

Nassau County
Office of the Comptroller



Living Wage Law
2016 Annual Report

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Comptroller

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Executive Summary

Introduction

The Nassau County Living Wage Law (“Law”) was enacted by the Nassau County Legislature in 2006¹, and took effect January 1, 2007. The purpose of the Living Wage Law is to ensure that all employees of companies that do business with Nassau County earn the living wage and receive health benefits or a health benefits supplement. Additionally, full-time employees receive no less than 12 paid days off per year. Part-time employees who work at least 20 hours per week receive proportionate compensated days off.

As a result of the Law, covered workers in Nassau County have seen annual increases in their hourly wages in the years following the implementation of the Law.

Purpose

The Comptroller’s Office is responsible for monitoring, investigating and auditing compliance with the Law. In accordance with this responsibility, the Comptroller must submit an Annual Report to the County Executive and the County Legislature summarizing and assessing the implementation of, and compliance with, the Law during the preceding year.²

Summary of Significant Findings

- On August 1, 2016 the Living Wage rate in Nassau County saw an increase to \$15.78 for employees without health benefits and \$13.73 for employees who receive health benefits.
- A limited compliance review of Armor Correctional Health Services Inc. was performed for the period January 1, 2014 through December 31, 2015. Armor provides medical services to inmates at the Nassau County Correctional Center. Hourly base rates paid to employees in both 2014 and 2015 were less than the rates mandated by the Law. A total of \$10,398 was due to 20 employees for that period.
- Armor did not provide compensated time off for employees working between 20 and 23 hours per week or classified as per diem. Under the Law, part-time employees working at least 20 hours per week are entitled to leave time compensation.
- Armor’s vacation pay policy upon termination was not in compliance with the Law since employees who were involuntarily terminated were not eligible for an accrued vacation payout.

¹ Nassau County Living Wage Law, Title 57 of the Miscellaneous Laws of Nassau County.

² Nassau County Living Wage Law §7 (c) (2010).

Executive Summary

Conclusion

Since the Law became effective in 2007, the Comptroller's Office has released 37 Living Wage audit reports encompassing 30 different contractors. Overall, we have identified a total of \$1,089,259 in underpaid wages affecting 1,405 employees. The Comptroller's Office continues to perform audits, respond to employee complaints and inquiries received through the hotline and monitor providers that have been reviewed in the past to ensure they remain in compliance with the Law. The Comptroller's Office also follows-up with selected new providers who have received contracts with the County to ensure that they are in compliance with their contract regarding the Living Wage.

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Background

The Living Wage Law

All discussions of the Law in this report refer to the Law in existence in 2016, unless otherwise noted. The Law was last amended on January 21, 2010; the amendments took effect on March 22, 2010.

Living Wage Rates

The Living Wage Rate is reevaluated on August 1st of each year. On August 1, 2016, the Living Wage rate increased to \$15.78 in Nassau County for an employee without health benefits. If the employer provides health benefits to an employee covered under the Living Wage Law, the employee's rate of pay was increased to \$13.73. This rate will stay in effect until August 1, 2017. The Law also requires that full-time employees receive 12 compensated days off per year for sick leave, vacation, or personal reasons. Part-time employees who work at least 20 hours per week receive proportionate 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 contracts³ for more than \$50,000 and where the employer has at least 10 employees; and
- leases of property⁴ owned or controlled by the County.

The Law also applies to County subcontractors, County lessees and contractors of recipients of financial assistance from the County. Nassau Community College employees are covered by the Law, as are the College's contractors/subcontractors, and their employees. However, student workers at the College are not covered.⁵

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 services⁶;
- contracts where services are incidental to the delivery of products, equipment or commodities⁷; or
- inter-governmental contracts and financial assistance contracts for industrial development bonds, community development block grants and enterprise-zone investments⁸.

³ Nassau County Living Wage Law §2 (2010).

⁴ Ibid.

⁵ Ibid.

⁶ Nassau County Living Wage Law §3 (c) (3) (2010).

⁷ Nassau County Living Wage Law §2 (2010).

⁸ Ibid.

The Law exempts 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 employee⁹;
- employed as 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 position¹⁰;
- disabled and who are covered by a current sub-minimum wage certificate issued to the employer by the United States Department of Labor, or if they 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 wage¹¹; or
- covered by a bona fide collective bargaining agreement provided that the Law is expressly referenced in the agreement.¹²

The Comptroller's Office has promulgated rules and regulations, created forms and other documents, established a hotline for the confidential reporting of non-compliance and established a webpage¹³ to disseminate information about the Law and the audits performed. Audit criteria for conducting Living Wage audits have been established and a comprehensive audit plan intended to concentrate on the contractors with the greatest number of impacted employees has been created.

The Living Wage Advisory Board, comprised of labor leaders and Living Wage advocates, meets to discuss ways to improve the effectiveness of the Law.

