

**Nassau County
Office of the Comptroller**



**Living Wage Law
2008 Annual Report**

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Comptroller**

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TABLE OF CONTENTS

INTRODUCTION	1
THE LIVING WAGE LAW	1
THE LIVING WAGE UNIT	3
THE LIVING WAGE ADVISORY BOARD	4
AUDIT FUNCTION	5
ENFORCEMENT SUCCESSES/CHALLENGES UNDER THE LIVING WAGE LAW	8
CONCLUSION	8
Appendix A	A-1
Appendix B	B-1
Appendix C	C-1

INTRODUCTION

The Living Wage Law (the “Law”) was enacted by the Nassau County Legislature in 2006 to raise the minimum wage of employees working for the County and those working for most of its contractors. As a result of the Law, many Nassau County workers have seen increases in their annual salaries. The Comptroller’s Office is responsible for monitoring compliance with the Law, and the Law requires that the Comptroller report annually to the Legislature on the Law’s enforcement.

After the Law became effective on January 1, 2007 the Comptroller established a Living Wage Unit (the “Unit”), which is exclusively dedicated to auditing covered entities to ensure compliance with the Law. The Comptroller also promulgated rules and regulations for the Law, created forms and other documents to streamline implementation of the Law, and established a website to disseminate information about the Law. The Unit established audit criteria for conducting living wage audits, created a comprehensive audit plan intended to target the most likely offenders of the Law, and began auditing covered entities. Finally, the Comptroller established a Living Wage Advisory Board comprised of labor leaders and living wage law advocates, to advise his office in the implementation of the Law.

During 2008, the Comptroller’s staff met with representatives of the personal care aide industry to discuss enforcement and compliance issues. The staff discussed with the industry group and the Living Wage Advisory Board how to best draft a rule governing paid days off and compensation in lieu of paid days off. Living wage audit field work on almost all the larger personal care aide companies that contract with the County was completed and seven audit reports were issued. The majority of the violations identified in the audits concerned the Law’s requirement to grant workers paid days off or payment in lieu of paid days off. The audits found that contractors had underpaid 674¹ of their employees by about \$315,000 for wages and compensated days off. Each of these contractors was directed by the Comptroller’s Office to take the appropriate corrective action.

THE LIVING WAGE LAW

Living Wage Rates

The Law increases the minimum hourly wages on August 1 of each year until August 1, 2010 when the living wage rate is set at \$12.50 per hour. In addition, a benefit supplement to be applied towards the provision of health benefits is required. The benefit supplement was \$1.50 per hour from January 1, 2007 to July 31, 2008 and thereafter, it was increased to \$1.55. As of August 1, 2008, the Law requires covered employers to pay an hourly wage of \$10.50, or \$12.05 if no health benefits are provided. The Law also requires that eligible full

¹ The number of employees impacted represents a count of the incidences in which an employee’s name appeared as being under compensated, in terms of wages or compensated days off, in 2007 and/or 2008. As such, the same employee may account for up to four incidences if there was an under payment of both wages and compensated days off in both 2007 and 2008.

time employees receive 12 compensated days off per year for sick leave, vacation, or personal necessity, at their request. Part time employees who work at least 20 hours per week receive proportional compensated days off.

Application of the Law

The Law applies to the following types of contracts and leases entered into by the County after January 1, 2007:

- service contracts of \$25,000 or more;
- financial assistance contracts for more than \$50,000 and where the employer has at least 10 employees; or
- leases of property owned or controlled by the County.

The Law also applies to County subcontractors, County tenants and contractors of recipients of financial assistance from the County. The Law covers all employees of Nassau County and those of the Nassau Health Care Corporation and its subsidiaries.

The Law does not apply to vendors who enter into the following types of contracts with the County:

- service contracts and financial assistance for providers of child care services, pre-school services and early intervention services;
- contracts where services are incidental to the delivery of products, equipment or commodities; or
- inter-governmental contracts and financial assistance contracts for industrial development bonds, community development block grants and enterprise-zone investments.

The Law does not apply to the employees of Nassau Community College (the “College”) but does apply to the College’s service contractors and subcontractors. Also excluded from the Law are those employees who are:

- under 18 years of age and are claimed as dependents for federal tax purposes and are employed as an after-school or summer employee;
- enrolled in a bona-fide training program; or
- disabled and 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 federal minimum wage.

THE LIVING WAGE UNIT

The Law authorizes the Nassau County Comptroller to monitor, investigate and audit compliance with the Law.² To perform these functions the Comptroller established the Unit, led by a Director, within the Field Audit department of the Comptroller's Office. As of December 2007, one director, one supervisor and four auditors were assigned to work on living wage enforcement activities. In 2008, the audit plan was streamlined to focus on the audit of personal care providers – a segment of County contractors that had annual billings of \$65 million in 2007, and who employed low wage workers.

Rules

The Law provides for rulemaking in two areas: monitoring and enforcement of the Law, and waivers. The County Executive designated the Comptroller to promulgate the rules as they relate to the monitoring and enforcement of the Law.³ The primary purpose of the rules promulgated by the Comptroller is to define the role of the Comptroller, outline the responsibilities of covered employers, and clarify the rights of the covered employees. The Comptroller revised the rules in January 2009 to provide clarification about the employers' responsibilities in regard to compensated days off. (See Appendix A.) The County Executive has promulgated a separate set of rules to address the procedures governing requests for waivers and provide clarification of certain terms. In 2008, these rules were revised to, inter alia, amend the waiver requirements and establish benefit supplement rate adjustment procedures. (See Appendix B.)

