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the comptroller shall have the same powers as are conferred on the comptroller by subdivision b of section 93 of the charter. At the start of such investigation, the comptroller may request that the department withhold from any payment due to the shelter operator under the shelter contract moneys sufficient to safeguard the rights of the covered guards based on any alleged

underpayment to such covered guard. Such withholding shall not be based on the value of any potential civil penalties under this subdivision. If the department withholds monies pursuant to this paragraph, such monies shall be held in trust pending completion of the investigation, in accordance with rules promulgated by the mayor.

4. The comptroller shall report the results of such investigation to the mayor. Upon receipt of the results of such investigation, or based on other appropriate findings, the mayor shall, in accordance with the provisions of paragraph 5 of this subdivision, and after providing the covered employer an opportunity to cure any violations, where appropriate, issue an order, determination, or other disposition, which may include a stipulation of settlement. Such disposition may:

(i) Direct payment of wages and/or the monetary equivalent of benefits that were underpaid by the covered employer, including interest from the date of the underpayment to the covered guard, based on the interest rate then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the banking law, but in any event at a rate no less than six percent per year;

(ii) Direct the reinstatement of, or other appropriate relief for, any person found to have been subject to retaliation or discrimination in violation of this section;

(iii) Direct payment of a further sum as a civil penalty in an amount not exceeding 25 percent of the total amount found to be due in violation of this section;

(iv) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the shelter operator; and

(v) Direct payment of a further sum as a civil penalty up to three times the actual damages sustained when in two or more instances within the last six years final determinations by the

mayor, or the comptroller if the mayor has delegated the function pursuant to this subdivision, has found that the covered employer willfully failed to pay the prevailing wage.

In assessing an appropriate remedy, due consideration shall be given to the gravity of the violation, the history of previous violations, the good faith of the covered employer, and the failure to comply with record-keeping, notice, reporting, or other non-wage requirements. Any civil penalty shall be deposited in the general fund.

5. Before issuing an order, determination, or any other disposition, the mayor, or the comptroller if the mayor has delegated the function pursuant to this subdivision, (a) shall give notice thereof, together with a copy of the complaint, which notice shall be served personally or by mail on any person affected thereby and (b) may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings, or other appropriate agency or tribunal, for a hearing and recommended disposition. Such covered employer shall be notified of a hearing date by the office of administrative trials and hearings, or other appropriate agency or tribunal, and shall have the opportunity to be heard in respect to such matters.

6. In an investigation conducted under the provisions of this section, the inquiry of the comptroller shall not extend to work performed more than three years prior to the filing of the complaint, or the commencement of such investigation, whichever is earlier.

7. (a) Upon stipulation of settlement or issuance of an order, determination, or other disposition that a covered employer has violated this section, pursuant to paragraph 4 of this subdivision, the department shall pay to such covered guards from any trust money withheld pursuant to paragraph 3 of this subdivision the amounts specified in such order, determination, or

other disposition and shall deduct from such trust monies an amount equal to any civil penalty specified in such order, determination, or other disposition, provided that no review proceeding pursuant to article 78 of the civil practice law and rules or any other law challenging such order, determination, or other disposition has been commenced and the time for initiation of such proceeding has expired. If such a challenge is made, the money withheld shall remain in trust pending final disposition of the review proceeding. The department shall pay any additional withheld trust monies to the shelter operator in accordance with such order, determination, or other disposition.

(b) If the amounts specified in such order, determination, or other disposition to be paid to covered guards or as a civil penalty exceed the value of the funds withheld pursuant to paragraph 3 of this subdivision, or if no such withholding was made pursuant to such paragraph, the department shall deduct the outstanding amounts from monies subsequently earned under the shelter contract or any other existing or future shelter contract with the shelter operator and pay such monies to the applicable guard or to the general fund as a civil penalty, unless the covered employer found to have violated this section provides proof sufficient to the commissioner that such covered employer has made such payments to covered guards in accordance with such order.