The Comptroller's Office continues to maintain a telephone "hotline" to field calls regarding instances of noncompliance with the Law. The number of the hotline is clearly noted on the Living Wage Poster which is required to be posted at workplaces. As stated on the poster, "Complaints will remain confidential", enabling workers to call with assurances of confidentiality. Also, forms are posted on the Comptroller's website to provide workers the opportunity to submit their complaints online or submit them via regular mail. The forms allow for complaints to be filed for noncompliance regarding wages, health benefits and non-payment for compensated time in accordance with the Law.

The selection of vendors for audit has been broadened to include service providers such as food service, medical service, emergency housing, project management service, and office services.

⁹ Nassau County Living Wage Law §3.

¹⁰ Nassau County Living Wage Law §3 (c) (1) (B) (2010).

¹¹ Nassau County Living Wage Law §3 (2010).

¹² Nassau County Living Wage Law § 10 (c) (2010).

¹³ The web address is: http://www.nassaucountyny.gov/1597/Living_Wage.

Living Wage Law 2016 Annual Report

Utilizing both field audits and desk audits, we have been able to identify shortfalls in payments of both wages and compensated time off. Exhibit I below summarizes the financial results of our findings for the living wage audits issued from 2008-2016, covering years 2007-2015.

Since the Law's inception, we have helped more than 1,400 people recover payments totaling \$1,089,000 owed to them. The data for each audit can be found in the Appendix.

Exhibit I

SUMMARY IMPACT OF LIVING WAGE AUDITS ISSUED FOR THE YEARS 2008 - 2016					
<i>Wages</i>		<i>Compensated Time Off</i>		<i>Totals</i>	
Amount Recovered	Number of Underpayment Instances	Amount Recovered	Number of Underpayment Instances	Amount Recovered	Number of Underpayment Instances
\$ 887,479	662	\$ 201,780	743	\$ 1,089,259	1,405

Penalties for Non-Compliance

When an employer fails to comply with the Law after being notified in writing by the County, among other penalties, the Law originally allowed 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"¹⁴. In light of the significant number of instances of non-compliance, in 2009, the Board recommended that the Law be amended to increase the maximum allowable fine that may be imposed by the County. These changes were implemented when the Law was amended, effective March 22, 2010, and are as follows:

1. Upon the issuance of the first written notice of a violation of this title an employer shall be fined in the amount of \$500 each week for each employee found not to have been paid in accordance with this title;
2. If within thirty days after such employer receives the first written notice of violation, such employer fails to cure such breach, such employer shall receive a second notice of such violation and shall be fined in the amount of \$1,000 each week thereafter for each employee found not to have been paid in accordance with this title;
3. If, within thirty days after such employer receives a second written notice of violation, such employer fails to cure such breach, such employer shall receive a third notice of such violation and shall be fined in the amount of \$2,000 each week thereafter for each employee found not to have been paid in accordance with this title.

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. The primary purpose of the Rules is to define the

¹⁴ Nassau County Living Wage Law §7 (d) (iv) (2010).

role of the Comptroller, outline the responsibilities of covered employers, and clarify the rights of covered employees. The Comptroller's Office periodically reviews its Rules and will revise them as necessary. The County Executive has promulgated a separate set of Rules to address the procedures governing requests for waivers and to clarify certain terms. These Rules, including any amendments, can be viewed on the Comptroller's webpage under the Living Wage Law sub-heading.

Waivers

County contractors may request an annual waiver from the requirements of the Law from the County Executive's Office. Section 9 of the Law sets forth the eligibility criteria that must be met to grant their request for a waiver. A contractor granted a waiver is exempt from the Living Wage Law and is not required to pay its employees the Living Wage rate for the year the waiver is granted. However, the contractor remains subject to Federal and State minimum wage requirements. In 2016, ten agencies applied for waivers. All ten of these agencies were granted at least a partial waiver by the County Executive's Office.

There are several criteria that can be used by contractors in order to receive a waiver. The two most common are as follows:

1. The salary of the highest paid officer or employee of such contractor earns a salary which, when calculated on an hourly basis, is less than six times the lowest wage or salary paid by the contractor. Also taken into account for this computation are benefits, including but not limited to: dividends, a car and health insurance.
2. The Contractor must prove that complying with requirements of the Law will increase their expected total annual budget in an amount greater than ten percent of the prior fiscal year's budget.

At the Comptroller's request, in 2010, the amended Law added the requirement that fringe benefits be included as part of the determination of the highest paid officer's total salary. The Law provides that the Comptroller can determine a method for valuing the fringe benefits in making this determination. Included in the Compensation Ratio calculation are items such as bonuses, stock options, educational assistance, housing costs, etc.