Website

The Living Wage website can be found at www.nassaucountyny.gov/agencies/Comptroller/Livingwage/index.html. Currently, the website includes a complete copy of the Law, the Living Wage rules promulgated by the Comptroller, links to Living Wage Forms in a downloadable format, and Frequently Asked Questions about the Law. Additionally, all the audit reports that have been issued are posted on the website.

Poster

The Unit created a Living Wage Poster (Appendix C) to explain the Law in a simple format. The poster is available in English and Spanish and can be downloaded from the website. The poster lists the current living wage rates and the employee's right to compensated days off. It also provides contact information, including the telephone number and the e-mail address for the Unit, to allow individuals to clarify eligibility questions and/or direct employee complaints.

² Nassau County Living Wage Law § 7(a) (2008).

³ Nassau County Living Wage Law § 7(b) (2008).

The Comptroller's Rules (Appendix A) now require that appropriate Living Wage Notices be posted in a conspicuous manner at all relevant work sites. The poster has been designed in a manner that its posting will meet this requirement. It is the Unit's hope that the poster will not only afford employees with the information they need to ensure that they are being paid at the correct rate, but will also provide leads on employers who are not in compliance.

THE LIVING WAGE ADVISORY BOARD

In an effort to benefit from the insight of union leaders and activists who are often the first to receive complaints about wage violations, the Comptroller established the Living Wage Advisory Board (the "Board") in 2007. The current Board members are as follows:

John Durso - President, Long Island Federation of Labor (Chairman)
Jim Castellane - Building & Construction Trades Council (Vice Chair)
Lisa Tyson - Long Island Progressive Coalition (Vice Chair)
Jack Ahern - IUOE Local 30
Shirley Aldebol - SEIU Local 32BJ
Frank Bail - RWDSU Local 1102
Walter Barton - NALC Branch 6000
Patricia Bowden - TWU Local 252
Roger Clayman - Executive Director LI Federation of Labor
Larry DeAngelis - CWA District 1
Nick DeFino - Local 1181
Donald Fiore - IBEW Local 25
Jerry Laricchiuta - President, Civil Service Employees Association (CSEA) Local 830
Nick LaMorte - CSEA Region 1
Michele Lynch - 1199 SEIU
Jimmy Rogers - DC9 IUPAT

In 2008, the Board had three meetings. The Board discussed ways to improve enforcement of the Law, how to publicize the Law, how to identify employees of subcontractors, and how to audit subcontractors. The Board raised questions concerning the Law's interpretation and the granting of waivers from compliance with the Law and met with Chief Deputy County Executive Marilyn Gottlieb to review the factors that lead to grants of waivers. The Board also discussed possible amendments to the Law and planned to invite the Presiding Officer of the County Legislature to discuss the issues they had identified with the Law as written.

The Board also discussed issues concerning challenges faced by the current Law and how certain changes would result in greater protection for a larger pool of employees. The issues included:

Greater Penalties for Non-Compliance

Where an employer fails to comply with the Law 30 days after being notified by the County, the Law currently allows the County to impose a fine "in the amount of \$500 for each week for each employee found not to have been paid in accordance with this title". In light of the significant number of instances of non-

compliance and number of employees affected, the Board recommended that the Law be amended to increase to maximum allowable fine that may be imposed by the County.

Nassau Community College

The Law specifically excludes the College as an employer and, therefore, its employees are not covered. However, the College's service contractors/ subcontractors and their employees are covered by the Law. As the College directly employs approximately 3,200 individuals, the issue was raised as to whether the Law should be changed to include the College as a covered employer. Our research found that under Suffolk County's Living Wage Law, Suffolk Community College is a covered employer.

Exemptions

The Board discussed recommending that the Law be amended to eliminate the exemption for County contractors who furnish child care services. Child care is a vital industry which employs a large number of low wage workers who would greatly benefit from the Law.

MEETING WITH PERSONAL CARE AIDE PROVIDER GROUP

While audits of individual personal care aide provider contractors continued, the Comptroller's Office met with representatives of the Long Island Chapter of the New York Association of Health Care Providers to discuss issues of compliance and interpretation. Industry representatives were willing to comply with the Law but identified areas where the Law lacked clarity, especially regarding the treatment of compensated days off. Through some difficult discussions, the issues were identified and a rule was drafted to provide greater guidance to employers.

AUDIT FUNCTION

Audit Plan and Priorities

The Law only applies to contracts entered into by the County after January 1, 2007. In our 2007 annual report, we found that as of December 31, 2007, Nassau County had entered into 467 contracts during 2007; they were valued at approximately \$192 million and are covered by the Law. We identified 35 Personal Care Aide ("PCA") contracts, which account for approximately \$65 million of the \$192 million. Five of these 35 contracts, with a value of approximately \$7 million, were granted waivers from the Law.

Our review of contracts entered into, or amended, in 2008 found there are approximately 563 contracts with an estimated value of \$187 million that are subject to the Law. Included in the 2008 contracts are 27 PCA contracts with approximate value of \$56 million.

The 2008 audit plan continued to focus on the PCA providers because they employ a relatively large number of lower wage covered workers.