8. The comptroller shall be authorized to contract with non-governmental agencies to investigate possible violations of this section. Where a covered employer is found to have violated the requirements of this section, the covered employer shall be liable to the city for costs incurred in investigating and prosecuting the violation.

9. In circumstances where a shelter operator fails to perform in accordance with any of the requirements of this section and there is a continued need for shelter services, the commissioner

may through existing procurement mechanisms obtain from another source the required services as specified in the original shelter contract, or any part thereof, and may charge the non-performing shelter operator for any difference in price resulting from the alternative arrangements, may assess any administrative charge established by the commissioner, and may, as appropriate, invoke such other sanctions as are available under the shelter contract and applicable law.

d. Enforcement by private right of action. 1. When a final determination has been made and such determination is in favor of a covered guard, such guard may, in addition to any other remedy provided by this section, institute an action in any court of appropriate jurisdiction against the covered employer found to have violated this section. For any violation of this section, including failure to pay applicable prevailing wages, pay required benefits, or comply with other requirements of this section, 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 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.

2. Notwithstanding any inconsistent provision of paragraph 1 of this subdivision, where a complaint filed with the comptroller is dismissed an aggrieved person shall maintain all rights to commence a civil action pursuant to this section as if no such complaint had been filed.

3. A covered guard subject to this section shall not be barred from the right to recover the difference between the amount paid to such covered guard and the amount which should have been paid to the covered guard under the provisions of this section because of the prior receipt by

the covered guard without protest of wages or benefits paid, on account of the covered guard's failure to state orally or in writing upon any payroll or receipt that the covered guard is required to sign that the wages or benefits received by the covered guard are received under protest, or on account of the guard'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 covered guard for the period covered by such payment.

4. Such action 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 78 of the civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this section 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 section shall not be construed to limit a covered guard's right, if any, to bring a cause of action for wrongful termination.

e. 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 guard 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 guard or such guard's 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 such guard in good faith believes this section applies. Taking adverse employment action against a covered guard or such guard's representative within 60 days of the guard engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered guard subjected to any action that violates this subdivision may pursue administrative remedies or bring a civil action pursuant to subdivision d of this section in a court of competent jurisdiction.

f. Subcontracting. A shelter operator shall not enter into any contract for an amount greater than \$20,000 with a covered guard service company for the provision of security services or the services of a fire guard at a shelter in performance of a shelter contract without the department's prior approval of the proposed covered guard service company. The shelter operator shall provide information to the department demonstrating that the proposed covered guard service company has the necessary facilities, skill, integrity, past experience and financial resources to perform the services required pursuant to the shelter contract. A completed questionnaire containing the information required pursuant to subdivision b of section 6-116.2 by the proposed covered guard service company must be submitted to the department, if required pursuant to the rules of the procurement policy board. The department shall make a final determination in writing approving or disapproving the proposed covered guard service company after receiving all requested information. The approval of a covered guard service company shall not relieve the shelter operator of any of its responsibilities, duties and liabilities under the shelter contract. The shelter operator shall remain fully responsible to the department for the acts and omissions of the covered guard service company.

g. Relation to other laws. This section shall be liberally construed in favor of its purposes. Nothing in this section 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 guards subject to the provisions of this section. No requirement or provision of this section 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 section for which coverage would be preempted shall be construed as not applying.

§ 2. a. This local law takes effect immediately, except that:

1. subdivisions b and f of section 6-109.1 of the administrative code of the city of New York, as added by section one of this local law, shall take effect 180 days after it becomes law; and

2. Compliance with the provisions named in paragraph one of this subdivision, beginning 180 days after the enactment date, shall be a requirement of (A) any shelter contract entered into after such enactment date, and (B) any shelter contract renewed or amended after such enactment date for the renewal term of such contract or the portion of the term of such contract following such amendment, as applicable.

b. For the purposes of this section, the term “shelter contract” has the meaning set forth in subdivision a of section 6-109.1 of such code.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on October 7, 2021 and returned unsigned by the Mayor on November 8, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 125 of 2021, Council Int. No. 2006-A of 2020) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.