



Legislation Text

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A Local Law to amend the administrative code of the city of New York, in relation to establishing prevailing wage requirements for security 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 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 security guard company.

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

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 annually determined by the comptroller in accordance with the provisions of section 234 of the labor law. As provided under section 231 of the 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 under rules and regulations established by the comptroller.

Security guard. The term “security guard” means an unarmed individual with a current and valid

registration card 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 guard company. The term “security guard company” means a company licensed to provide security guards under contract to other entities pursuant to article 7 of the general business law, and that is engaged by a shelter operator to provide security guards to perform security services at a shelter pursuant to a shelter contract. An entity shall be deemed a security guard company for the duration of the period during which such entity assists the shelter operator in performing the shelter contract.

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 a shelter operator pursuant to a shelter contract.

Shelter contract. The term “shelter contract” means any written agreement whereby the department is committed to expend and does expend funds and the principle purpose of such agreement is to operate a shelter. The term “shelter contract” does not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the charter.

Shelter operator. The term “shelter operator” means any entity that enters into a shelter contract with the department. An entity shall be deemed a shelter operator for the duration of the shelter contract that it receives or performs.

b. Prevailing wage in city-contracted shelters required. 1. A shelter operator or security guard company that employs security guards performing security services at a shelter must pay such security guards no less than the prevailing wage.

2. Prior to commencing any work under a shelter contract, and annually thereafter, every shelter

operator shall provide to the comptroller and the commissioner an annual certification executed under penalty of perjury that all security guards subject to paragraph 1 of subdivision b of this section, who are employed at a shelter by the shelter operator or a security guard company, will be and/or have been paid the prevailing wage. Such certification shall include a record of the days and hours worked and the wages and benefits paid to each security guard employed at the shelter. Such certification shall be certified by the chief executive or chief financial officer of the shelter operator, or the designee of any such person. A violation of any provision of the certification, or failure to provide such certification, shall constitute a violation of this section by the party committing the violation of such provision.

3. Each covered employer shall maintain original payroll records for each of its security guards employed at a shelter reflecting the days and hours worked, and the wages paid and benefits provided for such hours worked, and shall retain such records for at least six years after the security services are performed. Failure to maintain such records as required shall create a rebuttable presumption that the security guards were not paid the wages and benefits required under this section. Security guard 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 subdivision b of this section.

4. No later than the day on which any work begins under a shelter contract subject to the requirements of this section, a shelter operator shall post in a prominent and accessible place at every shelter and provide each security guard subject to paragraph 1 of subdivision b of this section a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which security 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 security 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 other languages spoken by 10 percent or more of a covered employer's security 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 security guards. The comptroller shall provide the commissioner with sample written notices explaining the rights of security 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 commissioner and the comptroller shall promulgate implementing rules and regulations as appropriate and consistent with this section. Beginning one year after the enactment of the local law that added this section, the comptroller shall submit annual reports to the mayor and the speaker of the council summarizing and assessing the implementation and enforcement of this section during the preceding year.

2. Every shelter contract and every contract between a shelter operator and a security guard company for the provision of security services at a shelter shall contain a provision obligating shelter operators and security guard companies to comply with all applicable requirements of subdivision b 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 security guard, a former security guard, or a security 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 investigatory, hearing, and other powers as are conferred on the comptroller by sections 234 and 235 of the labor law. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by subdivision 2 of section 235 of the labor law, request that the department withhold any payment due to the covered employer in order to safeguard the rights of the security guards.

4. The comptroller shall report the results of such investigation to the commissioner, who 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,

including, but not limited to, a stipulation of settlement. Such order, determination, or disposition may at the discretion of the commissioner impose the following on the covered employee committing the applicable violations:

(i) Direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of the underpayment to the security 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 maintenance or disclosure of any records that were not maintained or disclosed as required by this section;

(iii) 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;

(iv) 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;

(v) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer; and

(vi) Declare a finding of non-responsibility and bar the covered employer from receiving city service contracts from the contracting agency for a prescribed period of time.

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 commissioner 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. The commissioner 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 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. When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the wage, benefits, anti-retaliation, record-keeping or reporting requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any shelter contract for a period of five years from the date of the second disposition.

8. When a final disposition has been made in favor of a security guard and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the commissioner and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding has expired, the commissioner shall file a copy of such order containing the amount found to be due with the clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof who knowingly participated in the violation of this section. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the commissioner in the same manner and with like effect as that prescribed by the state civil practice law and rules for the enforcement of a money judgment.

9. Before any further payment is made, or claim is permitted, of any sums or benefits due under any shelter contract covered by this section, it shall be the duty of the commissioner to require the covered

employer that has been found to have violated the law to file a written statement certifying to the amounts then due and owing from each such covered employer to or on behalf of all security guards, or the commissioner for wages or benefits wrongly denied them, or for civil penalties assessed, and setting forth the names of the persons owed and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the covered employer under penalty of perjury. If any interested person shall have previously filed a protest in writing objecting to the payment to any covered employer on the ground that payment is owing to one or more employees of the covered employer for violations of this section, or if for any other reason it may be deemed advisable, the comptroller, the commissioner or the department of finance may deduct from the whole amount of any payment to the covered employer sums admitted by the covered employer in the verified statement or statements to be due and owing to any security guard before making payment of the amount certified for payment, and may withhold the amount so deducted for the benefit of the security guards or persons that are owed payment as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due them.

10. 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.

11. 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 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 security guard, such security 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 wages, provide 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 or make-whole 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 chapter as if no such complaint had been filed.

3. Notwithstanding any inconsistent provision of this section or of any other general, special or local law, ordinance, city charter or administrative code, a security guard affected by this section shall not be barred from the right to recover the difference between the amount paid to such security guard and the amount which should have been paid to the security guard under the provisions of this section because of the prior receipt by the security guard without protest of wages or benefits paid, or on account of the security guard's failure to state orally or in writing upon any payroll or receipt which the security guard is required to sign that the wages or benefits received by the security guard are received under protest, or on account of the security 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 security 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 security guard's right to bring a common law 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 security 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 security guard or such security 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 security guard in good faith believes this section applies. Taking adverse employment action against a security guard or such security guard's representative within 60 days of the security guard engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any security 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 \$5,000 with a security guard company for the provision of security services at a shelter in performance of a shelter contract without prior approval of the security guard company by the department. The shelter operator shall provide information to the department demonstrating that the proposed security guard company has the necessary facilities, skill, integrity, past experience and financial resources to perform the security services required pursuant to the shelter contract. A VENDEX questionnaire completed by the proposed security guard 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

security guard company after receiving all requested information. The approval of a security guard 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 security guard company.

g. Application to existing shelter contracts. No later than 30 days after the effective date of the local law that added this section, the commissioner shall provide notice of the provisions of this section to existing shelter operators. To the extent permitted under a shelter contract between the department and a shelter operator executed prior to the effective date of the local law that added this section, the commissioner shall commence to renegotiate such existing shelter contract to include the provisions of this section and shall terminate such existing shelter contract if the shelter operator does not accept the new terms within 90 days of receiving notice of the provisions of this section. The commissioner shall provide sufficient funding for shelter operators to fulfill the additional requirements imposed under this section.

h. Severability. In the event that any requirement or provision of this section, or its application to any person or circumstance, should be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other requirements or provisions of this section, or the application of the requirement or provision held unenforceable to any other person or circumstance.

i. Competing 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 security 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. This local law takes effect 120 days after it becomes law, except that the commissioner of homeless

services and the comptroller may promulgate any rules necessary for implementation of this local law and take any other measures as are necessary for its implementation, prior to such date.

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