In 2009, the Unit will continue to focus on PCA providers. In particular, all of the providers that had significant audit findings in 2007 will be re-visited for follow-up reviews. These efforts will encompass auditing of 2008 compliance and ensuring that the corrective actions found necessary in the Unit's 2007 audits were carried out. In addition, audits will be performed on six PCA providers that fall under the Consumer Directed Personal Assistance Program, and are subjected to the Law for the first time in 2009. These providers are significant in size as their 2008 billings totaled \$33 million and they provide aides to 728 patients.

The 2008 audit plan also included a review of the non-PCA County contracts covered by the Law which were valued at approximately \$127 million in 2007. By the end of 2008, 130 contracts with approximate value of \$100 million had been subjected to a preliminary review. In addition, a review of 2008 contracts was also commenced and 34 contracts with estimated value of \$27 million were reviewed preliminarily.

In 2008, there were no significant leases entered into by the County, which were covered under the Law.

Based on the value and the size of a given contract, the Unit either conducted traditional physical (site-visit) audits or performed desk audits, which predominantly involved reviewing wage documentation already in the County's possession. For some desk audits, after the initial review of this information, additional documentation was requested of the auditee if necessary. For PCA providers, traditional audits were performed and for other contracts, desk audits were undertaken.

AUDIT FINDINGS

PCA Contracts

Nassau County enters into an agreement with PCA contractors to provide state-mandated personal care services to Medicaid recipients. The reimbursement claims for these personal care services are submitted to (and paid by) the New York State Department of Health. During 2007, Nassau County had 30 PCA providers which are covered by the Law. Their total billings in 2007 were \$58 million. We issued audit reports on seven of them, including Long Island Care at Home, who subsequently received a waiver from the County Executive's Office and is no longer covered under the Law. Of those remaining, one of the contractors ceased operations and audits of the 23 others are in progress.

Our audits revealed that several providers had not fully complied with the Law and they had underpaid their employees by a total of about \$ 280,000. The estimated total number of employees impacted was 650⁴. We directed these providers to take immediate corrective actions to properly compensate their employees.

⁴ The number of employees impacted represents a count of the incidences in which an employee's name appeared as being under compensated, in terms of wages or compensated days off, in 2007 and/or 2008.

Seven reports were issued in 2008 which contained findings that 313⁵ employees had been underpaid by \$138,000. Of this amount, \$86,000 is based on the vendor's assertion of the amount of underpayment. The accuracy of these assertions and the corrective actions taken by the vendor will be audited as part of our 2009 audit. The providers audited and the audit findings are as follows:

- Tender Loving Care Health Care Services, Inc. owed employees \$64,153 for underpayment of wages and days off.
- Allen Health Care Services, Inc. owed employees \$45,119 for underpayment of days off.
- New York Health Care, Inc. owed employees \$6,350 for underpayment of days off.
- Premier Home Health Care Services, Inc. owed employees \$15,683 for underpayment of wages. Premier also improperly calculated its employee's entitlement to compensated days off. Premier will quantify the amount of underpayment and we will audit its assertion in 2009.
- First Choice Home Care, Inc. owed employees \$6,289 for underpayment of days off.
- Aides at Home, Inc. had a corporate policy that did not include a provision to allow employees who completed six months of service to use their time off when they wanted to. It also failed to pay employees who were owed less than four hours accrued time.
- Long Island Care at Home, Ltd. understated the time two part time employees were entitled to take off and did not compute accrued leave accurately.

In response to the audits, all agencies stated that they have made (or would make) payment in full to their employees and adjust their policies so that they are in full compliance with the Law. The Comptroller's Office will be conducting follow up audits, where warranted, to see if they have complied.

County Service Contracts (Non-PCA)

The Unit's review of non-PCA contracts in 2008 identified three entities that had not complied with the Law. One of these entities asserted that it had not provided compensated time off to 18 employees in 2007 for a total of \$22,245 and to 23 employees in 2008 for a total of \$9,707. We required them to properly compensate their employees and will perform a follow up audit in 2009 to ensure that they have done so.

There were two other entities that were non-compliant and the total amount of underpayments was \$2,900. We directed both of these entities to promptly take the appropriate corrective actions.

As such, the same employee may account for up to four incidences if there was an under payment of both wages and compensated days off in both 2007 and 2008.

⁵ Ibid

ENFORCEMENT SUCCESSES/CHALLENGES UNDER THE LIVING WAGE LAW

In attempting to monitor and audit entities covered by the Law, the Unit has encountered some difficulties applying the Law in certain circumstances. One such issue identified in the 2007 Annual Report was PCA providers not covered by the Law. These are Consumer Directed Personal Assistance Program Providers, who had entered into Memorandums of Understanding (MOU) with the Nassau County Department of Social Services; the MOU pre-dates the Law's effective date of January 1, 2007. The Comptroller's Office brought this to the attention of the Health and Human Services vertical and we have been advised that, in 2009, new agreements will be executed under which these providers will be subject to the Law. This will effectively bring about 728 employees under the protection of the Law.

CONCLUSION

During 2008, the Comptroller has made significant progress in achieving the objective of bringing as many covered employers as possible into compliance with the Law. Audits of seven PCA providers were completed. Furthermore, through discussions with the industry, we have educated employers about their obligation to provide paid days off or compensation in lieu of paid days off. In addition, the Living Wage Advisory Board has been a major source of guidance for the Unit and their valuable suggestions and insights will continue to be utilized for improving the Law and its overall enforcement process.