In August of 2010, the Comptroller's Office began listing on its Living Wage webpage those vendors who have requested waivers. All requests for waivers must be submitted on an approved form, which is available on the Living Wage webpage. All waivers requests are reviewed by a representative of the County Executive's Office for completeness and compliance with the required criteria. Not all requests for waivers are granted.

During 2016, the Comptroller's Field Audit unit at the request of the Living Wage Advisory Board began reviewing pending waiver requests to determine if agencies are meeting the requirements for a waiver. Seven pending waiver requests were reviewed.

Monitoring of the Law by the Comptroller's Office

The Law charges the Nassau County Comptroller with the responsibilities of monitoring, investigating and auditing compliance with the Law. Since the Law's inception, the Comptroller's Office, through its monitoring powers, has continued to make progress in achieving the objective of bringing as many covered employers as possible into compliance with the Law.

Prior to 2016, the Comptroller's Office focused on audits of Personal Care Aide ("PCA's") agencies and Consumer Directed Personal Assistance Program ("CDPAP") service providers, because they have the largest number of employees covered by the Law. The focus has now been shifted to cover suppliers of other services such as medical providers, food providers, service providers and construction management oversight providers.

Webpage

The Living Wage webpage¹⁵ includes a complete copy of the current Law, the Living Wage Rules promulgated by the Comptroller and the County Executive¹⁶, links to Living Wage forms in a downloadable format and Frequently Asked Questions about the Law. Additionally, the annual reports for the years 2007 through 2015 are available on the webpage. All Living Wage audit reports issued by the Comptroller's Office since 2007 can also be accessed through the webpage.

Poster

The Comptroller's Office created a Living Wage Poster to explain the Law in a simple format. Posters are available in English, Spanish and Creole and may be downloaded from the webpage. The posters list the current Living Wage rates and the employee's right to compensated days off; they also display the Comptroller's Office Living Wage telephone hotline and e-mail address to allow individuals to contact the Comptroller's Office with questions and employee complaints. The Comptroller's Rules require that Living Wage notices be posted in a conspicuous manner at all relevant work sites. The posters have been designed in a manner to meet this requirement and are updated to reflect changes in the Living Wage rates. The posters were updated in 2016 to reflect the increased Living Wage effective August 1, 2016 through July 31, 2017.

The Living Wage Advisory Board

In order to benefit from the insight of union leaders and activists, the County Comptroller established the Living Wage Advisory Board in 2007. Exhibit II lists the Board members as of January 1, 2016.

¹⁵ The web address is: <http://www.nassaucountyny.gov/1597/Living-Wage>

¹⁶ Rules of the Comptroller; Rules of the County Executive: The Nassau County Living Wage Law Miscellaneous Laws Title 57, Effective November 10, 2010 , As Amended.

Exhibit II

**Living Wage Advisory Board Members
as of January 1, 2016**

John Durso	Long Island Federation of Labor (Chairman)
Richard O’Kane	Building and Construction Trades Council (Vice Chair)
Lisa Tyson	Long Island Progressive Coalition (Vice Chair)
Gemma DeLeon	Retail Wholesale Department Store Union Local 1102
Walter Barton	National Association of Letter Carriers Branch 6000
Debra Hagan	Transit Workers Union Local 252
Roger Clayman	Long Island Federation of Labor
Nick LaMorte	Civil Service Employees Association Region 1
Onika Shepherd*	1199 Service Employees International Union

*Note: Michele Lynch Retired in 2016

Representatives from the Office of Management and Budget, Field Audit and the Comptroller’s Office Legal Counsel are also present at these meetings.

Three Living Wage Advisory Board Meetings were held in 2016. Key topics discussed are summarized below:

- The Living Wage Advisory Board has noticed a trend of some contractors applying for waivers every year. The Board sent a request to the County Executive directing the Comptroller’s Office to audit firms that repeatedly request a waiver.
- The Comptroller’s Field Audit Section reviewed seven pending waiver requests. The auditors had questions regarding six of the seven waiver requests. Four of these six waiver requests were initiated based on the 10% budget waiver criteria. In preparing the waiver requests, managed care workers were included in the budget to actual calculation even though some of the employees did not work under any Nassau County contracts.
- One of the board members proposed that everyone who requests a waiver should be audited. Audit stated they can make recommendations not to grant a waiver, however, the final decision is not theirs to render.
- The 10% budget waiver criteria applies when the requirement for a contractor to comply with the living law will directly increase a contractor’s expected annual budget more than 10%. The Board recommended comparing the prior years’ actual employee headcounts and dollars to current year budgeted numbers, for the purpose of obtaining a waiver. The Board believed that the intent of waivers was to give a contractor a break from complying with the requirements of the Law for a year or two until they were able to comply.

