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Int. No. 386

By Council Members Miller, Chin, Mendez, Rodriguez, Rose, Cohen, Kallos, Constantinides, King, Torres, Levine, Gibson, Rosenthal, Reynoso, Treyger, Lancman, Richards, Ferreras-Copeland, Johnson, Van Bramer, Barron, Eugene, Dromm, Menchaca, Lander, Espinal, Koslowitz, Williams, Cornegy, Cumbo, Levin, Gentile and Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to wages for building service employees.

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 6-109 of the administrative code of the city of New York is amended to read as follows:

§ 6-109. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) "City" means the City of New York.

(2) "Entity" or "Person" means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

(3) "Homecare Services" means the provision of homecare services under the city's Medicaid Personal Care/Home Attendant or Housekeeping Programs, including but not limited to the In-Home Services for the Elderly Programs administered by the Department for the Aging.

(4) "Building Services" means work performing any custodial, janitorial, groundskeeping or security guard services, including but not limited to, washing and waxing floors, cleaning windows, cleaning of curtains, rugs, or drapes, and disinfecting and exterminating services. Such services shall include the work of custodial employees employed by custodian engineers, or persons performing the functions of custodian engineers, to assist in the performance of custodial services, including but not limited to building HVAC operations services, in connection with the care or maintenance of a building.

(5) "Day Care Services" means provision of day care services through the city's center-based day care program administered under contract with the city's administration for children's services. No other day care programs shall be covered, including family-based day care programs administered by city-contracted day care centers.

(6) "Head Start Services" means provision of head start services through the city's center-based head start program administered under contract with the city's administration for children's services. No other head start programs shall be covered.

(7) "Services to Persons with Cerebral Palsy" means provision of services which enable persons with cerebral palsy and related disabilities to lead independent and productive lives through an agency that provides health care, education, employment, housing and technology resources to such persons under contract

with the city or the department of education.

(8) "Food Services" means the work preparing and/or providing food. Such services shall include, but not be limited to, those as performed by workers employed under the titles as described in the federal dictionary of occupational titles for cook, kitchen helper, cafeteria attendant, and counter attendant. Any contracting agency letting a food services contract under which workers will be employed who do not fall within the foregoing definitions must request that the comptroller establish classifications and prevailing wage rates for such workers.

(9) "Temporary Services" means the provision of services pursuant to a contract with a temporary services, staffing or employment agency or other similar entity where the workers performing the services are not employees of the contracting agency. Such services shall include those performed by workers employed under the titles as described in the federal dictionary of occupational titles for secretary, word processing machine operator, data entry clerk, file clerk, and general clerk. Any contracting agency letting a temporary services contract under which workers will be employed who do not fall within the foregoing definitions must request the comptroller to establish classifications and prevailing wage rates for such workers.

(10) "City Service Contract" means any written agreement between any entity and a contracting agency whereby a contracting agency is committed to expend or does expend funds and the principle purpose of such agreement is to provide homecare services, building services, day care services, head start services, services to persons with cerebral palsy, food services or temporary services where the value of the agreement is greater than the city's small purchases limit pursuant to section 314 of the city charter. With respect to building services, this definition shall include any written agreement between a custodian engineer or a person performing the functions of a custodian engineer, or an entity representing such custodian engineer(s) or person(s), and a contracting agency where the agreement provides for payment to custodian engineers to be used by the custodian engineers for their employment of persons to provide building services.

This definition shall not include contracts with not-for-profit organizations, provided however, that this exception shall not apply to not-for-profit organizations providing homecare, headstart, day care and services to persons with cerebral palsy. This definition shall also not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the city charter.

(11) "City Service Contractor" means any entity and/or person that enters into a city service contract with a contracting agency, including a city service contract entered into by an entity representing such person(s). An entity shall be deemed a city service contractor for the duration of the city service contract that it receives or performs.

(12) "City Service Subcontractor" means any entity and/or person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that is engaged by a city service contractor to assist in performing any of the services to be rendered pursuant to a city service contract. This definition does not include any contractor or subcontractor that merely provides goods relating to a city service contract or that provides services of a general nature (such as relating to general office operations) to a city service contractor which do not relate directly to performing the services to be rendered pursuant to the city service contract. An entity shall be deemed a city service contractor for the duration of the period during which it assists the city service subcontractor in performing the city service contract.

(13) "Contracting Agency" means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury or the department of education.

(14) "Covered Employer" means a city service contractor or a city service subcontractor.

(15) "Employee" means any person who performs work on a full-time, part-time, temporary, or

seasonal basis and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity. For purposes of this definition and this section, "employ" means to maintain an employee, as defined in this section. For purposes of counting numbers of employees or employed persons when required by this section, full-time, part-time, temporary, or seasonal employees shall be counted as employees. Where an employer's work force fluctuates seasonally, it shall be deemed to employ the highest number of employees that it maintains for any three month period. However, in the case of city service contractors and city service subcontractors that provide day care services, independent contractors that are family-based day care providers shall not be deemed employees of the agencies and shall not be subject to the requirements of this section.

(16) "Covered Employee" means an employee entitled to be paid the living wage or the prevailing wage and/or health benefits as provided in subdivision b of this section.

(17) "Not-for-Profit Organization" means a corporation or entity having tax exempt status under section 501(c)(3) of the United States internal revenue code and incorporated under state not-for-profit law.

(18) "Prevailing Wage and Supplements" means the rate of wage and supplemental benefits per hour paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with the provisions of section 234 of the New York state labor law or, for titles not specifically enumerated in or covered by that law, determined by the comptroller at the request of a contracting agency or a covered employer in accordance with the procedures of section 234 of the New York state labor law. As provided under section 231 of the New York state labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the comptroller.

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

(20) "Health Benefits" has the meaning provided in paragraph 3 of subdivision b of this section.

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

§2. This local law shall take effect ninety days after its enactment into law.

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6/5/14