APPENDIX A



**COUNTY OF NASSAU
RULES OF THE COMPTROLLER**

**THE NASSAU COUNTY LIVING WAGE LAW
LOCAL LAW 1-2006, MISCELLANEOUS LAWS TITLE 57**

TABLE OF CONTENTS

PART I:	INTRODUCTION.....	3
	SECTION A: AUTHORITY AND USAGE.....	3
PART II:	INVESTIGATION, MONITORING & ENFORCEMENT.....	3
	SECTION A: INVESTIGATING COVERED EMPLOYEE COMPLAINTS.....	3
	1. RESPONSIBILITIES OF COVERED EMPLOYERS.....	3
	SECTION B: MONITORING AND ENFORCEMENT.....	3
	1. RESPONSIBILITIES OF THE LIVING WAGE UNIT.....	3
	2. RESPONSIBILITIES OF COVERED EMPLOYERS.....	4
PART III:	RECORD KEEPING & REPORTS.....	4
	SECTION A: PUBLICATION OF LIVING WAGE RATES.....	4
	1. RESPONSIBILITIES OF COVERED EMPLOYERS.....	4
	SECTION B: PAYROLL RECORDS OF COVERED EMPLOYERS.....	5
	1. RESPONSIBILITIES OF COVERED EMPLOYERS.....	5
	SECTION C: COMPENSATED DAYS OFF.....	5
	1. RESPONSIBILITIES OF COVERED EMPLOYERS.....	5

PART I

INTRODUCTION

SECTION A: AUTHORITY AND USAGE

- a. These Rules are promulgated pursuant to Local Law 1-2006, Section 7(a) which authorizes the Comptroller to monitor, investigate, and audit compliance by all contracting agencies and may contract with non-governmental agencies to investigate possible violations of the Living Wage Law.
- b. Whenever the term “Law” or “Living Wage Law” is used in this document, it shall mean Local Law 1-2006, otherwise known as the Nassau County Living Wage Law. Whenever the terms “Rule” or “Rules” are used in this document, it shall mean these Rules of the Nassau County Comptroller regarding the Nassau County Living Wage Law.

PART II

INVESTIGATION, MONITORING & ENFORCEMENT

SECTION A: INVESTIGATING COVERED EMPLOYEE COMPLAINTS

1. RESPONSIBILITIES OF COVERED EMPLOYERS

- a. Covered Employers are required to cooperate with the *Living Wage Unit* so that it may perform its monitoring, investigating and auditing functions pertaining to the Law. Covered Employers must permit access to work sites, payroll records and other relevant documents for compliance purposes. Cooperation includes, but is not limited to, producing payroll records for inspection and copying if deemed relevant and necessary by the *Living Wage Unit*.

SECTION B: MONITORING AND ENFORCEMENT

1. RESPONSIBILITIES OF THE LIVING WAGE UNIT

The Living Wage Unit is responsible for ensuring that Covered Employers are in compliance with the Living Wage Law. The investigation process may include, but is not limited to, the following:

- a. Visiting relevant work site(s).
- b. Notifying Covered Employers and Contracting Agencies if any non-compliance determinations have been made.

- c. Conducting follow-up investigations or audits with Covered Employers to ensure that corrective action has been taken.
- d. Referring any cases of non-compliance to the County Attorney and the Contracting Agency for further appropriate action.

2. RESPONSIBILITIES OF COVERED EMPLOYEES

- a. Covered Employers must ensure that its covered subcontractors comply with the requirements of the Law by attaching to each subcontract, a provision obligating the subcontractor to comply with the requirements of the Law. This provision shall also provide that failure to comply with the requirements of the Law may constitute a material breach of contract by the subcontractor.
- b. During the term of the County service contract, Covered Employers must notify the Contracting Agency and the *Living Wage Unit* of any material changes in the information contained in their current certification or their subcontractors' certification within sixty (60) days of the date of the material change.

PART III

RECORD KEEPING & REPORTS

SECTION A: PUBLICATION OF LIVING WAGE RATES

1. RESPONSIBILITIES OF COVERED EMPLOYERS

- a. Provide written notification to each of their Covered Employees of the adjusted living wage and the health benefit supplement rates and the effective date of the change at least seven (7) days prior to the effective date.
- b. Post Living Wage notices in a conspicuous manner at all relevant work sites/locations no later than the day on which any work begins under a County service contract.
- c. Provide all covered subcontractors with Living Wage notices (see subsection (b) above) for posting in a conspicuous manner at each covered work site/location.
- d. Provide all subcontractors with certification of compliance forms. Covered Employers must maintain in their files for inspection, copies of Living Wage-related subcontractor completed paperwork.

SECTION B: PAYROLL RECORDS OF COVERED EMPLOYERS

1. RESPONSIBILITIES OF COVERED EMPLOYER:

- a. Maintain its payroll records in accordance with the Living Wage Law, Section 5(b).
- b. Upon request by the Living Wage Unit, provide a separate list of Covered Employees which shall include the name, date of hire, position, rate of pay and benefits paid for each employee.
- c. Submit any required information in a timeframe established by the Living Wage Unit.
- d. Require its subcontractors to maintain payroll records for its Covered Employees and related records under each subcontract including, but not limited to, the following:
 - Number of hours worked each day for each employee;
 - Base rate of wages for each employee;
 - Gross wages;
 - Deductions made;
 - The actual wages paid each employee; and
 - A record of compensated days off.
- e. Require its subcontractors to preserve its payroll records for a period of four (4) years after the expiration of the subcontract.