Scope of 2016 Audits

The 2016 audit plan did not focus on any particular sector such as Personal Care Aides, Emergency Housing Shelters, or Service Providers etc. Living Wage audits are a component of most contract compliance audits performed by the Comptroller’s Field Audit unit. A number of Living Wage audits were started in 2016 and the results of these audits will be issued in the future. These audits include: an engineering company monitoring clean-up work from Superstorm Sandy, a food service vendor/park concessionaire and several health care agencies.

Audit Findings

A living wage audit of Armor Correctional Health Services of New York, Inc. (“Armor”) was released in 2016. Armor provides medical services to inmates at the Nassau County Correctional Center in East Meadow, N.Y.

As illustrated in the table presented in the Appendix, the summary impact of the audit issued in 2016 totaled \$11,287 of underpayments affecting 23 employees. We reviewed Armor’s employee payroll history reports for all 26 pay periods in both 2014 and 2015 to verify the hourly rates paid to their employees working at the Nassau County Correctional Center.

Below is a brief summary of the 2016 audit findings:

- Hourly base rates paid to certain employees in both 2014 and 2015 were less than the rates mandated by the Living Wage Law. A total of \$10,398 is due to 20 employees for the period January 2014-December 2015.
- Additionally, Armor did not provide accrued compensation time-off for those employees working 20-23 hours per week or classified as per diem. Under the Living Wage Law, part-time employees who work more than 20 hours per week are entitled to leave time compensation. A total of \$889 of accrued compensated time was due to six employees for the period January 2014 - December 2015.
- Armor’s vacation pay policy upon termination was also not in compliance with the Law since employees who were involuntarily terminated were not eligible for an accrued compensation payout.

As a result of the audit, all employees were fully compensated. Armor also agreed to update their policy and procedure manual.

Enforcement Successes and Challenges Going Forward

Every year, we disclose whether any significant leases subject to the Living Wage Law were entered into by the County. The Law defines a county lease as “any lease, concession agreement,

or other agreement authorizing any party to occupy, use, control or do business at property owned or controlled by the County”¹⁷.

For 2016, the Office of Real Estate Services advised us that there were two lease amendments and one new Occupancy Permit subject to the Law, as follows:

- A contract extension was granted for the Nassau Energy LLC lease which allows two additional one year extensions to the original contract. The County entered into a 25 year contract with Nassau Energy in 1988 to lease the County’s existing central utility plant and medical plant at the Nassau University Medical Center to provide thermal energy to customers in the Nassau Hub area. Employees working under this contract are subject to the Law.

- An amendment to the lease agreement with Sun Edison Origination1 LLC was initiated. Sun Edison pays the County rent for solar equipment maintained at Cedar Creek Park which is used to generate power. The amendment was initiated to reflect revisions to the generating capacity of the solar equipment and the amount of rent paid to the County.

- A new Occupancy Permit was granted to Azzil Granite to receive and store quarry stone at the Glen Cove Maintenance Facility operated by the Nassau County Department of Public Works.

The Comptroller’s Office will continue to expand their Living Wage Law compliance reviews to include covered agencies and lessees in order to ensure the work force is properly compensated.

¹⁷ Nassau County Living Wage Law §2 (2010).

Appendix

FIVE YEAR SUMMARY OF EMPLOYEE UNDERPAYMENTS RECOVERED LIVING WAGE AUDIT REPORTS ISSUED 2012 - 2016								
Year Audit Issued	Name of Auditee	Wages		Compensated Time Off		Totals		
		Dollars Recovered	Number of Instances of Non- Compliance	Dollars Recovered	Number of Instances of Non- Compliance	Dollars Recovered	Number of Instances of Non- Compliance	Employees Assisted**
2012	A&B Healthcare Services, Inc. * Cottage Home Care, Inc. * Jzanus Home Care, Inc.	\$ - - 8,039	- - 100	\$ - - -	- - -	\$ - - 8,039	- - 100	- - 100
2013	Bethany House Community Housing Innovations, Inc. Glory House Recovery Peace Valley Haven, Inc.	10,055 1,810 1,523 122,264	14 15 1 38	- - - -	- - - -	10,055 1,810 1,523 122,264	14 15 1 38	7 14 1 26
2014	Peace Valley Haven, Inc. Utopia Home Care Inc. *	16,735 -	15 -	- -	- -	16,735 -	15 -	15 -
2015	Eager to Serve, Inc. microMEDIA®	5,116 461,466	13 38	\$ 4,266 3,846	8 14	9,382 465,312	21 52	13 38
2016	Armor Correctional Health Services, Inc.	10,398	30	889	7	11,287	37	23
Totals:		\$ 637,406	264	\$ 9,001	29	\$ 646,407	293	237

Notes

* These Living Wage Audit Reports noted no instances of wage or compensated time off underpayments to employees.

** The number of instances is higher than the number of employees assisted because in some instances, the same employee was impacted by both a Living Wage underpayment and a compensated time off underpayment.