SECTION C: COMPENSATED DAYS OFF

1. RESPONSIBILITIES OF COVERED EMPLOYERS

In furtherance of Section 3b of the Living Wage Law, Covered Employers may offer eligible Employees the option of receiving cash payments in lieu of accrued days off, in accordance with the accrual requirements of the Law. Employers cannot, however, mandate that Employees take cash payments. Compensation policies shall include dates certain for when cash payments will be made, which shall be no less than every six (6) months.

A copy of the Employer's policy on compensated days off shall be provided to each Employee within thirty (30) days of the Employee's start date. Amendments to the policy shall be communicated to Employees within thirty (30) days of the amendment(s).

Where an employee separates from service with a Covered Employer for any reason, the Employer shall pay out an employee's accrued days bank within thirty (30) days of the employee's last day of employment.

APPENDIX B



COUNTY OF NASSAU

**RULES OF THE COUNTY EXECUTIVE:
THE NASSAU COUNTY LIVING WAGE LAW
LOCAL LAW 1-2006, MISCELLANEOUS LAWS TITLE 57**

EFFECTIVE AUGUST 26, 2008, AS AMENDED

Section 1. Authority and Usage

a. These Rules are promulgated pursuant to Local Law 1-2006, section 7(b) which authorizes the County Executive to promulgate rules to implement the provisions of the Nassau County Living Wage Law.

b. Wherever the term "Law" or "Living Wage Law" is used in this document, it shall mean Local Law 1-2006, otherwise known as the Nassau County Living Wage Law. Whenever the terms "Rule" or "Rules" are used in this document, it shall mean these Rules of the County Executive regarding the Nassau County Living Wage Law.

Section 2. Clarification of Terms

a. **Awarded.** "Awarded" shall mean that time at which a contractor is selected by the County, or any department of the County, to receive county financial assistance, even if that time is before execution of a county financial assistance agreement by all parties or approval of such agreement by the County Legislature.

See Living Wage Law, § 5(a) "Certification of Compliance" and § 10 "Other Provisions"

b. **County Service Contract.** "County Service Contract" shall mean any 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. A contract for the sale of goods to the County, or a contract for the sale of goods where incidental services are being provided to the County, are not considered County Service Contracts. This definition shall not include contracts awarded pursuant to the County's emergency procurement procedure as set forth in section 2206 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.

c. **County Financial Assistance.** "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 given by or through the authority or approval of the county to an entity having at least ten employees. County financial assistance shall not include industrial development bonds, community development block grant loans, and enterprise-zone-related incentives.

d. **Disabled Employee.** For purposes of Section 3(c)(2) of the Law, "disabled employee" shall mean any employee whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury. An employee may not be considered a disabled employee under the Law unless such employee is covered by a sub-minimum wage certificate issued by the United States Department of Labor in compliance with 29 U.S.C. § 214(c) and 29 C.F.R. Part 525, or would qualify to receive such a sub-minimum wage certificate but for the fact that the employer is paying a wage equal to or higher than the federal minimum wage.

e. Employee and Employer.

i. Under Section 1 of the Living Wage Law, an "Employee" for the purposes of a county service contract is an employee of a county contractor "pursuant to one or more service contracts and who expends any of his or her time thereon." An Employee may be:

A. Any person hired by a County contractor specifically to work on the County Service Contract at issue

B. Any person employed by the County Contractor who works on the specific services contemplated by the County Service Contract

ii. An Employee is not:

A. An employee who provides services that are only incidental to the services specified in the County Service Contract.

B. An employee who does not provide any services contemplated under the County Service Contract in Question

iii. For the purposes of the Living Wage Law, Nassau Community College is not an Employer as defined in the Law. However, service contractors, financial assistance recipients and lessees of the College are Employers as defined in the law and are subject to the provisions of the Living Wage Law as they are applicable.

iv. In relation to County Financial Assistance, an employee is any person employed by a County Financial Assistance Recipient (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. For the purposes of this definition, "any person who expends at least half of his or her time on the funded project/program or property" shall refer to any employee of the CFAR who expends at least half of his or her time on 1) a County-funded project or program which the CFAR administers related to the delivery of services or 2) a County-funded project related to the improvement, maintenance or demolition of property of the CFAR.

See Living Wage Law, § 2 "Employee," "Employer"

f. Enter Into. "Enter into" shall mean that time at which both parties have signed the contract in question.

See Living Wage Law, § 2 "County Service Contract" and § 10(a) "Other Provisions"

3. Amendments, Extensions and Renewals

a. Renewals and Extensions. Where an existing County Financial Assistance Agreement, County Service Contract, or County Lease is renewed or extended after the

effective date of the Law, such agreement is a new County Financial Assistance Agreement, County Service Contract or County Lease, as the case may be, and is subject to the applicable provisions of the Law.

b. Determination of Applicability.

i. County Service Contracts.

A. Any renewal of a County Service Contract is subject to the Living Wage Law if the total expenditure by the County under the renewal is \$25,000 or greater.

B. If a County Service Contract is extended or otherwise amended, such extension or amendment will be subject to the provisions of the Law if such amendment increases the total expenditure under the original agreement to an amount \$25,000 or over, or if such amendment itself involves an expenditure of \$25,000 or over. In no event shall the Law apply in a situation where an amendment involves an expenditure of less than \$25,000 and the original agreement already involves an expenditure of \$25,000 or over.

ii. County Financial Assistance Agreements.

A. Any renewal of a County Financial Assistance Agreement is subject to the Living Wage Law if the total expenditure by the County under the renewal is greater than \$50,000.

B. If a Financial Assistance Agreement is extended or otherwise amended, such extension or amendment will be subject to the provisions of the Law if such amendment increases the total expenditure under the original agreement to an amount over \$50,000, or if such amendment itself involves an expenditure over \$50,000. In no event shall the Law apply in a situation where an amendment involves an expenditure of \$50,000 or less and the original agreement already involves an expenditure over \$50,000.

iii. County Leases. Any renewal, extension or modification of a County Lease is subject to the provisions of the Living Wage Law.

See Living Wage Law, §10(a) "Other Provisions"

4. Waiver of the Law

a. Application of the Provision

i. Any County Contractor may apply for a waiver of the provisions of the Law. In order to qualify as a County Contractor, the applying organization must have a County Service Contract with the County of Nassau. A County Service Contract is a contract which contemplates providing a service to the County (not goods or any

service performed only to deliver goods) for which the County is paying \$25,000 or more. Both non-profit and for-profit County Contractors may apply for a waiver.

ii. At this time, the Living Wage Law does not allow a County Lessee or an entity receiving County Financial Assistance to apply for a waiver of the Law's provisions.

b. Request for a Waiver The following procedures have been established by the County Executive for requesting a waiver of the provisions of the Living Wage Law:

i. Request for a waiver must be made to the Nassau County Office of Compliance. Since a waiver request must be made by a County Contractor who already has a contract with the County to provide services, a request for a waiver may only be made after the contract in question is entered into with the County.

ii. A request for a waiver must be made on the approved form designated "Request for Waiver of the Provisions of the Nassau County Living Wage Law." This form is attached to these rules. Additional forms may be requested by contacting the agency with which the requesting organization has a contract.

iii. Except for those requesting organizations with County Service Contracts listed in section 4(b)(iv)(E)(3) below, and except for County Contractors providing Personal Care Aide Services, those requesting organizations which plan to request a waiver once a County Service Contract has been entered into must include, in their bid or proposal for the specific County Service Contract, a budget breakdown stating the amount of the budget allocated to wages (*assuming the Living Wage Law applies*), and the amount of the budget allocated to services and other contract expenses. For the purposes of these Rules, "Personal Care Aid Services" shall refer to those services provided by County Contractors pursuant to Title 11 of Article 5 of the New York Social Service Law and Title XIX of the United States Social Security Act.

A. In any budget breakdown submitted, the requesting organization must include only those employees who are included within the definition of "Employee" described above.

B. Those County contractors who have been awarded a contract through Executive Order No. 1 of 1993, a state or federal grant, General Municipal Law section 104, or any other state or federal rule or regulation must submit the above budget breakdown to the contracting agency before such contract is entered into with the County in order to be eligible for a waiver.

iv. A waiver request must contain the following information:

A. The name of the organization

B. The address of the organization

C. The County-issued contract number for the County Service Contract to which the request for waiver pertains. This number may be obtained from the County department with which the requesting organization contracts.

D. The name and email address of the Chief Executive Officer of the requesting organization

E. The criteria (hereinafter, the "Criteria") for qualifying for a waiver under the provisions of the Law. Currently, a requesting organization must meet either Criteria 1, 2, 3 or 4 below, and, if Criteria 1, 2 or 4 are cited, must meet Criterion 5 below:

1. The highest paid officer or employee of the requesting organization earns a salary which, when calculated on an hourly basis, is less than six times the lowest wage or salary paid by the requesting organization.

OR

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 the prior fiscal year's budget.

OR

3. The requesting organization is providing any of the following services to the County and compliance with the Living Wage Law would exceed the amount, per hour or per diem (as the case may be), reimbursed to the County by any State or Federal Source:

- i. Services under the Expanded In-Home Services for the Elderly Program (EISEP)
- ii. Foster care services under the New York Social Services Law.
- iii. Residential domestic violence services under the New York Social Services Law.
- iv. Residential care, educational and vocational training, physical and mental health services, and employment counseling services to residents of the Juvenile Detention Center under the New York Executive Law.

OR

4. The requesting organization is providing any of the following services to the County and compliance with the Living Wage Law would increase the County Service Contract's budget by greater than ten percent over the budget for the requesting organization's County Service Contract for the previous contracting year:

- i. Non-residential domestic violence services under the New York Social Services Law.
- ii. Services under the Home Energy Assistance Program (HEAP)
- iii. Preventive services for children pursuant to the New York Social Services Law
- iv. Non-Secure detention services pursuant to the New York Executive Law.

AND (if Criteria 1, 2 or 4)

5. When the requesting organization placed a bid or submitted a proposal for the County Service Contract at issue, it must have submitted a budget which included a breakdown of the wages paid to employees of the requesting organization who would be covered under the Living Wage Law. This requirement shall not apply to County Contractors providing Personal Care Aide Services.

F. A statement that, if a waiver is granted, the requesting organization will decrease its budgeted wage allocation to that amount the requesting organization would have paid its employees had the requirements of Living Wage Law not been applied. The amount to be paid by the County to the requesting organization will be reduced accordingly by contract amendment. This requirement shall not apply to County Contractors providing Personal Care Aide Services.

G. The notarized signature of the requesting organization's Chief Executive Officer.

v. A request must be accompanied by documentation supporting the Criteria claimed by the requesting organization.

A. If Criteria (1) is cited in the request, the requestor must include a statement, certified by the chief financial officer of the requesting organization as true and accurate, of the wages paid, on an hourly basis, of the highest and lowest paid individuals employed by the requesting organization.

B. If Criteria (2) is cited in the request, the requestor must provide a copy of the requesting organization's budget for the last fiscal year along with a copy of the organization's expected budget taking into account increases in salary as a result of compliance with the Living Wage Law. Both budgets must be certified as complete and accurate by the chief financial officer of the requesting organization.

C. If Criteria (4) is cited in the request, the requestor must provide a copy of the requesting organization's budget for the County Service Contract for the prior

agreement year along with the requesting organization's budget for the County Service Contract for the current agreement year which takes into account increases in salary as a result of compliance with the Living Wage Law. Both budgets must be certified as complete and accurate by the chief financial officer of the requesting organization.

vi. The request form and all documentation must be sent to the following address:

County of Nassau Office of Compliance
Attention: Living Wage Waiver Request Office
One West Street, Room 327
Mineola, New York 11501

c. Waiver and Procurement

i. As a waiver may only be requested once a County Service Contract has been entered into, no waiver application may be submitted by any organization submitting a bid or proposal to the County for a County Service Contract.

ii. It shall not be a consideration in evaluating a bid or proposal that an organization submitting a bid or proposal to the County for a County Service Contract may be eligible to receive a waiver.

d. Review Procedures

i. Review of a request for a waiver must be made by the Office of Compliance.

ii. Approval of a request is dependent on the requestor satisfying either criteria (1), (2), (3) or (4) in section 4(b)(iv)(E) above and, if citing criteria (1), (2) or (4), criterion (5) in section 4(b)(iv)(E) above. Applications not satisfying these criteria, or incomplete applications, will not be approved. However, complete applications that do meet these criteria shall be approved by the Office of Compliance.

iii. The Office of Compliance shall inform the requestor of his or her decision to grant or deny a request in writing within thirty days of receipt of the request. A copy of the grant or denial shall be transmitted to the County Comptroller for the purposes of monitoring compliance with the Living Wage Law.

iv. In the event that a request for a waiver made pursuant to these Rules and the Law is denied by the Office of Compliance, the requesting organization must comply with the provisions of the Law and these Rules, as they are applicable, including, without limitation, the payment of any unpaid wages to the requesting organization's Employees as required under the Law. Failure to do so may result in action by the Office of the Nassau County Comptroller to enforce the provisions of the Law.

e. Period in Which Request for Waiver Must Be Made; Effective Date and Duration of Waiver

i. For County Service Contracts entered into after January 1, 2007 with terms commencing between January 1, 2007 and October 25, 2007, a request for a waiver may be made at any time, including any period after the termination of such County Service Contract, provided, however, that no request for a waiver may be made and no request for a waiver may be accepted by the County after December 31, 2008. If such waiver is granted by the County, such waiver shall be effective as of the commencement date of such County Service Contract and shall continue until the termination of such County Service Contract. Such waiver may be granted if, and only if:

1. the requesting organization certifies that it would have qualified for a waiver for the County Service Contract for which it requests a waiver during the term of such County Service Contract; and
2. the requesting organization submits to the County with such request such documentation that would otherwise be required for a waiver of the Law as described in Section 4(b) above.

ii. For County Service Contracts with terms commencing October 26, 2007 or after, a request for a waiver may only be made within six (6) months of the date that the County Contractor has constructive or actual notice that such County Service Contract was executed by the County. It shall be a rebuttable presumption that such County Contractor has been notified of such execution on the date which is five (5) days after the date that accompanies the seal of the County, which is affixed to such County Service Contract by the Clerk of the Nassau County Legislature. If such waiver is granted by the County, such waiver shall be effective as of the commencement date of such County Service Contract and shall continue until the termination of such County Service Contract.

iii. For County Service Contracts entered into after January 1, 2007 with terms commencing October 26, 2007 or after for which a request for waiver has been made and which waiver was granted by the County as of (*insert date of this rules amendment*), notwithstanding any language contained in such waiver grant letter, such waiver shall be deemed effective as of the commencement date of the County Service Contract to which the waiver pertains, and shall continue until the termination of such County Service Contract.

iv. As a renewal, extension or other time-related amendment to a County Service Contract is considered a new County Service Contract and is subject to the provisions of the Law, as they are applicable, if a County Service Contract is renewed, extended or amended in such a manner as to increase the term of the County Service Contract, a new request for a waiver of such renewed, extended or amended contract must be made to the Office of Compliance.

f. Post-Award Review

i. After the County grants a waiver, if at any time during the term of the County Service Contract the requesting organization alters its budget or wages such that the organization no longer qualifies for a waiver of the Living Wage Law, the requesting organization must contact the County department with which it contracts and inform such department of such alteration.

ii. If a County department is contacted in reference to such a change, the department must either:

1. Amend the County Service Contract in question to restore any funding subtracted from the contract as a result of a waiver of the Living Wage Law and receive from the Contractor a completed Certificate of Compliance; or
2. Terminate such Contract according to its terms.

See Living Wage Law, § 9 "Waiver"

5. Inter-Governmental Agreements

a. The Living Wage Law shall not apply to those County Service Contracts which are entered into with any municipal corporation located within the County, any school district located within the County, and any special district located within the County.

b. County Financial Assistance Agreements and County Leases. The Living Wage Law shall not apply to a County Financial Assistance Agreement or a County Lease in the event that application of the law would conflict with the application of a federal, state or local law, rule, regulation or ordinance. For the purposes of this Rule, the Living Wage Law would not apply to a County Financial Assistance Agreement or County Lease where funding for the Agreement or Lease is derived from a Federal or state grant where the distribution of such grant funds to certain subrecipients is mandatory and non-discretionary.

See Living Wage Law, § 2 "County Service Contract," "Inter-governmental Agreement;" § 3 "Minimum Compensation;" §10 "Other Provisions"

6. Certification of Compliance

a. An updated certification of compliance with the provisions of the Living Wage Law shall be submitted to the County on or before the first day of each agreement year during the term of any County Service Contract.

b. For the purposes of updating a certification of compliance, a "material change" as used in the Law shall be limited to the following:

i. Any determination by the County Comptroller that the contractor has violated any provision of the Law.

ii. Any instance during the preceding year in which the contractor has been found by a court or governmental 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 governmental body has initiated a judicial action, administrative proceeding or investigation of the contractor in regard to any of the above laws.

See Living Wage Law, § 5 "Certification of Compliance"

7. Nassau County Employees

a. All Nassau County Employees are covered by the provisions of the Living Wage Law, provided, however, that Nassau County Employees covered by the collective bargaining agreement between the County and the Civil Service Employees Association are not entitled to receive the benefit supplement rate as the term is defined in the Law. The provisions of the Law also extend to paid interns hired by the County.

b. The Living Wage Law does not apply to volunteer workers utilized by the County pursuant to the County's authority to use volunteer workers under § 2105 of the Nassau County Charter. As such, the Law does not cover unpaid interns utilized by the County.

See Living Wage Law, § 2 "Employee," "Employer;" § 10 "Other Provisions"

8. Benefit Supplement Rate

The benefit supplement rate shall be upwardly adjusted at such times as the Living Wage is adjusted in conformance with the definition of "Living wage" contained in Section 2 of the Law. Any adjustment of the benefit supplement rate shall be made in proportion to any increase of the consumer price index for medical care in the All Urban Consumers Index (CPI-U) during the twelve (12) months preceding the month prior to the time at which the living wage is adjusted. The benefit supplement rate shall only be adjusted if the above-referenced index shows an increase in such twelve-month period. In no event shall the benefit supplement rate be downwardly decreased at such times.

See Living Wage Law, § 2 "Benefit Supplement Rate"

APPENDIX C



Howard S. Weitzman
Nassau County Comptroller
Living Wage Unit



IMPORTANT NOTICE FOR WORKERS

The Nassau County Living Wage
is
\$12.05 per hour
or
\$10.50 with health benefits

(Rate Effective August 1, 2008 through July 31, 2009)

Employees who work 20 hours or more per week are entitled to receive a maximum of 12 paid days off per year, including paid holidays

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 Unit at (516)571-3668**

You may also visit our website at www.nassaucountyny.gov/comptroller and click on Living Wage for more information or to obtain a complaint form

Complaints will remain confidential

Exceptions:

The Law **DOES NOT** apply to the following:

- Contracts for child-care services, pre-school services and early intervention services
- Contracts where 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.



Howard S. Weitzman
Nassau County Comptroller
Living Wage Unit



INFORMACION IMPORTANTE PARA TRABAJADORES

La Ley de Living Wage de Nassau County

es

\$12.05 por hora

o

\$10.50 con beneficios de salud

(Efectivo August 1, 2008 hasta July 31, 2009)

Empleados que trabajan 20 horas o mas por semana reciben un maximo de
12 dias libre con pago por año por la ley de Living Wage

Si usted es un empleado de las compañías que tienen contratos con Nassau County la ley de Living Wage puede aplicarle a usted. Si usted tiene preguntas o si usted piensa que su empleador no esta cumpliendo con la ley de Living Wage, por favor llame a:

**La Oficina del Nassau County Comptroller
Living Wage Unit a (516)571-3668**

Tambien puede visitor nuestro website www.nassaucountyny.gov/comptroller

Las Quejas Seguiran Siendo Confidenciales

Excepciones:

La Ley NO SE APLICA para los siguiente:

- Los contratos para servicios de cuidado de niños, servicios preescolares e intervención temprano para niños
- Contratos adonde los servicios son incidentales a la entrega de productos, equipos o materias primas
- Contratos Inter-gubernamentales y los contratos de asistencia financiera para el desarrollo industrial de los bonos, el desarrollo de la comunidad bloquear la concesión de préstamos y de las empresas de zonas incentivos
- Contratos por menos de \$25,000
- Los empleados menores de 18 años de edad que son reclamados como dependientes para efectos del impuesto federal y que están trabajando como un después de la escuela de verano
- Aprendices en un programa de entrenamiento auténtico
- Empleados discapacitados cubiertos por un sub-actual salario mínimo certificado expedido a los empleadores por los Estados Unidos Departamento de Trabajo o si él / ella sería objeto de dicho certificado, pero por el hecho de que el empleador paga un salario igual o superior a el salario mínimo